



Agenda Item: ATCM 9
Presented by: New Zealand,
Netherlands,
Finland, Sweden
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Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Next Steps

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Next Steps

Working Paper submitted by New Zealand, the Netherlands, Finland and Sweden

Summary

New Zealand, the Netherlands, Finland and Sweden recommend that the ATCM adopt a Decision to address the mandate in Decision 4 (2010) regarding consideration of the resumption of negotiations on liability in accordance with Article 16 of the Protocol on Environmental Protection to the Antarctic Treaty. A draft Decision is provided for the ATCM's consideration.

Background

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty was adopted by ATCM XXVIII in 2005, and sets out a regime for liability arising from environmental emergencies.

Measure 1 (2005) provides that Annex VI will become effective once the Measure has been approved by all Consultative Parties entitled to attend ATCM XXVIII. According to the depositary, as at 21 October 2014 ten out of the required 28 Parties had notified their approval of the Measure.

By Decision 1 (2005) Parties decided to evaluate annually the progress towards Annex VI's becoming effective and, not later than five years from the adoption of the Annex, to take a decision on a time-frame for the resumption of negotiations, in accordance with Article 16 of the Protocol, to elaborate further rules and procedures as may be necessary relating to liability for environmental damage.

By Decision 4 (2010) Parties decided to extend by another five years (to 2015) the period for taking a decision on a time-frame for the resumption of negotiations on further rule and procedures on liability. The Parties also requested the Committee for Environmental Protection (CEP) to consider environmental issues related to the practicality of repair or remediation of environmental damage in the circumstances of Antarctica, in order to assist the ATCM in adopting an informed decision in 2015 related to the resumption of negotiations.

On behalf of the CEP New Zealand reported on the work of the Intersessional Contact Group (ICG) on repair and remediation of environmental damage at ATCM XXXVI (Brussels, May 2013). The ATCM welcomed the advice and confirmed that it would be addressed in detail at the Legal and Institutional Working Group in 2014 (ATCM Final Report, para 174). At ATCM XXXVII (Brasilia, May 2014) the Meeting agreed that no further advice from the CEP was required in order to take a Decision in 2015 to consider whether to resume negotiations on liability in accordance with Decision 4 (2010) (ATCM Final Report, 2014, para 166).

Recommendation

The Meeting is now required to take a decision on the establishment of a time-frame for the resumption of negotiations on liability in accordance with Decision 4 (2010).

New Zealand, the Netherlands, Finland and Sweden see the resumption of negotiations as a priority and remain convinced of the need for a comprehensive liability regime in order to give full effect to the undertaking in Article 16 of the Protocol.

At the same time, New Zealand, the Netherlands, Finland and Sweden consider that immediate efforts should be focussed on bringing Annex VI into force.

We propose that additional emphasis be placed on encouraging and assisting Parties to approve Measure 1 (2005).

We would like to encourage those Parties that have yet to approve Measure 1 (2005) to provide the Secretariat with information to populate the Table at Attachment B, to inform a focused discussion on progress at ATCM XXXIX (2016). If other Parties considered it useful, we would propose that this table be updated annually by the Legal and Institutional Working Group.

Further, we propose that Parties commit to taking a decision in 2018 on the resumption of negotiations on liability in accordance with Article 16 of the Protocol, or sooner if Parties so decide in light of progress made in approving Measure 1 (2005).

New Zealand, the Netherlands, Finland and Sweden recommend that the ATCM adopt a Decision to this effect. A draft Decision is attached to this paper for the consideration of the meeting.

*Attachment A***Draft Decision X (2015): Liability arising from Environmental Emergencies****The Representatives,**

Recalling the undertaking in Article 16 of the Protocol on Environmental Protection to the Antarctic Treaty to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

Recalling Measure 1 (2005) and the adoption of Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, as a step in the establishment of a liability regime in accordance with Article 16 of the Protocol;

Noting that Annex VI has yet to become effective;

Recalling Decision 1 (2005) and Decision 4 (2010) regarding the annual evaluation of progress towards Annex's VI's becoming effective and the establishment of a time-frame for the resumption of negotiations on liability in accordance with Article 16 of the Protocol;

Welcoming the advice provided by the Committee for Environmental Protection in 2013 on environmental issues related to the practicality of repair or remediation of environmental damage in the circumstances of Antarctica;

Decide:

1. to continue to evaluate annually the progress made towards Annex VI's becoming effective in accordance with Article IX of the Antarctic Treaty;
2. to continue to share with one another information and experience, to support progress towards Annex VI's becoming effective;
3. to consider at ATCM XXXIX (2016) further action to encourage and assist Parties to approve Measure 1 (2005) as a priority;
4. to take a decision in 2018 on the resumption of negotiations on liability in accordance with Article 16 of the Protocol, or sooner if Parties so decide in light of progress made in approving Measure 1 (2005);
5. that Decision 4 (2010) is no longer current.

Attachment B

| Consultative Parties entitled to attend ATCM XXVIII | Date of approval as notified to the depositary (as at 21 October 2014) | Situation update | Expected timeframe for approval |
|--|---|-------------------------|--|
| Argentina | | | |
| Australia | 15 May 2014 | | |
| Belgium | | | |
| Brazil | | | |
| Bulgaria | | | |
| Chile | | | |
| China | | | |
| Ecuador | | | |
| Finland | 14 December 2010 | | |
| France | | | |
| Germany | | | |
| India | | | |
| Italy | | | |
| Japan | | | |
| Korea (ROK) | | | |
| Netherlands | 28 April 2014 | | |
| New Zealand | 31 May 2013 | | |
| Norway | 24 May 2013 | | |
| Peru | 10 July 2007 | | |
| Poland | 15 January 2009 | | |
| Russian Federation | | | |
| South Africa | | | |
| Spain | 17 December 2008 | | |
| Sweden | 8 June 2006 | | |
| Ukraine | | | |
| United Kingdom | 18 April 2013 | | |
| United States | | | |
| Uruguay | | | |