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Tourism and the Duty for ATCP Action

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Information Paper Submitted by ASOC¹ to ATCM XXX (ATCM Agenda Item 11)

1. Introduction

Commercial tourism activity in the Antarctic Treaty Area is showing steep and accelerating rates of growth, whether measured by numbers of tourists, vessels or expeditions. Seaborne tourism still dominates the industry, but air-supported and “fly-sail” operations also occur, and are expanding. The 2007/08 summer season is likely to see in excess of 50,000 persons entering the Antarctic Treaty Area through Antarctic tourism, if crews and passengers are included.

Unrestricted and unregulated, these activities pose several sorts of risks. Increasing numbers and diversifying activities, particularly in the Antarctic Peninsula, pose increasing risk of environmental impact via chronic or acute mechanisms. Any such impacts will affect not only environmental values, but also the value of the area for the established priority human activity in Antarctica, scientific research. Misadventure poses risks of not only human catastrophe, but significant disjunction of national programme activity supporting the scientific project in Antarctica. As tourism in Antarctica transforms from niche to mass tourism, the likelihood of tourism infrastructure ashore – and the positive feed-back loop to further tourism expansion that this would usher in - increases. Each year sees further evidence of the transformation of even the seaborne sector from its historic use of relatively small ice-strengthened vessels to large or gigantic general-purpose cruise liners, which are not ice-strengthened. Increasing tourism activity of all types brings closer the day when problematical jurisdictional issues in relation to criminal or civil law in this complex legal environment will transform from theoretical to actual issues.

Since 2001, ASOC has drawn attention to these problems and the urgent need for Antarctic Treaty Consultative Parties (ATCPs) to take responsibility for putting in place legal measures that regulate this activity.² This should be done before the activity reaches such a scale that regulation becomes politically impossible, undercuts the present form of Antarctic governance, and leaves the dominant human activity in Antarctica to be mediated by corporations. Tourism may be the first issue out of the blocks, but other commercial interests are already evident. Quite aside the likely practical consequences of the emergence of a “Continent for Commerce”, the moral implications of the appropriation of an entire continent for private pecuniary benefit are profound.

Some tourism activities take place with direct or indirect support of National Antarctic Programmes. From the environmental perspective, they are no different to other commercial tourism activities, and should be considered alongside those activities.

ASOC believes that ATCPs have a duty to act to ensure appropriate regulation of Antarctic tourism. This paper identifies three key areas for action.

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² ASOC tourism-related IPs are listed in Appendix 1.

2. Three Key Areas for Action

2.1 Ending the Use of Very Large Cruise Liners in the Antarctic Treaty Area

The 2006/07 season saw the largest tourist vessel ever to operate in Antarctic waters. Indeed, the 109,000 ton *Golden Princess* is by far the largest vessel in any category that has ever operated within the Antarctic Treaty Area. COMNAP has identified the largest national program vessel as 40,000 tons.³

This vessel carried 3,700 persons (2,500 passengers and 1,200 crew). This was by far the largest number of persons ever carried into the Antarctic Treaty Area by a single vessel, and constituted the single largest human activity in the Antarctic Treaty Area in the 2006/07 season. It represented a significant proportion of the total persons carried into the area by seaborne tourism in the 2006/07 season. The 3,700 persons aboard this single ship substantially exceed COMNAP's 2005 estimate of a peak summer population for all Antarctic national programs of 3,427 persons – a number distributed across some 37 year-round stations. With a residence time in the Antarctic Treaty Area of around 6 days (about double the residence time of previous large-ship cruises) its activity footprint, in terms of human residence time within the area, was 22,200 person-days.

Although the vessel did not land passengers, it operated in poorly charted waters in areas of high environmental and scientific value and sensitivity near the South Shetlands and northern Antarctic Peninsula. The *Golden Princess* is not ice-strengthened. Given the size and characteristics of the vessel, the huge number of passengers and crew, the risk of significant environmental damage in the event of misadventure, problems ensuring adequate search and rescue for an enterprise on this scale, and the potential loss of life, ASOC called upon the responsible US authorities to require that the activity to be subject to a CEE. Unfortunately, it was only subject to an IEE, and proceeded without apparent modification.

In the case of the *Golden Princess* there appears to have been a sense of comfort arising from the fact that landings were not proposed. ASOC is gratified that it did not seek landings (and that it completed its cruise without problem), but this does not remove the basis for concern. The environmental impacts of shipping do not occur only at the landing sites, and the Protocol does not just apply in relation to activities ashore. The potential for misadventure in the marine environment remains significant – a risk demonstrated by the grounding of the far smaller, and ice-strengthened, Norwegian cruise ship *Nordkapp* at Deception Island at around the same time. Further, the fact that very large cruise liners have not yet proposed landings in Antarctica is no guarantee that they will not. In March 2006, the 70,327 tonne cruise liner *Queen Elizabeth II* landed over 1,000 passengers by small boat near the active volcano at Rabaul in Papua New Guinea's New Britain province. Although not Antarctica, this event suggests that there is in principle nothing to prevent landings from very large cruise liners in dynamic and potentially hostile natural environments, Antarctica included. Currently, there are no legal constraints that would preclude landings from very large cruise liners in the Antarctic Treaty area.

ASOC believes that ATCPs should agree to adopt a Measure prohibiting vessels above a certain size, and/or carrying more than a specified number persons in total (passengers and crew), from operating in the Antarctic Treaty Area, whether they propose landings or not. This would remove the risks from very large cruise liners completely, and has the administrative elegance of generic application across all vessels types operating in the area. It would be without prejudice to any likely national programme scientific or logistic support, fishing or other vessel currently operating in Antarctic waters. None of these other types of vessel would come anywhere close to having so many persons aboard, or being so large. Such a Measure would of course have no effect on vessels conducting innocent passage through the Antarctic Treaty Area.

2.2 Preventing the Establishment of Tourism Infrastructure Ashore

There has been some discussion about preventing the development of permanent and/or semi-permanent tourism facilities ashore in Antarctica, most substantially at XXIX ATCM. Most ATCPs appear to believe such a development would be unfortunate but arguments about, variously, the sufficiency of the Protocol, not cutting across EIA as the appropriate regulator, and sovereignty concerns have so far precluded agreement on any mechanism to prevent it. The fact that there are already active tourism facilities ashore appears to have hampered the debate. ASOC's position is that the immediate prospects of tourism infrastructure ashore should be a matter of grave concern. The resulting environmental footprint would not be offset by any public

³ XXVIII ATCM/IP122 - paragraph 5.

returns in the manner of scientific activities, the activity sites would likely be of high environmental value; and the activity might entail unacceptable competition with science for access to, and use of, sites.

Moreover, tourism infrastructure ashore would have a further consequence of even greater concern. It would accelerate the penetration of Antarctica by mass tourism. Once facilities appear ashore, we should soon face pressures for air-supported tourism, and the economics of that transformation would massively accelerate tourism development and the overall level of activity. Questions of property rights and usufruct would certainly follow the facilities, and open up quite unhelpful new lines of contention in Antarctica.

It is therefore critical that ATCPs foreclose on the possibility of tourism infrastructure ashore. If this can, in the first instance, only be approached through hortatory mechanisms, such as the Resolution proposed by the United Kingdom at XXIX ATCM, then that should be the first step. However, ATCPs need to find the political will and mechanism to move to legally based constraint thereafter.

Other mechanisms, such as setting a ceiling for acceptable impacts arising from tourist activity –the level favoured by both IAATO and some parties appears to be “no more than minor or transitory” impact (i.e. the level where Initial Environmental Evaluation (IEE) operates) – may also be useful. ASOC has consistently argued that a broad raft of approaches may be necessary to address tourism challenges. However, we raise a note of caution in relation to the EIA-approach. It cannot be acceptable if the reasonable proposition that tourism activities have no more than a minor or transitory impact leads to the industry or ATCPs determining *a priori* that no tourism activity could have more than this level of impact. Were this to be the case, we should have given the Antarctic EIA system a very severe wound without effectively constraining tourism activity ashore (or indeed anywhere else).

2.3 Constraining the Absolute Scale of Antarctic Tourism

Constraints on large cruise vessels and tourism infrastructure ashore would contribute to limiting the overall absolute scale of Antarctic tourism. The question is whether this would be enough to alter the present steeply climbing level of activity. For some parts of Antarctica, in the short term it probably would. It is less clear that this would be the case in the northern Antarctic Peninsula, where the heaviest tourism pressures are presently seen. Here, a large part of the growth in Antarctic tourism is arising through expansion of small to medium size ship activity. Similarly, although Site Specific measures may contribute to better management of individual, defined tourism sites, they do not of themselves impose constraints on tourism growth.

It is clear that some further mechanisms are necessary, particularly for the Peninsula. The most obvious approaches might be some limits on either the number of vessels or the number of expeditions a vessel may conduct in a season. Other criteria might be the nature of the tourism activity, in some variation on the concept of compelling purpose with which the Antarctic Treaty System is familiar elsewhere. Imposing limits of these sorts is plainly a matter for careful consideration – posing significant issues of policy and establishing the appropriate legal basis. ASOC does not have a fixed view on how ATCPs might arrive at a means of doing this, but we believe that it should involve some objective standards, as well as longer term strategic considerations. Interest in vessel standards, evident at several ATCMs, perhaps offers one objective basis.

Pending resolution of a basis for constraining the scale of Antarctic tourism, it would be helpful for the ATCM to agree to some clear statement that it does not see unending growth of Antarctic tourism as desirable or necessary. Such a declaratory position would demonstrate the intention to remain in control of this industry in Antarctica where ATCPs claim particular responsibilities.

3. Conclusion

Antarctic Treaty Consultative Parties should act on their duty to ensure appropriate and effective regulation of commercial tourism in Antarctica. They should do so in order to protect the environment of Antarctica and the other values to which they have committed in the Protocol. This Information Paper identifies three key areas for action. The mechanisms suggested would constrain the particularly negative forms of tourism currently emerging, and offer a route to constraining the absolute scale of Antarctic tourism. It is imperative that this is done before the scale of Antarctic tourism is beyond the capacity of the Antarctic Treaty System to control.

ASOC urges Parties to:

- Adopt at XXX ATCM a *Resolution* stating that it does not see unending growth of Antarctic tourism as desirable or necessary;
- Commence discussions on criteria and levels that will allow it to adopt a *Measure* at XXXI ATCM prohibiting vessels above a certain size and/or carrying more than a specified number of persons from operating within the Antarctic Treaty area; and
- Commence discussions on mechanisms that will allow it to adopt a *Measure* at XXXI ATCM that prevents the establishment of tourism infrastructure ashore.

Appendix 1: ASOC Information Papers on Antarctic Tourism Regulation:

- 2001 'Antarctic Tourism'. *XXIV ATCM IP 40*.
- 2002 'ATCM Papers, Discussions & Recommendations Relating to Tourism and Non-Governmental Activities'. *XXV ATCM IP 52*.
 'Port State Jurisdiction: An Appropriate International Law Mechanism to Regulate Vessels Engaged in Antarctic Tourism'. *XXV ATCM IP 63*.
 'Improving Awareness of Protocol Obligations Amongst Antarctic Yacht Operators'. *XXV ATCM IP 76*.
 'Regulating Antarctic Tourism'. *XXV ATCM IP 83*.
- 2003 'Port State Control: An Update on International Law Approaches to Regulate Vessels Engaged in Antarctic Non-Governmental Activities'. *XXVI ATCM IP 44*.
 'Preventing Marine Pollution in Antarctic Waters'. *XXVI ATCM IP 64*.
 'Regulating Commercial Tourism in Antarctica: The Policy Issues'. *XXVI ATCM IP 67*.
- 2004 'The Case for Concern about Antarctic Tourism'. *ATME Paper #20 Rev. 1*.
 'What Does Regulation of Commercial Tourism Mean?' *ATME Paper #21*.
 'Mechanisms for Regulating Commercial Tourism'. *ATME Paper # 22*.
 'The Regulation of Antarctic Tourism: State of Play after the Antarctic Treaty Meeting of Experts (Norway, 22-25 March 2004)'. *XXVII ATCM IP 93*.
 'Tourism Accreditation and Inspection under the Antarctic Treaty'. *XXVII ATCM IP 108*.
- 2005 'Some Legal Issues Posed by Antarctic Tourism'. *XXVIII ATCM IP 71*.
 'Antarctic Tourism Graphics: An Overview of Tourism Activities in the Antarctic Treaty Area'. *XXVIII ATCM IP 119* (with UNEP)
- 2006 'Managing Antarctic Tourism: A Critical Review of Site-Specific Guidelines'. *XXIX ATCM IP 65*.
 'Strategic Issues posed by Commercial Tourism in the Antarctic Treaty Area'. *XXIX ATCM IP 120*.