TOURISM ACCREDITATION AND INSPECTION UNDER THE ANTARCTIC TREATY
Tourism Accreditation and Inspection under the Antarctic Treaty

INTRODUCTION

The concept of “Accreditation” or “Certification” (hereafter solely “Accreditation”) of tourism operators is now well entrenched in many parts of the world. Although not universally effective, nor necessarily the only action required, there may be advantages. At its best, it may provide one means to improve operating and environmental standards, and compliance with existing legal obligations, social norms and technical best-practice. In such instances benefits may accrue to a variety of interested parties – tourists, who acquire a means for discrimination, good operators, who acquire a cachet of distinction; other users, who at least now have a process wherein their interests may be raised; regulatory agencies, which may be able to segue legal obligations through such a mechanism; and the wider non-use owners, whose existential interests may be (like other users) now at least be factored into a process.

Over the past several years, as regulation of tourism has been discussed under the Antarctic Treaty, the idea of Accreditation has arisen. Its consideration appears independent of wider stances on regulatory needs, since several State Parties, ASOC and IAATO have now each independently examined it as an option.

This paper examines one route to an Accreditation Scheme, which ASOC believes Parties may wish to consider. It is a scheme based upon the Inspection provisions established under the 1959 Antarctic Treaty, the 1991 Protocol on Environmental Protection to the Antarctic Treaty, and various Resolutions adopted by Parties at ATCMs. Some further development of the Inspection capacity may be required, but we believe this may not be the rate-limiting step that some have feared. Plainly, some parts of the Accreditation Scheme have to be constructed de novo. The Inspection regime, even if developed further, does not constitute the whole scheme. But it may be able to provide the foundation for such a scheme. The idea, in brief, is to:

(i) build upon an existing legal capacity and the substantial case history in relation to Inspections generally;
(ii) employ a mechanism which can give effect to the full raft of existing Antarctic Treaty and Protocol obligations;
(iii) take advantage of a mechanism which has a direct feed-back capability vis-à-vis the Antarctic Treaty, thereby enabling subsequent development of the regulatory regime on the basis of experience and need;
(iv) ground an Accreditation Scheme in the Antarctic Treaty System; and
(v) place the Antarctic Treaty Consultative Parties at the centre of the Accreditation Scheme.

INSPECTIONS

The basis for Inspection is found in Article VII of the Antarctic Treaty:

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.
The combined Antarctic Treaty and Protocol Inspection regime is thus apparently intended to:

• Promote the objectives of, and ensure the observance of the provisions of, the Antarctic Treaty, the protection of the Antarctic environment and dependent and associated ecosystems and ensure compliance with the Protocol;

• Apply at any time to all parts of the Antarctic Treaty Area (subject to certain high seas freedoms and the rights and obligations under other international conventions), including all stations, installations, equipment, ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, and to all records maintained thereon which are called for under the Protocol; and

• Allow aerial observation.
These legal capacities have been underpinned by both the case history of Antarctic Inspections by Consultative Parties, and by specific Inspection Checklists adopted by Parties.

A recent examination of Inspection practice (ASOC/UNEP XXVI ATCM IP 118 Rev.1) suggests that only five tourism focussed inspections have occurred, all of tourism vessels, and all since October 1991 – i.e. they postdate the adoption of the Protocol. Tourism and other non-governmental sites ashore appear not to have been the subject of declared Inspections.

Clearly the case history is not substantial. But tourist activities are not the only subset of Antarctic activities to be patchily examined by Inspections to date. It would, presumably, be considered desirable by most Parties that Inspection coverage was broadened, quite apart from the particular purpose suggested in this Information Paper.

It has been suggested that there are inherent limitations in the application of the Article VII inspection rights to tourist activities, particularly in relation to tourism cruises. This is presumably based upon a reading of paragraph 3 of that article, wherein the qualification “at points of discharging or embarking cargoes or personnel in Antarctica” occurs.

We do not believe that this is necessarily a significant limitation.

- The Article 14 provisions do, after all, arise in a Protocol intended to apply (inter alia) to tourism activities, and must presumably have been intended to have application to that activity;

- The Article VII phrasing appears to pose no impediments to Inspections of tourist operations during the landings at discrete sites within the Antarctic Treaty Area that still characterises most Commercial Tourism;

- There is no impediment to Inspection of tourism activities ashore;

- The embarkation and disembarkation of cargoes and personnel in other places than at shorelines (e.g. zodiac cruising, dive support, helicopter flights, etc) characteristic of some contemporary Commercial Tourism also seems to fall within the reach of Article VII (3).

There may be types of tourism activity which fall beyond the reach of the present Inspection provisions, but it is not evident to us that this presently affects a significant part of the mainstream industry. The option of developing further the Inspection provisions is of course open to Parties.

The Inspection Checklists are hortatory and were adopted under Resolution 5 (1995). They presently comprise four checklists:

- Checklist A: Permanent Antarctic Stations and Associated Installations
- Checklist B: Vessels within the Antarctic Treaty Area
- Checklist C: Abandoned Antarctic Stations and Associated Installations
- Checklist D: Waste Disposal Sites

None specifically relate to tourism, although plainly tourism may have effects at each of the sites covered, and tourism vessels are a significant fraction of the “Vessels within the Antarctic Treaty Area” covered by Checklist B.
There seems to be a good case for developing a tourism specific checklist, or checklists. We have not presently given detailed consideration to what these might cover, nor indeed whether it would be better to have a single integrated Checklist or several activity-specific Checklists.

**BENEFITS OF AN ACCREDITATION SCHEME LINKED TO INSPECTION PROVISIONS**

An Accreditation scheme could be constructed in several ways. What might be the advantages of a scheme linked to Inspections provisions?

- It provides a mechanism already grounded in international law, through the Antarctic Treaty and its Protocol;

- It provides a mechanism whereby the full range of Antarctic Treaty interests (currently codified or future developments) may be utilised. It is not (eg) a mechanism useful only for giving effect to Protocol obligations. Thus non-environmental considerations such as Search and Rescue obligations could be considered;

- It draws upon a case history of Inspections and Inspection Checklist use – albeit not well developed in relation to tourism;

- It deploys a mechanism which allows direct and short-line feedback to the Antarctic Treaty System – and thus offers the particular advantage of facilitating future assessment of regime development by Consultative Parties. So, finding that environmental monitoring was in some way problematical for tourist operations might trigger initiatives through the CEP, SCAR, COMNAP, etc which could lead to refinement of monitoring standards and their subsequent embedding via ATCM Resolution or Measure;

- It obviously grounds Accreditation in the Antarctic Treaty System and thus ensures that Consultative Parties remain at the centre of the scheme;

- It can be linked to other mechanisms that Consultative Parties either currently employ, or in future may care to employ (EIA, Onboard Observer Schemes, Departure State/Port State Jurisdiction consistent with UNCLOS, etc)

**HOW MIGHT IT WORK IN PRACTICE?**

This Information Paper does not purport to offer more than a preliminary model for consideration by Consultative Parties. The following are some issues that we believe would need to be considered:

- Who does the Inspection for Accreditation?
- What are the standards?
- How frequently is Inspection for Accreditation done?
- How does one deal with the set-up period?
- Who pays?

*Who does the Inspection for Accreditation?*
We think it would best be done by a small number of states, as any multi-Party Inspection. This allows the Inspection team to include Parties who have a particular interest in the operator, or the area of activity.

**What are the standards?**

They are the full range of current Antarctic Treaty System obligations. It would be helpful if these were available in an Inspection Checklist.

**How frequently is Inspection for Accreditation done?**

Our impression is a five-yearly interval, but this is a very preliminary view. Plainly a balance has to be found between a manageable workload and issuing “blank cheques”. A re-testing scheme also needs development for operators that fail to gain Accreditation, or who significantly change their operations or ownership.

**How does one deal with the set-up period?**

Possibly, for the first five years every existing tourism operator is deemed to have Interim-Accreditation unless there is a compelling reason to withhold this. By the end of the first five-year period, all operators should have been Inspected for Accreditation

**Who pays?**

The tourism operator, who seeks Accreditation, pays. In return they get the ultimate cachet of Antarctic *bona fides* – Accreditation by the Antarctic Treaty System, with whatever logo and use rights Consultative Parties consider appropriate.