The Antarctic and Southern Ocean Coalition

ASOC Secretariat
1630 Connecticut Ave NW
Washington, DC 20009 USA
Tel +1 202 234-2480
Fax +1 202 387-4823
Email : antarctica@igc.org
www.asoc.org

ASOC REPORT ON THE
XXVIII ANTARCTIC TREATY CONSULTATIVE MEETING
Stockholm, Sweden
6-17 June 2005
EXECUTIVE SUMMARY

BACKGROUND

1. Antarctic Treaty Consultative Meetings (ATCMs) \(^1\) give effect to obligations under the 1959 Antarctic Treaty, and the 1991 Protocol on Environmental Protection to the Antarctic Treaty.

2. ATCMs are hosted by Consultative Parties (essentially voting members – presently 29) in alphabetical order in English. The ATCM lasts two weeks, and conducts its business through a number of Working Groups – presently five: Liability, Legal & Institutional, Tourism, Operational and the Committee for Environmental Protection (CEP).

3. The Antarctic and Southern Ocean Coalition (ASOC) has participating “Expert” status at ATCMs. It is the only environmental non-governmental group with such access. IUCN and UNEP are also invited “Experts” – and ASOC works supportively and collaboratively with both.

4. XXVIII ATCM was held in Stockholm from 6-17 June 2005.

5. It considered 197 papers (72 Working Papers and 125 Information Papers) tabled by states and other participants, and produced a Final Report of 475+ pages. ASOC is able to provide electronic copies of these documents (in the original language in the case of Information Papers, and in English, French, Spanish and Russian in the case of Working Papers) to ASOC members.

6. The ASOC Report on the Stockholm meeting does not attempt to say everything that can be said about it. It seeks to identify what we believe were the key issues for the wider NGO community whom we represent, and identifies the people, papers, press and outcomes particularly associated with ASOC participation.

7. The ASOC delegation comprised:
   • Jim Barnes (ASOC Executive Director - France);
   • Sarah Dolman (Whale and Dolphin Conservation Society - UK);
   • Dr Alan Hemmings (Senior ASOC Adviser and Antarctic Tourism Campaign Coordinator – Canberra, Australia);
   • Daniel Owen (Barrister - UK); and
   • Lic. Ricardo Roura (Madrid Protocol Implementation Campaign Coordinator; Antarctic Tourism Campaign Co-Coordinator –The Netherlands);

MATERIALS PRODUCED

8. ASOC presented five Information Papers - including our annual report, which is included in the Final Report of the ATCM - available on the ASOC website:

\(^1\) Appendix 1 contains a glossary of Antarctic terms relevant to the ATCM.
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9. Three editions of the international NGO newspaper *ECO* were produced – available at the ASOC website:

*ECO No 1 (6 June):*
  - *A meeting of firsts* – Outlines key issues to be dealt by the XXVIII ATCM.
  - *Liability* – *A first within grasp* –
  - *Antarctica: An increasingly popular place* – Expresses concerns about the growing development of infrastructure in Antarctica.
  - *Commercial activities: It’s the economy, stupid!* – Lists current commercial pressures on the Antarctic environment and argues for the regulation of tourism.
  - *Protection for marine life* –
  - *Antarctic science for the world* – Argues that the scientific knowledge obtained in Antarctica should be used for the benefit of humankind, and urges all ATCPs to ratify the Kyoto Protocol.

*ECO No 2 (13 June):*
  - *No time, no money? No problem* – An overview of cheaper and quicker means to visit the Antarctic, which highlights that mass tourism is becoming established there.
  - *Liability Annex in the balance* –
  - *Specially Protected Species* –
  - *The future of the CEP* – Summarizes aspects of the strategic debate on the future of the Antarctic and the role CEP.

*ECO No 3 (16 June):*
  - *A Liability Annex in Stockholm (well done the Kiwis)*
  - *Site guidelines* – A critical update of the debate on the use of site specific guidelines as a means to manage tourism.

10. Media (during ATCM only):
  - *NRC Handelsblad* (Dutch daily newspaper). The article *Pinguïn struint tussen toeristen* (Penguin strolls among tourists) appeared on June 2 just before the ATCM, and quotes
key ASOC arguments for tourism regulation. The article is available at

KEY ISSUES

11. ASOC’s priorities included:

- Adoption of the Annex on Liability Arising from Environmental Emergencies;
- Progress on the regulation of Commercial Tourism in Antarctica;
- Scrutiny in the CEP of the significant development of Antarctic infrastructure planned
  for the next few years; and
- Monitor the implementation of the Madrid Protocol and highlight deficiencies in its
  compliance.

12. Secondary to these, we focused attention on:

- Discussion of “Biological Prospecting”;
- Climate change;
- Noise pollution.

KEY OUTCOMES

13. We have assigned key outcomes to four categories – Positive, Negative, Presently
   Indeterminate and Other.

   Positives

- The adoption of Annex VI of the Protocol on Liability Arising from Environmental
- A strategic discussion on the key environmental issues facing Antarctica, and the future
  role of the CEP in dealing with these issues. This discussion is to be continued in a
  workshop prior to ATCM XIX\(^2\) and at CEP XIX.

   Negatives

- What we have termed “deconstruction” of the Protocol continues apace. Following an
  expansive phase of regime development around the adoption of the Protocol, we now see
  efforts to “roll-back” the more innovative and progressive environmental management
  initiatives. In Stockholm concrete progress was made to further “deconstruct” the
  Protocol, with the adoption of a Decision on “Marine Protected Areas and other areas of
  interest to CCAMLR” (Decision 9-2005). This essentially gives even greater control of
  the marine component of the Antarctic Treaty Area to CCAMLR, greatly weakening
  Protocol provisions under Annexes I, II and V. Under this Decision the Treaty has to
  request "prior approval" from CCAMLR before approval of draft management plans of
  areas in which “…there is actual harvesting or potential capability for harvesting, and for
  plans that contain provisions that may prevent or restrict CCAMLR related activities.”
  There can hardly be any part of the marine environment where this is not theoretically
  possible, and thus the gatekeeper role of CCAMLR is comprehensively established.
  Aside the substantive effect of Decision 9, the process by which it was adopted gives
  serious cause for concern. At XXVIII ATCM there were no Working or Information
  papers relating to this issue and the Final Report has a single, succinct entry with no

\(^2\) This workshop will be held in Edinburgh from Friday 9th until early afternoon on Saturday 10th June 2006 close to
the full CEP/ATCM venue. Two representatives from all Parties, Observers and Experts will be invited to attend.
reference to any debate in the meeting.  

Presently indeterminate

- The regulation of tourism – Over the past few years there has been significant progress towards acknowledging the issues posed by Commercial Tourism and debating its regulation, but nothing by way of tangible regulation of the key facets of tourism (absolute numbers and activity level, rate of growth and diversification of activities) has yet appeared. Some favour recasting “regulation” as accreditation (by industry, with the rubberstamp of the ATCM) plus “site-specific guidelines”. If these mechanisms alone (which were discussed in Stockholm) indeed became the basis of a tourism “regulation” scheme, it would be without any substantive effect on the nature and scale of Antarctic tourism.
- The issue of adventure tourism may be also re-emerging, but with the term now deployed prejudicially against NGO and small private expeditions.
- Malaysia – At XXVII ATCM there was criticism addressed to states (i.e. Malaysia) using an observer status to postpone indefinitely accession to the Treaty.
- Biological Prospecting – This emerging commercial activity has still not received substantive discussion as a policy issue, and key states seem reluctant to do so. However, some papers on this issue were presented to the ATCM by ATCPs (in addition to the regular update by UNEP), and a Resolution on biological prospecting was adopted, recalling the provisions of information exchange under the Antarctic Treaty.
- Climate Change – this issue was featured in the CEP brainstorming (see below)

Other

- As in previous years, the ATCM and its advisory Committee for Environmental Protection (CEP) established a number of Intersessional Working Groups (ICGs) and other discussion fora to debate a number of issues in the period leading to the next ATCM. This marks a trend towards conducting substantive discussion on technical matters outside the meetings.

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3 “The UK introduced a draft decision regarding the iteration between the ATCM and the CCAMLR on protected areas with marine components. This was a technical revision of the understanding agreed upon in 1997-98. Decision 9 - 2005 was adopted.”
REPORT ON ISSUES

14. The following section examines some of the key topics at XXVIII ATCM. It does so on the basis of the issue, rather than the particular Working Group in which the matters were discussed. Appendix 2 contains an agenda of CEP VII, and a listing of the documents discussed under each agenda item. Appendix 3 contains a preliminary agenda of XXIX ATCM.

OPERATION OF THE ATS

Czech Republic and Estonia

15. The Czech Republic and Estonia are the two Non-Consultative Parties most actively seeking to increase their participation in the ATS. The Czech Republic, which began building its Antarctic base this summer, announced that it has completed all steps necessary for accession to the Protocol. Estonia is lagging behind in its base construction plans due to lack of funds, and did not report on the status of Protocol accession.

Romania

16. Romania signed an agreement with Australia for the joint use of Law Base, now renamed Base Law-Rakovita (for the Romanian chief scientist in Adrian de Gerlache’s Belgica expedition). Romania acceded to the Protocol in 2003.

Malaysia

17. Malaysia was again invited by ATCPs to observe the ATCM. Four Malaysian delegates attended – a larger delegation size than in earlier meetings, and a larger delegation than some Parties. However, as noted above, there was criticism addressed to states using an observer status to postpone indefinitely accession to the Treaty. This may force Malaysia to either join the Treaty or retreat to its earlier stances.

Israel

18. There are rumours that Israel may want to join the Antarctic Treaty, although this was not formally discussed at the ATCM. Apparently the first Israeli expedition to the Antarctic took place in 2003 (Israeli hydrologists travelling with the Russian Antarctic program). A report of this expedition will be presented to a scientific conference in September 2005.4

The Antarctic Treaty Secretariat

19. Jan Huber of The Netherlands attended the XXVIII ATCM as the first ATS appointed Executive Secretary. Parties have been very keen to constrain the role of the Secretariat and ensure that it has only a servicing and mandated representational role, rather than any executive autonomy that might cast it as a quasi-independent spokesman for the ATS.

20. There were extensive discussions of how the Secretariat is functioning, including its budget, which resulted in a much better understanding between states on the one hand and the Secretariat on the other.

Future ATCM hosts

21. The UK will host XXIX ATCM and a prior CEP strategy meeting in 2006 in Edinburgh. At ATCM XXVII India expressed interest in hosting XXX ATCM in 2007, Ukraine ATCM XXXI in 2008 and the USA ATCM XXXII in 2009. We understand that the US is keen to host the ATCM on the 50th anniversary of the adoption of the Antarctic Treaty.

PROTOCOL IMPLEMENTATION

Compliance with the Protocol

22. An inspection of numerous sites and facilities in the Antarctic Peninsula was conducted by the UK with the assistance of Australia and Peru (XXVIII ATCM/WP032). The outcome was predictable and – with some highlights – depressingly similar to observations made in past inspections, both official and unofficial by Greenpeace (and some of them dating back to the early 1990s or even late 1980s): scientific research is limited at many stations; and many programs have problems with fuel management and with following up the EIA process on the ground. Of note is that of the 22 stations inspected, eight were unoccupied – all belonging to South American states, and five of which belonging to one state.

Strategic discussion on the future of the CEP

23. A strategic discussion on the future of the CEP was promoted at CEP VII (2004) by the Swedish vice-chair of the CEP. At CEP VIII the debate was initiated with a brief paper submitted by Sweden. Subsequently, the CEP was divided in two groups that had one hour to brainstorm over strategic issues and the future of the CEP. Points of debate included trends in human pressures, future environmental challenges, and the question of “how do we want Antarctica to look environmentally in ten years or more?”

24. In the first group the discussion focussed on the emerging pressures on the Antarctic environment, and the role of the CEP. The first intervention, by Brazil, identified many of the key issues. Some Parties commented on broad strategic issues, while others focused on more practical matters. Among the former several Parties mentioned issues of carrying capacity; one Party made reference to the precautionary principle (or approach); other Parties noted the need to look at all activities collectively, particularly in the context of the IPY. There were various comments about the need to forge better links with SCAR and with other bodies working on polar or global issues, and perhaps joint Arctic-Antarctic representation. Among the latter Parties asked for a pragmatic approach in which strategic considerations are broken down into concrete actions – e.g. improving monitoring, getting rid of abandoned stations, increasing the efficiency of stations and reducing their carbon imprint, etc.

25. ASOC noted that both human activities and pressures on the environment will continue to grow, and that just as these increased, so would the workload of the CEP – whether the CEP liked it or not. It noted that there was a need not only to manage human activities in the Antarctic, but also to manage the growth of these activities. The CEP should take initiatives based on a strategic goal e.g. with regards to the question “how do we want Antarctica to look environmentally in ten years or more?” ASOC contended that in the future Antarctica should be not worse than now, and that this should be the guiding principle of the CEP.

26. The second brainstorming group focused its debate on global issues, predominately climate

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5 Appendix 2 contains a preliminary agenda for ATCM XXIX.
change. It was suggested that the CEP could recommend some action to the global audience and that outreach was required to achieve this. There was also some discussion about direct impacts on the Antarctic, requiring management action. ASOC noted transboundary impacts including GMOs and pollutants. Alien species were also mentioned.

27. Of prominence, there was some enthusiasm for an ‘Antarctic Climate Strategy’. There were also discussions surrounding targets to reduce CO₂ emissions to send an important signal to the rest of the world. It was suggested that capping energy use in Antarctica, whilst plainly trivial at a global level, was both symbolically important for the community most engaged on Antarctic research to do, and something it could do. A second, interesting, suggestion was that the CEP encourage or mediate assessment of the effects of climate change on the Antarctic, analogous to the assessment already done for the Arctic. A suggestion was made that an International Polar Conference should be held in IPY.

28. In all, these were interesting brainstorming sessions, albeit too brief. This discussion is only just beginning – in fact, one Party remembered ASOC’s work on SEA in the late 1990s-early 2000⁶ and suggested that it was time to revisit this approach and its usefulness to Antarctic activities. A pre-CEP XIX workshop is to be convened in 2006 to discuss strategic issues, and the issue will be discussed again at CEP XIX.

29. A separate discussion, which took place earlier in the week, addressed the growing workload of the CEP. An open ended contact group was established, and proposed some alternatives to manage the workload. In practise, the intersessional workload resulting from CEP VIII ended up being still very significant.

Annex I – EIA

30. The CEP discussed two draft CEEs, both for the replacement of existing stations (Germany’s Neumayer II and UK’s Halley VI), and reviewed an update of the ANDRILL project final CEE. None of the CEEs was controversial, and unlike some CEEs reviewed in the past few years, both were in fact of high quality.

31. The Secretariat was tasked to look into establishing an electronic database of IEEs/CEEs, many of which are presently difficult to obtain.

32. The CEP discussed amendments of the “Guidelines for EIA in Antarctica”. This resulted from a CEP VII (2004) proposal by Argentina to address the limitations of Annex I to tourism activities. Instead, an ICG was convened to consider whether the Guidelines should be supplemented “…to take into account the assessment of possible cumulative impacts arising from multiple activities at multiple locations undertaken by one or more national or private operators.” The discussion was quite substantive and underscored the weakness of the EIA process to address cumulative impacts. However, the ICG report recommended comparatively minor changes to the Guidelines. As a follow up from the ICG recommendations, New Zealand agreed to develop a methodology to assist proponents in identifying all the steps/information required in assessing cumulative impacts. In all there is incremental progress on the issue of cumulative impacts over the past decade, although this has so far been exceedingly slow.

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Annex II – Conservation of Antarctic Flora and Fauna

Annex II review

33. This issue was the subject of much debate in the two previous CEP meetings, but disappeared from sight at CEP VIII. The Meeting agreed that the review of Annex II should be revisited at ATCM XXIX.

Specially Protected Species

34. CEP VII in 2004 agreed to discuss Specially Protected Species at its 2005 session, and SCAR offered to bring a “prototype process for the designation of Specially Protected Species” to CEP VIII.

35. Accordingly, at CEP VIII, SCAR tabled WP 34 (Proposal to list a species as a Specially Protected Species under Annex II). This canvassed criteria (those of IUCN) and processes for designation and used southern giant petrel and macaroni penguins as models for a proposal – on the grounds that these were the most immediate candidates for adding to the list. There was widespread concurrence. Following the development of management plans to address the threats facing these species, we are likely to see their formal proposal for designation in the near term – probably southern giant petrel first. This has long been the most pressing candidate for such listing, and ASOC has argued for it. Thus, the discussion of this facet of Specially Protected Species was useful.

36. However, SCAR tabled a second paper, WP 33 (De-listing Antarctic Specially Protected Species). Here the picture becomes more complex. The two taxa presently comprising Specially Protected Species are the fur seals (Arctocephalus spp.) and the Ross Seal (Ommatophoca rossii). Both were carried over into Annex II from the 1964 Agreed Measures for the Conservation of Antarctic Flora and Fauna. Fur seals were listed because of adverse effects of 150+ years of sealing, in the mid 1960s then disappearing from Antarctica as a major activity; Ross seals were added because of the paucity of information about them. During the downturn in sealing a new agreement to regulate sealing – the 1972 Convention for the Conservation of Antarctic Seals (CCAS), should it eventuate, was adopted.

37. Reasonable evidence for the recovery of Antarctic (A. gazelle) and subantarctic (A. tropicalis) fur seals exists, and accordingly it is reasonable to consider the case for their removal from the list of Specially Protected Species. Whilst far more information is now available about the Ross seal, it still remains relatively poorly known and most authorities would consider it wise to leave it on the list. SCAR’s WP 33 essentially rehearsed this opinion. The paper apparently overlooked information from US and French seal biologists – a surprising oversight given the known active programmes of these two states. Adding data from these sources may not alter the judgement.

38. The crux of the problem in regard to lifting special protection of fur seals is that there are two communities with a seeming lethal interest in them. The first community are those states with interest in harvesting of marine mammals. Whilst fur seals may no longer be in the first rank in terms of desirable targets, the fact of a species being declared to now be so secure that it no longer needs special protection might be taken as manna from heaven. Here might be a target that one could argue was ‘scientifically’ agreed not to be at risk. We have been concerned that states whose marine mammal interests primarily lie elsewhere might wish to

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7 Para 117, Report CEP VII.
8 Para 115, Ibid.
seize this opportunity for its supposed precedent value. Aside from the acceptability of such harvesting, were it to occur it would involve the activation of the dormant CCAS – a not entirely positive thought given its prevailing exploitative ethic and the fact that its management approaches are now rather old. The resumption of sealing might also establish the concept of “rational use” in relation to the Protocol. Established here, it would likely permeate other vexed conservation and resource issues. Our judgement has been that it would further contribute to the roll-back of Protocol advances sought by some states.

39. The second community of concern are scientists who have felt that the degradation of vegetation and limnological systems in the Scotia Arc by increasing fur seal numbers can only be resolved by culling fur seals. The main fur seal population is at South Georgia, north of the Antarctic Treaty Area, although the expanding population has effects in the AT Area to its south. Their rationale (plausible enough in scientific rationalism terms) is that a greater environmental good is at risk in the continued environmental change resulting from fur seal numbers, that exclusion is impossible, and that culling would not materially affect the viability of the fur seal population. The problem is the moral acceptability of culling, and secondary effects such as introducing ‘active-management’ precedents into the Antarctic.

40. Interestingly, although South Georgia is outside the Antarctic Treaty Area, and thus its fur seal populations not formally covered by specific protections under the Protocol (or before that the Agreed Measures), the UK appears not to have felt able to introduce culling there. The special protection conferred within the Antarctic Treaty Area has been seen as having normative significance for areas subject to UK jurisdiction9 in the subantarctic too (and this may hold for other states with subantarctic or metropolitan populations of fur seals). This raises the possibility that apart from any effects of delisting within the Antarctic Treaty Area, there may also be consequences in areas beyond it, and particularly in relation to management practices at South Georgia.

41. We have suggested that one reasonable approach is to couple de-listing of fur seals with some sort of declaration or commitment at ATCM level that this is not intended, nor will be taken as, a green light to commence either harvesting or culling of seals. ASOC has pointed out to delegates (and many are quite well aware of this themselves) that in many states, however rationalised, killing fur seals would be viewed as utterly unacceptable by appreciable fractions of their citizenship. It would have extremely negative effects on the standing of the ATS, and of Antarctic science, and it does not seem a terribly auspicious way to welcome in the International Polar Year.

42. Subtle attempts to raise these issues have been rebuffed over many years. Crude scientific determinism is not a sufficient basis for decisions on vexed public issues which (quite reasonably) involve wider considerations.

43. In the second week of XXVIII ATCM, still having failed to get any appreciation of the risks, ECO 2 included an article on the subject10. As with all ECOS, this one was not a tabled paper. It is merely a commentary outside the meeting, made available in the coffee rooms.

44. This triggered an immediate and aggressive response by one delegation inside the meeting immediately after ECO 2 appeared.

45. The ECO assertion that “for the past decade some UK scientists have argued that increasing Antarctic furs seal populations in the Scotia Arc justifies active management, which means

9 The UK and Argentina contest the sovereignty of South Georgia.
10 Provided as Appendix 5.
culling fur seals”, is entirely fair and correct. UK scientists have been quite direct about this at a number of international meetings. Even though their published comments have been more circumspect – one is not likely to find a ‘smoking-gun’ sentence in a public document along the lines of “fur seals should be culled, but first we have to lift their Specially Protected status”. The direction of thinking seems fairly clear from the published record. One can trace (quite reasonable) concern about fur seal impacts on vegetation at Signy Island through papers from the late 1980s\textsuperscript{11}, and media reports\textsuperscript{12} and BAS’s own current educational materials\textsuperscript{13} canvass the legitimacy of culling.

46. The issue of de-listing fur seals will no doubt recur at CEP IX in Edinburgh in 2006, and we can assume that some will continue to believe that de-listing is appropriate. It really cannot be in anybody’s interest – whatever their positions in relation to fur seals – for this to open up great problems in the Antarctic.

**Annex III – Waste disposal and Waste Management**

47. Russia reported on the recovery of a Russian aircraft from the Amundsen-Scott South Pole station by a Russian crew. The aircraft had landed there in 2002-03 as an official expedition apparently sanctioned by Russia’s President Putin. However, it was in fact a private tourism expedition that had been organised by a high-ranking Russian politician who had a long involvement in his country’s Antarctic affairs. The plane failed to take off again, and the tourists (both from Russia and other nations) had to be evacuated by the US, causing a great embarrassment to the Russian Antarctic Expedition and cost to the American taxpayer. In their reporting to CEP VIII, Russian officials omitted to mention the involvement of a high-ranking Russian politician in this imbroglio, and placed the blame squarely on an unnamed Russian NGO.

**Annex IV – Prevention of Marine Pollution**

48. The CEP approved Decision 8 (2005) on the Use of Heavy Fuel Oil (HFO) in Antarctica, which requests to the International Maritime Organization to examine mechanisms for restricting the use of HFO in Antarctic waters, taking into account the relatively high risk of fuel release in Antarctic navigation, and the high potential of environmental impacts associated with the spilling of HFO.

**Annex V – Area Protection and Management**

49. The CEP considered a large number of management plans, some of which had been reviewed by ICGs. The CEP designated:

- A new Antarctic Specially Managed Areas (ASMAs);


\textsuperscript{12} Scientists call for action on Antarctic fur seals’, *The Times* (London), 19 May 1999.

\textsuperscript{13} ‘Ecological effects of fur seals at Signy Island’, Resource TL4, British Antarctic Survey. www.bas.ac.uk/Resources/schoolzone/resources/SchoolsPack/11terrestrial_dl.pdf “Should the exceptional terrestrial and freshwater ecosystems on Signy Island be given greater protection from fur seals by introducing carefully controlled exclusion fencing or seal culling? While a culling programme may not be desirable, it may be the only way to limit the impact of these animals on the terrestrial environment of the island. Such a management policy would be very difficult to agree politically”.

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• Two new Antarctic Specially Protected Areas (ASPAs); approved new or reviewed management plans for 14 ASPAs; and extended the management plans of five ASPAs until 2010; and
• Two new Historic Sites and Monuments (HS&Ms). In one case (the as yet unfound tent of Roald Amundsen in the vicinity of South Pole) the designation may have been intended to keep treasure hunters at bay as the IPY 2007-08 and the 2011 centenary of the expedition approach.

50. The management plans of several new ASPAs or ASMA will be discussed intersessionally.

Fildes Peninsula proposed ASMA

51. At CEP VII (2004) Germany introduced its research project "Risk assessment for the Fildes Peninsula and Ardley Island and the development of management plans for designation as Antarctic Specially Protected or Managed Areas”, outlining a three-year project to assess a possible broad-scale management system on the western tip of King George Island, South Shetland Islands. Subsequently, during late 2004 ASOC produced a document summarizing observations made by Greenpeace at Fildes Peninsula and Ardley Island during that period, which information may aid present-day environmental management. Copies of that document, Environmental Reports of Fildes Peninsula, 1988-1997: Benchmarks for Environmental Management, were made available to Germany and to all Parties active in Fildes Peninsula.

52. At CEP VIII Germany announced its intentions to establish an ASMA at Fildes Peninsula in the near future. Chilean officials asked for the nomination period of their existing Protected Areas at Fildes Peninsula, due to expire in the near future, to be extended until 2010.

53. German interest in the Fildes area stems from some 30 years of research conducted there by former East German scientists. It is also the location of the main Antarctic station owned of Chile, a claimant state, with facilities that include a hotel and airstrip; a popular tourism site, from where fly-sail operations are now beginning to develop, and where government sponsored tourism is likely to occur too. ASOC will monitor how this ASMA process unfolds.

Liability

54. XXVIII ATCM saw the adoption of a Sixth Annex to the Protocol addressing Liability Arising from Environmental Emergencies, the first new instrument since the Protocol and its first five annexes were adopted during October 1991.

55. The obligation to develop a liability regime stems from Protocol Article 16 and the Final Act of 11th ATSCM where the Protocol was adopted. Negotation of liability commenced at XVII ATCM in Venice in 1992. Between 1992 and 1998, liability was addressed by a Group of Legal Experts, chaired by Rudiger Wolfrum of Germany over 10 meetings. From XXII ATCM in Tromsø in 1998 the work passed to a Working Group of the ATCM, which from XXIII ATCM in Lima in 1999 to the conclusion in Stockholm were chaired by Don MacKay of New Zealand. ASOC has been actively engaged on the liability issue, and has attended most of the associated meetings, throughout the 13 years that it has taken to arrive at this Annex.

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14 There are four bases at Fildes Peninsula (from Chile, China, Russia and Uruguay), out of a total of nine bases on King George Island.
15 A first workshop on Fildes Peninsula will be held on September 23 on the margins of the 22nd International Polar Meeting, Friedrich-Schiller University, Jena, Germany, 18-24 September 2005.
56. About half the Consultative Parties favoured a comprehensive liability regime. However, with the articulation of a much more restricted option – addressing environmental emergencies alone – by the US from 1995, the prospects of a more broad-reaching liability regime evaporated.

57. Final agreement to the present Annex required general acceptance of the US option (which gained support from the other half of the Consultative Parties in recent years), containment of efforts by some other states to insulate national programmes from liability, and the establishment of some general commitment that Parties could in the future look to broaden the liability regime. It is a delicate political accommodation, and its limitations and drafting have to be seen in that light. MacKay achieved a considerable feat in getting agreement at all. Even mid-way through ATCM XXVIII, achieving agreement was not certain.

58. The Annex is far less comprehensive than ASOC (and many Parties) hoped for. What has been achieved is an important first step and can become a significant enhancement of the Protocol. If this first annex has indeed provided a peg on which to hang subsequent development, it may become a more significant achievement.

59. The Annex contains general provisions on preventative measures and contingency planning, but its main focus is the establishment of responsibilities relating to response action to what are termed “environmental emergencies”, and liability for failure to take such action. In many respects the Annex is as much to do with the Protocol’s Article 15 on Emergency Response Action as it is about Article 16 Liability. It creates responsibilities and liability for both State and non-State operators.

60. Each Party is to require its operators to take prompt and effective response action to environmental emergencies arising from their activities. If the operator does not take such action, the Annex allows the Party of the operator, or other Parties, to take that response action in certain circumstances.

61. Liability arises where the responsible operator fails to take the required response action. That operator may then be liable for the costs of those who do respond. If no response action at all occurs, the operator may sometimes have to pay into a special fund to be maintained by the Antarctic Treaty Secretariat.

62. The Annex’s provisions on enforcement of liability depend on whether the operator is a State operator or a non-State operator and on whether the issue is the costs of the stepping-in Party or the costs of response action that should have been taken. For example, a non-State operator may be sued for stepping-in costs in the domestic courts of certain Parties.

63. There are important exceptions from liability, and limits of liability are also established. To ensure that money is available to meet liability, each Party is to require its operators to maintain insurance to cover liability for the costs of stepping-in Parties. But, to cover liability where no response action at all occurs, each Party has the option to decide whether or not insurance should be mandatory.

64. The Annex is limited as to which activities it covers. The focus is on activities for which advance notice is required under Article VII(5) of the Antarctic Treaty. So, it will not ordinarily cover fishing and whaling activities, which are seen as covered by their own international instruments (although not, we observe, their own liability regimes) or activities such as “innocent-passage” or aircraft overflights without landing. The Annex explicitly states that it applies to all tourist vessels entering the Antarctic Treaty area, so they are
covered even if they don’t land in the Area. The debate about whether to include fishing vessels’ pollution-causing activities was surprisingly robust, with the great majority of states and ASOC strongly supporting their inclusion, and a few governments even spoke passionately in favor. A few states, including Russia and Japan, objected to including any aspect of fishing vessels, citing strict instructions on the matter.

65. The Liability Annex was adopted as a legally binding Measure, and will enter into force once all the present Consultative Parties have ratified it. A Decision adopted at the same time commits Parties to annually evaluate progress towards its becoming effective, and suggests that not less than five years from now they will examine whether additional liability coverage may be necessary.

66. The challenge now is to ensure that it enters into force in a reasonable time, and substantially quicker than the seven years it took for the Protocol itself to enter into force. Note that unlike the Protocol and its first five annexes, it would be difficult to have any “interim” application of Annex VI, which was not even formally discussed. So, prompt entry-into-force is even more important than with other sorts of technical annexes. Hopefully, we shall see the first batch of states ratify the Annex within two years. How long it will take for all the rest to do so is not yet clear, but it will require not only persistent diplomatic effort by the states which have ratified but consistent advocacy by ASOC and its member groups in each state.

Infrastructure development and the IPY 2007-08

67. At XXVII ATCM in Cape Town (2004) ASOC was the first to call the attention to the present boom of infrastructure development. At XXVIII ATCM ASOC developed this issue further in IP074 Development pressures on the Antarctic wilderness. The total of infrastructure developments projects identified to May 2005 fall into four categories:
   i. new station construction (n=6);
   ii. upgrade of existing stations (n=4);
   iii. development of inter- and intra-continental transportation links (n=4); and
   iv. large-scale research projects (n=2).

68. In all, these projects are being planned independently from each other – i.e. without a strategic perspective on their need, location alternatives and impacts – and with varying compliance with EIA requirements under the Protocol by individual states.

69. The issue of infrastructure development partly overlaps with the IPY 2007-08. However, there are some infrastructure projects apparently unrelated to the IPY itself; and some IPY projects that have no significant infrastructure development requirements. In any event, the next few years will see a significant increase of human activities – not only science, but also tourism – in the Antarctic, with the ensuing risk of cumulative impact of several sorts. Some Parties expressed concern about the impact of the IPY, particularly in relation to tourism activities.

Subglacial lake research – Lake Vostok

70. The Russian project to take water samples from subglacial Lake Vostok was extensively discussed at earlier ATCMs, but not at ATCM XXVIII. At CEP VI (2003) Russia’s CEE for the penetration of Lake Vostok was discussed in detail, and severely criticized. As a result, Russia was supposed to produce a revised version of the CEE incorporating all comments received. In addition, Russia was supposed to submit an additional IEE for the penetration of a further 50m into the borehole, which would extend the borehole’s depth to 3,673 m (i.e. to ≈ 70 m above the surface of Lake Vostok). Russia was supposed to submit those to the
following CEP meeting (i.e. CEP VII). However, neither of these documents was presented to CEP VII (2004) or CEP VIII (2005). Russian documents submitted to the XXVIII ATCM list its activities at Lake Vostok as a minor item in a range of research activities planned for the next few years.

71. During the discussions in the Operational Working Group ASOC asked Russia to provide an update on the drilling at Lake Vostok, which it did. Russia will drill a further 50 m in 2005-2006 (i.e. to 70 m above the ice-water interface) and will reportedly use data collected then to inform further developments. The Russian delegation gave the impression that the plans to penetrate the lake have been delayed but not cancelled.

72. The SCAR report to XXVIII ATCM discusses plans for subglacial lake research but not specifically Lake Vostok.

Tourism

73. Tourism was addressed in the Tourism Working Group operating for most of week 2 of the ATCM. The Working Group was chaired by Michel Trinqué of France. Twenty-two papers were tabled (4 Working Papers and 18 Information Papers). ASOC tabled two papers: IP 071 Some legal issues posed by Antarctic tourism; and IP 119 Antarctic tourism graphics. An overview of tourism activities in the Antarctic Treaty Area jointly with UNEP.

74. The tourism discussion now follows a number of themes, with different groupings of advocates and opponents for each. Each nominal theme itself contains several strands. The complexity of the tourism debate is formidable. However, overall, this complexity represents a maturing of the discussions since ASOC initiated them in 2001. Even those themes that ASOC may not see as particularly useful in relation to the central issue of establishing a regulation of Antarctic tourism – themes that we may see as elaborated largely to avoid such regulation – have actually helped embed tourism management as the key policy issue for the ATCM.

75. In Stockholm, the chair of the Working Group characterised the issues (and arranged the agenda around) four themes:
   i. Site-specific guidelines
   ii. Land-based tourism
   iii. Areas of Special Tourism Interest
   iv. Accreditation

76. The interest in site-specific guidelines arises through the long-term project of Oceanites, supported by the US, UK and IAATO – and formerly by Germany. Essentially, it takes the perfectly worthy interest in particular tourist sites (the vertebrate fauna; a little attention to vegetation; and the level and nature of tourist activity there), which could form a useful local component of a tourism regulatory regime, and casts it as the major and seemingly (with accreditation) sufficient basis for management through industry self-regulation. Thus, its reasonable practical value is undercut in ASOC’s view by its deployment on behalf of those who seek to avoid more rigorous tourism regulation. Historically based on the Peninsula, it is now an approach being encouraged elsewhere on the continent, in part because it appears to be scientifically grounded and anchored in a particular real place. It is an approach especially favoured by national operators, who tend to be suspicious about arguments of principle and what they plainly see as airy-fairy ethical and legal concerns about tourism.

77. Based on UK WP 31, Stockholm saw adoption of Resolution 5 on Site Guidelines for Visitors, which provides for the development of specific site-guidelines, to be adopted by the
ATCM, and the addition of a list of those sites to the Resolution as an appendix. The CEP was directed to establish an Intersessional Contact Group (ICG) to review any further site-guideline proposals before the next ATCM, and that ICG (chaired by the UK) has since commenced its work.

78. The theme of “Land-based tourism” involves considerations of the propriety and (for some) the legality of tourism infrastructure ashore, thresholds for any such activities (including triggerings levels for EIA), potential negative effects on scientific access, and questions of the legal implications (property-rights, use-rights) arising from any such land-based activities. Australia (WP 38), New Zealand (WP 12), Germany (IP 20) and ASOC (IP 71) addressed these issues. Although there does seem to be a general (not universal) reluctance to see land-based tourism develop in Antarctica, a number of states have problems with the formal arguments against such development.

79. The case for concern about land-based tourism rests on the finding that for most states, domestic implementing legislation for existing EIA and other Protocol-related mechanisms does not allow discrimination against the activity. In order to constrain land-based activities, concerned states argue that additional ATS agreement is required – and most favour something grounded in a legally binding Measure. Others have not been prepared to accept this.

80. So, Stockholm saw no substantive response on land-based tourism. But, the depth of the critique of land-based tourism presented in the Australian, NZ, German and ASOC papers was not without effect. The general case has not yet been repudiated, though it may be disputed. The German argument that land-based tourism may be contrary to general Protocol obligations was specifically repudiated by the US and others, who argued the tenable position that unless something is specifically prohibited in the Protocol (and this isn’t) then it is permissible. A focus on the basis for concern about, and mechanisms to address, land-based tourism is an important element (it may be the most important element) of the continuing tourism regulation debate, and will be revisited in Edinburgh.

81. France’s interest in Special Tourism Areas (IP 12) is a resurrection of past approaches. It is not an inherently problematical approach, but it seems overtaken by events. If, at the point of emergence of Antarctic tourism, one had been able to agree on its confinement to such areas, then it might have been useful. With today’s spread of tourism – and the certainly problematic establishment of de facto tourism areas within ASMAs – it seems altogether less feasible. No substantive discussion occurred in Stockholm. Such areas may be useful in the context of a wider regulatory structure,

82. Accreditation represents something of a mixed-bag post Stockholm. On the positive side, the dangers of an essentially industry-driven accreditation scheme with no substantive effect being legitimized by the ATCM did not arise. Accreditation has reverted to its usual status elsewhere, being a mechanism developed by and for industry. IAATO has gone away to elaborate its own accreditation scheme. Some Parties are disappointed that the ATCM itself does not have a role – some may still hope that it may.

83. Tourism regulation is now a fait accompli – the issue is merely the form and the depth of the regulation (not insignificant matters).

84. The state of play post XXVIII ATCM is that industry and pro-industry states favour recasting “regulation” as accreditation (by industry, with the rubberstamp of the ATCM) plus “site-specific guidelines”. If these mechanisms alone indeed became the basis of a tourism “regulation” scheme, it would be without any substantive effect on the nature and scale of
Antarctic tourism.

85. Other positions on tourism are more fragmented, and do not always define clearly the form that tourism regulation may take. Among these, a second group of states see a stronger role for the Parties on the regulation of tourism and promote and/or support generic or specific regulation. A third group of states, the composition of which varies, appear to be actively or potentially interested in developing their own tourism schemes. Little information is made available to the CEP or ATCM about these schemes. Finally, a number of states have only a basic position on tourism (i.e. like or dislike tourism) and are usually passive in the tourism debate. There is a certain overlapping of these various groupings.

**Biological Prospecting (Bioprospecting)**

86. XXVIII ATCM again saw Biological Prospecting assigned to the CEP (Agenda item 7), and the main ATCM agenda (item 17, assigned to the Legal and institutional Working Group). In practice, given the CEP’s heavy agenda and the discussion in the L&I WG, there was no discussion in the CEP. Three papers were tabled: a joint NZ & Sweden WP, and IPs by Spain and UNEP.

87. The Spanish IP provided a background on biomedically-focussed bioprospecting in the marine environment. Interesting as it was, it made no specific recommendations for action. The marine focus means it may be retabled at CCAMLR XXIX.

88. UNEP’s IP was the third produced by the United Nations University Institute of Advanced Studies for recent ATCMs, documenting developments in Antarctic bioprospecting. These documents provide the best publicly available record of the interests and activities of biotech companies in the Antarctic. They have also provided a running brief on attention to Antarctic bioprospecting (and generic issues having a bearing on Antarctic activities) in other international fora. Again, no specific recommendations were made.

89. The NZ/Sweden WP 13 offered comments on several facets of the bioprospecting discussion to date: the definition of bioprospecting (and component activities within the general activity class hitherto referred to as “biological prospecting”), exchange of information, and environmental impact. It noted that for both jurisdictional and Antarctic-specific reasons “the Antarctic regime does not lend itself to a simple application of the CBD system”.

90. The primary focus of the WP was exchange of information, and appended to the paper was a draft Resolution (i.e. hortatory instrument) “Bioprospecting in Antarctica”, which reiterated the obligations in relation to information exchange in Article III (1) of the 1959 Antarctic Treaty.

91. With various amendments, this proposal was subsequently adopted as Resolution 7. The Resolution reiterates, *verbatim*, Article III (1) from the Antarctic Treaty, recommends that governments draw the attention of their research communities to these obligations, and that governments keep the question of biological prospecting under review. Viewed simply, the Resolution's substantive achievements might not seem great. However, this is the first outcome in relation to bioprospecting to emerge from an ATCM; it relates to a significant area of concern (that commercial bioprospecting may be a zero-sum-game for traditional openness); and it potentially formalises what may already have been established, namely that bioprospecting be on the annual ATCM agenda.

16 Previous Iqs are XXVI ATCM IP 75, jointly tabled by UK/Norway; and XXVII ATCM IP 106, tabled by UNEP.
92. The consideration of bioprospecting in L&I WG was more sophisticated than any previous ATCM discussion. A great many themes were evident. Some states appear worried that bioprospecting might run away from them (as individual states, as the ATS); some would seem to hope that the ATCM could play an active role in some (hitherto unspecified) way. Other states are aware of interests and developments in other fora and seem not to be worried about these. Some are even intimating a wish that there are no special rules in the Antarctic – either because they think these might be in conflict with arrangements arrived at elsewhere, or because they favour no inhibiting rules whatsoever (and in relation to the latter position, this can be either because they see laissez-faire as in their interests, or see no feasible way in which useful rules could be achieved). Some states’ see tangible benefits (scientific and/or commercial), others mentioned ethical, environmental, property-rights issues.

93. ASOC raised two points: concern that bioprospecting not emerge as the first resource issue where the ATS is not the prime regulator; and the thought that now liability is concluded it might be helpful if consideration of some of the legal issues posed by bioprospecting commenced at the next ATCM. Neither point was reflected in the report language of the meeting.

Continental Shelf

94. There was no discussion of Australia’s submission to the Commission on the Limits of the Continental Shelf (CLCS) in relation to UNCLOS Article 76 issues (nor in the Heads of Delegation Meetings to our knowledge), although on the margins of the meeting some delegates expressed concern at what were usually conceived as “unhelpful” developments. The Notes submitted by other Parties to CLCS may be taken as evidence of both the substantive concern of many Parties, and (with Australia’s own declaration that the Commission not proceed to consider the area appurtenant to the “Australian Antarctic Territory”) paradoxically as a sufficient containment of the issue.
APPENDIX 1

GLOSSARY OF ANTARCTIC TERMS RELEVANT TO ATCM

ACAP Agreement on the Conservation of Albatrosses and Petrels
AEON Antarctic Environmental Officers Network
ASMA Antarctic Specially Managed Area
ASOC Antarctic and Southern Ocean Coalition [http://www.asoc.org/]
ASMA Antarctic Specially Managed Area
ASPA Antarctic Specially Protected Area
ASTI Area of Special Tourism Interest (None designated)
ATCM Antarctic Treaty Consultative Meeting
ATCP Antarctic Treaty Consultative Party
ATS Antarctic Treaty System
CCAS Convention on the Conservation of Seals
CCAMLR Convention on (or Commission for) the Conservation of Antarctic Marine Living
Resources [http://www.ccamlr.org/]
CEE Comprehensive Environmental Evaluation
CEMP CCAMLR Environmental Monitoring Program
CEP Committee for Environmental Protection (of the ATCM) [http://www.cep.aq/]
COMNAP Council of Managers of National Antarctic Programs [http://www.comnaps.org/]
CRAMRA Convention on the Regulation of Antarctic Mineral Resources (Not enacted)
EIA Environmental Impact Assessment
GOSEAC Group of Specialists on Environmental Affairs and Conservation
HSM Historic Sites and Monuments [http://www.cep.aq/]
IAATO International Association of Antarctica Tour Operators [http://www.iaato.org/]
ICG Intersessional Contact Group
IEE Initial Environmental Evaluation
IHO International Hydrographic Organisation [http://www.who.shom.fr/]
IMO International Maritime Organisation [http://www.imo.org/]
IOC Intergovernmental Oceanographic Commission [http://ioc.unesco.org/iocweb/]
IUCN International Union for the Conservation of Nature [http://www.iucn.org/]
IWC International Whaling Commission
MARPOL International Convention for the Prevention of Pollution from Ships
MPA Multiple-Use Planning Area (None designated)
PA Preliminary Assessment
SCALOP Standing Committee on Antarctic Logistics and Operations
SCAR Scientific Committee on Antarctic Research [http://www.scar.org/]
SEA Strategic Environmental Assessment (Not used in the Antarctic Treaty System)
SPA Specially Protected Area (now ASPA) [http://www.cep.aq/]
SSSI Site of Special Scientific Interest (now ASPA) [http://www.cep.aq/]
TANGO Tourism and NGOs Working Group
UNEP United Nations Environment Program [http://www.unep.org/]
WMO World Meteorological Organisation [http://www.wmo.ch/]

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APPENDIX 2

CEP VIII AGENDA (6-10 June 2005)

[WPs and IPs identified for each agenda item; red = ASOC paper]

- Item 1: Opening of the Meeting
- Item 2: Adoption of Agenda
- Item 3: Operation of the CEP [WPs 1, 9, IP 74]
- Item 4: Compliance with the Protocol on Environmental Protection
  - 4a) General Matters [WPs 16, 32, IPs 2, 4, 7, 9, 10, 21, 26, 39, 43, 51, 53, 65, 73, 74, 80, 84, 101, 102, 104, 110, 116]
  - 4b) Consideration of Draft CEEs [WP 19, IPs 25, 30, 66]
  - 4c) Other Matters covered by Annex I (Environmental Impact Assessment) [WPs 30, 40, IPs 6, 17, 23, 40, 42, 58, 59, 72, 75, 83, 107]
  - 4d) Matters covered by Annex II (Conservation of Antarctic Flora and Fauna) [WPs 28, 33, 34, IPs 63, 97, 121]
  - 4e) Matters covered by Annex III (Waste Disposal and Waste Management) [IPs 37, 47, 49, 105]
  - 4f) Matters covered by Annex IV (Prevention of Marine Pollution) [WPs 41, 52, IP 67]
  - 4g) Matters covered by Annex V (Area Protection and Management) [WPs 2, 3, 4, 5, 6, 7, 8, 11, 15, 17, 20, 21 rev 1, 22, 24, 25, 27 rev 1, 31, 35, 36, 37 rev 1, 39, 42, IPs 16, 27, 28, 29, 41, 44, 64, 98]
- Item 5: Environmental Monitoring [WPs 23, 26, IPs 22, 37, 52, 54, 69, 76]
- Item 6: State of the Antarctic Environment Report [WP 10, IP 104]
- Item 7: Biological Prospecting [IP 93]
- Item 8: Emergency Response and Contingency Planning
- Item 9: Data and Exchange of Information [IP 15]
- Item 10: Co-operation with other organizations [IPs 32, 36]
- Item 11: Election of Officers
- Item 12: Preparation for CEP IX
- Item 13: Adoption of the Report
- Item 14: Close of the Meeting
APPENDIX 3

PRELIMINARY AGENDA FOR ATCM XXIX

1. Opening of the meeting.
2. Election of Officers and creation of Working Groups.
3. Adoption of the Agenda and allocation of items.
8. Liability: Implementation of Decision (x) 2005
9. Safety and Operations in Antarctica.
10. Relevance of Developments in the Arctic and in the Antarctic.
12. Tourism and Non-Governmental Activities in the Antarctic Treaty Area.
13. Inspections under the Antarctic Treaty/Protocol.
15. Operational issues.
16. Education issues.
17. Exchange of Information.
18. Biological Prospecting in Antarctica.
19. Adoption of the Final Report1
20. Preparation of the XXX Meeting.
APPENDIX 4

ARTICLE FROM PAGE 2 OF ECO 2

Specially Protected Species

ECO is pleased to hear of serious thought being given to Specially Protected Species under Annex II. SCAR’s suggestion that southern giant petrels and macaroni penguins be added to the list is likely to win wide support across the international environmental community. The southern giant petrel, an albatross-sized predatory bird, has long been recognised as particularly susceptible to disturbance at its Antarctic breeding grounds. In recent years it has also been adversely affected by longline fisheries.

But the picture is less clear when it comes to the seals that currently constitute the Specially Protected Species. We await SCAR’s advice in relation to the state of Ross Seal populations, but indications are that there may be inadequate data for anything other than its precautionary maintenance on the list. Antarctic and Subantarctic fur seal populations are vastly more secure than they were, and the case put forward by SCAR for delisting them is, in principle, reasonable. But there are complications to be kept in mind.

For the past decade some UK scientists have argued that increasing Antarctic fur seal populations in the Scotia Arc justifies active management, which means culling fur seals. Apart from the fact that this would (to put it mildly) be problematical for many of us, it would also introduce a new general active-management approach, which may come back to haunt us.

The fact that killing fur seals is problematical is attested to by the fact that despite the main South Georgia population being outside the Antarctic Treaty Area, culling has not been carried out there.

A second complication is that fur seals have previously been the subject of commercial harvesting, and it is not inconceivable that delisting could stimulate renewed sealing interest. Neither CCAS, nor the prospect of so-called ‘rational use’ interpretations being entrenched under the Protocol, are cheering prospects.

ECO does not believe that either of these scenarios is mandated by delisting – and we are sure that this feeling is shared by many Parties. But unless and until one can have some confidence that delisting does not trigger a sequence that ends up with bloody seal carcasses on the front pages of our newspapers as we enter IPY, caution seems reasonable. The international environmental community, and the wider public for whom seals are important, will expect their governments to think through the possible consequences of removing protection from seals before they do so.