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**THE REGULATION OF ANTARCTIC TOURISM:
STATE OF PLAY AFTER THE ANTARCTIC TREATY
MEETING OF EXPERTS (NORWAY, 22-25 MARCH 2004)**

**Submitted to the XXVII ATCM by
the Antarctic and Southern Ocean Coalition**

THE REGULATION OF ANTARCTIC TOURISM: STATE OF PLAY AFTER THE ANTARCTIC TREATY MEETING OF EXPERTS (NORWAY, 22-25 MARCH 2004)

I. INTRODUCTION

This information paper summarizes the perspectives on the regulation of Antarctic tourism submitted by ASOC to the Antarctic Treaty Meeting of Experts (ATME) (Norway, 22-25 March 2004), and offers an assessment of the state of play following that meeting.

The XXVI ATCM mandated the meeting (Final Report paragraph 151; Decision 5 (2003)). Norway confirmed its invitation by letter from Ambassador Jan Tore Holvik, Ministry of Foreign Affairs, dated 19 January 2004. The meeting agenda (developed through several drafts from 19 February) and structure was built around Decision 5, particularly the bulleted “topics” found in paragraph 2 of the Decision.

ASOC would like to express its great appreciation to Norway for an extremely well organized and useful meeting.

II. ASOC DOCUMENTS

ASOC submitted three documents to ATME (ATME #20, #21 and #22) – summarized below – and provided electronic copies of background papers, which were lodged on the ATME website. The full papers are available at the ASOC website (<http://www.asoc.org>).

#20 – ASOC: *The Case for Concern about Antarctic Tourism (rev 1)*.

Describes increasing annual tourism, increasing intensity of activity, pressure on environment, pressure on the Antarctic regime, role of the industry on the regime and reiterates that the priority for attention is Commercial Tourism.

#21 – ASOC: *What Does Regulation of Commercial Tourism mean?*

Argues for substantive regulation. Suggests 4 “Strategic Decisions” necessary for Parties to take. Critiques some technical proposals made by Parties (using UK form of these), and put forward four additional proposals:

- 1) Greater use of Comprehensive Environmental Evaluation for large, complex or risky tourism activities;
- 2) Capping of total annual tourist levels;
- 3) Prevention of particular classes of tourism activity, including tourism infrastructure ashore and air-supported tourism; and
- 4) Developing criteria for identifying problematical tourism activities analogous to those used for other Antarctic activities (e.g. compelling purpose).

#22 – ASOC: *Mechanisms for Regulating Commercial Tourism*.

In 2002, ASOC canvassed a range of mechanisms for regulating tourism activity in the Antarctic Treaty Area¹. We argued then, and have since, that the issues posed by Commercial Tourism go beyond those properly forming the domain of the Protocol. The Protocol has, and will continue to have, an important role in the management of tourism, as it does for all other activities. However, for ASOC the Protocol is not a sufficient basis for regulating tourism. Consequently ATME # 22 argues for either a *Convention for the Regulation of Antarctic*

¹ See ASOC. 2002. ‘Regulating Antarctic Tourism’. XXV ATCM/IP83.

Tourism (CRAT) or legally binding Measures grounded in the 1959 Antarctic Treaty. Subsidiary mechanisms could be a further Protocol annex or Measures adopted to give effect to Protocol obligations.

III. ASSESSMENT OF ATME

The ATME did not address legal mechanisms to regulate commercial tourism. ASOC raised considerations such as the need to limit the overall level of tourism, but that issue was not discussed further. However, a distinct shift has occurred in Parties' thinking about the need for regulation, with declining reliance on industry self-regulation and increased acceptance of a central role for the Antarctic Treaty System in establishing the regulatory basis for the industry. The industry association is still seen by some Parties as having a privileged role in the management of tourism, but the Norway meeting saw acceptance of the risk that changes in the industry's structure may lead to more companies not becoming part of the association.

The ATME discussion was largely focused on technical issues. A number of the technical proposals are reasonable enough. The question is essentially whether they are a sufficient response to the challenges posed by the growing and diversifying tourism industry. ASOC thinks that without some strategic commitments on the part of the Antarctic Treaty Parties, these initiatives will have very little effect on the core issues.

Overall the meeting in Norway has taken the issue of tourism regulation forward, and it is up to the full ATCM to build on this momentum.

IV. CONCLUSIONS

The purpose of regulating tourism in Antarctica is not regulation for regulation's sake. It is about protecting Antarctica – a global wilderness, global commons and global heritage – against the actual or potential negative effects of what is currently the largest and fastest growing global industry.

There is some evidence that the principle of some form of regulation is quite widely accepted by Antarctic Treaty Consultative Parties. However, ASOC is concerned that such "regulation" needs to have substantive effect on the level, *modus operandi* and trajectory of Commercial Tourism. It should be inclusive of the entire industry and not only of some of its components, such as so-called "adventure (extreme) tourism" or large ships. It should avoid being merely a series of easy technical fixes that have little real effect – what we have termed an "ersatz regulation".

In contrast, ASOC sees regulation as necessarily requiring strategic agreement among Parties on some key parameters of Antarctic tourism, supported by a range of more specific (and sometimes technical) responses on particular issues. Without the former, worthwhile technical responses are likely to be fiddling around the edges of the issue. To regulate a large industry, legally enforceable standards are required. Guidelines, particularly those developed by the industry trade association, cannot provide an adequate basis for regulation of Commercial Tourism.

Following ATME, ASOC urges the XXVII ATCM to take bold steps towards developing appropriate tourism regulation inclusive of the entire industry. the Antarctic Treaty System needs to take early action to ensure a sustainable future for the Antarctic region, its intrinsic values, and its regime of governance, which are at risk from increasing commercial activity in Antarctica, including tourism.

REFERENCES

Recent publications by ASOC on the regulation and management of Commercial Tourism in Antarctica, in addition to the papers submitted to ATME, are listed below.

In relation to the **policy aspects** of commercial tourism:

- XXVI ATCM IP 67 *Regulating commercial tourism in Antarctica: The policy issues* (2003);
- XXV ATCM IP 83 *Regulating Antarctic tourism* (2002);
- World Summit on Sustainable Development *Antarctica and the Southern Ocean: Global commons, global wilderness, global heritage* (2002); and
- XXIV ATCM IP 40 *Antarctic tourism* (2001).

In relation to **specific responses** to particular aspects of tourist industry management:

- In relation to **problems of EIA application** to tourist activity, in: Hemmings A D and Roura R (2003): “A square peg in a round hole: Fitting impact assessment under the Antarctic environmental protocol to Antarctic tourism.” *Impact Assessment and Project Appraisal*. 21:1, 13-24;
- In relation to improving the regulation of **tourist vessels flagged in non-Party states**, in: XXV ATCM/IP 63 – *Port State Jurisdiction: An appropriate international law mechanism to regulate vessels engaged in Antarctic tourism* (2002) and XXVI ATCM IP 44 *Port State Control: An update on international law approaches to regulate vessels engaged in Antarctic non-governmental activities* (2003);
- In relation to improving **Protocol compliance by yachts**, in: XXV ATCM/IP 76 *Improving awareness of Protocol obligations amongst Antarctic yacht operators* (2002);
- In relation to the **establishment of an Antarctic Specially Managed Area** at Deception Island, the site most visited by tourists in Antarctica: R Roura and C Pérez-Muñoz (2002): “Evaluation of sites with human activities at Deception Island, South Shetland Islands. Recommendations for a Management Plan.” *An ASOC field report submitted to the Deception Island Management Group*. The Antarctica Project, Washington DC, USA;
- In relation to **Strategic Environmental Assessment**, in: XII SATCM/IP 10 – *Antarctic Strategic Environmental Assessment: Application to the growing Antarctic tourism industry* (2000);
- In relation to **large ships**, and a dependence on EIA as currently the main tourism management tool, in: XXIII ATCM/IP 121 - *Large scale Antarctic tourism* (1999); and
- In relation to **tourism overflights**, in XIX ATCM/IP 38 – *Qantas Antarctic Overflights* (1995).

In relation to **existing ATCM materials** concerning Antarctic tourism:

- XXV ATCM/IP 52 – *ATCM Papers, Discussions & Recommendations relating to tourism and non-governmental activities* (2002).