

Protocol on Environmental Protection to the Antarctic Treaty (1991)

Preamble

The States Parties to this Protocol to the Antarctic Treaty, hereinafter referred to as the Parties,

Convinced of the need to enhance the protection of the Antarctic environment and dependent and associated ecosystems;

Convinced of the need to strengthen the Antarctic Treaty system so as to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Bearing in mind the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principals of the Antarctic Treaty;

Recalling the designation of Antarctica as a Special Conservation Area and other measures adopted under the Antarctic Treaty system to protect the Antarctic environment and dependent and associated ecosystems;

Acknowledging further the unique opportunities Antarctica offers for scientific monitoring of and research on processes of global as well as regional importance;

Reaffirming the conservation principles of the Convention on the Conservation of Antarctic Marine Living Resources;

Convinced that the development of a Comprehensive regime for the protection of the Antarctic environment and dependent and associated ecosystems is in the interest of mankind as a whole;

Desiring to supplement the Antarctic Treaty to this end;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Protocol:

- (a) “The Antarctic Treaty” means the Antarctic Treaty done at Washington on 1 December 1959;
- (b) “Antarctic Treaty area” means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty;
- (c) “Antarctic Treaty Consultative Meetings” means the meetings referred to in Article IX of the Antarctic Treaty;
- (d) “Antarctic Treaty Consultative Parties” means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty;
- (e) “Antarctic Treaty system” means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments;
- (f) “Arbitral Tribunal” means the arbitral Tribunal established in accordance with the Schedule to this Protocol, which forms an integral part thereof;
- (g) “Committee” means the Committee for Environmental Protection established in accordance with Article 11.

Article 2

Objective and Designation

The Parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science.

Article 3

Environmental Principles

1 The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

2 To this end:

(a) activities in the Antarctic Treaty area shall be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems;

(b) activities in the Antarctic Treaty area shall be planned and conducted so as to avoid:

(i) adverse effects on climate or weather patterns;

(ii) significant adverse effects on air or water quality;

(iii) significant changes in the atmospheric, terrestrial (including aquatic), glacial or marine environments;

(iv) detrimental changes in the distribution, abundance or productivity of species of populations of species of fauna and flora;

(v) further jeopardy to endangered or threatened species or populations of such species;
or

(vi) degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;

(c) activities in the Antarctic Treaty area shall be planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about, their possible impacts on the Antarctic environment and dependent and associated ecosystems and on the value of Antarctica for the conduct of scientific research; such judgments shall take account of:

(i) the scope of the activity, including its area, duration and intensity;

(ii) the cumulative impacts of the activity, both by itself and in combination with other activities in the Antarctic Treaty area;

(iii) whether the activity will detrimentally affect any other activity in the Antarctic Treaty area;

(iv) whether technology and procedures are available to provide for environmentally safe operations;

(v) whether there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify and provide early warning of any adverse effects of the activity and to provide for such modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment and dependent and associated ecosystems; and

(vi) whether there exists the capacity to respond promptly and effectively to accidents, particularly those with potential environmental effects;

(d) regular and effective monitoring shall take place to all assessment of the impacts of ongoing activities, including the verification of predicted impacts;

(e) regular and effective monitoring shall take place to facilitate early detection of the possible unforeseen effects of activities carried on both within and outside the Antarctic Treaty area on the Antarctic environment and dependent and associated ecosystems.

3 Activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research, including research essential to understanding the global environment.

4 Activities undertaken in the Antarctic Treaty area pursuant to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required in accordance with Article VII (5) of the Antarctic Treaty, including associated logistic activities, shall:

(a) take place in a manner consistent with the principles in this Article; and

(b) be modified, suspended or cancelled if they result in or threaten to result in impacts upon the Antarctic environment or dependent or associated ecosystems inconsistent with those principles.

Article 4

Relationship with other Components of the Antarctic Treaty System

1 This Protocol shall supplement the Antarctic Treaty and shall neither modify nor amend that Treaty.

2 Nothing in this Protocol shall derogate from the rights and obligations of the Parties to this Protocol under the other international instruments in force within the Antarctic Treaty system.

Article 5

Consistency with other Components of the Antarctic Treaty System

The Parties shall consult and cooperate with the Contracting Parties to the other international instruments in force within the Antarctic Treaty system and their respective institutions with a view to ensuring the achievement of the objectives and principles of this Protocol and avoiding any interference with the achievement of the objectives and principles of those instruments or any inconsistency between the implementation of those instruments and of this Protocol.

Article 6

Cooperation

1 The Parties shall cooperate in the planning and conduct of activities in the Antarctic Treaty area. To this end, each Party shall endeavour to:

- (a) promote cooperative programs of scientific, technical and educational value, concerning the protection of the Antarctic environment and dependent and associated ecosystems;
- (b) provide appropriate assistance to other Parties in the preparation of environmental impact assessments;
- (c) provide to other Parties upon request information relevant to any potential environmental risk and assistance to minimise the effects of accidents which may damage the Antarctic environment or dependent and associated ecosystems;
- (d) consult with other Parties with regard to the choice of sites for prospective station and other facilities so as to avoid the cumulative impacts caused by their excessive concentration in any location;
- (e) where appropriate, undertake joint expeditions and share the use of stations and other facilities; and
- (f) carry out such steps as may be agreed upon at Antarctic Treaty Consultative Meetings.

2 Each Party undertakes, to the extent possible, to share information that may be helpful to other Parties in planning and conducting their activities in the Antarctic Treaty area, with a view to the protection of the Antarctic environment and dependent and associated ecosystems.

3 The Parties shall co-operate with those Parties which may exercise jurisdiction in areas adjacent to the Antarctic Treaty area with a view to ensuring that activities in the Antarctic Treaty area do not have adverse environmental impacts on those areas.

Article 7

Prohibition of Mineral Resource Activities

Any activity relating to mineral resources, other than scientific research, shall be prohibited.

Article 8

Environmental Impact and Assessment

1 Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having:

- (a) less than a minor or transitory impact;
- (b) a minor or transitory impact; or
- (c) more than a minor or transitory impact.

2 Each Party shall ensure that the assessment procedures set out in Annex I are applied in the planning processes leading to decisions about any activities undertaken in the Antarctic Treaty area pursuant to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.

3 The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise.

4 Where activities are planned jointly by more than one Party, the Parties involved shall nominate one of their number to coordinate the implementation of the environmental impact assessment procedures set out in Annex I.

Article 9

Annexes

1 The Annexes to this Protocol shall form an integral part thereof.

2 Annexes, additional to Annexes I-IV, may be adopted and become effective in accordance with Article IX of the Antarctic Treaty.

3 Amendments and modifications to Annexes may be adopted and become effective in accordance with Article IX of the Antarctic Treaty, provided that any Annex may itself make provision for amendments and modifications to become effective on an accelerated basis

4 Annexes and any amendments and modifications thereto which have become effective in accordance with paragraphs 2 and 3 above shall, unless an Annex itself provides otherwise in respect of the entry into effect of any amendment or modification thereto, become effective for a Contracting Party to the Antarctic Treaty which is not an Antarctic Treaty Consultative Party, or which was not an Antarctic Treaty Consultative Party at the time of the adoption, when notice of approval of that Contracting Party has been received by the Depositary.

5 Annexes shall, except to the extent that an Annex provides otherwise, be subject to the procedures for dispute settlement set out in Articles 18 to 20.

Article 10

Antarctic Treaty Consultative Meetings

1 Antarctic Treaty Consultative Meetings shall, drawing upon the best scientific and technical advice available:

(a) define, in accordance with the provisions of this Protocol, the general policy for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems; and

(b) adopt measures under Article IX of the Antarctic Treaty for the implementation of this Protocol.

2 Antarctic Treaty Consultative Meetings shall review the work of the Committee and shall draw fully upon its advice and recommendations in carrying out the tasks referred to in paragraph 1 above, as well as upon the advice of the Scientific Committee on Antarctic Research.

Article 11

Committee for Environmental Protection

1 There is hereby established the Committee for Environmental Protection.

2 Each Party shall be entitled to be a member of the Committee and to appoint a representative who may be accompanied by experts and advisers.

3 Observer status in the Committee shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Protocol.

4 The Committee shall invite the President of the Scientific Committee on Antarctic Research and the Chairman of the Scientific Committee for the Conservation of Antarctic Marine Living Resources to participate as observers at its sessions. The Committee may also, with the approval of the Antarctic Treaty Consultative Meeting, invite such other relevant scientific, environmental and technical organisations which can contribute to its work to participate as observers at its sessions.

5 The Committee shall present a report on each of its sessions to the Antarctic Treaty Consultative Meeting. The report shall cover all matters considered at the session and shall reflect the views expressed. The report shall be circulated to the Parties and to observers attending the session, and shall thereupon be made publicly available.

6 The Committee shall adopt its rules of procedure which shall be subject to approval by the Antarctic Treaty Consultative Meeting.

Article 12

Functions of the Committee

1 The functions of the Committee shall be to provide advice and formulate recommendations to the Parties in connection with the implementation of this Protocol,

including the operation of its Annexes, for consideration at Antarctic Treaty Consultative Meetings, and to perform such other functions as may be referred to it by the Antarctic Treaty Consultative Meetings. In particular, it shall provide advice on:

- (a) the effectiveness of measures taken pursuant to this Protocol;
- (b) the need to update, strengthen or otherwise improve such measures;
- (c) the need for additional measures, including the need for additional Annexes, where appropriate;
- (d) the application and implementation of the environmental impact assessment procedures set out in Article 8 and Annex I;
- (e) means of minimising or mitigating environmental impacts of activities in the Antarctic Treaty area;
- (f) procedures for situations requiring urgent action, including response action in environmental emergencies;
- (g) the operation and further elaboration of the Antarctic Protected Area system;
- (h) inspection procedures, including formats for inspection reports and checklists for the conduct of inspections;
- (i) the collection, archiving, exchange and evaluation of information related to environmental protection;
- (j) the state of the Antarctic environment; and
- (k) the need for scientific research, including environmental monitoring, related to the implementation of this Protocol.

2 In carrying out its functions, the Committee shall, as appropriate, consult with the Scientific Committee on Antarctic Research, the Scientific Committee for the Conservation of Antarctic Marine Living Resources and other relevant scientific, environmental and technical organisations.

Article 13

Compliance with this Protocol

- 1 Each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol.
 - 2 Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to this Protocol.
 - 3 Each Party shall notify all other Parties of the measures it takes pursuant to paragraphs 1 and 2 above.
 - 4 Each Party shall draw the attention of all other Parties to any activity which in its opinion affects the implementation of the objectives and principles of this Protocol .
 - 5 The Antarctic Treaty Consultative Meetings shall draw the attention of any State which is not a Party to this Protocol to any activity undertaken by that State, its agencies, instrumentalities, natural or juridical persons, ships, aircraft or other means of transport which affects the implementation of the objectives and principles of this Protocol.
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Article 14

Inspection

1 In order to promote the protection of the Antarctic environment and dependent and associated ecosystems, and to ensure compliance with this Protocol, the Antarctic Treaty Consultative Parties shall arrange, individually or collectively, for inspections by observers to be made in accordance with Article VII of the Antarctic Treaty.

2 Observers are:

(a) observers designated by any Antarctic Treaty Consultative Party who shall be nationals of that Party; and

(b) any observers designated at Antarctic Treaty Consultative Meetings to carry out inspections under procedures to be established by an Antarctic Treaty Consultative Meeting.

3 Parties shall co-operate fully with observers undertaking inspections, and shall ensure that during inspections, observers are given access to all parts of stations, installations, equipment, ships and aircraft open to inspection under Article VII (3) of the Antarctic Treaty, as well as to all records maintained thereon which are called for pursuant to this Protocol.

4 Reports of inspections shall be sent to the Parties whose stations, installations, equipment, ships or aircraft are covered by the reports. After those Parties have been

given the opportunity to comment, the reports and any comments thereon shall be circulated to all the Parties and to the Committee, considered at Antarctic Treaty Consultative Meeting, and thereafter made publicly available.

Article 15

Emergency Response Action

In order to respond to environmental emergencies in ^ Antarctic Treaty area, each Party agrees to:

(a) provide for prompt and effective response action to such emergencies which might arise in the performance of scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities; and

(b) establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems.

2 To this end, the Parties shall:

(a) co-operate in the formulation and implementation of such contingency plans; and

(b) establish procedures for immediate notification of, and co-operative response to, environmental emergencies.

3 In the implementation of this Article, the Parties shall draw upon the advice of the appropriate international organisations.

Article 16

Liability

Consistent with the objectives of this Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems, the Parties undertake to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by this Protocol. Those rules and procedures shall be included in one or more Annexes to be adopted in accordance with Article 9 (2).

Article 17

Annual Report by Parties

1 Each Party shall report annually on the steps taken to implement this Protocol. Such reports shall include notifications made in accordance with Article 13 (3), contingency plans established in accordance with Article 15 and any other notifications and information called for pursuant to this Protocol for which there is no other provision concerning the circulation and exchange of information.

2 Reports made in accordance with paragraph 1 above shall be circulated to all Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and made publicly available.

Article 18

Dispute Settlement

If a dispute arises concerning the interpretation or application of this Protocol, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other . which the parties to the dispute agree.

Article 19

Choice of Dispute Settlement Procedure

1 Each Party, when signing, ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, may choose, by written declaration, one or both of the following means for the settlement of disputes concerning the interpretation or application of Articles 7, 8 and 15 and, except to the extent that an Annex provides otherwise, the provisions of any Annex and, insofar as it relates to these Articles and provisions, Article 13:

- (a) the International Court of Justice;
- (b) the Arbitral Tribunal.

2 A declaration made under paragraph 1 above shall not affect the operation of Article 18 and Article 20 (2).

3 A Party which has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.

4 If the parties to a dispute have accepted the same means for the settlement of a dispute, the dispute may be submitted only to that procedure, unless the parties otherwise agree.

5 If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.

6 A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until three months after written notice of revocation has been deposited with the Depository.

7 A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

8 Declarations and notices referred to in this Article shall be deposited with the Depository who shall transmit copies thereof to all Parties.

Article 20

Dispute Settling Procedure

1 If the parties to a dispute concerning the interpretation or application of Articles 7, 8 or 15 or, except to the extent that an Annex provides otherwise, the provisions of any Annex or, insofar as it relates to these Articles and provisions, Article 13, have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to Article 18, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by Article 19 (4) and (5).

2 The Arbitral Tribunal shall not be competent to decide or rule upon any matter within the scope of Article IV of the Antarctic Treaty. In addition, nothing in this Protocol shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or otherwise rule upon any matter within the scope of Article IV of the Antarctic Treaty.

Article 21

Signature

This Protocol shall be open for signature at Madrid on the 4th of October 1991 and thereafter at Washington until the 3rd of October 1992 by any State which is a Contracting Party to the Antarctic Treaty.

Article 22

Ratification, Acceptance, Approval or Accession

- 1 This Protocol is subject to ratification, acceptance or approval by signatory States.
 - 2 After the 3rd of October 1992 this Protocol shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.
 - 3 Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of the United States of America, hereby designated as the Depository.
 - 4 After the date on which this Protocol has entered into force, the Antarctic Treaty Consultative Parties shall not act upon a notification regarding the entitlement of a Contracting Party to the Antarctic Treaty to appoint representatives to participate in Antarctic Treaty Consultative Meetings in accordance with Article IX (2) of the Antarctic Treaty unless that Contracting Party has first ratified, accepted, approved or acceded to this Protocol.
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Article 23

Entry into Force

- 1 This Protocol shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the date on which this Protocol is adopted.
 - 2 For each Contracting Party to the Antarctic Treaty which, subsequent to the date of entry into force of this Protocol, deposits an instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the thirtieth day following such deposit.
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Article 24

Reservations

Reservations to this Protocol shall not be permitted.

25Article 25

Modification or Amendment

1 Without prejudice to the provisions of Article 9, this Protocol may be modified or amended at any time in accordance with the procedures set forth in Article XII (1) (a) and (b) of the Antarctic Treaty.

2 If, after the expiration of 50 years from the date of entry into force of this Protocol, any of the Antarctic Treaty Consultative Parties so requests by a communication addressed to the Depository, a conference shall be held as soon as practicable to review the operation of this Protocol.

3 A modification or amendment proposed at any Review Conference called pursuant to paragraph 2 above shall be adopted by a majority of the Parties, including three-quarters of the States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

4 A modification or amendment adopted pursuant to paragraph 3 above shall enter into force upon ratification, acceptance, approval or accession by three-quarters of the Antarctic Treaty Consultative Parties, including ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

5 (a) With respect to Article 7, the prohibition on Antarctic mineral resource activities contained therein shall continue unless there is in force a binding legal regime on Antarctic mineral resource activities that includes an agreed means for determining whether, and if so, under which conditions, any such activities would be acceptable. This regime shall fully safeguard the interests of all States referred to in Article IV of the Antarctic Treaty and apply the principles thereof. Therefore, if a modification or amendment to Article 7 is proposed at a Review Conference referred to in paragraph 2 above, it shall include such a binding legal regime.

(b) If any such modification or amendment has not entered into force within 3 years of the date of its adoption, any Party may at any time thereafter notify to the Depository of its withdrawal from the Protocol, and such withdrawal shall take effect 2 years after receipt of the notification by the Depository.

Article 26

Notifications by the Depositary

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

- (a) signatures of this Protocol and the deposit of instruments of ratification, acceptance, approval or accession;
 - (b) the date of entry into force of this Protocol and any additional Annex thereto;
 - (c) the date of entry into force of any amendment or modification to this Protocol;
 - (d) the deposit of declarations and notices pursuant to Article 19; and
 - (e) any notification received pursuant to Article 25 (5) (b).
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Article 27

Authentic Texts and Registration with the United Nations

1 This Protocol, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to all Contracting Parties to the Antarctic Treaty.

2 This Protocol shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

SCHEDULE TO THE PROTOCOL

ARBITRATION

Article 1

1 The Arbitral Tribunal shall be constituted and shall function in accordance with the Protocol, including this Schedule.

2 The Secretary referred to in this Schedule is the Secretary General of the Permanent Court of Arbitration.

Article 2

1 Each Party shall be entitled to designate up to three Arbitrators, at least one of whom shall be designated within three months of the entry into force of the Protocol for that Party. Each Arbitrator shall be experienced in Antarctic affairs, have thorough knowledge of international law and enjoy the highest reputation for fairness, competence and integrity. The names of the persons so designated shall constitute the list of Arbitrators. Each Party shall at all times maintain the name of at least one Arbitrator on the list.

2 Subject to paragraph 3 below, an Arbitrator designated by a Party shall remain on the list for a period of five years and shall be eligible for redesignation by that Party for additional five year periods.

3 A Party which designated an Arbitrator may withdraw the name of that Arbitrator from the list. If an Arbitrator dies or if a Party for any reason withdraws from the list the name of an Arbitrator designated by it, the Party which designated the Arbitrator in question shall notify the Secretary promptly. An Arbitrator whose name is withdrawn from the list shall continue to serve on any Arbitral Tribunal to which that Arbitrator has been appointed until the completion of proceedings before the Arbitral Tribunal.

4 The Secretary shall ensure that an up-to-date list is maintained of the Arbitrators designated pursuant to this Article.

Article 3

1 The Arbitral Tribunal shall be composed of three Arbitrators who shall be appointed as follows:

(a) The party to the dispute commencing the proceedings shall appoint one Arbitrator, who may be its national, from the list referred to in Article 2. This appointment shall be included in the notification referred to in Article 4.

(b) Within 40 days of the receipt of that notification, the other party to the dispute shall appoint the second Arbitrator, who may be its national, from the list referred to in Article 2.

(c) Within 60 days of the appointment of the second Arbitrator, the parties to the dispute shall appoint by agreement the third Arbitrator from the list referred to in Article 2. The third Arbitrator shall not be either a national of a party to the dispute, or a person

designated for the list referred to in Article 2 by a party to the dispute, or of the same nationality as either of the first two Arbitrators. The third Arbitrator shall be the Chairperson of the Arbitral Tribunal.

(d) If the second Arbitrator has not been appointed within the prescribed period, or if the parties to the dispute have not reached agreement within the prescribed period on the appointment of the third Arbitrator, the Arbitrator or Arbitrators shall be appointed, at the request of any party to the dispute and within 30 days of the receipt of such request, by the President of the International Court of Justice from the list referred to in Article 2 and subject to the conditions prescribed in subparagraphs (b) and (c) above. In performing the functions accorded him or her in this subparagraph, the President of the Court shall consult the parties to the dispute.

(e) If the President of the International Court of Justice is unable to perform the functions accorded him or her in subparagraph (d) above or is a national of a party to the dispute, the functions shall be performed by the Vice-President of the Court, except that if the Vice-President is unable to perform the functions or is a national of a party to the dispute the functions shall be performed by the next most senior member of the Court who is available and is not a national of a party to the dispute.

2 Any vacancy shall be filled in the manner prescribed for the initial appointment.

3 In any dispute involving more than two Parties, those Parties having the same interest shall appoint one Arbitrator by agreement within the period specified in paragraph 1 (b) above.

Article 4

The party to the dispute commencing proceedings shall so notify the other party or parties to the dispute and the Secretary in writing. Such notification shall include a statement of the claim and the grounds on which it is based. The notification shall be transmitted by the Secretary to all Parties.

Article 5

1 Unless the parties to the dispute agree otherwise, arbitration shall take place at The Hague, where the records of the Arbitral Tribunal shall be kept. The Arbitral Tribunal shall adopt its own rules of procedure. Such rules shall ensure that each party to the dispute has a full opportunity to be heard and to present its case and shall also ensure that the proceedings are conducted expeditiously.

2 The Arbitral Tribunal may hear and decide counter-claims arising out of the dispute.

Article 6

1 The Arbitral Tribunal, where it considers that *prima facie* it has jurisdiction under the Protocol, may:

(a) at the request of any party to a dispute, indicate such provisional measures as it considers necessary to preserve the respective rights of the parties to the dispute;

(b) prescribe any provisional measures which it considers appropriate under the circumstances to prevent serious harm to the Antarctic environment or dependent or associated ecosystems.

2 The parties to the dispute shall comply promptly with any provisional measures prescribed under paragraph 1 (b) above pending an award under Article 10.

3 Notwithstanding the time period in Article 20 of the Protocol, a party to a dispute may at any time, by notification to the other party or parties to the dispute and to the Secretary in accordance with Article 4, request that the Arbitral Tribunal be constituted as a matter of exceptional urgency to indicate or prescribe emergency provisional measures in accordance with this Article. In such case, the Arbitral Tribunal shall be constituted as soon as possible in accordance with Article 3, except that the time periods in Article 3 (1) (b), (c) and (d) shall be reduced to 14 days in each case. The Arbitral Tribunal shall decide upon the request for emergency provisional measures within two months of the appointment of its Chairperson.

4 Following a decision by the Arbitral Tribunal upon a request for emergency provisional measures in accordance with paragraph 3 above, settlement of the dispute shall proceed in accordance with Articles 18,19 and 20 of the Protocol.

Article 7

Any Party which believes it has a legal interest, whether general or individual, which may be substantially affected by the award of an Arbitral Tribunal, may, unless the Arbitral Tribunal decides otherwise, intervene in the proceedings.

Article 8

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, in accordance with their law and using all means at their disposal, shall

provide it with all relevant documents and information, and enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 9

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, any other party to the dispute may request the Arbitral Tribunal to continue the proceedings and make its award.

Article 10

1 The Arbitral Tribunal shall, on the basis of the provisions of the Protocol and other applicable rules and principles of international law that are not incompatible with such provisions, decide such disputes as are submitted to it.

2 The Arbitral Tribunal may decide, *ex aequo et bono*, a dispute submitted to it, if the parties to the dispute so agree.

Article 11

1 Before making its award, the Arbitral Tribunal shall satisfy itself that it has competence in respect of the dispute and that the claim or counterclaim is well founded in fact and law.

2 The award shall be accompanied by a statement of reasons for the decision and shall be communicated to the Secretary who shall transmit it to all Parties.

3 The award shall be final and binding on the parties to the dispute and on any Party which intervened in the proceedings and shall be complied with without delay. The Arbitral Tribunal shall interpret the award at the request of a party to the dispute or of any intervening Party.

4 The award shall have no binding force except in respect of that particular case.

5 Unless the Arbitral Tribunal decides otherwise, the expenses of the Arbitral Tribunal, including the remuneration of the Arbitrators, shall be borne by the parties to the dispute in equal shares.

Article 12

All decisions of the Arbitral Tribunal, including those referred to in Articles 5, 6 and 11, shall be made by a majority of the Arbitrators who may not abstain from voting.

Article 13

1 This Schedule may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2 Any amendment or modification of this Schedule which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX I

TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

ENVIRONMENTAL IMPACT ASSESSMENT

Article 1

Preliminary Stage

1 The environmental impacts of proposed activities referred to in Article 8 of the Protocol shall, before their commencement, be considered in accordance with appropriate national procedures.

2 If an activity is determined as having less than a minor or transitory impact, the activity may proceed forthwith.

Article 2

Initial Environmental Evaluation

1 Unless it has been determined that an activity will have less than a minor or transitory impact, or unless a Comprehensive Environmental Evaluation is being prepared in accordance with Article 3, an Initial Environmental Evaluation shall be prepared. It shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact and shall include:

(a) a description of the proposed activity, including its purpose, location, duration and intensity; and

(b) consideration of alternatives to the proposed activity and any impacts that the activity may have, including consideration of cumulative impacts in the light of existing and known planned activities.

2 If an Initial Environmental Evaluation indicates that a proposed activity is likely to have no more than a minor or transitory impact, the activity may proceed, provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the activity.

Article 3

Comprehensive Environmental Evaluation

1 If an Initial Environmental Evaluation indicates or if it is otherwise determined that a proposed activity is likely to have more than a minor or transitory impact, a Comprehensive Environmental Evaluation shall be prepared.

2 A Comprehensive Environmental Evaluation shall in

(a) a description of the proposed activity including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;

(b) a description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;

(c) a description of the methods and data used to forecast the impacts of the proposed activity;

(d) estimation of the nature, extent, duration, and intensity of the likely direct impacts of the proposed activity;

(e) consideration of possible indirect or second order impacts of the proposed activity;

(f) consideration of cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;

(g) identification of measures, including monitoring programs, that could be taken to minimise or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;

(h) identification of unavoidable impacts of the proposed activity;

(i) consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;

(j) an identification of gaps in knowledge and uncertainties encountered in compiling the information required under this paragraph;

(k) a non-technical summary of the information provided under this paragraph; and

(l) the name and address of the person or organisation which prepared the Comprehensive Environmental Evaluation and the address to which comments thereon should be directed.

3 The draft Comprehensive Environmental Evaluation shall be made publicly available and shall be circulated to all Parties, which shall also make it publicly available, for comment. A period of 90 days shall be allowed for the receipt of comments.

4 The draft Comprehensive Environmental Evaluation shall be forwarded to the Committee at the same time as it is circulated to the Parties, and at least 120 days before the next Antarctic Treaty Consultative Meeting, for consideration as appropriate.

5 No final decision shall be taken to proceed with the proposed activity in the Antarctic Treaty area unless there has been an opportunity for consideration of the draft Comprehensive Environmental Evaluation by the Antarctic Treaty Consultative Meeting on the advice of the Committee, provided that no decision to proceed with a proposed activity shall be delayed through the operation of this paragraph for longer than 15 months from the date of circulation of the draft Comprehensive Environmental Evaluation.

6 A final Comprehensive Environmental Evaluation shall address and shall include or summarise comments received on the draft Comprehensive Environmental Evaluation. The final Comprehensive Environmental Evaluation, notice of any decisions relating

thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed activity, shall be circulated to all Parties, which shall also make them publicly available, at least 60 days before the commencement of the proposed activity in the Antarctic Treaty area.

Article 4

Decisions to be based on Comprehensive environmental evaluations

Any decision on whether a proposed activity, to which Article 3 applies, should proceed, and, if so, whether in its original or in a modified form, shall be based on the Comprehensive Environmental Evaluation as well as other relevant considerations.

Article 5

Monitoring

1 Procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the impact of any activity that proceeds following the completion of a Comprehensive Environmental Evaluation.

2 The procedures referred to in paragraph 1 above and in Article 2 (2) shall be designed to provide a regular and verifiable record of the impacts of the activity in order, *inter alia*, to:

(a) enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(b) provide information useful for minimising or mitigating impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the activity.

Article 6

Circulation of Information

1 The following information shall be circulated to the Parties, forwarded to the Committee and made publicly available:

(a) a description of the procedures referred to in Article 1;

(b) an annual list of any Initial Environmental Evaluations prepared in accordance with Article 2 and any decisions taken in consequence thereof;

(c) significant information obtained, and any action taken in consequence thereof, from procedures put in place in accordance with Articles 2 (2) and 5; and

(d) information referred to in Article 3 (6).

2 Any Initial Environmental Evaluation prepared in accordance with Article 2 shall be made available on request.

Article 7

Cases of Emergency

1 This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this Annex.

2 Notice of activities undertaken in cases of emergency, which would otherwise have required preparation of a Comprehensive Environmental Evaluation, shall be circulated immediately to all Parties and to the Committee and a full explanation of the activities carried out shall be provided within 90 days of those activities.

Article 8

Amendment or Modification

1 This Annex may be amended or modified by a measure adopted in accordance with Article IX (I) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that period, that it wishes an extension of that period or that it is unable to approve the measure.

2 Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX II

TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

CONSERVATION OF ANTARCTIC FAUNA AND FLORA

Article 1

Definitions

For the purposes of this Annex:

(a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;

(b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there seasonally through natural migrations;

(c) “native plant” means any terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;

(d) “native invertebrate” means any terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;

(e) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;

(f) “permit” means a formal permission in writing issued by an appropriate authority;

(g) “take” or “taking” means to kill, injure, capture, handle or molest, a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected;

(h) “harmful interference” means:

(i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds and seals;

(ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds and seals;

- (iii) using explosives or firearms in a manner that disturbs concentrations of birds and seals;
 - (iv) wilfully disturbing breeding or moulting birds or concentrations of birds and seals by persons on foot;
 - (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
 - (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.
- (i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.
-

Article 2

Cases of Emergency

- 1 This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
- 2 Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.
-

Article 3

Protection of Native Fauna and Flora

- 1 Taking or harmful interference shall be prohibited, except in accordance with a permit.
- 2 Such permits shall specify the authorised activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
- (a) to provide specimens for scientific study or scientific information;
 - (b) to provide specimens for museums, herbaria, zoological and botanical gardens, or other educational or cultural institutions or uses; and

(c) to provide for unavoidable consequences of scientific activities not otherwise authorised under sub-paragraphs (a) or (b) above, or of the construction and operation of scientific support facilities.

3 The issue of such permits shall be limited so as to ensure that:

(a) no more native mammals, birds, or plants are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;

(b) only small numbers of native mammals or birds are killed and in no case more native mammals or birds are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and

(c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty are maintained.

4 Any species of native mammals, birds and plants listed in Appendix A to this Annex shall be designated “Specially Protected Species”, and shall be accorded special protection by the Parties.

5 A permit shall not be issued to take a Specially Protected Species unless the taking:

(a) is for a compelling scientific purpose;

(b) will not jeopardise the survival or recovery of that species or local population; and

(c) uses non-lethal techniques where appropriate.

6 All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

Article 4

Introduction of Non-native Species, Parasites and Diseases

1 No species of animal or plant not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water in the Antarctic Treaty area except in accordance with a permit.

2 Dogs shall not be introduced onto land or ice shelves and dogs currently in those areas shall be removed by April 1, 1994.

3 Permits under paragraph 1 above shall be issued to allow the importation only of the animals and plants listed in Appendix B to this Annex and shall specify the species, numbers and, if appropriate, age and sex and precautions to be taken to prevent escape or contact with native fauna and flora.

4 Any plant or animal for which a permit has been issued in accordance with paragraphs 1 and 3 above, shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation. Any other plant or animal introduced into the Antarctic Treaty area not native to that area, including any progeny, shall be removed or disposed of, by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna.

5 Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol and Appendix C to this Annex.

6 Each Party shall require that precautions, including those listed in Appendix C to this Annex, be taken to prevent the introduction of micro-organisms (e.g., viruses, bacteria, parasites, yeasts, fungi) not present in the native fauna and flora.

Article 5

Information

Each Party shall prepare and make available information setting forth, in particular, prohibited activities and providing lists of Specially Protected Species and relevant Protected Areas to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

Article 6

Exchange of Information

1 The Parties shall make arrangements for:

(a) collecting and exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird or plant taken annually in the Antarctic Treaty area;

(b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection;

(c) establishing a common form in which this information shall be submitted by Parties in accordance with paragraph 2 below.

2 Each Party shall inform the other Parties as well as the Committee before the end of November of each year of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.

Article 7

Relationship with other Agreements outside the Antarctic Treaty System

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

Article 8

Review

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

Article 9

Amendment or Modification

1 This Annex may be amended or modified by a measure adopted in accordance with Article IX (I) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depository, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph I above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

Appendices to the Annex

Appendix A

Specially Protected Species

All species of the genus *Arctocephalus*, Fur Seals. *Ommatophoca rossii*, Ross Seal.

Appendix B

Importation of Animals and Plants

The following animals and plants may be imported into the Antarctic Treaty area in accordance with permits issued under Article 4 of this Annex:

- (a) domestic plants; and
- (b) laboratory animals and plants including viruses, bacteria, yeasts and fungi.

Appendix C

Precautions to Prevent Introductions of Micro-organisms

1 Poultry. No live poultry or other living birds shall be brought into the Antarctic Treaty area'. Before dressed poultry is packaged for shipment to the Antarctic Treaty area, it shall be inspected for evidence of disease, such as Newcastle's Disease, tuberculosis, and yeast infection. Any poultry or parts not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates risks to native flora and fauna.

2 The importation of non-sterile soil shall be avoided to the maximum extent practicable.

ANNEX III

TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

WASTE DISPOSAL AND WASTE MANAGEMENT

Article 1

General Obligations

1 This Annex shall apply to activities undertaken in the Antarctic Treaty area pursuant to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.

2 The amount of wastes produced or disposed of in the Antarctic Treaty area shall be reduced as far as practicable so as to minimise impact on the Antarctic environment and to minimise interference with the natural values of Antarctica, with scientific research and with other uses of Antarctica which are consistent with the Antarctic Treaty.

3 Waste storage, disposal and removal from the Antarctic Treaty area, as well as recycling and source reduction, shall be essential considerations in the planning and conduct of activities in the Antarctic Treaty area.

4 Wastes removed from the Antarctic Treaty area shall, to the maximum extent practicable, be returned to the country from which the activities generating the waste were organised or to any other country in which arrangements have been made for the disposal of such wastes in accordance with relevant international agreements.

5 Past and present waste disposal sites on land and abandoned work sites of Antarctic activities shall be cleaned up by the generator of such wastes and the user of such sites. This obligation shall not be interpreted as requiring:

- (a) the removal of any structure designated as a historic site or monument; or
- (b) the removal of any structure or waste material in circumstances where the removal by any practical option would result in greater adverse environmental impact than leaving the structure or waste material in its existing location.

Article 2

Waste Disposal by Removal from the Antarctic Treaty Area

1 The following wastes, if generated after entry into force of this Annex, shall be removed from the Antarctic Treaty area by the generator of such wastes:

- (a) radio-active materials;
- (b) electrical batteries;
- (c) fuel, both liquid and solid;
- (d) wastes containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;
- (e) poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products which contain additives that could produce harmful emissions if incinerated;
- (f) all other plastic wastes, except low density polyethylene containers (such as bags for storing wastes), provided that such containers shall be incinerated in accordance with Article 3 (1);
- (g) fuel drums; and
- (h) other solid, non-combustible wastes;

provided that the obligation to remove drums and solid non-combustible wastes contained in subparagraphs (g) and (h) above shall not apply in circumstances where the removal of such wastes by any practical option would result in greater adverse environmental impact than leaving them in their existing locations.

2 Liquid wastes which are not covered by paragraph 1 above and sewage and domestic liquid wastes, shall, to the maximum extent practicable, be removed from the Antarctic Treaty area by the generator of such wastes.

3 The following wastes shall be removed from the Antarctic Treaty area by the generator of such wastes, unless incinerated, autoclaved or otherwise treated to be made sterile:

- (a) residues of carcasses of imported animals;
- (b) laboratory culture of micro-organisms and plant pathogens; and
- (c) introduced avian products.

Article 3

Waste Disposal by Incineration

1 Subject to paragraph 2 below, combustible wastes, other than those referred to in Article 2 (1), which are not removed from the Antarctic Treaty area shall be burnt in incinerators which to the maximum extent practicable reduce harmful emissions. Any emission standards and equipment guidelines which may be recommended by, *inter alia*, the Committee and the Scientific Committee on Antarctic Research shall be taken into account. The solid residue of such incineration shall be removed from the Antarctic Treaty area.

2 All open burning of wastes shall be phased out as soon as practicable, but no later than the end of the 1998/1999 season. Pending the completion of such phase-out, when it is necessary to dispose of wastes by open burning, allowance shall be made for the wind direction and speed and the type of wastes to be burnt to limit particulate deposition and to avoid such deposition over areas of special biological, scientific, historic, aesthetic or wilderness significance including, in particular, areas accorded protection under the Antarctic Treaty.

Article 4

Other Waste Disposal on Land

1 Wastes not removed or disposed of in accordance with Articles 2 and 3 shall not be disposed of onto ice-free areas or into fresh water systems.

2 Sewage, domestic liquid wastes and other liquid wastes not removed from the Antarctic Treaty area in accordance with Article 2, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or the grounded ice-sheet, provided that such wastes which are generated by stations located inland on ice shelves or on the grounded ice-sheet may be disposed of in deep ice pits where such disposal is the only practicable option. Such pits shall not be located on known ice-flow lines which terminate at ice-free areas or in areas of high ablation.

3 Wastes generated at field camps shall, to the maximum extent practicable, be removed by the generator of such wastes to supporting stations or ships for disposal in accordance with this Annex.

Article 5

Disposal of Waste in the Sea

1 Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment and provided that:

(a) such discharge is located, wherever practicable, where conditions exist for initial dilution and rapid dispersal; and

(b) large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration.

2 The by-product of sewage treatment by the Rotary Biological Contacter process or similar processes may be disposed of into the sea provided that such disposal does not adversely affect the local environment, and provided also that any such disposal at sea shall be in accordance with Annex IV to the Protocol.

Article 6

Storage of Waste

All wastes to be removed from the Antarctic Treaty area, or otherwise disposed of, shall be stored in such a way as to prevent their dispersal into the environment.

Article 7

Prohibited Products

No polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, chips or similar forms of packaging, or pesticides (other than those required for scientific, medical or hygiene purposes) shall be introduced onto land or ice shelves or into water in the Antarctic Treaty area.

Article 8

Waste Management Planning

1 Each Party which itself conducts activities in the Antarctic Treaty area shall, in respect of those activities, establish a waste disposal classification system as a basis for recording wastes and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and associated logistic support. To that end, wastes produced shall be classified as:

(a) sewage and domestic liquid wastes (Group 1);

- (b) other liquid wastes and chemicals, including fuels and lubricants (Group 2);
- (c) solids to be combusted (Group 3);
- (d) other solid wastes (Group 4); and
- (e) radioactive material (Group 5).

2 In order to reduce further the impact of waste on the Antarctic environment, each such Party shall prepare and annually review and update its waste management plans (including waste reduction, storage and disposal), specifying for each fixed site, for field camps generally, and for each ship (other than small boats that are part of the operations of fixed sites or of ships and taking into account existing management plans for ships):

- (a) programs for cleaning up existing waste disposal sites and abandoned work sites;
- (b) current and planned waste management arrangements, including final disposal;
- (c) current and planned arrangements for analysing the environmental effects of waste and waste management; and
- (d) other efforts to minimise any environmental effects of wastes and waste management.

3 Each such Party shall, as far as is practicable, also prepare an inventory of locations of past activities (such as traverses, field depots, field bases, crashed aircraft) before the information is lost, so that such locations can be taken into account in planning future scientific programs (such as snow chemistry, pollutants in lichens or ice core drilling).

Article 9

Circulation and Review of Waste Management Plans

1 The waste management plans prepared in accordance with Article 8, reports on their implementation, and the inventories referred to in Article 8 (3), shall be included in the annual exchanges of information in accordance with Articles III and VII of the Antarctic Treaty and related Recommendations under Article IX of the Antarctic Treaty.

2 Each Party shall send copies of its waste management plans, and reports on their implementation and review, to the Committee.

3 The Committee may review waste management plans and reports thereon and may offer comments, including suggestions for minimising impacts and modifications and improvement to the plans, for the consideration of the Parties.

4 The Parties may exchange information and provide advice on, *inter alia*, available low waste technologies, reconversion of existing installations, special requirements for effluents, and appropriate disposal and discharge methods.

Article 10

Management Plans

Each Party shall:

- (a) designate a waste management official to develop and monitor waste management plans; in the field, this responsibility shall be delegated to an appropriate person at each site;
 - (b) ensure that members of its expeditions receive training designed to limit the impact of its operations on the Antarctic environment and to inform them of requirements of this Annex; and
 - (c) discourage the use of poly-vinyl chloride (PVC) products and ensure that its expeditions to the Antarctic Treaty are advised of any PVC products they may introduce into that area in order that these products may be removed subsequently in accordance with this Annex.
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Article 11

Review

This Annex shall be subject to regular review in order to ensure that it is updated to reflect improvement in waste disposal technology and procedures and to ensure thereby maximum protection of the Antarctic environment.

Article 12

Cases of Emergency

1 This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value or the protection of the environment.

2 Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

Article 13

Amendment or Modification

1 This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the amendment.

2 Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX IV

TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

PREVENTION OF MARINE POLLUTION

Article 1

Definitions

For the purpose of this Annex:

(a) “discharge” means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;

(b) “garbage” means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship, except those substances which are covered by Articles 3 and 4;

(c) “MARPOL 72/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto and by any other amendment in force thereafter;

(d) “noxious liquid substance” means any noxious liquid substance as defined in Annex II of MARPOL 73/78;

(e) “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined oil products (other than petrochemicals which are subject to the provisions of Article 4);

(f) “oily mixture” means a mixture with any oil content; and

(g) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

Article 2

Application

This Annex applies, with respect to each Party, to ships entitled to fly its flag and to any other ship engaged in or supporting its Antarctic operations, while operating in the Antarctic Treaty area.

Article 3

Discharge of Oil

1 Any discharge into the sea of oil or oily mixture shall be prohibited, except in cases permitted under Annex I of MARPOL 73/78. While operating in the Antarctic Treaty area, ships shall retain on board all sludge, dirty ballast, tank washing waters and other oily residues and mixtures which may not be discharged into the sea. Ships shall discharge these residues only outside the Antarctic Treaty area, at reception facilities or as otherwise permitted under Annex I of MARPOL 73/78.

2 This Article shall not apply to:

(a) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

(i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and

(ii) except if the owner or the Master acted either with intent to cause damage, or recklessly and with the knowledge that damage would probably result; or

(b) the discharge into the sea of substances containing oil which are being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution.

Article 4

Discharge of Noxious Liquid Substances

The discharge into the sea of any noxious liquid substance, and any other chemical or other substances, in quantities or concentrations that are harmful to the marine environment, shall be prohibited.

Article 5

Disposal of Garbage

1 The disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets, and plastic garbage bags, shall be prohibited.

2 The disposal into the sea of all other garbage, including paper products, rags, glass, metal, bottles, crockery, incineration ash, dunnage, lining and packing materials, shall be prohibited.

3 The disposal into the sea of food wastes may be permitted when they have been passed through a comminuter or grinder, provided that such disposal shall, except in cases permitted under Annex V of MARPOL 73/78, be made as far as practicable from land and ice shelves but in any case not less than 12 nautical miles from the nearest land or ice shelf. Such comminuted or ground food wastes shall be capable of passing through a screen with openings no greater than 25 millimetres.

4 When a substance or material covered by this article is mixed with other such substance or material for discharge or disposal, having different disposal or discharge requirements, the most stringent disposal or discharge requirements shall apply.

5 The provisions of paragraphs 1 and 2 above shall not apply to:

(a) the escape of garbage resulting from damage to a ship or its equipment provided all reasonable precautions have been taken, before and after the occurrence of the damage, for the purpose of preventing or minimising the escape; or

(b) the accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.

6 The Parties shall, where appropriate, require the use of garbage record books.

Article 6

Discharge of Sewage

1 Except where it would unduly impair Antarctic operations:

(a) each Party shall eliminate all discharge into the sea of untreated sewage (“sewage” being defined in Annex IV of MARPOL 73/78) within 12 nautical miles of land or ice shelves;

(b) beyond such distance, sewage stored in a holding tank shall not be discharged instantaneously but at a moderate rate and, where practicable, while the ship is en route at a speed of no less than 4 knots.

This paragraph does not apply to ships certified to carry not more than 10 persons.

2 The Parties shall, where appropriate, require the use of sewage record books.

Article 7

Cases of Emergency

1 Articles 3, 4, 5 and 6 of this Annex shall not apply in cases of emergency relating to the safety of a ship and those on board or saving life at sea.

2 Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

Article 8

Effect on Dependent and Associated Ecosystems

In implementing the provisions of this Annex, due consideration shall be given to the need to avoid detrimental effects on dependent and associated ecosystems, outside the Antarctic Treaty area.

Article 9

Ship Retention Capacity and Reception Facilities

1 Each Party shall undertake to ensure that all ships entitled to fly its flag and any other ship engaged in or supporting its Antarctic operations, before entering the Antarctic Treaty area, are fitted with a tank or tanks of sufficient capacity on board for the retention of all sludge, dirty ballast, tank washing water and other oil residues and mixtures, and have sufficient capacity on board for the retention of garbage, while operating in the Antarctic Treaty area and have concluded arrangements to discharge such oily residues and garbage at a reception facility after leaving that area. Ships shall also have sufficient capacity on board for the retention of noxious liquid substances.

2 Each Party at whose ports ships depart en route to or arrive from the Antarctic Treaty area undertakes to ensure that as soon as practicable adequate facilities are provided for the reception of all sludge, dirty ballast, tank washing water, other oily residues and mixtures, and garbage from ships, without causing undue delay, and according to the needs of the ships using them.

3 Parties operating ships which depart to or arrive from the Antarctic Treaty area at ports of other Parties shall consult with those Parties with a view to ensuring that the establishment of port reception facilities does not place an inequitable burden on Parties adjacent to the Antarctic Treaty area.

Article 10

Design, Construction, Manning and Equipment of Ships

In the design, construction, manning and equipment of ships engaged in or supporting Antarctic operations, each Party shall take into account the objectives of this Annex.

Article 11

Sovereign Immunity

1 This Annex shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Annex.

2 In applying paragraph 1 above, each Party shall take into account the importance of protecting the Antarctic environment.

3 Each Party shall inform the other Parties of how it implements this provision.

4 The dispute settlement procedure set out in Articles 18 to 20 of the Protocol shall not apply to this Article.

Article 12

Preventive Measures and Emergency Preparedness and Response

1 In order to respond more effectively to marine pollution emergencies or the threat thereof in the Antarctic Treaty area, the Parties, in accordance with Article 15 of the Protocol, shall develop contingency plans for marine pollution response in the Antarctic Treaty area, including contingency plans for ships (other than small boats that are part of the operations of fixed sites or of ships) operating in the Antarctic Treaty area, particularly ships carrying oil as cargo, and for oil spills, originating from coastal installations, which enter into the marine environment. To this end they shall:

- (a) co-operate in the formulation and implementation of such plans; and
- (b) draw on the advice of the Committee, the International Maritime Organisation and other international organisations.

2 The Parties shall also establish procedures for cooperative response to pollution emergencies and shall take appropriate response actions in accordance with such procedures.

Article 13

Review

The Parties shall keep under continuous review the provisions of this Annex and other measures to prevent, reduce and respond to pollution of the Antarctic marine environment, including any amendments and new regulations adopted under MARPOL 73/78, with a view to achieving the objectives of this Annex.

Article 14

Relationship with MARPOL 73/78

With respect to those Parties which are also Parties to MARPOL 73/78, nothing in this Annex shall derogate from the specific rights and obligations thereunder.

Article 15

Amendment or Modification

1 This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2 Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

ANNEX V

TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

AREA PROTECTION AND MANAGEMENT

Article 1

Definitions

For the purposes of this Annex:

- (a) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
 - (b) “permit” means a formal permission in writing issued by an appropriate authority;
 - (c) “Management Plan” means a plan to manage the activities and protect the special value or values in an Antarctic Specially Protected Area or an Antarctic Specially Managed Area.
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Article 2

Objectives

For the purposes set out in this Annex, any area, including any marine area, may be designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area. Activities in those Areas shall be prohibited, restricted or managed in accordance with Management Plans adopted under the provisions of this Annex.

Article 3

Antarctic Specially Protected Areas

1. Any area, including any marine area, may be designated as an Antarctic Specially Protected Area to protect outstanding environmental, scientific, historic, aesthetic or wilderness values, any combination of those values, or ongoing or planned scientific research.
- 2 Parties shall seek to identify, within a systematic environmental-geographical framework, and to include in the series of Antarctic Specially Protected Areas:
 - (a) areas kept inviolate from human interference so that future comparisons may be possible with localities that have been affected by human activities;
 - (b) representative examples of major terrestrial, including glacial and aquatic, ecosystems and marine ecosystems;
 - (c) areas with important or unusual assemblages of species, including major colonies of breeding native birds or mammals;

- (d) the type locality or only known habitat of any species;
- (e) areas of particular interest to on-going or planned scientific research;
- (f) examples of outstanding geological, glaciological or geomorphological features;
- (g) areas of outstanding aesthetic and wilderness value;
- (h) sites or monuments or recognised historic value; and
- (i) such other areas as may be appropriate to protect the values set out in paragraph 1 above.

3 Specially Protected Areas and Sites of Special Scientific Interest designated as such by past Antarctic Treaty Consultative Meetings are hereby designated as Antarctic Specially Protected Areas and shall be renamed and renumbered accordingly.

4 Entry into an Antarctic Specially Protected Area shall be prohibited except in accordance with a permit issued under Article 7.

Article 4

Antarctic Specially Managed Areas

1 Any area, including any marine area, where activities are being conducted or may in the future be conducted, may be designated as an Antarctic Specially Managed Area to assist in the planning and co-ordination of activities, avoid possible conflicts, improve co-operation between Parties or minimise environmental impacts.

2 Antarctic Specially Managed Areas may include:

- (a) areas where activities pose risks of mutual interference or cumulative environmental impacts; and
- (b) sites or monuments of recognised historic value.

3 Entry into an Antarctic Specially Managed Area shall not require a permit.

4 Notwithstanding paragraph 3 above, an Antarctic Specially Managed Area may contain one or more Antarctic Specially Protected Areas, entry into which shall be prohibited except in accordance with a permit issued under Article 7.

Article 5

Management Plans

1 Any Party, the Committee, the Scientific Committee for Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose an area for designation as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area by submitting a proposed Management Plan to the Antarctic Treaty Consultative Meeting.

2 The area proposed for designation shall be of sufficient size to protect the values for which the special protection or management is required.

3 Proposed Management Plans shall include, as appropriate:

(a) a description of the value or values for which special protection or management is required;

(b) a statement of the aims and objectives of the Management Plan for the protection or management of those values;

(c) management activities which are to be undertaken to protect the values for which special protection or management is required;

(d) a period of designation, if any;

(e) a description of the area, including:

(i) the geographical co-ordinates, boundary markers and natural features that delineate the area;

(ii) access to the area by land, sea or air including marine approaches and anchorages, pedestrian and vehicular routes within the area, and aircraft routes and landing areas;

(iii) the location of structures, including scientific stations, research or refuge facilities, both within the area and near to it; and

(iv) the location in or near the area of other Antarctic Specially Protected Areas or Antarctic Specially Managed Areas designated under this Annex, or other protected areas designated in accordance with measures adopted under other components of the Antarctic Treaty System;

(f) the identification of zones within the area, in which activities are to be prohibited, restricted or managed for the purpose of achieving the aims and objectives referred to in subparagraph b. above;

- (g) maps and photographs that show clearly the boundary of the area in relation to surrounding features and key features within the area;
- (h) supporting documentation;
- (i) in respect of an area proposed for designation as an Antarctic Specially Protected Area, a clear description of the conditions under which permits may be granted by the appropriate authority regarding:
 - (i) access to and movement within or over the area;
 - (ii) activities which are or may be conducted within the area, including restrictions on time and place;
 - (iii) the installation, modification, or removal of structures;
 - (iv) the location of field camps;
 - (v) restrictions on materials and organisms which may be brought into the area;
 - (vi) the taking of or harmful interference with native flora and fauna;
 - (vii) the collection or removal of anything not brought into the area by the permit holder;
 - (viii) the disposal of waste;
 - (ix) measures that may be necessary to ensure that the aims and objectives of the Management Plan can continue to be met; and
 - (x) requirements for reports to be made to the appropriate authority regarding visits to the area;
- (j) in respect of an area proposed for designation as an Antarctic Specially Managed Area, a code of conduct regarding:
 - (i) access to and movement within or over the area;
 - (ii) activities which are or may be conducted within the area, including restrictions on time and place;
 - (iii) the installation, modification, or removal of structures;
 - (iv) the location of field camps;
 - (v) the taking of or harmful interference with native flora and fauna;

- (vi) the collection or removal of anything not brought into the area by the visitor;
 - (vii) the disposal of waste; and
 - (viii) any requirements for reports to be made to the appropriate authority regarding visits to the area; and
 - (k) provisions relating to the circumstances in which Parties should seek to exchange information in advance of activities which they propose to conduct.
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Article 6

Designation Procedures

1 Proposed Management Plans shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, as appropriate, to the Commission for the Conservation of Antarctic Marine Living Resources. In formulating its advice to the Antarctic Treaty Consultative Meeting, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research and, as appropriate, by the Commission for the Conservation of Antarctic Marine Living Resources. Thereafter, Management Plans may be approved by the Antarctic Treaty Consultative Parties by a measure adopted at an Antarctic Treaty Consultative Meeting in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the Plan shall be deemed to have been approved 90 days after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or is unable to approve the measure.

2 Having regard to the provisions of Articles 4 and 5 of the Protocol, no marine area shall be designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area without the prior approval of the Commission for the Conservation of Antarctic Marine Living Resources.

3 Designation of an Antarctic Specially Protected Area or an Antarctic Specially Managed Area shall be for an indefinite period unless the Management Plan provides otherwise. A review of a Management Plan shall be initiated at least every five years. The Plan shall be updated as necessary.

4 Management Plans may be amended or revoked in accordance with paragraph 1 above.

5 Upon approval Management Plans shall be circulated promptly by the Depositary to all Parties. The Depositary shall maintain a record of all currently approved Management Plans.

Article 7

Permits

1 Each Party shall appoint an appropriate authority to issue permits to enter and engage in activities within an Antarctic Specially Protected Area in accordance with the requirements of the Management Plan relating to that Area. The permit shall be accompanied by the relevant sections of the Management Plan and shall specify the extent and location of the Area, the authorised activities and when, where and by whom the activities are authorised and any other conditions imposed by the Management Plan.

2 In the case of a Specially Protected Area designated as such by past Antarctic Treaty Consultative Meeting which does not have a Management Plan, the appropriate authority may issue a permit for a compelling scientific purpose which cannot be served elsewhere and which will not jeopardise the natural ecological system in that Area.

3 Each Party shall require a permit-holder to carry a copy of the permit while in the Antarctic Specially Protected Area concerned.

Article 8

Historic Sites and Monuments

1 Sites or monuments of recognised historic value which have been designated as Antarctic Specially Protected Areas or Antarctic Specially Managed Areas, or which are located within such Areas, shall be listed as Historic Sites and Monuments.

2 Any Party may propose a site or monument of recognised historic value which has not been designated as an Antarctic Specially Protected Area or an Antarctic Specially Managed Area, or which is not located within such an Area, for listing as a Historic Site or Monument. The proposal for listing may be approved by the Antarctic Treaty Consultative Parties by a measure adopted at an Antarctic Treaty Consultative Meeting in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the proposal shall be deemed to have been approved 90 days after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or is unable to approve the measure.

3 Existing Historic Sites and Monuments which have been listed as such by previous Antarctic Treaty Consultative Meetings shall be included in the list of Historic Sites and Monuments under this Article.

4 Listed Historic Sites and Monuments shall not be damaged, removed or destroyed.

5 The list of Historic Sites and Monuments may be amended in accordance with paragraph 2 above. The Depositary shall maintain a list of current Historic Sites and Monuments.

Article 9

Information and Publicity

1 With a view to ensuring that all persons visiting or proposing to visit Antarctica understand and observe the provisions of this Annex, each Party shall make available information setting forth, in particular:

- (a) the location of Antarctic Specially Protected Areas and Antarctic Specially Managed Areas;
- (b) listing and maps of those Areas;
- (c) the Management Plans, including listings of prohibitions relevant to each Area;
- (d) the location of Historic Sites and Monuments and any relevant prohibition or restriction.

2 Each Party shall ensure that the location and, if possible, the limits of Antarctic Specially Protected Areas, Antarctic Specially Managed Areas and Historic Sites and Monuments are shown on its topographic maps, hydrographic charts and in other relevant publications.

3 Parties shall co-operate to ensure that, where appropriate, the boundaries of Antarctic Specially Protected Areas, Antarctic Specially Managed Areas and Historic Sites and Monuments are suitably marked on the site.

Article 10

Exchange of Information

1 The Parties shall make arrangements for:

- (a) collecting and exchanging records, including records of permits and reports of visits, including inspection visits, to Antarctic Specially Protected Areas and reports of inspection visits to Antarctic Specially Managed Areas;

(b) obtaining and exchanging information on any significant change or damage to any Antarctic Specially Managed Area, Antarctic Specially Protected Area or Historic Site or Monument; and

(c) establishing common forms in which records and information shall be submitted by Parties in accordance with paragraph 2 below.

2 Each Party shall inform the other Parties and the Committee before the end of November of each year of the number and nature of permits issued under this Annex in the preceding period of 1st July to 30th June.

3 Each Party conducting, funding or authorising research or other activities in Antarctic Specially Protected Areas or Antarctic Specially Managed Areas shall maintain a record of such activities and in the annual exchange of information in accordance with the Antarctic Treaty shall provide summary descriptions of the activities conducted by persons subject to its jurisdiction in such areas in the preceding year.

4 Each Party shall inform the other Parties and the Committee before the end of November each year of measures it has taken to implement this Annex, including any site inspections and any steps it has taken to address instances of activities in contravention of the provisions of the approved Management Plan for an Antarctic Specially Protected Area or Antarctic Specially Managed Area.

Article 11

Cases of Emergency

1 The restrictions laid down and authorised by this Annex shall not apply in cases of emergency involving safety of human life or of ships, aircraft, or equipment and facilities of high value or the protection of the environment.

2 Notice of activities undertaken in cases of emergency shall be circulated immediately to all Parties and to the Committee.

Article 12

Amendment or Modification

1 This Annex may be amended or modified by a measure adopted in accordance with Article IX(1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which

it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depository, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2 Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depository.

ANNEX VI

TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

LIABILITY ARISING FROM ENVIRONMENTAL EMERGENCIES

Article 1 Scope

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article 13.

Article 2 Definitions

For the purposes of this Annex:

- (a) “Decision” means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;
- (b) “Environmental emergency” means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;
- (c) “Operator” means any natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person,

whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;

(d) “Operator of the Party” means an operator that organises, in that Party’s territory, activities to be carried out in the Antarctic Treaty area, and:

(i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or

(ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party. The terms “its operator”, “Party of the operator”, and “Party of that operator” shall be interpreted in accordance with this definition;

(e) “Reasonable”, as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:

(i) risks to the Antarctic environment, and the rate of its natural recovery;

(ii) risks to human life and safety; and

(iii) technological and economic feasibility;

(f) “Response action” means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact;

(g) “The Parties” means the States for which this Annex has become effective in accordance with Article 9 of the Protocol.

Article 3 Preventative Measures

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.

2. Preventative measures may include:

(a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;

(b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and

(c) specialised training of personnel.

Article 4 Contingency Plans

1. Each Party shall require its operators to:

(a) establish contingency plans for responses to incidents with potential adverse impacts

on the Antarctic environment or dependent and associated ecosystems; and
(b) co-operate in the formulation and implementation of such contingency plans.

2. Contingency plans shall include, when appropriate, the following components:

- (a) procedures for conducting an assessment of the nature of the incident;
- (b) notification procedures;
- (c) identification and mobilisation of resources;
- (d) response plans;
- (e) training;
- (f) record keeping; and
- (g) demobilisation.

3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

Article 5 Response Action

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.

2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.

3. (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.

(b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.

(c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.

4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.

5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

Article 6 Liability

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article 5(2) to such Parties.

2. (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article 12.

(b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article 12, to the Party of that operator or to the Party that enforces the mechanism referred to in Article 7(3). A Party receiving such money shall make best efforts to make a contribution to the fund referred to in Article 12 which at least equals the money received from the operator.

3. Liability shall be strict.

4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.

5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

Article 7 Actions

1. Only a Party that has taken response action pursuant to Article 5(2) may bring an action against a non-State operator for liability pursuant to Article 6(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article 2(d). Such actions for compensation shall be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.
2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.
3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2)(b) with respect to any of its non-State operators within the meaning of Article 2(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article 13(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article 6(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.
4. The liability of a Party as a State operator under Article 6(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
5. (a) The liability of a Party as a State operator under Article 6(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.
(b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article 12, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.

6. Under this Annex, the provisions of Articles 19(4), 19(5), and 20(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

Article 8 Exemptions from Liability

1. An operator shall not be liable pursuant to Article 6 if it proves that the environmental emergency was caused by:
 - (a) an act or omission necessary to protect human life or safety;
 - (b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
 - (c) an act of terrorism; or
 - (d) an act of belligerency against the activities of the operator.
 2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article 5(2) to the extent that such response action was reasonable in all the circumstances.
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Article 9 Limits of Liability

1. The maximum amount for which each operator may be liable under Article 6(1) or Article 6(2), in respect of each environmental emergency, shall be as follows:
 - (a) for an environmental emergency arising from an event involving a ship:
 - (i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:
 - for each ton from 2,001 to 30,000 tons, 400 SDR;
 - for each ton from 30,001 to 70,000 tons, 300 SDR; and
 - for each ton in excess of 70,000 tons, 200 SDR;
 - (b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.
2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:
 - (i) the liability or right to limit liability under any applicable international limitation of liability treaty; or
 - (ii) the application of a reservation made under any such treaty to exclude the application

of the limits therein for certain claims;

provided that the applicable limits are at least as high as the following: for a ship with a tonnage not exceeding 2,000 tons, one million SDR; and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton; for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

(b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article 7(1) and Article 7(2).

3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article 13(2).

5. For the purpose of this Article:

(a) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

(b) “SDR” means the Special Drawing Rights as defined by the International Monetary Fund;

(c) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

Article 10 State Liability

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

Article 11 Insurance and Other Financial Security

1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(1) up to the applicable limits set out in Article 9(1) and Article 9(2).
 2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(2) up to the applicable limits set out in Article 9(1) and Article 9(2).
 3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect of its State operators, including those carrying out activities in the furtherance of scientific research.
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Article 12 The Fund

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, inter alia, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article 5(2).
 2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.
 3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article 8 applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.
 4. Any State or person may make voluntary contributions to the fund.
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Article 13 Amendment or Modification

1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.
2. In the case of a Measure pursuant to Article 9(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the

Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.

3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.