Report of the Intersessional Contact Group (ICG) on Criteria for Consultative Status

Proposed updated Decision and Guidelines on notification and procedure

with respect to Consultative Status

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**Working Paper submitted by Chile, New Zealand and Uruguay**

Summary

At the XXXIX Antarctic Treaty Consultative Meeting (ATCM) discussions were raised in relation to the desire to improve the mechanisms currently available within the ATS, and its implementation by the ATCM, for considering applications by Contracting Parties wishing to be granted Consultative Party status pursuant to Article IX, paragraph 2, of the Antarctic Treaty.

The ATCM decided to establish an ICG on Criteria for Consultative Status, convened by Chile, New Zealand and Uruguay, with the following terms of reference:

review the existing procedure for obtaining Consultative Party status, including Decision 4 (2005);

review the Guidelines on notification with respect to Consultative status;

consider whether additional or updated Guidelines would provide further clarity regarding the granting of Consultative Party status as per Article IX, paragraph 2, of the Antarctic Treaty, which requires that a “Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition”; and

consider other recommendations for Contracting Parties wishing to obtain Consultative Party Status and report to the ATCM.

This paper reports on the ICG’s work to address its terms of reference and makes recommendations for consideration by the ATCM.

Background

Method of operation

The ICG operated using the online ATCM Discussion Forum, under the topic ‘ICG on Criteria for Consultative Status’. The discussion was open to Consultative Parties only.

References were provided on the forum as sources for the discussion including:

* Guidelines on notification with respect to Consultative Status adopted by ATCM XIV (Rio de Janeiro, 1987);
* Decision 4 (2005) - ATCM XXVIII - CEP VIII, Stockholm.

The ICG began work with an opening announcement by the co-convenors on 1st August 2016. The work was arranged in stages:

* Stage 1: Circulation of TORs, references, proposed work plan and schedule; Initial inputs; Summary;
* Stage 2 Proposal of updated Guidelines;
* Stage 3: Finalize recommendations and agree on a Working Paper; Report of the ICG for ATCM XL.

Summary of discussions

Comments were provided to the ICG by seven Parties (Argentina, Australia, France, Norway, United Kingdom, United States and Uruguay).

To assist participants in providing inputs consistent with the terms of reference, a Co-Convener’s initial post was prepared and circulated to form the basis of the ICG discussion. This post outlined and invited Parties to suggest initial thoughts and proposals on these issues with the aim of reviewing existing guidelines using the mentioned references and preparing additional guidelines if needed. The results will assist in the best possible decision-making by Consultative Parties when an application is received, as well as helping Contracting Parties present their applications. Participants were invited to provide views on these suggested actions or any alternative or further options.

The inputs received by the Parties were grouped into two main subjects:

1. Those related to Guidelines on notification for a Treaty Party requesting Consultative Status (TprCS) such as:

* Timetable for the notification;
* Information concerning the TPrCS’s activities in the Antarctic and the Antarctic Treaty System.

2. Those related to evaluation criteria for Consultative Parties when reviewing the information provided by a TPrCS.

Following inputs from participants, the Co-Convenors summarised the discussion and provided the draft ICG outcomes and a draft Working Paper.

***Outcomes of the Discussions***

1. Parties agreed that establishing a station is not a precondition for conducting substantial scientific research in Antarctica necessary for obtaining Consultative Status, noted that this was not mentioned in Decision 4 (2005), and clarified it in the resulting proposed Decision and Guidelines.
2. The necessity of having enough time for the proper assessment of the TPrCS was one of the key issues. In order to address it, some Parties suggested establishing an ICG, open to Consultative Parties only, for the proper assessment of the application of the TPrCS using the guidelines determined by the ATCM*.* The aforementioned ICG would work with standard Terms of Reference common to all ICGs, with the ATCM being able to add other ToR. The ICG would serve not only as a place for discussion and enquiries about the request for Consultative Status but also as an archive for future reference.
3. In addition, regarding the time required to establish an ICG for consideration of the request, it was understood that a Dossier of Information had to be provided by the TPrCS no later than 120 days before the next ATCM, in at least one of the four official languages of ACTM, and considerations regarding the translation were incorporated to the Guidelines.
4. The contributing Parties to the ICG proposed a list of parameters and details to be included in the Dossier covering legislation and institutional matters, environmental issues, future plans, investment, operational and scientific activities, among others, and these were included in the proposed updated Guidelines.
5. The ICG identified the need to establish a metric for scientific research output, which is also not considered in Decision 4 (2005). In order to evaluate the “substantial scientific research activity” (as indicated in Article IX.2 of the Antarctic Treaty), the use of bibliometric reviews and detailed information to be provided by the TPrCS was recommended for inclusion in the updated Guidelines for evaluation of the TPrCS by the Consultative Parties. Some Parties wish to retain some flexibility, rather than establishing a strict quantified approach in measuring the scientific research output.
6. Collaboration with other CPs was found to be significantly important, needing a clear reference to be made on the ability and willingness to promote it, together with the appropriate details listed in the new Guidelines.
7. Indicators of involvement in Antarctic Science, operational matters, and the Antarctic Treaty System organisations, within their scope and objectives, were universally considered to add value to any application for accession to Consultative Status. However, some Parties stressed that membership by their relevant authority in these organizations should be encouraged but not a requirement for Consultative Status.
8. Maximizing the use of an existing mechanism, such as the Electronic Information Exchange System (EIES) based on an ATCM Decision, was considered as a valuable tool for easily accessing information provided by the TPrCS on Science, Infrastructure, Observatories, etc., collected and documented in an ATCM approved format for the needed assessment.
9. Since the existing procedure, including Decision 4 (2005), does not take into account the new considerations made by the ATCPs in the ICG, it was agreed that it should therefore be updated, while keeping in mind that according to numeral 5 of Decision 4, the existing procedure *“may be modified only by a unanimous decision of the Consultative Parties”*.
10. New guidelines and procedures were agreed by updating and merging the sources: Guidelines on notification with respect to Consultative Status adopted by ATCM XIV and Decision 4 (2005) - ATCM XXVIII - CEP VIII.

With this report, the ICG has concluded its work in accordance with the terms of reference and agreed recommendations for consideration by the ATCM.

* Based on the outcomes of the discussion, a Draft Decision is presented for consideration by the Consultative Parties, including the proposed updated Guidelines as Attachment 1.

Additional points raised by participants

Several points were raised in the ICG discussion that are to be worked on later if Parties so agree:

1. The accession to Consultative Status as a gradual process, in a step-by-step procedure, was found to be desirable.
2. Keeping the openness of the system by not establishing mandatory requirements and a case-by-case analysis of each application was mentioned as a concern.
3. The Parties wish to retain the right to consider whether a TPrCS is meeting the obligations and standards of the international agreements and ATCM decisions.
4. The possible implementation of standard forms for applications was considered for further discussion.
5. Although Sponsorship was mentioned as a possible way to assist an application for Consultative Status, there was no consensus on including it in the Guidelines.
6. Some parties were in the view that they prefer the information of the application to be posted only, at the Antarctic Treaty Secretariat website, for their consultation and assessment.
7. The role of the previously elected Chair of WG 1 according to Decision 2 (2016) num.11.b as moderator for the ICG was found to be a possibility, if agreed to by the ATCM.
8. In addition to having the standard Terms of Reference (ToR) common to all ICGs for the ICG working on the request from a TPrCS, the ATCM being able to add other ToR needs to be addressed when required.
9. The need to evaluate the past, current, and future involvement of the TPrCS in terms of scientific activities was found necessary, including the environmental impact assessments in respect of intended activities in Antarctica.

Recommendations

1. It is recommended that the ATCM:
   1. Consider the report of the ICG;
   2. Adopt the agreed updated Decision for Guidelines on the procedure to be followed with respect to Consultative Status;
   3. Consider as no longer valid the previous references.

**Attachment**

Decision X (20XX)

**Guidelines on the procedure to be followed with respect to Consultative Status**

The Representatives,

*Recognising* the need for an updated procedure of consultation and evaluation in the event that another state, having acceded to the Antarctic Treaty, should notify the Depositary Government that it considers it is entitled to appoint Representatives to participate in Antarctic Treaty Consultative Meetings;

*Recalling* their obligation under Article X of the Antarctic Treaty to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in an activity in Antarctica contrary to the principles or purposes of the Treaty;

*Recognising that* the entitlement of an acceding state to appoint Representatives to participate in Antarctic Treaty Consultative Meetings (ATCM) under Article IX.2 of the Antarctic Treaty depends on such a state demonstrating its interest in Antarctica by conducting substantial scientific research activities there, such as the establishment of a scientific station or the dispatch of a scientific expedition;

*Considering that* these activities are not exclusive, need to be evaluated objectively and that establishing a station is not a precondition for conducting substantial scientific research in Antarctica for obtaining Consultative Status;

*Recalling* their obligation under Article 22.4 of the Protocol on Environmental Protection to the Antarctic Treaty (the Protocol) not to act upon a notification regarding the entitlement of a Contracting Party to the Antarctic Treaty to appoint representatives to participate in the ATCM unless the Contracting Party has first ratified, accepted, approved or acceded to the Protocol;

*Emphasising* the importance of Contracting Parties to the Antarctic Treaty that are seeking Consultative Status approving all Annexes to the Protocol that have become effective;

*Conscious of* the adoption*,* subsequent to the adoption of the Protocol, of Annex V to the Protocol on Area Protection and Management and Annex VI to the Protocol on Liability Arising from Environmental Emergencies;

*Noting that* Annex V to the Protocol has become effective;

*Taking into account that*Decision 4 (2005), agreed at ATCMXXVIII, and the Guidelines on Notification with respect to Consultative Status, agreed at ATCMXIV, are the references for granting Consultative Status and need to be updated;

**Decide that:**

1. An acceding state which considers itself entitled to appoint Representatives in accordance with Article IX.2 of the Antarctic Treaty shall notify the Depositary Government for the Antarctic Treaty of this view and shall provide information concerning its activities in the Antarctic, no later than 120 days prior to the ATCM at which the request for recognition of Consultative Party status is to be considered in particular as recommended by the ATCM in the present Decision and its Annex. The Depositary Government shall forthwith communicate for evaluation the foregoing notification and information to all other Consultative Parties. An Intersessional Contact Groups (ICG) with standard Terms of Reference included in the Guidelines shall be established by the Antarctic Treaty Secretariat once an application is received, in order to assist Consultative Parties in the evaluation of the request for Consultative Status at the following ATCM.

2. Consultative Parties, in exercising the obligation placed on them by Article X of the Treaty, shall examine the information about its activities supplied by such an acceding state, may conduct any appropriate enquiries (including the exercising of their right of inspection in accordance with Article VII of the Treaty) and may, through the Depositary Government, urge such a state to make a declaration of intent to approve the Recommendations and Measures adopted at ATCM in pursuance of the Treaty and subsequently approved by all the Contracting Parties whose Representatives were entitled to participate in those meetings. Consultative Parties may, through the Depositary Government, invite the acceding state to consider approval of the other Recommendations and Measures.

3. The Government which is to host the next ATCM shall, in the context of its preparation of the Provisional Agenda for the ATCM in accordance with Rule 38 of the Rules of Procedure, include an appropriate item in the Provisional Agenda for consideration of the notification.

4. The ATCM shall determine, on the basis of all information available to it, whether to acknowledge that the acceding state in question has met the requirements of Article IX.2 of the Antarctic Treaty and of Article 22.4 of the Protocol, including whether the acceding state has approved all Annexes to the Protocol that have become effective. The ATCM shall also take into account the approved Guidelines onthe procedure to be followed with respect to Consultative Status. If agreed by the Representatives of all the Consultative Parties, such acknowledgement shall be recorded in a Decision of the ATCM and be notified by the host Government to the acceding state.

5. The procedure set out in paragraphs 1 to 4 above may be modified only by a unanimous decision of Consultative Parties.

6. The Guidelines on the procedure to be followed with respect to Consultative Status are included as Annex 1 to this Decision

7. The Guidelines on Notification with respect to Consultative Status agreed at ATCM XIV and Decision 4 (2005) of ATCM XXVIII are superseded by this Decision and its Annex 1.

Annex

**Guidelines on the procedure to be followed with respect to Consultative Status**

The following Guidelines on notification and procedure with respect to Consultative Status are to be followed by a non-Consultative Party to the Antarctic Treaty that considers it is entitled to appoint Representatives to the Antarctic Treaty Consultative Meetings and by the Consultative Parties with respect to the procedure and evaluation of the request by the ATCM:

1. The Treaty Party requesting Consultative Status (TPrCS) should inform the Consultative Parties of its intention to request recognition of Consultative Status as early as possible prior to the Antarctic Treaty Consultative Meeting at which the request is to be considered.
2. The TPrCS should formally notify the Depository and provide the necessary dossier of information no later than 120 days before the ATCM at which its request is to be considered.
3. The dossier of information should be provided through the Depository Government for the Antarctic Treaty by the TPrCS in at least one of the four official languages of ACTM, with an executive summary to be translated into the four Treaty languages by the translation services of the Antarctic Treaty Secretariat as soon as received.
4. The Executive Secretary of the Antarctic Treaty Secretariat will establish the Intersessional Contact Group (ICG) after a request for recognition of Consultative Status is received.

The ICG will have the following standard terms of reference:

* Evaluate the request presented by the TPrCS, with the information provided*,* using the guidelines determined by the ATCM;
* Request further information, if necessary;
* Serve as an archive for future reference;
* Report to the ATCM;

The ICG will be convened by the elected Chair of the Working Group 1 of the ATCM, elected as per Decision 2 (2016) num. 11 lit. b;

Only Consultative Parties will be invited to provide input;

The following ATCM will consider the report of the ICG.

1. The TPrCS information dossier should include a complete description of scientific programs and activities performed in or on Antarctica during the last ten years, including for example:
   * a list of publications related to Antarctica, including both articles in recognized peer-reviewed scientific journals as well as papers to international bodies;
   * a list of publications with co-authors from different countries;
   * details of citations of relevant papers in recognized science citation indexes*;*
   * details of data contributed by the TPrCS with emphasis on data cited in publications that score well in a science citation index and on data contributed to Antarctic scientific programs and databases;
   * creation of data sets that are fully open and accessible to the scientific community; and
   * examples of research prizes or formal recognition of accomplishments.
2. The TPrCS should also include, if relevant, complete information that points to sustained contributions to science about:

* ongoing and planned scientific programs in Antarctica, including involvement in international Antarctic research groups, programs and organizations;
* details and status of the necessary environmental impact assessments in respect of intended activities in Antarctica;
* if relevant, details of its research facilities and logistics resources existing or planned to support its Antarctic research activities;
* ratio of science to logistics personnel in summer and winter;
* long-term scientific objectives and research plans; and
* the nomination of a competent national authority, according to Article 1 of Annex II of the Protocol.

1. The TPrCS should give, if relevant, a complete description of the planning, management and execution of its scientific programs and logistical support activities in Antarctica, in compliance with the Antarctic Treaty and the Protocol on Environmental Protection, including for example:

* how Antarctic affairs are managed within its government’s structures;
* legislation necessary to ensure compliance with ATCM binding arrangements by the appropriate national institutions;
* identification of all other governmental and non-governmental institutions involved; and
* investments dedicated to both Antarctic scientific programs and logistical support activities.

1. The TPrCS should provide details, where relevant, about its ability and willingness to promote international cooperation in accordance with Article III of the Antarctic Treaty. This could include information on:

* cooperative arrangements or agreements that the Party may have in place with other Antarctic nations to further its Antarctic science programs;
* number of scientists from other countries involved in the Antarctic projects (in the field or in laboratories);
* number of the TPrCS´s scientists participating in an expedition in the field organized by another Party;
* list of joint international projects in which the TPrCS is partner; and
* if relevant, arrangements made in order to facilitate inspections by any observers designated in accordance with Article VII and article 14 of the Protocol, of its own sites or vessels, or of any logistical support provided.

1. The TPrCS should note the obligation for Consultative Parties, under Article 22.4 of the Protocol on Environmental Protection to the Antarctic Treaty (the Protocol), not to act upon a notification regarding the recognition of Consultative Status unless the Contracting Party has first ratified, accepted, approved, or acceded to the Protocol, as well as approved all Annexes to the Protocol which have become effective.
2. The TPrCS should make a declaration of intent to approve the Recommendations and Measures adopted at ATCMs in pursuance of the Treaty and subsequently approved by all the Consultative Parties.
3. The TPrCS is reminded that the two examples mentioned in Art IX(2) of the Antarctic Treaty to demonstrate the conduct of substantial scientific research activity are not exclusive and that establishing a station is not a precondition for obtaining Consultative Status. Notwithstanding this, if a station is established, the TPrCS should provide information on which standards and guidelines are being followed on operational safety and environmental protection.
4. Where a scientific expedition is the sole or primary justification for a request for Consultative Party status, the TPrCS should provide information regarding the degree to which the expedition is self-managed and under its responsibility, using its own assets, those of a service provider, or those of an existing Consultative Party, but organized, financed and headed by the TprCS.
5. The TPrCS should note that having its relevant authority become a full member of COMNAP will be considered a positive indicator of engagement in Antarctic operational matters in support of science, while having its relevant scientific body being a full member of SCAR and having participated in SCAR related scientific activities will be considered an important indicator of involvement in Antarctic science.
6. The TPrCS should upload all relevant data to the Electronic Information Exchange System (EIES) of the ATS, including to the “Scientific Information” section.
7. The TPrCS is encouraged to seek assistance, as appropriate, from other Consultative Parties during the process to achieve Consultative Status.

The Guidelines on notification with respect to Consultative Status adopted by ATCM XIV (Rio de Janeiro, 1987) and Decision 4 adopted by ATCM XXVIII (Stockholm**,** 2005) are superseded by these Guidelines.