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Australian Government
Department of Foreign Affairs and Trade

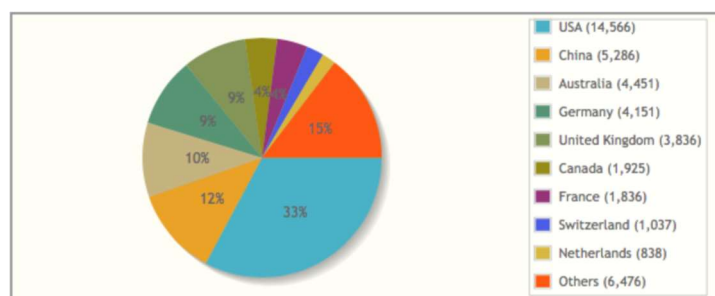
RESPONSES TO QUESTIONS ON NOTICE

PARLIAMENTARY INQUIRY INTO AUSTRALIA'S ANTARCTIC TERRITORY – DFAT PUBLIC HEARING 14 SEPTEMBER 2017

Q: Senator Jonathan Duniam asked the Department to provide tourism statistics.

1. As is required by the Protocol on Environmental Protection to the Antarctic Treaty, all tourist activities undergo an environmental assessment before they can proceed to Antarctica, administered by the responsible Treaty Party. The Antarctic Treaty parties keep Antarctic tourism under close consideration, and tourism management is a major focus of Antarctic Treaty Consultative Meetings.
2. The International Association of Antarctica Tour Operators (IAATO), an international organisation comprised of more than 100 companies and organisations from Antarctic Treaty Contracting Parties including Australia, publishes information about Antarctic tourism conducted by its members on its website. Currently the large majority of Antarctic tourism activity is conducted by IAATO member companies. IAATO information includes up-to-date Antarctic tourism statistics and information about tourism trends.
3. Some points the Committee may find particularly useful are below.
 - Most tourists visiting the continent travel by sea to the Antarctic Peninsula, via Argentina and Chile's ports.
 - Antarctic tourism numbers are modest – a total of 44 367 visitors in the 2016-17 season, including cruise only tourists.
 - IAATO's breakdown of tourist numbers by nationality is copied below.
 - The 'tourism statistics' section of IAATO's website <https://iaato.org/tourism-statistics> provides other useful breakdowns of tourist numbers, for example number of tourists per site, per vessel for Peninsula and continental sites respectively.

2016-2017 Tourists By Nationality Total



Q: Mr Julian Leaser, MP, asked whether the Treaty had ever been breached since its entry into force in 1961.

Q: Senator Malarndirri McCarthy asked whether there had been any kind of political conflict, even if it that had not breached the Treaty, or anything else of interest the Committee should be aware of.

1. To the Department's knowledge, there have been no breaches of the Antarctic Treaty since its entry into force in 1961.
2. The Treaty, negotiated in 1958 at the height of the Cold War and with Russia and the United States among its founding parties, is the product of an era of political conflict. Against this backdrop, the agreement's 12 original signatories wanted to reserve Antarctica for peaceful uses, principally scientific investigation. Despite significant shifts in geo-strategic dynamics in the decades since its adoption the Treaty has proved remarkably successful in ensuring Antarctica remains free from discord and political conflict.
3. The system of agreements that now support the Treaty are an important part of the picture. The Treaty's 1991 Protocol on Environmental Protection (Environment Protocol) is particularly important.
4. Strategic competition and potential environmental damage relating to the continent's mineral resources was historically a real possibility, even after the Treaty's entry into force. It was a possibility Treaty parties tried to address during years of negotiations on an agreement controlling potential mineral resource activities in Antarctica. The result was the adoption, in 1988, of a Convention on the Regulation of Antarctic Minerals (CRAMRA).
5. In a decisive departure from what CRAMA negotiations had sought to achieve, then Australian Prime Minister Bob Hawke announced in 1989 that Australia opposed mining in Antarctica and would not sign the agreement. Mr Hawke, together with his French counterpart Michel Rocard, instead called on Antarctic Treaty Consultative Parties to adopt a comprehensive regime for protect the Antarctic environment that included a ban on mining. Our initiative was taken up and the Antarctic Treaty's Environment Protocol was negotiated and signed within a year, entering into force in 1998.
6. Our efforts to secure a comprehensive environmental protection regime for Antarctica, and in particular a permanent ban on mining and oil drilling, marked a defining chapter in our history as a leading Antarctic nation.
7. The Treaty system has demonstrated its capacity to forestall the potential for political or strategic confrontation in the Antarctic region and we consider the risk of a serious breach of the Treaty to be low.



8. We are, however, sensitive to the potential for breaches. Promoting compliance with the Treaty and Protocol is therefore central to our international legal diplomacy on Antarctic issues.
9. Advocating compliance with the Treaty's prohibition on military activity (Article I) and encouraging parties to accommodate and support scientific cooperation by providing information about planned scientific programs and making scientific observations and results from Antarctica freely available (Article III) are priorities we take every opportunity to pursue.
10. For example, although Article I of the Treaty prohibits any measures of a military nature in Antarctica, Contracting Parties are entitled to use military personnel or equipment for scientific research or any other peaceful purpose.
11. The Treaty puts in place mechanisms to make sure Contracting Parties keep within these limits. Article VII (5) (c) obliges Parties intending to use military personnel or equipment in Antarctica to inform other Contracting Parties before doing so.
12. In addition, Article VII of the Treaty gives Contracting Parties an important means of verifying others' compliance with the prohibition on military activity and other core Treaty system principles, by opening to inspection all areas of Antarctica, including all stations, installations and equipment, ships, aircraft, cargoes and personnel in these areas.
13. Australia is committed to meeting and promoting obligations like these. We use the inspections regime regularly. Australian inspection teams have conducted nine inspections since 1963, visiting stations, facilities, vessels, and protected areas across a wide area of East Antarctica, the Ross Sea region, Dronning Maud Land and the Antarctic Peninsula.
14. Most recently, we inspected the US's Amundsen-Scott South Pole Station. Our 2016 inspection was a significant achievement, being the first South Pole inspection any country has conducted without logistics support from the US.

Q: Ms Gai Bradtmann MP asked Mr Larsen to elaborate on what Annex VI to the Environment Protocol was about and what it was designed to achieve.

1. Promoting accessions and adherence to the Environment Protocol and entry into effect of its annex on liability for damage arising from environmental emergencies is an important part of our international diplomacy on Antarctic issues. It serves our interest in promoting compliance with the Treaty system and minimising the potential for breaches of one of its core principles – environmental protection.
2. Article 15 of the Protocol obliges its parties to respond promptly and effectively to environmental emergencies in Antarctica. Article 16 obliges Parties to elaborate, in one or more annexes to the Protocol, rules and procedures relating to liability for damage taking place in the Antarctic Treaty area. Recognising the importance of these obligations, Australia took a leading role in negotiating Annex VI to the Protocol, which deals with 'Liability Arising from

Environmental Emergencies' in the Antarctic Treaty area. Annex VI was adopted at the Antarctic Treaty Consultative Meeting in 2005.

3. Annex VI applies to any accidental event that results or threatens imminently to result in, any significant or harmful impact on the Antarctic environment and applies to scientific research programs, tourism and all other governmental and non-governmental activity in the Treaty area for which advance notice is required under the Treaty. It is a detailed instrument, but requires parties to impose some key obligations on operators under their jurisdiction, which we outlined in paragraphs 20 to 22 below.
4. Under Annex VI, operators planning activities that require advance notification under the Treaty must: take reasonable preventative measures to reduce the risk of environmental emergencies; establish contingency plans for responses to environmental incidents; and take prompt and effective response action to any environmental emergency arising from their activities.
5. Where an operator fails to respond promptly and effectively to an environmental emergency arising from its activities, it will be liable to pay the costs of response action taken by Parties on its behalf.
6. Australia has approved Annex VI through the *Antarctic Treaty (Environment Protection) Amendment Act 2012*. The legislative amendments will commence when Annex VI enters into effect, following its approval by all the 28 countries that were Antarctic Treaty Consultative Parties in 2005.

Q: Ms Brodtmann asked for a more detailed explanation of how the policy of enforcing domestic law applicable to the AAT only against Australian nationals works in practice. She also sought clarity on how international law applies in Antarctica.

Q: The Committee Chair, Mr Ben Morton MP, asked for examples of how we deal with foreign nationals in the AAT (e.g. foreign scientists visiting our research stations). In particular, he sought clarity as to whether Australian law applies to foreign nationals visiting the AAT (e.g. our research stations).

1. Australia asserts sovereignty over approximately 42 per cent of Antarctica – the Australian Antarctic Territory (AAT). The AAT is an external territory of Australia. In the exercise of sovereignty, Australia applies certain legislation to the AAT – where it is specifically expressed to do so.
2. The different views of States on the question of Antarctic sovereignty were accommodated in a compromise embodied in Article IV of the Antarctic Treaty. This Article provides that nothing in the Treaty itself shall act as a renunciation or diminution of any claim or basis of claim to sovereignty, or shall prejudice any Party's position of recognition or non-recognition of any such claim. Further, no acts conducted while the Treaty is in force shall constitute a basis for

asserting, supporting or denying a claim to sovereignty, and no new claims, or enlargement of existing claims, shall be asserted.

3. While relevant Australian legislation applies to the AAT, in line with established practice under the Antarctic Treaty, Australia's practice is to enforce such laws only against its own nationals. This enduring practice of successive Australian Governments applies equally to the land territory of the AAT and to the AAT's adjacent maritime zones, including its exclusive economic zone.
4. Under Article VIII of the agreement, individuals conducting inspections, scientific personnel and support staff are subject to the jurisdiction of the Contracting Party of which they are nationals while in Antarctica.

Q: The Committee Chair, Mr Ben Morton MP, asked about how Antarctica supports other nations' space activities, an issue touched on in the Russian Federation's submission to the Inquiry.

1. Conducting world-class scientific research that serves national priorities is among the national Antarctic interests set out in the Australian Antarctic Strategy and 20 Year Action Plan.
2. The Australian Antarctic Division (AAD) of the Department of the Environment and Energy leads the Government's scientific program in Antarctica and manages our cooperation with other Antarctic nations' scientists. It pursues its Antarctic science program within the framework of the *Australian Antarctic Science Strategic Plan 2011-12 to 2020-21*, which directs the Division to focus on science that addresses pressing local, regional and global environmental and conservation issues.
3. The Science Strategic Plan includes provision for research in the area of Frontier Science, which has enabled excellent new science in line with national science priorities, including astronomy and space weather research. The plan is being updated and the Australian Antarctic Science Program will continue to support frontier science and technology research, like astronomy and space weather, that advances Australia's interests and demonstrates a national benefit.
4. The Australian Antarctic Science Program currently supports projects undertaking space-based research, including astronomical, space weather and climate observations. Research is undertaken in collaboration with scientists from other nations, including the Chinese, US and Japanese Antarctic programs. Researchers also utilise satellite and remote sensing data and imagery to support a range of activities, including the automation of some data collection such as cosmic ray data and meteorological data from automatic weather stations. The AAD also has a long-standing agreement with NASA on medical operations and research, and is actively involved in the Antarctic Joint Expert Group on Human Biology Medicine Group, of which NASA and ESA are members.



Other comments

1. International legal diplomacy that fosters understanding of the Treaty system's value and core principles is essential.
2. This is why, for example, we take every opportunity to address misperceptions about the mining ban's lifespan.
3. The ban on mining and oil drilling in Antarctica that Australia played such a critical role in securing is permanent and robust.
4. Media and academic commentary on the Protocol will sometimes suggest that the ban expires in 2048. In fact the ban does not expire.
5. The Environment Protocol itself contains a review mechanism common to many treaties.
6. This review mechanism provides that from 50 years after its entry into force, any Antarctic Treaty Consultative Party may request a conference to review the Protocol's operation.
7. Any change to the Protocol proposed at such a review conference must overcome significant hurdles before it can enter into force, including finding unanimous agreement of all Consultative Parties.
8. As one of the countries that was a Consultative Parties when the Protocol was adopted in 1991, any change to the Protocol would need to be ratified by Australia before it could enter into force.
9. And if the proposed change concerns the mining ban, the threshold is especially high, including a requirement that a binding legal regime on Antarctic mineral resources must be in force before a modification or amendment to the ban could commence.
10. No Contracting Party has expressed any desire to revisit the mining ban, and at the Antarctic Treaty Consultative Meeting in 2016 the Parties unanimously adopted the *Santiago Declaration*, which reaffirmed their strong and unequivocal support for the mining ban.