BACK TO BASICS: RESTORING PROTOCOL'S VALUES

Notwithstanding the clear commitment to the protection of intrinsic, wilderness and aesthetic values found in the Protocol, in the emerging application of the Protocol it appears that these values are being side-lined.

ECO understands that in recent discussions on both Monitoring and Liability, some have argued that these values have no place. In many EIAs circulated to date, in the circulated draft report of the SCAR/COMNAP Oslo Monitoring Workshop, and in the Chairman of the Liability Group's "Fifth Offering," intrinsic, wilderness and aesthetic values receive little attention.

Given this situation, ECO believes it important and timely to remind Delegates to the XX ATCM of their already agreed obligation to safeguard these values as part of the comprehensive protection of the Antarctic environment under the Protocol.

PROTOCOL ARTICLE 3

Paragraph 1, Article 3 (Environmental Principles) of the Protocol includes intrinsic, wilderness and aesthetic values in its list of concerns which "shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area." To that end, says Paragraph 2, activities are to be planned and conducted so as to avoid various undesirable effects. One of these is the degradation of, or substantial risk to, areas of, inter alia ".. historic, aesthetic or wilderness significance."

Furthermore, when the Protocol actually lists what shall be in a CEE (Article 3, Annex I), it includes "consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values."

RECOGNITION OF VALUES

The basis for these quite explicit references in the
(Continued, see Values, Page 2, Column 1)

ONE LAST PUSH

Finally an ATCM where the entry into force of the Protocol looks as though it could happen - and in the not too distant future! By the end of this meeting, the total of ratifications may have reached 22 and next year's meeting in Christchurch could be the first to take place with the Protocol in force.

As the interim agreement to act as though the Protocol were already in force looks somewhat frayed at the edges, the momentum that would come from full ratification would bring a welcome and much needed boost to the whole Treaty system.

There is certainly no room whatever for complacency.

While political apathy remains a major constraint to completing the international ratification process, certain aspects of the process in some of the four countries which have not yet ratified do present genuine short-term difficulties.

At this stage, responsibility to ensure that those remaining ratifications are completed without further delay rests not just with those four states but with every one of the Consultative Parties. Co-operation and information exchange are fundamental to the Antarctic Treaty System. The onus must be on those nations which have already ratified the Protocol to maintain the appropriate diplomatic pressure and where necessary to proffer practical help, advice and encouragement.

It is to be hoped that each delegation will have come to Utrecht having made an appraisal both of the current situation and of what they can usefully do to help.

Only if all delegations take it upon themselves to do this, will full ratification be achieved by the Christchurch ATCM.
Protocol is surely the recognition that "environment" is more than just its biophysical components, important as these are. The area is being protected precisely because various values in it are acknowledged. One of these values is its value for the conduct of scientific research. Nobody appears to have difficulty recognising that value. The other values identified should receive similar recognition.

If intrinsic, wilderness and aesthetic values are recognised by the Protocol itself, it follows that further measures elaborated under the Protocol must also recognise them.

VALUES CAN BE DAMAGED TOO

However, the Fifth Offering on Liability shows that there is as yet not even agreement that "damage" should include damage to these values. This seems particularly strange when, as the Final Act to XI ATSCM reveals, the commitment to elaborate rules and procedures for liability for damage goes even further than just liability for damage to the Antarctic environment.

In the case of Monitoring (the focus of two SCAR/COMNAP workshops) we find, in the draft report of the first workshop, "Values of concern" selectively drawn from only the second paragraph of Article 3 of the Protocol. By that deft stroke, intrinsic, wilderness and aesthetic values are entirely bypassed.

SPECIOUS PROBLEMS

ECO has noted two lines of argument from those who exclude "intrinsic, wilderness, aesthetic" from consideration. Firstly, some have argued that there is no obligation to do so. We hope that Delegates will recognise that this obligation is mandated by the Protocol. The second line is that even if they are formally covered by the Protocol, in practice it is impossible, or too hard, to do so.

FISHY BUSINESS

Most of you will no doubt have seen coverage over the last few months of bilateral disagreements concerning the fishing of a high-value fish species around a small island and even smaller set of rocks just to the north of the Antarctic Treaty area. ECO has watched the affair with appalled fascination. Essentially, when all the diplomatese and excuses are stripped away, what we have is an out-of-control fishery, the effective management of which is completely hostage to a territorial dispute to the north. And what is the territorial dispute to the north about? ECO suspects, again when all the political and diplomatic posturing is stripped away, that it's actually about who gets the oil reserves (ever heard of CO2-induced climate change?) and fish stocks (overfishing?). One ECO article at an Antarctic Treaty Meeting is hardly the place to go into a detailed analysis of global economic and political realities, but every now and then it is good to remember where the finger should be pointed.

Actually, come to think of it, isn't this the same little problem that has held up the establishment of a Secretariat for the Treaty?

ANTARCTIC PRECEDENTS

Although to date evidence of consideration of such values has been rare in the Antarctic context it is not unknown. See, for example, the US Final Program EIS of 1980, and its 1991 Supplement, where "degradation of aesthetic values" are recognised, or the New Zealand 1991 IEE for the problematical Satellite Earth Station at Arrival Heights, where a methodology for addressing one component of aesthetic concern - visual impact - can be found. The recent UK Guide to EIA, whilst in our view rather overstating the difficulties, is quite clear that such values must not be ignored.

One difficulty seems to be, as Benninghoff and Bonner recognised a decade back in 'Man's Impact on the Antarctic Environment', that the usual "biologically-centered definition" of impact employed in the Antarctic leaves out of consideration those matters which, as they put it, "though biologically neutral, are aesthetically intrusive."

ESTABLISHED METHODS

Looking further afield than Antarctica however, there are well established methodologies, applied around the world, for monitoring, evaluating and assessing potential impacts on values, including these three. The "problem" may be less one of practicality than of familiarity with the techniques amongst the extremely specialised Antarctic community. We urge Parties with knowledge of, and experience with, these methodologies to share these with other Parties.

ECO urges all Parties to live up to the promise of the Protocol, and to interpret its provisions faithfully. In the case of meeting the obligations to intrinsic, wilderness and aesthetic values in Antarctica, the task is less onerous than you might think.
"ANYBODY SEEN A LIABILITY ANNEX?"

ASOC is deeply concerned that three and a half years after the first liability discussions at XVII ATCM, and four and a half years after the signing of the Madrid Protocol, not only is the Liability regime mandated by the Protocol not completed, but no clear time horizon for its completion is yet evident.

Further, even after the appearance of six offerings, representing a major effort by the Chairman of the group of experts, substantial areas of the putative annex remain almost entirely untouched, and many others remain deeply contentious.

In this dismal picture we see:

* The extraordinary spectacle of some Parties arguing that the concept of "damage", central to the Annex, should not apply to the full range of values (ie: intrinsic, wilderness and aesthetic) formally protected by the Protocol;

* Attempts to leave the determination of whether an impact is in fact "damage" (and thus incurs liability) to the state responsible for the impact in the first place;

* Various efforts to avoid the obligation to clean up environmental damage through qualifiers such as "feasibility," "proportionality" and "economic reasonableness";

* Efforts to discourage response action by non-state operators if they encounter damage to the Antarctic environment caused by others. If present positions hold, they would not be reimbursed for incurred expenses unless they had received prior authorisation for their initiative. The consequence of this may be the environmentally ludicrous scenario of a tourist or private expedition vessel having to stand by, having encountered environmental damage in Antarctica, because they had not received authorisation to respond to it from the very state that caused it.

* Efforts to constrain the reach of the liability provisions in such a way that it will effectively confine the Protocol's area of application to the continent of Antarctica and surrounding islands, despite its promotion as applicable to the entire Antarctic Treaty area.

ASOC has provided a detailed Commentary on each "Offering" produced by Professor Wolfrum. The latest, a Commentary on the Chairman's Fifth Offering, is tabled as an Information Paper at this ATCM.

ECO encourages Parties to view a rigorous Liability Annex as an aid to achieving better practice, and not simply as a way to penalise for failure after damage has occurred. The Annex should encourage operators to properly consider the possible risks of proposed activities at the planning stage.

With the majority of Parties having now ratified the Protocol, its entry into force could be achieved by the XXI ATCM in Christchurch. But a Protocol in force without its liability regime is a toothless instrument. Parties at XX ATCM need seriously to address themselves to a process that not only produces an Annex as a matter of urgency, but an Annex that actually contributes to the protection of the Antarctic environment.

EIA AND AUDITS: DO THEM BUT DON'T GET MIXED UP...

ECO is encouraged by the increase in international circulation of IEEs and the tabling of such documents as Information papers at the ATCM. Common understanding on practical aspects such as the appropriate cut off points between IEE and CEE, or on how to carry out EIAs properly, takes time to develop. Easy availability of the different operators' documents is one of the necessary steps towards facilitating such crucial standardisation of Annex I implementation.

Another process, called a "Review" or "Audit," can be used to examine one's compliance with the obligations of the Protocol. At least two good examples have been presented to the ATCM in recent years. At XVIII ATCM, New Zealand tabled its programme-wide audit (INFO 59) and at XIX ATCM, South Africa tabled an audit of the 1994/95 SANAE IV construction (INFO 37).

However, ECO is concerned about the apparent confusion, in some cases, between an EIA and an audit (or review). A clear example of such confusion is the "Initial Evaluation: Antarctic and Southern Ocean Seaborne Tourism of Marine Expeditions Inc." tabled at last year's ATCM (Info 108). Called an IEE, the document was in fact an audit, and as such should not have been used in an attempt to comply with the requirements of Annex I.

It is important to highlight the distinction between an EIA under Annex I and an audit or review:

An EIA under the Protocol looks ahead. It is intended to be a prior evaluation of a proposed activity and its

(Continued, see EIA, Page 4, Column 2)
ECO notes with interest that of the four tourist ships New Zealand reports (INFO 14) as operating in the Ross Sea during the 1995/96 summer, EIAs appear to be available only for two. While ECO is pleased to hear that the expeditions of the 'Marco Polo' (organised in the UK) and the 'Akademic Shokalski' (organised in New Zealand) were preceded by EIAs produced in those two states, we wonder what happened with the other two? The expeditions of the 'Kapitan Khlebnikov' (organised in the United States) and the 'Bremen' (organised in Germany) should have produced prior EIA too. Why didn't the United States and Germany ensure that their obligations under Article 8 of the Protocol were met?

The Protocol may not yet be in force but the Final Act of the Eleventh Special Consultative Meeting agreed that pending its entry into force it is desirable for all Parties to apply Annexes I-IV, in accordance with their legal systems and to the extent practicable. Did this mean anything?*

Are Parties (and not just those in which these expeditions are organised) taking all the steps they can, including the use of "carrots" and "sticks" to ensure that proper Tourism EIAs are produced? If all Parties decided that visits to stations, or keys to historic huts would only be available to organisers who have completed proper EIA procedures, ECO is certain that in a very short time EIAs would be standard practice among tourist operators.

And when will NCP Canada, home of the largest tourist operator, ratify the Protocol?

Making sure that EIAs are produced is a start. The next step is, of course, to make sure that the right kind of EIA is produced (i.e. IEE or CEE). For instance, in the 1996/97 season, as far as ECO is aware, Quark Expeditions is planning a circum-Antarctic expedition which includes, according to its advertising flyer, the visiting of "pristine" areas. A circumnavigation like this, in ECO's view warrants a CEE, but none has been produced for comment at this ATCM. ECO considers a CEE to be the proper level of impact assessment especially in view of the geographic scale of the activity and the planned helicopter trips to remote areas to view wildlife. The potential disturbance to birds (especially during moulting) from aircraft or people on foot, the risk of inadvertent contamination of pristine areas, and the circum-continental nature of the expedition mean that the potential impact may well be more than minor or transitory, and a CEE is required.

ECO believes that most tour operators strive to be environmentally sensitive in Antarctica, and the logical next step is to conduct prior EIAs, as required under the Protocol.
THE DIMINISHING OZONE LAYER

Antarctic spring ozone depletion in 1995 started 10 days earlier than previous seasons, in early August, at a rate of 1% per day. By the first week of September, ozone levels had plummeted to record lows. By the end of September, a 60% depletion of the ozone layer over Antarctica was recorded - with total loss at 14-19 km recorded by monitors at Marambio, Neumayer and Syowa. The now familiar ozone "hole" remained over much of Antarctica for several months.

The Northern Hemisphere also experienced severe ozone losses. From mid-January to early March, ozone levels over much of northern Europe, Greenland, the North Atlantic and western Russian Arctic, were at least 30% below historic norm. Some areas recorded a depletion of more than 45%, with Britain recording a 50% depletion in March and UV radiation levels on the ground reportedly double the usual for that time of the year.

In view of the potential vulnerability of Antarctic ecosystems to increased UV-B levels, ECO reiterates the need for Antarctic Treaty Parties to take a proactive role in appropriate international fora and via national legislation to ensure a prompt halt to the emission of ozone depleting chemicals.

Most Antarctic Treaty Parties are also Parties to the Montreal Protocol. At last December's meeting of that Protocol, Parties were complacent about their efforts thus far. Happy that efforts to reduce CFC levels in industrialised nations had started to take effect, they failed to clamp down on other ozone-depleters such as the agricultural fumigant, methyl bromide, and only agreed to phase out for industrialised nations by 2010. Even this allowed significant exemptions for quarantine (estimated to be 20% of worldwide use) and "critical agricultural" use. The UNEP/WMO Scientific Assessment in 1994 identified elimination of methyl bromide as the single largest remaining step that could be taken to protect the ozone layer. Furthermore, Montreal Protocol Parties did not tackle the growing manufacture of ozone-destroying CFCs in developing countries.

With the USA the world's number one user of methyl bromide (responsible for about 40% of global use), its current domestic commitment to phase out production by 2001 is extremely significant. ECO is concerned that intense efforts by self-interested industry groups to postpone this phase-out are resisted.

Antarctic Treaty Parties - such as Italy, Spain, France, Greece and Japan which are major users of methyl bromide, and Australia and NZ which are significant users - have a particular obligation to ensure its effective phase-out by 2001. And Parties such as the USA, and Germany and Netherlands who have already essentially eliminated use of methyl bromide, should encourage other Parties to follow their lead.

ECO submits that Antarctic Treaty Parties should support the provision of sufficient financial and other resources to enable developing States to immediately introduce ozone-safe alternatives. Bilateral aid, and regional development and agricultural programs offer other means to assist a rapid developing country phase-out of ozone-depleting chemicals. Multilateral agencies such as the World Bank, EBRD and the other regional development banks also have a large role if they would only choose to play it.

ECO is also particularly concerned about the replacement of CFCs (and HCFCs) by HFCs (and particularly HFC 134a). While HFCs are safe for the ozone layer, they are very strong global warming agents. It is imperative that Antarctic Treaty Parties work within the Framework Convention on Climate Change (FCCC) to ensure the introduction of effective international controls on HFCs. Already some nations have made moves at a national level - the UK Ozone Panel has recommended a national phase-out of HFCs, as well as ozone-depleting substances, the Netherlands has called for non-essential use of HFCs and particularly those such as HFC-134a with a high Global Warming Potential, while the USA is also working toward controlled use.

Antarctic Treaty Parties should already be following the advice of the 1994 UNEP/WMO Scientific Assessment Report to prevent release of Halons and CFCs from existing equipment.

ECO calls upon the XX ATCM, and Antarctic Treaty Parties, to endorse the action necessary to ensure the earliest possible recovery of the ozone layer, including rapid action to phase out methyl bromide by 2001 and measures to facilitate the rapid phase out of all ozone-depleting chemicals in developing countries.
LAND-BASED TOURISM

Immediately after the ATCM last year, ECO learned of MEI's plans to establish an Antarctic Research Camp (ARC), that would offer tent accommodation on land for up to twelve people. It was claimed to be a "zero-impact seasonal camp" -- even though no EIA had been carried out, and despite its planned location in an "area of high wildlife concentrations." In June 1995, more information was circulated. ECO understands that several governments expressed their concern to the Canadian government about this plan. GOSEAC also raised concerns, and IAATO was not particularly happy.

Environmental organisations including ASOC, and member organisations Greenpeace, The Antarctica Project and WWF quickly expressed their concerns in no uncertain terms. The opposition was based not only on the absence of EIA procedures and the lack of clarification about the statements that the ARC would contribute to research and monitoring of tourism impacts (we already have scientific whaling, we don't need scientific tourism!), but also, and foremost, because of the precedent for land-based tourism that the ARC would have established.

Later in 1995, MEI decided not to continue with the proposal in the 1995/96 season, but left open the option of carrying it out in future seasons. ECO is not aware of an EIA having been circulated for the 1996/97 season, and sincerely hopes that the idea does not surface again.

ECO firmly believes that the establishment of tourist facilities ashore in Antarctica is not desirable. Aside from the potentially serious environmental impact of ever greater human activity on the Continent which such a step would presage, ECO is concerned that once the door was opened to such activity, it would never be effectively closed again. ECO does not believe that such land based camps could ever be justified. Impacts should always be minimised and field excursions, workshops, etc., would inevitably have less impact if carried out from a vessel rather than from land-based facilities.

The consequences on other uses and values of Antarctica, now recognised in the Protocol, could be considerable if land-based tourist facilities were to be established. The moral justification of such a major change in the use of the region has not been made. In ECO's view, the decision to proceed down this path requires something more weighty than the commercial aspirations of one or more corporations. In Antarctica, the opportunity to make moral choices of this sort still remains, and some types of activities are simply not appropriate in the Antarctic.

ECO is published by Friends of the Earth and others at international meetings of environmental importance. This volume is a joint project of the Antarctic and Southern Ocean Coalition (ASOC), The Antarctica Project, Friends of the Earth International and Greenpeace International.

The Editorial office is at The Holiday Inn, Jaarbeursplein 24, Utrecht, The Netherlands.

ECO is financed from non-governmental sources. ECO's role is to provide ideas and alternative proposals for delegates to intergovernmental meetings, to report on the meetings to inform the public in order to generate wide-spread debate, and to clarify issues to the media. Special thanks to the CS Fund, Scherman Fdn, WWF International, Weeden Fdn, Turner Fdn, Martin Fdn, Packard Fdn, Patagonia, Fidelity Investments Charitable Gift Fund, Royal Forest & Bird Protection Society, Federated Mountain Clubs and Greenpeace International.