ECO looks forward to the establishment of the Committee on Environmental Protection, and urges Parties to take the steps needed to ensure that it can begin to function as soon as the Protocol is legally in force. But ECO is concerned that several Parties wish to constrain the CEP's ability to function effectively as an advisory body on environmental issues. We are aware of statements that the CEP should not be able to make judgments on the adequacy of IEEs and CEEs, as this would imply that it is a decision-making rather than an advisory body.

ECO agrees that the Protocol intended for the CEP to be advisory to the ATCM. But the CEP must be able to evaluate the adequacy of environmental assessments and to comment on any deficiencies. This is the only way to build up a body of common practice so that eventually there is consistency among environmental impact assessment documents and to ensure the effectiveness of EIA procedures across Antarctic programmes. This will be crucial for those nations which do not have well-developed EIA procedures.

Since the CEP is intended to be a committee of environmental and scientific experts that provides advice to the political arm of the Treaty, it must be within its purview to provide comments and advice on environmental assessments. Not to do so would effectively obviate the need for the CEP even to review the assessments. This would seriously limit the capability of the CEP to effectively fulfil its role in environmental protection, as required by the Protocol.

The CEP should have the ability to operate intersessionally as needed, similar to the procedures of CCAMLR's Scientific Committee. The intersessional meetings of the Scientific Committee's Working Groups allow for a substantial amount of technical work to occur. This work could not reasonably get done at the annual meeting of the Scientific Committee, given the time constraints and the amount of work involved. Thus, the success of CCAMLR has depended on its ability to conduct intersessional work.

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A Smoke-Screen for Antarctica?

Antarctica is now being used even for making cigarette commercials. This February two ships loaded with camera equipment, climbing gear and a helicopter departed Ushuaia, Argentina to spend two weeks in the Gerlache Strait area filming an advertisement for a US brand of cigarettes, reportedly for a launch of the product into the Brazilian market.

Is this an activity we -- a group of people whose mission is to further the protection of Antarctica -- think is appropriate in the last great wilderness? ECO most definitely thinks not. Whether or not you are a smoker (and ECO has to admit to having scant sympathy for smokers) everyone must admit that cigarette advertisements will never fall into the category of activities either of global significance or that can't be done elsewhere.

Continued page 2...
Increasingly, in connection with many different topics currently under discussion in the Antarctic Treaty System, the question of value judgments arises. Environmental impact assessments under the Protocol come closest to making value judgments about activities and their impacts, but even the EIA Annex fails to provide objective criteria by which an activity’s predicted impacts can be judged against the value of the activity’s outcome.

This is obviously a fraught issue, and not one which will be solved in a short ECO article. Nevertheless, it will be a major challenge to the operation and success of the Protocol, and ECO says: "Let the discussions begin!"

**WHITHER LAKE VOSTOK? A QUESTION OF VALUES**

Recent news reports have outlined a plan by some scientists to use Lake Vostok as a testing ground to refine a future mission to Jupiter’s frozen moon Europa. NASA has released new images of Europa’s surface showing fractured icebergs that hint at an ocean below. Some hypothesise that Europa is the only body in the solar system other than Earth that might have a liquid ocean.

Part of the plan involves testing an ice-melting robotic craft that might be used on Europa. NASA’s concept is to use a small, tethered, submersible “hydrobot” in conjunction with an ice-melting probe called a “cryobot”. The hydrobot would emerge when it sensed water and would radio back a chemical analysis of what it finds.

Another aspect would be biology experiments that could shed light on the kinds of microscopic organisms that live in extreme cold and total darkness. NASA says that “The dominant issue is how do you look for life and how do you know if you’ve found it.”

Everyone acknowledges that Lake Vostok is a pristine glacial lake, which may possess unique and ancient forms of life. In recent years there has been interest in carrying out scientifically important deep ice core drilling at the site. The scientific and NGO communities have urged caution, because of the risk of penetrating the lake and causing possibly irrevocable damage through contamination. As a result, constraints have been accepted, and at present the drilling proposals have been deferred.

Consequently, ECO finds it disturbing that now the environmental and scientific values of Lake Vostok might be sacrificed to the possibility of finding life elsewhere. This is a perfect example of why the Protocol is so important, and of the need to carry out scrupulous environmental assessments assessing the full range of values, which then can be used to decide whether to allow a proposed activity. Lake Vostok is an important example of the value of maintaining the pristine nature of much of Antarctica, and as such is deserving of great care.

**LIABILITY:**

Christchurch sees the eighth meeting of legal experts on liability, yet substantive questions relating to the scope of the Annex remain. Despite the broad obligations accepted by Parties in the Protocol itself, it appears that some Parties are unwilling to translate those obligations into a rigorous liability regime.

The Chairman’s Seventh Offering has de-emphasised the obligation to carry out response action and remedial measures in favour of the obligation to pay compensation into the Fund for NOT having done so. If this view prevails, we are likely to see damage left unrepaired and a small amount of money paid. This may be cost effective; we doubt it is environmentally effective!
SLOW BOAT TO NOWHERE?

But it gets worse: The Fund itself, of course, is not yet accepted by all Parties, and a number of Parties continue to insist that an operator coming across environmental damage in Antarctica must gain authority from the responsible state before they can clean it up. No authority, no compensation for the operator who cleaned up. Quite how the environment benefits from the resultant delay before response action commences (if it does commence), is a mystery.

But, if one conveniently decides that in the majority of cases damage in Antarctica is going to be (a priori) irreparable, then, hey, you probably aren't going to bother too much with response action (and certainly not with remedial measures) in the first place.

Without political commitment to achieving what is promised in Article 16 of the Protocol, it is difficult to see how the Liability Annex will ever be completed. Let's get it done before 2001!

ENVIRONMENTAL IMPACT ASSESSMENT:
CRUCIAL FOR CREDIBILITY

There seems to be some confusion as to the purpose of the EIA procedures contained in the Protocol. Some Parties argue that the process is purely procedural, that its sole purpose is the identification of possible impacts, and that decisions need not be based on the outcome of the assessment. Others foresee a more content-laden EIA process.

ECO's view is that the EIA process is both procedural and substantive. The EIA process is designed to ensure that the specific requirements of the Protocol are fully considered. The Protocol was created in order to ensure that the protection of the Antarctic environment, including dependent and associated ecosystems, is the paramount consideration when making decisions about whether and how an activity should proceed. EIA procedures are intended to help Parties make decisions that are based on the fullest possible understanding of environmental consequences, and to induce governments and other actors to take actions that will best protect the environment. Therefore, there must implicitly be substance to the EIA process.

The purpose of carrying out an EIA is to identify possible environmental impacts in advance of any action, including cumulative impacts resulting from several activities occurring in the same time and/or space, and thus to provide the basis for mitigation of those impacts as far as possible. This is backed up by the wording of the Protocol, which states (Article 3.2a) that activities should be conducted so as to LIMIT adverse impacts. Article 3.4 states that "activities...shall take place in a manner CONSISTENT WITH THE PRINCIPLES in this Article; and be modified, suspended or cancelled if they result or threaten to result in impacts upon the Antarctic environment." Annex I, Article 4 states that decisions to proceed with an activity should be based on a CEE.

In this context, the EIA process should be integrated with the broader environmental management procedures and systems established by each Antarctic program. An EIA process as a formal, isolated procedure misses the point of its key role in achieving adequate implementation of the Protocol.

ECO considers that all activities should be judged by a common standard when deciding whether and how the activity should proceed. The scientific or other benefits of an activity should be weighed against the possible environmental impacts when deciding whether or not to proceed with the activity. Although a decision may ultimately be made to allow an activity to proceed even if environmental impact is the result (and this might be the appropriate decision), that is not explicitly stated in the Protocol.

While Protocol Article 3.3 accords priority to the CONDUCT of science by stating that "activities shall be planned and conducted so as to accord priority to scientific research AND TO preserve the value of Antarctica as an area for the conduct of such research," the first paragraph of that Article accords at least equal weight to environmental protection: "The protection of the Antarctic environment...and its value as an area for the conduct of scientific research...shall be fundamental considerations in the planning and conduct of all activities..." Paragraph 2 states that "activities shall be planned and conducted so as to LIMIT ADVERSE IMPACTS on the Antarctic environment....There is no blanket exemption for scientific activities in this paragraph, or anywhere else in this Article. The Protocol accords priority to science only with respect to choosing between competing activities (e.g., tourism). It does not automatically
endorse every scientific activity in the face of serious environmental impact.

Some Parties have decided, after making an IEE or CEE, NOT to allow an activity to proceed. Australia's 1993 IEE to upgrade the water supply at Davis Station, as well as the pre-Protocol (and Subantarctic) proposal by South Africa to build an airstrip on Marion Island are examples that spring to mind. Those cases demonstrate the appropriate use of the EIA process to base a decision on a consideration of the environmental consequences of allowing the activity to proceed.

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**Greenpeace once more into the breach**

Delegations will find in their paper stacks the latest in the long series of reports from Greenpeace on its latest expedition to Antarctica, which took place in the past austral summer. In a slight change of emphasis from previous expeditions, this voyage emphasised the impacts on the Antarctic environment of human activities elsewhere in the world. However, impacts of human activities in Antarctica were not entirely neglected: Greenpeace's vessel *Arctic Sunrise* visited 12 stations belonging to nine nations, and the Expedition Report tabled at this meeting contains accounts of those visits.

It was clear to Greenpeace that, in the case of many national Antarctic programs, things are slowly changing. Argentina is in the process of a massive clean-up of the legacy of several decades of Antarctic operations, while the UK's recent handover of the ex-Faraday station to the Ukraine seems to have worked out happily for both programs, for science, and -- insofar as it avoids the construction of an additional station -- the environment. Regrettably, other programs are still stuck in the bad old days, and there is still expansion occurring that would appear unnecessary for anything other than political reasons.

On the climate front, massive changes are afoot in the Antarctic Peninsula region. The *Arctic Sunrise* achieved the first circumnavigation of James Ross Island, previously impossible because of a permanent ice sheet connecting the island to the Peninsula, which has recently collapsed. The ship also sailed into the uncharted waters previously covered by many square kilometres of the Larsen A Ice Shelf, which disappeared in the course of just 50 days in January and February 1995.

Penguin colonies are declining and/or increasing along the length of the Peninsula, Antarctic flowering plants are moving their ranges south faster than triffids, and at every station visited, Greenpeace heard a litany of stories about retreat and disappearance of local glaciers and other ice features.

Clearly, global climate change is having a real impact on Antarctica. ECO believes that ATCPs, as self-appointed protectors of the Antarctic environment, have a very clear duty to take strong measures, individually and perhaps collectively, at the December meeting of the Climate Convention in Kyoto. We look forward to hearing what various governments will say about this crucial global issue.