Strengthening the CEE Process
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Information Paper
Submitted by ASOC\(^1\) to ATCM XXX
(CEP Agenda Items 3 & 6; ATCM Agenda Item 5)

1. Introduction

The *Protocol on Environmental Protection to the Antarctic Treaty* establishes generic obligations to prior Environmental Impact Assessment (EIA). A three-level EIA regime is established under Protocol Article 8, hinging on the level of impact – less than minor or transitory; minor or transitory; more than minor or transitory.

Annex I *Environmental Impact Assessment*, establishes standards and processes for the corresponding EIA levels:

- Preliminary Stage - sometimes termed by Parties: Preliminary Assessment (PA) or Preliminary Environmental Assessment (PEE);
- Initial Environmental Assessment (IEE); and
- Comprehensive Environmental Evaluation (CEE).

Preliminary stage evaluations are left to appropriate national procedures\(^2\) and only limited guidance on scope and process is provided for IEEs, which are again left to national procedures\(^3\), excepting only that there is a duty to advise on procedures and that an IEE has been done, and any IEE shall be made available on request\(^4\).

Only with CEEs are substantial obligations in relation to content and process specified; and critically, only with a draft CEE are there obligations to allow international scrutiny of EIA. The draft CEE must be circulated to Parties (who must make it publicly available) and to the Committee for Environmental Protection (CEP) within a timeframe established by the Protocol\(^5\).

A substantial case-history for IEE and CEE practice now exists. Through 2006, a total of 517 IEEs have been registered on the cumulative EIA list\(^6\) maintained by the Antarctic Treaty Secretariat.

The focus of this Information Paper is CEE practice. A total of 26 CEEs\(^7\) are identified in the Secretariat’s EIA database, over the period 1988 – 2006 (see Appendix 1). Some further Draft CEEs not yet on the list are presently before the CEP. The central argument of this paper is that while some, perhaps many, of the CEEs to date are substantial documents and processes, which are likely to have raised the standard of environmental care in the Antarctic Treaty Area, some significant generic limitations are evident. These include the surprising finding that not one of the 26 CEE processes appears to have led to substantial modification of the activity as first elaborated by the proponent, nor to a single decision not to proceed with

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\(^1\) Lead Author: Alan D. Hemmings.
\(^2\) Annex I, Article 1.
\(^3\) Annex I, Article 2.
\(^4\) Annex I, Article 6.
\(^5\) Annex I, Articles 3 and 4.
\(^6\) EIA Database at [http://www.ats.aq](http://www.ats.aq) last accessed 13.3.07.
\(^7\) Ibid.
the activity, despite this being a mandatory consideration. There are indications that the imperatives in the CEE process are administrative rather than environmental.

Fifteen years on from the adoption of the Protocol, it may be no surprise that the process has not turned out quite as may have been anticipated (or at least, advertised), but it does offer a stimulant to now reviewing the CEE process and seeking to improve it. Whilst the process of Annex review, and possible amendment or modification, which commenced with Annex II has not been a happy one, ASOC assumes that in the near-term, Annex I will also be subject to some scrutiny. This paper is a first contribution to that process.

2. The Roots of CEE

2.1 The Historic Context

As with much else in the Protocol, the Annex on EIA codified and expanded existing Antarctic obligations – in this case the duties under Recommendations XIV-2 Human Impact on the Antarctic Environment: Environmental Impact Assessment and XIV-3 Human Impact on the Antarctic Environment: Safeguards for Scientific Drilling of 1987. These applied to a smaller field than the subsequent generically applicable Annex II – “scientific research or associated logistic activities” – but the former established the categories of IEE and CEE, and the latter mandated CEE for any scientific drilling. It is the existence of these Recommendations, and particularly Recommendation XIV-2, that explains the existence of the CEEs prior to the adoption of the Protocol in 1991.

The EIA structure we arrived at with the Protocol was the product of numerous considerations. Urgency meant that we essentially lifted and tinkered with the existing more restricted EIA procedures adopted in 1987. The desire to move beyond the vagaries of leaving high level EIA solely in the hands of each Party – and thus in effect in the hands of the proponent operator – meant that we looked to “internationalise” consideration of CEEs. But there were limits to what Parties would consider by way of international scrutiny. State and territorial sovereignty considerations posed two limitations – firstly on the maximum period of delay to a project that this could impose (hence the 15 months); but also on the scope of that international scrutiny. It was not acceptable for this to become a veto by Parties (even in toto). As a consequence a degree of ambiguity was built into the “international” review aspects of Draft CEE review. That has weakened the international review.

2.2 The Purpose of Antarctic EIA

The purpose of Antarctic EIA is not explicitly addressed in either Protocol Article 8 or Annex I, although it may be implicit in Protocol Article 3. It might be said that the EIA process is intended, in the terminology of Article 3.1, to cover the “planning and conduct” of Antarctic activities, and that this is reflected in the process of identifying environmental impacts, evaluating alternatives to the activity, and planning and executing mitigation measures.

An anonymous seven-page working document (possibly sourced to SCAR) from the First Session of the Eleventh Antarctic Treaty Consultative Meeting in Viña del Mar in late 1990, entitled A Framework for Environmental Impact Assessment in the Antarctic sets out rather well, and succinctly, the reasonable expectations that Antarctic Treaty Consultative Parties might have. They should –

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8 Annex I, Article 3.2.a
9 See ASOC XXX ATCM/IP Amendment or Modification of Annex II and the Implications for Annex Review.
12 Advice on the definitive source of this paper would be welcomed.
be able to:
- assess the environmental impacts of such activity during the planning process,
- adjust the plans with a view to minimizing adverse impact, and finally
- make rational decisions on whether the unavoidable impacts of the planned activities are environmentally acceptable or not.

As a working guide to the purpose of EIA, this still has validity. The difficulties, if not the devil, are of course in the detail. The detail is in the manner in which EIA is conducted, and by whom.

3. CEE in Practice

3.1 The Process of Antarctic EIA

Who characterises and describes what is intended – who actually writes the evaluative document that we usually refer to as “the EIA” – is critical. Invariably (and there is nothing Antarctic-specific about this) “the EIA” is written by, or for, the proponent of the activity. This means that the operative decision about the appropriate level of EIA is made (or at least heavily influenced) by the proponent. There are exceptions – in many jurisdictions, non-governmental activities, including commercial tourism, are required by competent authorities to prepare EIAs at particular levels, usually IEE\(^\text{13}\). The fact that the proponent guides the preparation of the EIA document makes it inherently unlikely that, mandated or not, serious consideration will ever be given to not proceeding with the activity. To expect this is to have unrealistic expectations about the capacity to detach oneself from self-interest. If that option of not proceeding is to be given serious consideration, that will likely fall to the competent authority assessing the EIA document. The further difficulty is that, in the case of Antarctic EIA, this competent authority is often the proponent body (or at least the Antarctic operational agency). There are of course jurisdictions where a greater distance is evident between operations and competent authority review, but these are a minority of Parties.

If these are common structural factors, there are also questions about the legal basis for the EIA obligations in domestic implementing legislation (or in administrative practice in those Parties where implementing legislation is not used). A number of Parties appear to have legal obligations whose focus is compliance with an administrative process, rather than meeting objective environmental standards through the “planning and conduct” of the activity. In these situations, one meets one’s EIA obligations by compliance with a procedure – usually by the submission of a document, which is then signed off on by the competent authority. The substance of the document – what the proposed activity might mean in the real world of the Antarctic – is here of less significance than the fact that you met the procedural obligation. Indeed, some jurisdictions appear to have no legal capacity to modify, restrict or otherwise impose any conditions upon the operator, so long as they have completed the paper trail.

3.2 The Process of CEE

But with CEE, at least there are obligations to international scrutiny by ATCPs and the CEP at the Draft CEE stage. This surely imposes a significant quality control? Sadly it does not. Most Draft CEEs stimulate substantive comments from no more than half a dozen ATCPs and usually ASOC. The half dozen ATCPs are those few states who are active in the CEP. But even with the active half dozen, in the case of any one Draft CEE we generally see only three or four detailed examinations of the document. Going through a Draft CEE is a major time-consuming task, and it is hardly surprising that even amongst the states who are conscientious about this, there are limits to what they can take on.

The CEP’s capacity to seriously engage with Draft CEEs is limited, and the only practical option is to use an Intersessional Contact Group (ICG), as indeed has been done in some instances. This helps, but it risks a

zero-sum-game in terms of Draft CEE comments from the active ATCP’s, since it is likely to be those ATCPs (and their key personnel) who will constitute the ICGs.

Comments received from both Parties and the CEP tend to be of a narrow technical focus. ICGs, in particular, have strict terms of reference. The more fundamental questions that would ordinarily form a part of EIA review elsewhere – questions about the underlying purpose and value of the activity; examination of the degree of novelty or redundancy of what is proposed against other existing activities; the consequences of the proposal for human footprint over a wider area than just the focal site; and the implications of the proposal for other uses and values in the Antarctic Treaty Area, are all generally notable by their absence.

Powerful states get an easier time than less powerful states. Non-Consultative Parties seeking to build research stations have probably been subject to proportionately greater scrutiny than their station proposals warranted, whereas powerful ATCPs often receive only perfunctory scrutiny of their Draft CEEs.

The Party responsible for the proponent of the activity addressed in the Draft CEE (generally of course, the national operating agency of that state, since no tourism activity has yet been subject to CEE) mediates the receipt of the comments by the proponent. Under Article 3.6 of Annex I, the Final CEE “shall address and include or summarise comments received”. This does not mean that the substantive points made in those comments will inform the Final CEE. The comments may just be listed, there may be some response on them, and they may lead to some changes in the Final CEE. But there is no obligation for this to be the case, and generally it is not. And hanging over the entire process of international scrutiny is the 15 month guillotine provided by Paragraph 5 of the Annexe’s Article 3.

4. Evaluating the Present CEE Process

Whereas the domestic and international processes around a Draft CEE may tighten up the EIA, they really have no major effect on the outcome – even if the advice is strongly against the proposed activity. Consequently, a decision to conduct a particular activity leads inexorably to its realisation in Antarctica. The EIA process, even the high level EIA provided by CEE, affects the outcome only at the margins. A proof of that is provided by the fact that not a single Final CEE shows evidence of substantial revision of the activity considered in the Draft CEE – and no CEE has concluded that the activity should not proceed.

To put this in context, a far smaller number of high level EIAs roughly analogous to the Antarctic CEEs have been conducted in the subantarctic outside the Antarctic Treaty Area. Yet in this environment we can find at least one “CEE equivalent” that has resulted in a decision not to proceed\textsuperscript{14}.

It would be invidious, and in this forum probably counterproductive, to point to particular CEEs as positive or negative models. But ASOC would contend that many Parties have anxieties about activities now proceeding despite the fact that the CEE process around that activity has been formally and “satisfactorily” concluded. It is certainly ASOC’s position that several activities presently underway in the Antarctic Treaty Area pose significant environmental risk, notwithstanding the completion of their CEE processes.

This is a disquieting finding – that a mechanism that we all hoped would assist in the comprehensive protection of the Antarctic environment, indeed a mechanism that is at the heart of Antarctic environmental management post-Protocol, may have flaws in practice.

The difficulty is that we seem to have neutered the CEE process. We have ended up with a tame EIA process which is rather more focussed on compliance with administrative process than with the best environmental outcome. This needs to be addressed.

\textsuperscript{14} The Emergency Landing Facility on Marion Island, proposed in 1986, and subject to a substantial EIA in 1987, whereafter South African authorities decided not to proceed.
5. The Changes Necessary

5.1 Earlier “Heads-Up” on likely CEE proposals.

Part of the difficulty with CEEs may be that by the time the Draft CEE circulates internationally the entire project that it examines is well underway. Quite fundamental decisions about the project have already been made, and there are significant stakeholders in particular outcomes in the proponent agency and elsewhere. There may be great resistance to change at this point – logistics planning, dependent science programmes, and people’s careers are by now tightly coupled to the proposal.

There may, accordingly, be merit in looking at mechanisms in advance of the circulation of a Draft CEE which would flag the intent to look at a particular proposal. During the floor discussions at the first session of the XI ATSCM in Viña del Mar in 1990, when EIA was under discussion, Australia mooted a notification to the ATCM in advance of the commencement of EIA that a proposal was under consideration. ASOC sees this (or at least advance notification to Parties and the CEP) as having some merit. Whether this is best done by adding this to the existing advance information menu, or is run as a quite separate information stream would be a matter for discussion. It is not a guarantee of anything, but it would extend the notice and enable first responses to reach the proponent (or their responsible state) before the project became too inflexible. It is worth examining.

5.2 Earlier Engagement of the CEP with CEE proposals

The CEP will, as noted above, generally only be able to engage with a Draft CEE via an ICG – there simply is not the time, nor often the expertise, to examine complex documents or processes at the annual one week session. But rather than waiting until a Draft CEE is circulated before constituting the ICG, why not assign a CEP representative to the project at the time the Draft CEE starts to be put together? This would not alter the fact that the prime responsibility for the process would still reside with the proponent state, but it would allow an iterative process between the proponent and their state and the CEP to commence much earlier. Alternatively, or as a complement, the CEP might be engaged through creative use of available technologies such as the online CEP Forum. These technologies are low cost and widely accessible, although they do of course still require the investment of human resources.

As a result, the nature and form of CEP engagement with the CEE would change; the operator or responsible state would be the beneficiary of CEP-wide expertise; and the CEP would be the beneficiary of expertise from the CEE-conducting state. The CEP’s capacity to offer useful comment would be strengthened, and by its earlier injection the difficulties of accepting change to the project might be eased.

5.3 Broadening the application of CEE

There is an argument for broadening CEE coverage beyond the continental fixed-point, land-based activities to which it is currently overwhelmingly confined – and this argument goes to judgements that the objective risk posed by a broader range of activities indeed requires CEE. But the point ASOC makes here is a slightly different one. It is that if CEEs are not confined to the prime activities of Parties directly or indirectly as national programme operators, it may be easier to get franker international scrutiny. It is unavoidably the case, unfortunately, that Parties see their engagement with other Parties over CEE as involving diplomatic as much as environmental management issues.

In the case of CEEs applying to tourist activities or research vessel activity in Antarctic Treaty waters, this sensitivity might be slightly lessened. This might aid the building of confidence that engagement on CEEs need not create tensions between Parties in relation to core geo-political interests. We are not suggesting that the tensions evident in relation to stations and main science programme activities will be entirely absent in these instances, merely that they have a sufficiently different complexion that they might be less problematical.
5.4 Strengthening the CEP’s Advisory Function

Recognising that Parties will be cautious about giving the CEP a capacity to veto an activity on the basis of its CEE, ASOC nonetheless feels that it is necessary to give the ATCPs some greater collective responsibility for activities subject to CEE. In ASOC’s judgement, at the point where Annex I is reviewed, Parties should explore ways to modify Article 3 so as to require the CEP to positively assent to a decision to proceed with an activity on the basis of the Final CEE. It would of course, as an advisory body, have to do this in the form of its advice to the ATCM.

This, however, relies upon Parties establishing EIA at the CEE level when this is warranted by the potential environmental impact of the proposed activity. Existing practice suggests that the threshold of environmental impact for which CEE is considered necessary has been pushed upwards in a number of cases. As a result, only about 5% of EIAs produced to date have been CEEs, even for projects involving the construction of new bases, buildings or infrastructure that have arguably resulted in “more than minor or transitory” impacts.15

5.5 Building an Obligation to Strategic Environmental Assessment (SEA)

ASOC has previously tabled Information Papers on SEA16, and will not here repeat that material. Many Parties now have domestic and international experience of SEA outside the Antarctic Treaty Area, and its application to the area would represent a logical development of the EIA system in Annex I. It would require additional obligations to be worked into a modification or amendment of the Annex.

6. Conclusion

CEE practice to date indicates that the CEE process may need to be strengthened in order to improve its effectiveness as a tool for environmental protection, and make it more than merely an administrative procedure. This paper has suggested some of the changes that may be necessary. The review of Annex I will provide an opportunity to make these changes.

15 Bastmeijer & Roura op.cit.
16 See ASOC’s XII SATCM/IP 10; XXIV ATCM/IP 54 and XXV ATCM/IP 82.
### Appendix 1: Cumulative List of CEEs

<table>
<thead>
<tr>
<th>Year</th>
<th>CEE title</th>
<th>Activity</th>
<th>Proponent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>Draft CEE. Technological binding of a tank with capacity V = 200.</td>
<td>Construction of new fuel tank</td>
<td>Ukraine</td>
</tr>
<tr>
<td>2005</td>
<td>Final CEE. Construction of the Neumayer III Station, Operation of the Neumayer III Station, Dismantling of the Existing Neumayer II Station</td>
<td>Station Construction</td>
<td>Germany</td>
</tr>
<tr>
<td>2004</td>
<td>Rebuild and Operation of the Wintering Station Neumayer III and Retrogradation of the Present Neumayer Station II</td>
<td>Operational: construction</td>
<td>Germany</td>
</tr>
<tr>
<td>2004</td>
<td>Final Comprehensive Environmental Evaluation (CEE) for the upgrading of the Norwegian summer station Troll</td>
<td>Station upgrade</td>
<td>Norway</td>
</tr>
<tr>
<td>2004</td>
<td>Proposed construction and operation of Halley VI Research Station</td>
<td>Operational: construction</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>2004</td>
<td>Draft CEE for Development and Implementation of Surface Traverse Capabilities</td>
<td>Operational: Infrastructure</td>
<td>United States</td>
</tr>
<tr>
<td>2004</td>
<td>Draft CEE for Project IceCube</td>
<td>Science: Astronomy</td>
<td>United States</td>
</tr>
<tr>
<td>2003</td>
<td>Czech Scientific Station in Antarctic: Construction and Operation</td>
<td>Station construction and operation</td>
<td>Czech Republic</td>
</tr>
<tr>
<td>2003</td>
<td>The Concept of Upgrading the Norwegian Summer Station Troll in Drongning Maud Land, Antarctica, to Permanent Station.</td>
<td>Station upgrade</td>
<td>Norway</td>
</tr>
<tr>
<td>2003</td>
<td>Development and Implementation of Surface Traverse Capabilities in Antarctica</td>
<td>Operational</td>
<td>United States</td>
</tr>
<tr>
<td>2003</td>
<td>Project Ice Cube</td>
<td>Construction of a neutrino telescope</td>
<td>United States</td>
</tr>
<tr>
<td>2002</td>
<td>Draft CEE for ANDRILL: The McMurdo Sound Portfolio</td>
<td>Science: climatology</td>
<td>New Zealand</td>
</tr>
<tr>
<td>2002</td>
<td>Water sampling of the subglacial Lake Vostok</td>
<td>Science: climatology</td>
<td>Russian Federation</td>
</tr>
<tr>
<td>2000</td>
<td>Final CEE for European Project on Ice Coring in Antarctica (EPICA) - Drongning Maud Land</td>
<td>Ice drilling</td>
<td>Germany</td>
</tr>
<tr>
<td>1999</td>
<td>Draft CEE for European Project on Ice Coring in Antarctica (EPICA) - Drongning Maud Land</td>
<td>Ice drilling</td>
<td>Germany</td>
</tr>
<tr>
<td>1994</td>
<td>Concordia Project - Drilling activity at Dome C, Antarctica - Final Comprehensive Environmental Evaluation</td>
<td>Ice drilling</td>
<td>France</td>
</tr>
<tr>
<td>1994</td>
<td>Concordia Project. Construction and operation of a scientific base at Dome C, Antarctica - Final Comprehensive Environmental Evaluation</td>
<td>Construction, operation and maintenance of facilities</td>
<td>France</td>
</tr>
<tr>
<td>1994</td>
<td>Final Comprehensive Environmental Evaluation Antarctic stratigraphic drilling east of Cape Roberts in South West Ross Sea, Antarctica</td>
<td>Rock drilling</td>
<td>New Zealand</td>
</tr>
<tr>
<td>1993</td>
<td>Draft Comprehensive Environmental Evaluation (CEE) of the proposed new SANAE IV facility at Vesleskarvet, Queen Maud Land, Antarctica</td>
<td>Construction, operation and maintenance of facilities</td>
<td>South Africa</td>
</tr>
<tr>
<td>1992</td>
<td>Study of the environmental impact of the construction and operation of a scientific base at Dome C - Concorde base</td>
<td>Construction, operation and maintenance of facilities</td>
<td>France</td>
</tr>
<tr>
<td>1992</td>
<td>Draft Comprehensive Environmental Evaluation - Antarctic stratigraphic drilling east of Cape Roberts in Southwest Ross Sea, Antarctica</td>
<td>Rock drilling</td>
<td>New Zealand</td>
</tr>
<tr>
<td>1991</td>
<td>Final supplemental Environmental Impact Statement for the U.S. Antarctic Program</td>
<td>National Antarctic Programme</td>
<td>United States</td>
</tr>
<tr>
<td>1990</td>
<td>Draft Supplemental Environmental Impact Statement for the United States Antarctic Programme</td>
<td>National Antarctic Programme</td>
<td>United States</td>
</tr>
<tr>
<td>1989</td>
<td>Proposed construction of a crushed rock airstrip at Rothera Point, Adelaide Island, Antarctica - Final Comprehensive Environmental Evaluation</td>
<td>Construction of air facilities</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>1988</td>
<td>Comprehensive Environmental Evaluation - Proposed construction of a hard airstrip at Rothera Point, Adelaide Island, Antarctica</td>
<td>Construction of air facilities</td>
<td>United Kingdom</td>
</tr>
</tbody>
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