Update to the Procedure for CEP consideration of draft CEEs

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Summary

This paper proposes to update the Procedure for intersessional CEP consideration of draft Comprehensive Environmental Evaluations (CEEs) adopted in 2017 as Appendix 3 to the CEP XX Report, with the aim of facilitating compliance with the provisions of Article 3 of Annex I to the Protocol, improving intersessional discussions, and facilitating the availability of draft CEEs in a timely and effective manner with the assistance of the Secretariat.

Background

Paragraphs 3 and 4 of Article 3 of Annex I to the Madrid Protocol address the intersessional consideration of draft Comprehensive Environmental Evaluations by the CEP. They establish that:

3. The draft Comprehensive Environmental Evaluation shall be made publicly available and shall be circulated to all Parties, which shall also make it publicly available, for comment. A period of 90 days shall be allowed for the receipt of comments.

4. The draft Comprehensive Environmental Evaluation shall be forwarded to the Committee at the same time as it is circulated to the Parties, and at least 120 days before the next Antarctic Treaty Consultative Meeting, for consideration as appropriate.

To comply with this requirement, in 1999 the Committee adopted its first “Guidelines for CEP Consideration of Draft CEEs” (Annex 4 to CEP II Report). In 2017 the Committee updated these guidelines, adopting the “Procedures for intersessional CEP consideration of draft CEEs” (Appendix 3 to CEP XX Report).

Analysis of the current situation

Since the adoption of the Guidelines in 2017, Parties submitted five new draft CEEs, which were successfully processed in accordance with the guidelines, even under the challenging circumstances created by the COVID-19 pandemic. Through the processing of these draft CEEs areas that could benefit from further improvement of the guidelines have been identified.

The co-sponsors of this Working Paper have identified three areas where further refinement of the procedure would be beneficial and clarifying. These are:

* **Advance notice**: The current guidelines lack provisions for advance notice to the CEP Chair, which would allow the Chair to prepare for the establishment of the ICG that will discuss the draft CEE once available.
* **Communication**: The current guidelines state that the proponent of a draft CEE shall circulate it to Members and notify the CEP Chair (paragraph 4), and post the draft CEE online (paragraph 5), but gives no indication of how to effectuate this. In practice, the Secretariat has been a crucial point of contact with regard to these matters.
* **Translation**: The current guidelines make provisions for the translation of the draft CEE (paragraph 5 bis), without establishing a clear timeline.

Proposal

Based on these observations, the co-sponsors of this Working Paper have drafted a revised version of the Procedure for CEP consideration of draft CEEs (attached). The changes proposed can be summarised as follows:

* **Advance notice**: The proposed guidelines encourage proponents to inform the CEP Chair, as early as possible, of their intention to submit a draft CEE, so that the Chair can make the necessary arrangements for intersessional discussions of the draft CEE in a timely manner (paragraph 3).
* **Communication**: The proposed guidelines request that the proponent submit the Draft CEE to the Secretariat (paragraph 5), who immediately upon receipt of the draft CEE should notify the CEP Chair and then post the draft CEE (or a link to it) on the CEP section of its website (paragraph 6). The CEP Chair shall upon notification from the Secretariat notify CEP contact points (paragraph 7).
* **Translation**: The proposed guidelines encourage proponents to send the draft CEE to the Secretariat at least 165 days before the next ATCM (paragraph 4). In addition, they task the Secretariat to immediately send the draft CEE for translation into all other official languages and post these versions in the CEP section of its website as soon as possible, and as far as practical at least 120 days before the next ATCM (paragraph 8).

Other non-substantial edits have been included in the draft revised guidelines.

The co-sponsors invite Members to consider this proposal that relies on the assistance of the Secretariat and is aimed to facilitate compliance with Articles 3 and 4 of Annex I to the Protocol, enhance communication among all actors involved, and contribute to the high quality of the report prepared by ICG convenors to be discussed by Members during the CEP meeting.

Procedure for CEP consideration of draft CEEs

1. The agenda of each CEP meeting shall include an item relating to the consideration of draft CEEs forwarded to the CEP in accordance with Paragraph 4 of Article 3 of Annex I to the Protocol.
2. The CEP shall, under this agenda item, consider any draft CEE and provide advice to the ATCM on such drafts in accordance with Article 12 and Annex I of the Protocol.
3. Proponents are encouraged to inform the CEP Chair, as early as possible, of their intention to submit a draft CEE, so that the CEP Chair can make the necessary arrangements for intersessional discussions of the draft CEE in a timely manner.
4. In accordance with Paragraph 4 of Article 3 of Annex I to the Protocol, proponents shall circulate draft CEEs at least 120 days before the next Antarctic Treaty Consultative Meeting (ATCM). To facilitate translation in accordance with the provisions of paragraph 8 of these guidelines, proponents are encouraged to circulate draft CEEs as soon as practicable and preferably 165 days before the next ATCM.
5. Proponents shall submit the draft CEE (or a link to it) to the Secretariat by e-mail and make it publicly available, in one of the four official languages, on a website of their preference.
6. The Secretariat will immediately notify the CEP Chair and then post the draft CEE (or a link to it) on the CEP section of its website.
7. Upon receipt of the notification by the Secretariat, the CEP Chair shall immediately notify the CEP contact points of the availability of the draft CEE and provide details of the website at which the documents can be accessed.
8. Also upon receipt of the draft CEE, the Secretariat shall immediately send it for translation into all other official languages and post these versions in the CEP section of its website as soon as possible, and as far as practical at least 120 days before the next ATCM.
9. The Chair shall suggest a convenor for an open-ended intersessional contact group (ICG) to consider the draft CEE. The convenor should preferably not be from the proponent Party.
10. The Chair shall allow a period of 15 days for Members to object or offer comments, suggestions or proposals concerning:
    1. the proposed convenor.
    2. additional terms of reference beyond the following generic issues:

* the extent to which the CEE conforms to the requirements of Article 3 of Annex I of the Environment Protocol.
* whether the CEE: a) has identified all the environmental impacts of the proposed activity; and b) suggests appropriate methods of mitigating (reducing or avoiding) those impacts.
* whether the conclusions of the draft CEE are adequately supported by the information contained within the document.
* the clarity, format and presentation of the draft CEE.

1. If the Chair does not receive a reply within 15 days, it will be considered that the Members agree with the proposed convenor and the generic terms of reference. If the Chair receives comments on i) or ii) listed above within the 15-day limit the Chair shall, as appropriate, circulate a revised suggestion for one or both items. A further 15-day limit applies for Members to respond.
2. All ICG discussions shall be open to CEP Members and Observers and shall take place on the CEP Discussion Forum.
3. The right of a CEP Member to raise an issue on a draft CEE at the CEP and the right of a Party to raise an issue at the ATCM is not affected by its participation or lack thereof in the open-ended intersessional contact group.
4. The outcome of the ICG’s deliberations, indicating areas of agreement and areas where differing views are expressed, shall be reported in a Working Paper submitted by the convenor to the next CEP meeting.