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on Environmental Impact Assessment
in a Transboundary Context

Implementation Committee

Twenty-third session

Geneva, 5–7 December 2011

Report of the Implementation Committee on its twenty-third session

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I. Introduction

1. The twenty-third session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment was held from 5 to 7 December 2011 in Geneva.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Ms. E. Grigoryan (Armenia); Mr. R. Sattarzada (Azerbaijan); Mr. M. Prieur (France); Ms. T. Plesco (Republic of Moldova); Mr. J. Brun (Norway); Ms. L. Papajová Majeská (Slovakia); Ms. V. Kolar-Planinšič (Slovenia). Ms. L. A. Hernando (Spain), Ms. N. Stoyanova (Bulgaria) and Mr. F. Zaharia (Romania) were absent.

3. The Committee members for Protocol matters only (Mr. Brun and Ms. Papajová Majeská) attended the discussions on the revision of the questions on the implementation of the Protocol (see chap. VII, section A below). The Committee session was attended by an observer from Lithuania during the discussions on the submission by Lithuania regarding Belarus (see chap. III, section B below).

B. Organizational matters

4. The Chair of the Implementation Committee, Ms. Kolar-Planinšič, opened the session. Following long debate and in the absence of a consensus, the Committee adopted its agenda (ECE/MP.EIA/IC/2011/7) by a majority vote. The agenda was adopted with the following addition: when reviewing submissions, the Committee would take note of the submission of Armenia expressing concerns about the compliance by Azerbaijan with its obligations under the Convention, which had been received on 31 August 2011 after the issuance of the agenda, as well as of the response by Azerbaijan received on 29 November 2011.

5. Armenia opposed the adoption of the agenda and considered that there was no quorum for voting on its adoption. It also considered that its point of order on the agenda was not duly addressed. Armenia requested the Committee to defer to the twenty-fourth session its consideration of the submission by Azerbaijan regarding Armenia in the absence of a quorum in accordance with paragraphs 10 and 12 of the Committee's structure and functions (ECE/MP.EIA/6, annex II, decision III/2, appendix). Furthermore, as it considered that the actions of the secretariat had in fact prompted the submission by Azerbaijan, the secretariat should first be requested to respond to its questions with a view to providing it and the Committee with the necessary clarifications.

6. Committee members pointed out that a distinction should be made between three different procedural elements. In line with paragraph 12 of the structure and functions of the Committee on the competence of the Committee, considering that two Committee members represented involved Parties, the overall size of the Committee for discussing the submissions regarding those Parties had been reduced to six members, which remained sufficient. A quorum, on the other hand, related to the presence of Committee members at its meetings. As the Committee's operating rules (ECE/MP.EIA/10, decision IV/2, annex IV) and structure and functions did not define a quorum, the general rules of procedure of the Convention (ECE/MP.EIA/2, annex I, decision I/1) applied. According to rule 23,

paragraph 5, of the rules of procedure, one quarter of the Parties (i.e. one quarter of the members of the Meeting of the Parties and its subsidiary bodies) constituted a quorum, which in the case of the Committee would mean two out of eight members when considering Convention matters. Finally, the third element was the decision-making procedure regulated by rule 18 of the Committee's operating rules, which stated that, in the absence of a consensus, the decision should be taken by a majority vote, provided that at least five members were present. In the light of the above, at its twenty-third session, in the presence of only four of its members for considering the submission by Azerbaijan regarding Armenia, the Committee would be able to hear the two Parties but not to take decisions. The Committee had, however, been able to vote on the adoption of its agenda given the presence of six of its members.

II. Membership of the Committee

7. With reference to its operating rules, the Committee stressed the importance of continuity for the work of the Committee and the obligation of all members to participate in all of its sessions (rule 4, para. 2). That was intended to ensure the legitimacy of decisions taken by the Committee and to share the Committee's heavy workload. If in exceptional cases a member was unable to participate in a Committee session, the respective Party should make all efforts to provide a suitable replacement for that member for the session, informing the Chair and the secretariat accordingly well in advance. The Committee asked its Chair to write to all Parties represented in the Committee to urge them to comply with that rule.

8. The Committee noted the recent changes affecting two of its members elected by the Meeting of the Parties in June 2011 for the intersessional period extending until 2014. It regretted that, upon her departure from the Bulgarian Ministry of Environment and Water, Ms. Stoyanova, the first Vice-Chair of the Committee, had not been able to continue her membership in the Committee. It noted that the Chair had written to the Minister of Environment and Water inviting her to explore the possibilities for allowing Ms. Stoyanova to remain on the Committee or, if that was not possible, to nominate urgently a replacement to participate in future meetings. It noted the response from the Government of Bulgaria received on 5 December 2011 confirming that a new member would be nominated in time for the Committee's next session. The Committee also regretted that Ms. T. Javanshir from Azerbaijan had not been able to complete her second intersessional term on the Committee as decided by the Meeting of the Parties. However, the Committee welcomed Mr. Sattarzada who had been nominated by Azerbaijan to replace Ms. Javanshir.

9. Following his agreement received by e-mail, the Committee decided that Mr. Zaharia, the second Vice-Chair, should replace Ms. Stoyanova as the first Vice-Chair. In that capacity, Mr. Zaharia was invited to attend the meeting of the Bureau on 31 January and 1 February 2011 together with the Chair. The Committee also decided that Ms. Hernando, formerly the third Vice-Chair, should become the second Vice-Chair.

10. The secretariat informed the Committee that, at its next meeting, the Bureau was expected to confirm the nomination of Mr. J. Jendroska from Poland as the eighth member of the Committee for Protocol matters, in the light of Poland's ratification of the Protocol in June 2011 and in line with the decision by the Meeting of the Parties that the Bureau should identify the eighth member (ECE/MP.EIA/SEA/2, para. 39).

III. Submissions

11. Discussions concerning submissions were not open to observers, according to rule 17, paragraph 1, of the Committee's operating rules.

A. Armenia

12. The Committee began its consideration of the submission by Azerbaijan expressing concerns about the compliance of Armenia with its obligations under the Convention (ECE/MP.EIA/IC/2011/6, paras. 16–21). It noted the submission received by the secretariat on 5 May 2011, as well as the reply by Armenia to the submission, dated 2 August 2011.

13. The Committee took note of the clarifications provided by the secretariat in response to questions posed by Armenia and Azerbaijan on the secretariat's role as intermediary in the indirect notification process between, on the one hand, Armenia and, on the other hand, Azerbaijan, as well as the three other neighbouring countries that are not Parties to the Convention. The indirect notification process had formed part of a procedure under the Convention that had later led to the submission by Azerbaijan. The Committee also noted the presentation by the delegation of Azerbaijan of its submission, as well as the statement made by the delegation of Armenia, and invited the secretariat to record them and make them available to the Committee members for their further consideration. The delegation of Armenia made clear that its statement was not the presentation to the Committee that it had been invited to make.

14. The Committee decided to postpone the questioning of the Parties as well as the drafting of its findings and recommendations to its twenty-fourth session (20–23 March 2012). In a closed session, the Committee revised its draft questions to the two Parties. Following their finalization by e-mail by the Committee members, the revised draft questions would be made available to the two Parties by 1 January 2012. The Parties would be invited to provide written replies to the Committee through the Convention secretariat by 20 February 2012 for discussion and further clarifications at the next session of the Committee.

15. The Committee agreed to invite the two Parties to its next session, where it would continue its consideration of the submission, including questioning of the Parties. It invited the Chair to write to the two Parties to that end.

B. Belarus

16. A representative of Lithuania was present at the meeting during the discussions concerning the submission by Lithuania expressing concerns about the planned building of a nuclear power plant in Belarus, as that did not involve preparation of findings of the Committee, in accordance with rule 17 of the Committee's operating rules.

17. The Committee began its consideration of the submission that had been received by the secretariat on 16 June 2011 and forwarded on the same day by the secretariat to the focal point of Belarus, in conformity with paragraph 5 (a) of the appendix to decision III/2 (see ECE/MP.EIA/IC/2011/6, paras. 22–23). The Committee took note of the submission and the reply from Belarus that had been received on 22 September 2011, as well as the English translation of the reply provided by Belarus on 3 October 2011. It also noted the further information received from Lithuania on 5 December 2011 as a reaction to the response by Belarus.

18. The Committee agreed that Mr. Prieur would replace Ms. Stoyanova as curator for the submission.

19. In line with paragraph 9 of the structure and functions of the Committee, the Committee agreed to invite the two Parties to its next session, where it would continue its consideration. The Committee would start by considering the submission in a closed session. It would then invite brief presentations by the concerned Parties (not exceeding 20 minutes each) and ask them questions. Finally, the Committee would consider the submission again in a closed session but would request each delegation to be available for one hour in case it had additional questions. The two Parties should be invited to provide the secretariat with the names of their respective delegates as soon as possible, in order to facilitate access to the Palais des Nations. Belarus, as the Party whose compliance was in question, should also be asked whether it would be willing to accept the presence of observers at the hearing. The Committee asked the Chair to send invitation letters to the two Parties to that effect.

20. In the invitation letters, the two Parties should also be reminded of rule 11, paragraphs 1 to 3, of the operating rules regarding the procedure for submissions.

C. Azerbaijan

21. The Committee took note of the submission by Armenia expressing concerns regarding six named oil and gas projects developed in Azerbaijan, which had been received by the secretariat on 31 August 2011 and forwarded by the secretariat on 1 September 2011 to the focal point of Azerbaijan in conformity with paragraph 5 (a) of the appendix to decision III/2.

22. The Committee also took note of the reply from Azerbaijan that had been received on 29 November 2011.

23. In line with paragraph 9 of the structure and functions of the Committee, the Committee expected to invite the two Parties to participate in the eventual discussion on the matter of the submission and to present the Committee with information and opinions on the matter under consideration.

24. The Committee decided to consider the submission at its twenty-fifth session (11–13 September 2012) through conducting a hearing of the two Parties. Prior to sending invitation letters to the two Parties, the Committee agreed that it would discuss organizational matters and decide upon the exact timing of the hearing at its next session. It would also check the documentation available and establish whether it needed to ask for further information from the two Parties prior to the hearing.

25. The Committee invited the curator for the submission, Mr. Zaharia, to examine the documentation available in advance of its next session, including with a view to helping the Committee to identify possible information gaps.

IV. Follow-up to decision V/4 regarding Ukraine

26. The discussion on follow-up to decision V/4 (review of compliance) by the Meeting of the Parties to the Convention regarding Ukraine was not open to observers, in accordance with rule 17 of the Committee's operating rules.

27. The Committee welcomed the information from the Government of Ukraine received on 7 September 2011, in response to the Committee's letters of 1 February 2011 and 23 June 2011 (addressed to the Deputy Prime Minister of Ukraine) requesting

clarifications on the recent changes in the Ukrainian legislative framework for development activities, as well as in response to the Committee's second letter of 23 June 2011 (addressed to the national focal point) concerning the strategy for the implementation of the Convention.

28. The Committee decided to consider that information at its twenty-fifth session, together with the progress report that the Government of Ukraine was to submit by 31 December 2011, as requested by the Meeting of the Parties at its fifth session (decision V/4, para. 24).

29. The Committee agreed that Mr. Zattarzada (Azerbaijan) would replace Ms. Stoyanova as curator for the follow-up on Ukraine, including examining and evaluating the response of 7 September 2011 and the progress report to be submitted by Ukraine, identifying possible information gaps and providing the Committee with views for further consideration by the Committee at its subsequent sessions. The Committee invited the secretariat to provide Mr. Zattarzada with all the documentation on the matter.

V. Committee initiative

A. Azerbaijan

30. The Committee took note of the information provided by the secretariat and the representative of Azerbaijan regarding the implementation of the project to provide technical assistance to Azerbaijan for the review of its legislation and a draft law on environmental impact assessment.

31. The Committee expressed concern about the delay in launching the project, but was pleased to hear that there was high-level political will to implement the project and that it would soon be acted upon. However, following the information by Azerbaijan that a new law on environmental impact assessment had just been prepared in consultation with the relevant ministries and awaited adoption by the Parliament, the Committee invited the member nominated by Azerbaijan to clarify the transboundary aspects of the new law and whether the scope of the technical assistance needed adjustment. Based on that information, the Committee requested the secretariat, together with Azerbaijan and the implementing organization, the Organization for Security and Cooperation in Europe office in Baku, to discuss the possible need to revise the objectives and the deliverables of the project to better support the application of the Convention by Azerbaijan.

B. Albania

32. The Committee noted Albania's continuing failure to complete and return its responses to the questionnaire on its implementation of the Convention in the period from 2006 to 2009, in spite of the letters from the Committee addressed to the focal point of Albania of 18 January 2011 and 13 September 2011 urging it to do so.

33. The Committee recalled its earlier decision to begin, in parallel, a Committee initiative further to paragraph 6 of the Committee's structure and functions, following Albania's longstanding failure to report on its implementation (ECE/MP.EIA/IC/2011/6, para. 41).

34. In line with paragraph 9 of the Committee's structure and functions, the Committee decided to invite Albania to its next session to participate in the discussion and to present the Committee with information and opinions on the matter under consideration. The Committee would start by considering the initiative in a closed session, followed by a brief

presentation by Albania (not exceeding 20 minutes) and questions by the Committee. The Committee would then consider the initiative again in a closed session to draft its findings and recommendations.

35. The Committee nominated Ms. Plesco as the curator for its initiative on Albania. She was invited to prepare draft questions by 10 February 2012, as well as elements for draft findings and recommendations in consultation with the other Committee members.

36. The Committee asked the Chair to write an invitation letter on its behalf addressed to the Minister of the Environment of Albania and copied to the focal point of Albania attaching the draft questions. Albania should be invited to provide the secretariat with the names of its delegates as soon as possible, in order to facilitate access to the Palais des Nations. In the invitation letter, Albania should also be reminded of operating rule 11, paragraphs 1 to 3, and rule 15, paragraph 4, regarding the procedure for Committee initiatives.

VI. Information gathering

A. Belarus

37. The Committee continued its consideration of the possible systemic inconsistency between the Convention and environmental assessment within the framework of the State ecological expertise system of Belarus. At its previous session, the Committee had welcomed the information from Belarus, received in Russian on 19 August 2011, and its English translation, received on 5 September 2011, in response to the Committee's letter of 23 June 2011. It had also considered the analysis of the reply by one of its members and the views expressed by a former member.

38. Based on the clarifications provided by Belarus regarding its legislation, the Committee noted that Belarus had no explicit legal provision regulating the final decision and specifying its contents in line with article 6, paragraph 2, of the Convention.

39. However, after its analysis of the application of the environmental impact assessment procedures in Belarus and based on clarifications provided by the Committee members representing Armenia and the Republic of Moldova, the Committee considered that it had no grounds to conclude that there was a systemic inconsistency between the State ecological expertise of Belarus and the Convention. It invited the Chair to write to the Government of Belarus to inform it of that conclusion.

40. The Committee noted that its conclusion on Belarus did not preclude a further analysis of the consistency between the Convention and the State ecological expertise in the former Soviet Republics and the provision of related technical assistance as needed, in line with the workplan for 2011–2014 adopted by the Meeting of the Parties in June 2011.

B. Ukraine

41. The Committee took note of the letter from the Government of Ukraine received on 15 November 2011, in response to its letters of 7 September 2011 and 23 June 2011 requesting information on the environmental impact assessment for a planned extension of the Rivne nuclear power plant in Ukraine, close to the border with Belarus and Poland, as well as clarification on whether the Government of Ukraine had taken the necessary legal, administrative and other measures to implement the provisions of the Convention. The Committee had approached the Government of Ukraine further to information provided by a Ukrainian non-governmental organization.

42. Based on the information provided, the Committee concluded that Ukraine had not applied the Convention in relation to the planned extension of the nuclear power plant. However, it noted that the main issue was to establish whether the activity in question was a proposed activity subject to the Convention.

43. In that regard, the Committee concluded that lifetime extension of nuclear power plants could be considered as a major change to an activity in appendix I, and thus fell under the scope of the Convention. The Committee also referred to the background paper for the nuclear panel discussion held during the Meeting of the Parties in June 2011 (ECE/MP.EIA/2011/5). However, before reaching its final conclusion on the issue, each Committee member was invited to consider the matter further and to present their views for discussion and conclusions at the next session of the Committee.

C. Romania

44. The Committee noted a reply from the Government of Romania received on 15 November 2011 in response to its letter of 7 September 2011, further to information provided by a Romanian non-governmental organization regarding a planned activity in Romania, close to the border with Bulgaria. The reply also included clarifications on whether the Government of Romania had taken the necessary legal, administrative and other measures to implement the provisions of the Protocol.

45. The Committee decided to nominate Mr. Jendroska as the curator for the matter and to postpone its consideration of the matter to its next session based on the analysis of the information by Mr. Jendroska.

VII. Review of implementation

A. Revision of the questionnaire

46. The Committee considered the proposals for the simplification of the questionnaire for the fourth review of the implementation of the Convention and its extension for the first review of the implementation of the Protocol, as presented by the Committee members responsible for overseeing that work. The proposals regarding the Convention had been made available only in Russian, which made their consideration difficult.

47. The Committee invited the appointed Committee members to prepare and present revised proposals in advance of its twenty-fourth session, taking into account the comments provided.

48. Mr. Brun and Ms. Papajová Majeská were invited to provide the revised proposals regarding the implementation of the Protocol to the Committee members by e-mail by 10 January 2012, for them to comment by 10 February. Based on those comments, a new revised draft should be prepared and circulated to the Committee by 8 March 2012, with a view to being finalized at the twenty-fourth session of the Committee in March 2012, and subsequently submitted to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment for consideration at its April 2012 session.

49. Ms. Plesco and Ms. Grigoryan were invited to provide a draft revised questionnaire on the implementation of the Convention by 10 January 2012, in English, so as to enable the Committee to comment on it by 10 February. Based on the comments, a revised draft should be provided to the Committee by 8 March 2012 for consideration at its next session.

B. Specific compliance issues from the Third Review

50. The Committee continued its consideration of the specific compliance issues that had emerged from the Third Review of Implementation. It examined the responses received from Parties to the Committee's letters seeking clarification of information included in completed questionnaires.

1. Croatia

51. The Committee examined a reply from the Government of Croatia received on 18 November 2011 in response to the Committee's letter of 13 September 2011 requesting further clarifications on the timing of notification.

52. The Committee agreed that the response was to its satisfaction and asked that the Chair write to the Government of Croatia to inform it accordingly. The Chair should also request agreement that the correspondence between the Committee and Croatia be placed on the Convention's website, as an illustration of the Committee's approach to a specific compliance issue and of a proper and sufficient response from a Party to address the issue.

2. Portugal

53. The Committee regretted that it had not received a response from the Government of Portugal to its letter of September 2011. It invited the secretariat to urge the Government of Portugal to provide its response at its earliest convenience, for the Committee to examine at its subsequent session.

3. The Republic of Moldova

54. The Committee examined a reply from the Government of the Republic of Moldova received on 16 November 2011 in response to the Committee's letter of 13 September 2011 requesting further clarifications on the legal basis for the implementation of the Convention in the country.

55. The Committee was satisfied with the clarifications provided with regard to the relevant national legislation, but noted that that was without prejudice to any further consideration by the Committee on the practical and legal implementation of that legislation. It asked the Chair to write to the Republic of Moldova to inform it accordingly. The Chair should also request the agreement that the correspondence between the Committee and the Republic of Moldova be placed on the Convention's website, as an illustration of the Committee's approach to a specific compliance issue and of a proper and sufficient response from a Party to address the issue.

VIII. Structure, functions and operating rules: application of the Convention by European Union member States

56. The Committee noted the information from the European Commission received on 17 August 2011 in response to its letter of 23 June 2011 regarding the potential conflicts between the Convention's procedures for the review of compliance and the European Union's legislation on dispute settlements (article 344 of the Treaty on the Functioning of the European Union).

57. It decided to defer the discussion on the matter to its subsequent session with a view to preparing findings and recommendations at the next session of the Meeting of the Parties.

IX. Presentation of the main decisions taken and closing of the meeting

58. The Committee decided that it would next meet from 20 to 23 March 2012 and that the three first days of its twenty-fourth session would only address issues related to the Convention (namely, the submission from Azerbaijan regarding Armenia (EIA/IC/S/3), the submission from Lithuania regarding Belarus (EIA/IC/S/4) and the Committee initiative on Albania (EIA/IC/CI/3)).

59. The Committee adopted the draft report of its session, prepared with the support of the secretariat.
