Economic Commission for Europe

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Implementation Committee

Thirty-first session

Geneva, 2–4 September 2014

Report of the Implementation Committee on its thirty-first session

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I. Introduction

1. The thirty-first session of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) was held from 2 to 4 September 2014 in Geneva, Switzerland.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Mr. V. Buchko (Ukraine); Ms. E. Grigoryan (Armenia); Mr. K. Heinma (Estonia); Mr. J. Jendrośka (Poland); Ms. A. Kliut (Belarus); Ms. Z. Pocsai (Hungary); Mr. M. Prieur (France); Ms. O. Shoshi (Albania); Mr. R. Švedas (Lithuania); and Mr. F. Zaharia (Romania). Mr. M. Menendez Prieto, replaced Ms. L. A. Hernando (Spain) for the present session.

B. Organizational matters

3. The Chief of the Environment for Europe and Sustainable Development Section of the United Nations Economic Commission for Europe Environment Division opened the session.

4. The Committee adopted its agenda (ECE/MP.EIA/IC/2014/3), prepared by the Convention secretariat in agreement with the Chair, Ms. V. Kolar-Planinšič. Ms. Kolar-Planinšič served as Chair until the sixth session of the Meeting of the Parties to the Convention (MOP) and the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (MOP/MOP) (Geneva, 2–5 June 2014).

II. Membership of the Committee

5. The Committee elected Mr. F. Zaharia as Chair, in accordance with the structure and functions of the Implementation Committee and procedures for review of compliance (ECE/MP.EIA/6, annex II, appendix, paragraph 1 (c)), as amended (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1, decision VI/2, annex I). The Committee agreed to elect its two Vice-Chairs at its next session.

6. In accordance with the amendments to the Committee’s structure and functions and operating rules set out in decision VI/2 (annexes I and II), and adopted also by the MOP/MOP by reference in its decision II/2 (see ECE/MP.EIA/20/Add.2–ECE/MP.EIA/SEA/4/Add.2), in addition to the permanent members, each elected Party should appoint an alternate member for the same term of office. Members or other country representatives duly announced the appointment of the following alternate members by their countries: Ms. B. Antoni (Albania); Ms. A. Casanueva Cañamero (Spain); Ms. L. Kharatova (Armenia); Mr. I. Narkevitch (Belarus); Mr. R. Persidski (Estonia); Ms. K. Twardowska (Poland); and Ms. J. Usevičiūtė (Lithuania). The members of France, Hungary, Romania and Ukraine reported that they were in the process of finalizing the appointment of alternate members and would inform the secretariat shortly.

7. The Committee agreed that in the absence of the Chair the Chair’s functions would be carried out by the Vice-Chairs, and not by the alternate member appointed by the
country the Chair represented. The newly elected Chair agreed to continue his role as curator for the pending cases before the Committee until they were concluded.

III. Review of decisions by the Meeting of the Parties

8. Based on an informal document prepared by the secretariat, the Committee reviewed decisions taken by the MOP and the MOP/MOP at their sixth and second sessions, respectively, in particular on the review of implementation, the review of compliance and the adoption of the workplan (see ECE/MP.EIA/20—ECE/MP.EIA/SEA/4 and Add.1–3).

IV. Follow-up to decision VI/2

9. Discussions on the follow-up to decision VI/2 were not open to observers, according to rule 17, paragraph 1, of the Committee’s operating rules, and in the absence of the members nominated by Armenia, Belarus, Lithuania and Ukraine during the consideration of the cases concerning their countries.

A. Ukraine

10. Prior to the discussions, the member nominated by Ukraine requested the Committee to postpone consideration of any pending case concerning compliance by Ukraine until the situation in Ukraine was stabilized. The Committee took note of the request.

1. Bystroe Canal Project (EIA/IC/S/1)\(^1\)

11. By decision VI/2 (para. 25), the Government of Ukraine had been requested to adopt the draft legislation on the implementation of the Convention and to bring the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (the Project) into full compliance with the Convention by the end of 2015. The Government had also been requested to report by the end of each year to the Committee on how it implemented those recommendations. Specifically, it was asked to report on: (a) the implementation of the strategy to implement the Convention by the end of 2015 — in particular concrete legislative measures adopted to that effect — and to provide the Committee with relevant draft legislation for its review before it was adopted; and (b) the steps taken to bring the Project into full compliance with the Convention, implementing the measures in accordance with paragraph 19 of decision V/4, by the end of 2015, while refraining from undertaking any measure or programme that could jeopardize the fulfilment of those recommendations.

12. The Committee asked the Chair to invite the Government of Ukraine to submit its report, as requested by the MOP, in English by no later than 21 November 2014. The Committee nominated Mr. Švedas as the curator for the matter and invited him to provide an analysis of the information to be provided by Ukraine in advance of the Committee’s next session.

\(^1\) Information on this compliance case is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.
2. Rivne nuclear power plant (EIA/IC/CI/4)\textsuperscript{2}

13. By decision VI/2 (para. 71), the Committee had been invited to follow up its assessment of the case regarding the extension of the lifetime of the Rivne nuclear power plant (NPP) by Ukraine, which had been subject to proceedings before the Committee during the previous intersessional period, taking into consideration the specific circumstances and the fact that Ukraine had acted in good faith. In absence of the curator of the case, Ms. Hernando, the Committee decided to postpone consideration of the matter to its next session.

B. Armenia

1. Law on environmental impact assessment (EIA/IC/CI/1)\textsuperscript{3}

14. By decision VI/2 (paras. 31–32), Armenia had been invited to adopt its draft revised environmental assessment legislation as soon as possible and to ensure that the new legislation complied with the Convention and the Protocol. Moreover, since Armenia was a Party to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Armenia had been requested to ensure that its public participation procedures at the national level were in line with the minimum requirements of article 6 of the Aarhus Convention, so as to provide for proper public participation procedures in a transboundary context under the Espoo Convention. Armenia had further been asked to ensure that the new legislation was in concordance with the 2013 recommendations of the international consultant to the secretariat.

15. The Committee recalled that, before the sixth session of the MOP, the new law developed further to a consultant’s recommendations during the previous intersessional period had been before the Armenian parliament. The secretariat then reported that, as per the Committee’s recommendations and the request by the MOP (decision VI/2, para. 35), the secretariat had provided technical advice to the Government of Armenia immediately after the sixth session of the MOP, to assist it in bringing its draft legislation fully in line with the Convention and the Protocol. The expert review, carried out by international and national experts, had been completed in summer 2014 and forwarded to Armenia on 23 July 2014.

16. The Committee member nominated by Armenia reported on the progress made in the adoption of the draft law. The law on environmental impact assessment (EIA) had been approved by the parliament on 21 June 2014, and had entered into force on 11 August 2014. In addition, to address comments by the international experts and other stakeholders in the country, a working group had been set up with a view to proposing revisions, as appropriate, to the new law. In addition, a new law was being prepared on strategic environmental assessment (SEA).

17. The Committee welcomed the report and took note of the ongoing revision process by the working group. It observed that, while it already had an English translation of the draft law, it needed to be provided with the English translation of those parts of the recently adopted law that had been amended since the Committee had reviewed it. The Committee requested the secretariat to make the necessary arrangements for the translation of the


\textsuperscript{3} Ibid.
relevant parts of the law as soon as possible. It also asked the Chair to write to the Government of Armenia informing it of the Committee’s comments and requests, and asking it to include any future comments of the Committee, as far as possible, within the ongoing revision process.

18. The secretariat mentioned that a national round table on SEA would take place in Yerevan on 26 September 2014, in the framework of the technical assistance offered by the secretariat through the European Union (EU)-funded Greening Economies in the Eastern Neighbourhood (EaP GREEN) Programme to assist Armenia, a Party to the Protocol, to develop its legislative and institutional framework for the application of SEA. The Committee welcomed the information and instructed the secretariat, on the occasion of the upcoming round table, to inform the round-table participants about the Committee’s views.

2. Metsamor nuclear power plant (EIA/IC/S/3)

19. The Committee then turned to the consideration of compliance by Armenia with the MOP recommendations in decision VI/2 (paras. 45–46), expressing concerns about Armenia’s compliance with its obligations under the Convention with respect to the planned construction of the Metsamor NPP. The secretariat informed the Committee that the Minister of Nature Protection of Armenia had sent a letter dated 1 August 2014 to the United Nations Economic Commission for Europe Executive Secretary setting out the follow-up action taken on the project. Through its decision 511-A, dated 19 May 2014, the Armenian Government had approved its new energy programme, which among other projects, envisaged that the construction of the new block of the NPP would only start in 2018. Therefore, the information contained in Armenia’s notification dated 27 August 2010 had no further validity, according to the Minister, since no works had been initiated or carried out since then; moreover, any activities based on that notification had been suspended and any new developments would be based solely on the Government’s new programme.

20. The Committee took note of the information. It considered that, in following up on the MOP decision, further clarification should be sought from the Government regarding the legal status of the decision authorizing the activity: i.e., whether that decision was still valid and, if so, for how long; and whether the construction of the new NPP, envisaged to start in 2018, would require that a new authorization be issued. It asked the Chair to write a letter to Armenia inviting it to address those questions by 21 November 2014, for the Committee’s consideration at its next session.

C. Azerbaijan

21. By decision VI/2 (paras. 41–42), Azerbaijan had been requested to ensure that its draft framework law on environmental assessment and its implementing regulations complied with the Convention. In particular, Azerbaijani legislation had to clearly designate which decision constituted a final decision for the purposes of the Convention and any final decision had to comply with the requirements of the Convention, taking into account the 2009 recommendations of the international consultant to the secretariat and also the general guidance on enhancing consistency between the Convention and EIA in the framework of state ecological expertise in the countries of Eastern Europe, Caucasus and Central Asia (ECE/MP.EIA/2014/2, endorsed through decision VI/8). Azerbaijan had also been requested to adopt the draft law and the subsequent implementing regulations and to

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regularly report to the Committee. The MOP recommendations had followed the Committee’s recommendations further to initiative EIA/IC/CI/2 regarding the development of draft legislation for the implementation of the Convention, as well as submission EIA/IC/S/3.

22. The Committee recalled that, before the sixth session of the MOP, the draft framework law on environmental assessment, covering both EIA and SEA, had still been under consideration at the ministerial level, and was being revised to better reflect the 2009 recommendations of the international consultant. Then, as per the Committee’s recommendations and the request of the MOP (decision VI/2, para. 44), the secretariat had provided technical advice to the Government of Azerbaijan immediately after the MOP session to assist the country in bringing its draft legislation fully in line with the Convention and the Protocol. As part of that assistance, an expert review of the draft legislation had been carried out by international and national experts, including Mr. Jendrośka, a Committee member on Protocol matters. The review had been completed in summer 2014 and forwarded to Azerbaijan on 23 July 2014.

23. Mr. Jendrośka briefed the Committee about the conclusions of the review. The provisions of the draft law had been found to closely follow the previous OVOS/expertiza system, with the developer bearing the responsibility for carrying out public participation procedures and the public authorities becoming involved only after the full EIA documentation was prepared. In addition, the draft law did not properly address transboundary obligations deriving from the Convention, and only included a vague scheme on SEA.

24. The secretariat mentioned that a national round-table discussion on legal implementation of the Protocol in Azerbaijan had taken place in Baku on 28 August 2014 in the framework of the technical assistance offered by the secretariat through the EU-funded EaP GREEN Programme. The discussion had been intended to assist Azerbaijan in reviewing its existing legislative and institutional framework on the application of SEA to plans and programmes, and on that basis to develop proposals for legislative, institutional and process changes in order to strengthen its capacity to accede to and implement the Protocol. On that occasion, the Government had stated that it had considered the experts’ opinions and that it had further requested specific drafting proposals. It was expected that the Government would hold a meeting with two international experts in autumn 2014 to proceed with drafting the new law, in English and Azerbaijani.

25. The Committee took note of the information provided. It considered that it would be useful for its further analysis of the case to receive the drafting proposal. It requested the secretariat to convey that to the Government, referring to the conclusions of the experts’ 2014 review, in particular those noted by Mr. Jendrośka at the meeting.

26. Further to the ongoing developments in Armenia and Azerbaijan, the Committee noted that it would be useful for other Parties to the Convention to receive detailed information about the recent processes of drafting legislation and developing institutional capacity on EIA and SEA. It therefore asked the secretariat to propose to the Bureau to consider organizing a half-day seminar on the topic at one of the upcoming sessions of the Working Group.

D. Belarus

27. The Committee considered its follow-up to decision VI/2 regarding Belarus (paras. 48–64). It recalled that steps had been taken by Belarus and Lithuania to reach compliance subsequent to the Committee’s findings and recommendations at its twenty-seventh session (Geneva, 12–14 March 2013), which had been issued further to the
submissions by Lithuania expressing concerns about compliance by Belarus with its obligations under the Convention in relation to the planned construction of an NPP in Ostrovets, close to the border with Lithuania (EIA/IC/5/4), and that the Committee had recommended to the MOP that it make additional recommendations (see ECE/MP.EIA/2014/4 – ECE/MP.EIA/SEA/2014/4, paras. 53–56).

28. The Committee took note of the additional correspondence received by the Parties since its thirtieth session (Geneva, 25–27 February 2014). The curator for the case was also invited to brief new members about the case and the proceedings. Further to paragraph 59 of decision VI/2, the Committee decided to remind Belarus and Lithuania of their obligation to report by the end of the year, and by no later than 21 November 2014. In their reports, both Parties should specifically address the steps undertaken pursuant to paragraphs 51 to 64 of the MOP decision. The Committee also decided to start a thorough analysis of all the information provided at its next session.

29. The Committee asked the Chair to inform Belarus and Lithuania of its comments and requests. It then asked the curator to prepare his analysis in advance of its thirty-second session.

V. Submissions

30. No submissions had been received since the Committee’s previous session and there were no earlier submissions still under consideration.

VI. Committee initiative

31. Further to its thirtieth session, the Committee considered its initiative on the United Kingdom of Great Britain and Northern Ireland regarding the planned construction of the Hinkley Point C NPP (EIA/IC/CI/5).

32. The curator briefed the Committee about the case. The Committee considered the additional information provided by the United Kingdom on 19 June and 20 August 2014. In the light of all information received, the Committee now agreed not to discuss the issue with the United Kingdom at its thirty-second session (Geneva, 9–11 December 2014). It also agreed that, with the prior consent of the Parties from which the Committee had gathered information, the information would be forwarded to the United Kingdom. The United Kingdom would be invited to comment and also to further elaborate on the transboundary procedures concerning the adoption of the nuclear National Policy Statement.

33. The Committee further agreed that, on the basis of the information received, it would decide at its next session whether a new discussion would need to be scheduled in 2015 or whether the Committee would proceed with drafting findings and recommendations in closed session. However, the United Kingdom should be invited to comment on that approach and to indicate whether it wished to avail itself of its right to participate in a discussion with the Committee and present information and opinions on the

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5 Information on submissions by one Party about another Party’s compliance with its obligations (or self-referrals), including relevant documentation, is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

matter. In that case, the United Kingdom should be invited to specify the points that, in its view, had to be discussed with the Committee.

34. The Committee asked the Chair to write to the United Kingdom informing it of the Committee’s position and its questions, and inviting it to provide a written response through the secretariat by no later than 21 November 2014. The curator would then prepare a legal analysis in advance of the meeting for consideration by the Committee at its next session.

VII. Information gathering

A. Ukraine — Khmelnytskyi nuclear power plant

35. Following on from its thirtieth session, the Committee continued its consideration of the information it had gathered further to the information provided by a Belarusian non-governmental organization (NGO) on the planned construction of nuclear reactors 3 and 4 at the Khmelnytskyi NPP in Ukraine (EIA/IC/INFO/10). The Committee reviewed the additional information provided by the Government of Ukraine on 12 March 2014 and its letter of 25 June 2014 in response to the Committee’s letter of 14 March 2014.

36. After a brief analysis of the case by one of the co-curators, the Committee considered information furnished by Ukraine. It then agreed that it would continue its consideration of the matter at its next session and asked the Chair to write to Ukraine requesting it to provide concrete and comprehensive answers to the Committee’s questions in its letter of 14 March 2014. The information should be received in English by 21 November 2014 for analysis by the curators and subsequent consideration by the Committee at its thirty-second session.

B. Ukraine — Muzhiyevo goldmine

37. The Committee then continued its consideration of the information it had gathered further to information provided by a Hungarian political party concerning the planned reopening of a goldmine in Muzhiyevo, Ukraine, close to the border with Hungary (EIA/IC/INFO/13). In the absence of the curator for the case, whose term of office had ended, the secretariat presented a background note to brief Committee members about the case.

38. The Committee reviewed the information provided by the Governments of Ukraine and Hungary in response to the Committee’s letters of 14 March 2014. The Committee noted that it did not have sufficient information concerning the activity. For that reason, it decided to continue its consideration of the matter at its next session and asked the Chair to write to Ukraine to address the following questions:

(a) What was the legal status of the Muzhiyevo goldmine: were there valid licences/authorizations to undertake gold mining in Muzhiyevo and when had they been granted?;

(b) If there were no valid licences, was there any pending procedure for granting the mining licence, including for renewing/changing a previous licence?

(c) Could the Government provide factual information about the mine, such as the previous or authorized scale of the mining activity, if any?

39. The information should be received in English by 21 November 2014 for consideration by the Committee at its next session, when the Committee, depending on its deliberations, would also nominate a curator for the case.

C. Serbia

40. The Committee considered the information received on 2 April 2014 from the NGO Bankwatch Romania regarding the planned construction by Serbia of a lignite power plant in north-east Serbia, by the River Danube, close to the border with Romania.

41. The Committee decided to continue its consideration at its next session. The Committee asked the Chair to write to the Government of Serbia and invite it to provide information on the planned activity, including information about the heat output, and any EIA process, including transboundary, for the planned activity. It should also clarify whether the Government had taken the necessary legal, administrative and other measures to implement the provisions of the Convention. The Committee also asked the Chair to write to the NGO and ask it to provide the English translation of the annexes to its initial information of 2 April 2014 and to further explain why it considered that the activity was covered by the Convention’s provisions. The information from both the Government and Bankwatch Romania should be provided by 21 November 2014, for the Committee’s consideration at its thirty-second session.

42. The Committee nominated Ms. Kliut as the curator for the matter and invited her to provide an analysis of the information to be provided by Serbia and the NGO in advance of its next session.

D. The Netherlands

43. The Committee then considered the information received on 7 May 2014 from the NGO Greenpeace Netherlands concerning the extension by the Netherlands of the lifetime of the Borssele NPP. In the information it had provided, the NGO had referred to the findings and recommendations of the Committee on its Committee initiative concerning the extension of the lifetime of the Rivne NPP by Ukraine.

44. The Committee decided to continue its consideration of the matter at its next session. It asked the Chair to write to the Government of the Netherlands and invite it to provide information on the planned activity, including whether the potentially affected countries had been notified in accordance with article 3 of the Convention and if any transboundary EIA process had been carried out for the planned activity. The Government should also clarify whether it had taken the necessary legal, administrative and other measures to implement the provisions of the Convention. The information should be provided by 21 November 2014, for the Committee’s consideration at its thirty-second session.

45. The Committee nominated Mr. Prieur and Mr. Buchko as co-curators for the matter and invited them to provide an analysis of the information to be provided by the Netherlands in advance of its next session.
VIII. Review of implementation

A. Examination of general and specific compliance issues from the Fourth Review of Implementation of the Convention

46. The secretariat presented an informal document highlighting general and specific compliance issues identified in the Fourth Review of Implementation of the Convention (ECE/MP.EIA/2014/3), adopted by the MOP through decision VI/1, and in the completed questionnaires on which it was based.

47. The Committee noted that Ireland, Luxembourg and the United Kingdom had not returned the questionnaires. It asked the Chair to write to the three Parties to request them to complete and return the questionnaire for the Fourth Review of Implementation without delay and by no later than 21 November 2014.

48. The Committee also noted that Ukraine had indicated that its legislation in force did not encompass activities envisaged under item 17 (“deforestation of large areas”) of the appendix to the Convention; that Cyprus seemed to lack any regulation in its legislation about notification, which according to the Committee constituted “an integral part of the whole process in the Convention” (MP.EIA/WG.1/2003/3, para. 9); and that Armenia did not have detailed provisions on the content of the EIA documentation, which also constituted “an integral part of the whole process in the Convention” according to the Committee (ibid.). The Committee requested the Chair to write to the Government of Cyprus to seek clarification of its implementation of the Convention regarding those issues. It also decided to consider the issues identified in the legislation of Armenia and Ukraine in the context of its envisaged reviews of legislation under development.

B. Examination of general and specific compliance issues from the First Review of the Protocol

49. The secretariat also presented an informal document highlighting general and specific compliance issues identified in the First Review of Implementation of the Protocol (ECE/MP.EIA/SEA/2014/3), adopted by the MOP/MOP through decision II/1, and in the completed questionnaires on which it was based.

50. Regarding general matters, the Committee observed that several of the issues raised in the First Review did not seem to be correct. It recalled that, as discussed at its twenty-eighth session (Geneva, 10–12 September 2013) it would be useful in the future if the Committee could also consider the draft reviews before their adoption. It requested the secretariat to ask the Bureau to consider that step in the preparation of the draft fifth review of implementation of the Convention and the draft second review of implementation of the Protocol.

51. The Committee noted that the EU, Luxembourg and Portugal had not returned the questionnaires. It requested the Chair to write to those Parties reminding them of their obligation to report under article 14, paragraph 7, and requesting them to complete and return the questionnaire for the First Review of Implementation without delay and by no later than 21 November 2014.

52. In the letter to the EU, the Committee also decided to ask it to address the following questions:
(a) Whether EU legislative, regulatory or administrative provisions provided for preparation at the EU level — not that of its member States — of any plans or programmes subject to article 4, paragraphs 2 or 3, of the Protocol on SEA;

(b) If so, what were the legislative, regulatory or other measures that had been adopted by the EU, a Party to the Protocol, to implement the Protocol in relation to such plans and programmes.

53. The Committee also noted that Spanish legislation seemed to set overly restrictive conditions for NGO participation in the assessment procedures, which might prevent the fulfilment of effective public participation under the Protocol; that Austria seemed to not strictly apply the requirement of article 5, paragraph 4, of the Protocol that screening conclusions be made available to the public in a timely manner; and that Bosnia and Herzegovina had indicated that there were no provisions in its legislation regarding the content of the transboundary notification (art. 10, para. 2). The Committee requested the Chair to write on its behalf to the three countries to seek clarification of their implementation of the Protocol regarding those issues.

C. Modification of the questionnaires

54. The Committee approved the timetable proposed by the secretariat for the modification of the questionnaires for the report on implementation of the Convention and, as appropriate, the Protocol, in 2013–2015 for the fifth review of implementation of the Convention and the second review of implementation of the Protocol. The modifications to the questionnaire were to be undertaken by the Committee, with the support of the secretariat and, where appropriate, that of the World Health Organization.

55. The Committee nominated Ms. Pocsai as curator to oversee the modification of the questionnaire on the Convention and Mr. Heinma as curator to oversee the modification of the questionnaire on the Protocol. The Committee invited its members tasked with the revision of the questionnaire on the Convention and the preparation of the questionnaire on the implementation of the Protocol to present the outcomes of their work by 21 November 2014, for the Committee’s consideration at its thirty-second session.

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

56. The Committee confirmed that it would next meet from 9 to 11 December 2014. It also agreed that in 2015 it would hold its thirty-third session from 17 to 19 March, its thirty-fourth session from 7 to 9 September and its thirty-fifth session from 8 to 10 December.

57. The Committee adopted the draft report of its session, prepared with the support of the secretariat. The Chair then formally closed the thirty-first session.