


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
Forty-second session

Geneva, 11–14 September 2018

**Report of the Implementation Committee on its
 forty-second session**
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I. Introduction

1. The forty second 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 was held from 11 to 14 September 2018 in Geneva.

A. Attendance

2. The following members of the Implementation Committee for Convention and Protocol matters attended the session: Aysel Babayeva (Azerbaijan); Anders Bengtsson (Sweden); Volodymyr Buchko (Ukraine); Libor Dvorak (Czechia); Maria do Carmo Figueira (Portugal); Kaupo Heinma (Estonia); Zsuzsanna Pocsai (Hungary); Romas Švedas (Lithuania); Lasse Tallskog (Finland); and Nadezhda Zdanevich (Belarus).

B. Organizational matters

3. The Chair of the Implementation Committee opened the session.

4. The secretariat informed the Committee about the relevant outcomes of the seventh meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (28–30 May 2018). With regard to the intermediary session of the Meeting of the Parties to the Convention, being held primarily to finalize draft decision VII/2 on compliance with the Convention (ECE/MP.EIA/2017/8), the Working Group had supported the Bureau's decision to hold the session in Geneva from 5 to 7 February 2019. It had welcomed the Implementation Committee's revisions to the draft decision and had supported the splitting of decision VII/2 into one general decision (IS/1) and several country-specific decisions (IS/1a–IS/1h), as decided by the Committee at its forty-first session (13–16 March 2018).

5. The secretariat noted that comments on the revised draft decisions had been provided by the delegations of Armenia, Azerbaijan, Belarus and ClientEarth, both during and after the Working Group's seventh meeting, and that the comments had subsequently been made available to the Committee in advance of its present session for consideration in the finalization of the revised draft decisions. The secretariat recalled that the Meeting of the Parties had also requested the Committee, in revising draft decision VII/2, to take into account the Committee's deliberations at its ad hoc session (Minsk, 12 June 2017) and the discussions held during and in the margins of the seventh session of the Meeting of the Parties (Minsk, 13–16 June 2017).

6. The Committee was also informed about the progress by the ad hoc working group established by the Meeting of the Parties to the Convention at its seventh session in preparing draft guidance on the application of the Convention to the lifetime extension of nuclear power plants. As decided by the Working Group, the ad hoc group was expected to report on progress to the intermediary session of the Meeting of the Parties (Geneva, 5–7 February 2019) and, based on the input from the Parties, finalize the guidance for consideration by the Meeting of the Parties at its eighth session, preliminarily scheduled to be held in December 2020.

7. Regarding the organization of its work at its present session, the Committee agreed to prioritize the revision of draft decision VII/2, bearing in mind the deadline of early November 2018 for the secretariat to process official documents for the intermediary session of the Meeting of the Parties. At the request of the Committee member from Ukraine, the Committee also agreed to review and, as necessary, propose revisions to, its structure,

functions and operating rules to clarify the process for the follow-up to decision VI/2 (ECE/MP.EIA/20/Add.2-ECE/MP.EIA/SEA/4/Add.2) and subsequent decisions of the Meeting of the Parties. Considering its full agenda, and pending the outcomes of work of the ad hoc group and the related decisions by the Meeting of the Parties, the Committee postponed its consideration of the information gathered in relation to the lifetime extension of nuclear power plants and units.¹ Time permitting, it agreed to address other pending information-gathering matters. With the above adjustments, the Committee adopted its agenda as set out in document ECE/MP.EIA/IC/2018/3.

II. Structure, functions and operating rules

8. The Committee considered the proposal of the Committee member from Ukraine that, prior to finalizing draft decisions that followed up previous decisions of the Meetings of the Parties, the Committee should send them to the concerned Parties for comments and should take any comments made into consideration when finalizing the decisions. The Committee noted that the role of “follow-up” draft decisions was to assess, based on the information provided by the concerned Parties, to what extent a Party had fulfilled the requests from the Meetings of the Parties within a three-year intersessional period. In their annual reports to the Committee, the concerned Parties could provide evidence of their progress in complying with a decision and were then informed by a letter about the Committee’s assessment of that progress. That assessment was also recorded in the publicly available reports on the Committee’s sessions. The Parties could at any time comment the Committee’s assessment in writing. The draft decisions on compliance were also presented to all the Parties for information and comments at the meetings of the Working Group that preceded the sessions of the Meetings of the Parties, and any comments received were submitted for the Committee’s consideration. The Committee acknowledged the importance to continue to involve the concerned Parties in the preparation of the draft decisions. Following discussions, it deemed that it was neither relevant nor feasible to create additional consultation procedures for that purpose.

III. Revision of draft decision VII/2 on the review of compliance with the Convention

A. Follow-up to decision VI/2

9. Discussions on the follow-up to decision VI/2 of the Meeting of the Parties to the Convention on the review of compliance with the Convention (see ECE/MP.EIA/20/Add.1-ECE/MP.EIA/SEA/4/Add.1) were not open to observers, in accordance with rule 17, paragraph 1, of the Committee’s operating rules.² The Committee members nominated by Azerbaijan, Belarus, Lithuania and Ukraine were absent during the Committee’s consideration of matters in relation to which a direct or indirect conflict of interest could arise.

¹ I.e., information regarding Belgium, the Doel and Tihange nuclear power plants (EIA/IC/INFO/18); Czechia, the Dukovany nuclear power plant (EIA/IC/INFO/19); the Netherlands, the Borssele nuclear power plant (EIA/IC/INFO/15); and Ukraine, the Khmelnytsky, South Ukrainian, and Zaporizhia nuclear power plants and power units 3 and 4 at the Rivne nuclear power plant (EIA/IC/INFO/20).

² The Committee’s operating rules were adopted by decision IV/2, annex IV (see ECE/MP.EIA/10) and then later amended by decisions V/4 (see ECE/MP.EIA/15) and VI/2.

1. Armenia

(a) National legislation to implement the Convention (EIA/IC/CI/1)³

10. The Committee considered the follow-up by Armenia to decision VI/2 (paras. 29–35), further to a Committee initiative on a specific compliance issue related to Armenia (EIA/IC/CI/1) opened at the Committee's eleventh session (13–14 February 2007), and reviewed draft decision IS/1a on compliance by Armenia with its obligations under the Convention in respect of its national legislation. The Committee noted the comments Armenia had provided at the seventh meeting of the Working Group and the information Armenia had provided to the Committee on 13 July 2018 regarding the changes in its Government. Considering that the adoption of the law amending the Law on Environmental Impact Assessment and Expertise of 2014 was still pending, the Committee decided to not to change the text of draft decision IS/1a that had been agreed at its forty-first session.

11. The Committee requested the secretariat to transmit draft decision IS/1a to Armenia for information and to the Meeting of the Parties for consideration at its intermediary session.

(b) Planned construction of a nuclear power station in Metsamor (EIA/IC/S/3)⁴

12. The Committee considered the follow-up by Armenia to decision VI/2 (paras. 45–46), further to a submission by Azerbaijan of 5 May 2011 concerning compliance by Armenia (EIA/IC/S/3), and finalized the text of draft decision IS/1b on compliance by Armenia with its obligations under the Convention in respect of a nuclear power plant in Metsamor. It noted the comments provided by Armenia and Azerbaijan at the seventh meeting of the Working Group and the information received from Azerbaijan dated 10 August 2018. In its comments and the information provided, Azerbaijan had reiterated its view that the Convention should be applied to any future project initiatives to be launched at the Metsamor nuclear power plant, in particular in respect to constructing new nuclear reactors.

13. The Committee requested the secretariat to transmit draft decision IS/1b to Armenia and Azerbaijan for information and to the Meeting of the Parties for consideration at its intermediary session.

2. Azerbaijan (EIA/IC/CI/2)

14. The Committee continued its consideration of the follow-up by Azerbaijan to decision VI/2 (paras. 38–44), further to a committee initiative on a specific compliance issue related to Azerbaijan (EIA/IC/CI/2) opened at the Committee's seventeenth session (14–18 September 2009), and its finalization of draft decision IS/1c regarding compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation. Before leaving the room, the member nominated by Azerbaijan informed the Committee that the Law on Environmental Impact Assessment had entered into force in July 2018 and the Government was in the process of preparing six pieces of secondary legislation to implement that law. The secondary legislation would cover, among others, state ecological expertise, strategic environmental assessment, environmental impact assessment, transboundary environmental impact assessment and the procedure for certification of consultants on strategic environmental assessment and environmental impact assessment. The Government

³ Information on Committee initiatives is available from <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

⁴ Information on submissions by Parties concerning other Parties is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

had also adopted a law amending the Law on Environmental Protection, to align it with the new Law on Environmental Impact Assessment.

15. The Committee noted the information provided by Azerbaijan in August 2018, in response to the Committee's request, including the English translations of the Law on Environmental Impact Assessment and the law amending the Law on Environmental Protection and a brief overview of the national environmental impact assessment and strategic environmental assessment legal schemes. However, the Committee regretted that the information requested had been submitted after the established deadline of 31 July 2018, which meant that the Committee did not have sufficient time to evaluate the newly adopted laws prior to finalizing draft decision IS/1c regarding compliance by Azerbaijan.

16. Taking into account the preliminary analysis of the Committee co-curators for the matter, and the draft assessment of the compatibility of the Law on Environmental Impact Assessment with the Convention and the Protocol prepared by an international expert,⁵ the Committee noted some deficiencies in the Law and some discrepancies between the Law, the Convention and the Protocol, and invited Azerbaijan to address them without delay.

17. The Committee agreed to evaluate the laws and the secondary legislation adopted vis-à-vis the Convention as a package upon the entry into force of the secondary legislation. It invited the secretariat to explore the possibilities to finance that legislative review through the new European Union-funded programme "EU4Environment", which was expected to start in late 2018.

18. The Committee then reviewed and finalized the text of draft decision IS/1c. The secretariat was requested to transmit draft decision IS/1c to Azerbaijan for information and to the Meeting of the Parties for consideration at its intermediary session.

3. Ukraine

(a) Bystroe Canal Project (EIA/IC/S/1)

19. Further to the discussions at its forty-first session, the Committee continued its consideration of the follow-up by Ukraine to decision VI/2 (paras. 15–28), further to a submission by Romania dated 26 May 2004 concerning compliance by Ukraine (EIA/IC/S/1), and the review of draft decision IS/1f on compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project).

20. The Committee noted the information provided by Ukraine on 30 July 2018 that, following the entry into force of its Law on Environmental Impact Assessment in December 2018, Ukraine had adopted four pieces of secondary legislation and that the adoption of the secondary legislation on transboundary environmental impact assessment procedure was still pending.

21. The Committee also noted that since its forty-first session, at which Ukraine had expressed its genuine wish to bring the project into full compliance with the Convention as outlined in the draft road map that it had presented to the Committee, Ukraine had taken only limited steps to implement the road map. The Committee regretted that, despite the Committee's request for it to do so, Ukraine had provided no information with regard to repealing the final decision on Phase I. The Committee also emphasized that, at its forty-first session, the Committee had not "adopted", "agreed" or "endorsed" the road map presented

⁵ The assessment was prepared in the context of the update of the "Overview of legislative and administrative reforms for implementing strategic environmental assessment in Eastern Europe and the Caucasus", presented as an informal document to the Working Group at its fifth meeting, which covers strategic environmental assessment and, as relevant also, environmental impact assessment.

by Ukraine, as Ukraine had indicated in its letter to the Committee. Instead, the Committee had concluded that the draft road map represented a good basis and a way forward for bringing the project into full compliance with the Convention, and had pointed out that the list of the declared steps presented in the draft road map was not exhaustive (ECE/MP.EIA/IC/2018/2, para. 34).

22. The Committee welcomed the fact that, on 24 July 2018, Ukraine had transmitted to Romania the following documents:

(a) A draft bilateral agreement between Romania and Ukraine to implement the Convention, as revised in accordance with the new Law on Environmental Impact Assessment;

(b) A “draft” Monitoring Programme for the Bystroe Canal Project for the period 2017–2018.

23. The Committee also noted the information provided by Romania on 27 July 2018, including:

(a) Comments to draft decision IS/1f;

(b) The position of Romania concerning the road map prepared by Ukraine and the intent of the Government of Ukraine to launch a new Bystroe Canal Project;

(c) Concerns regarding the announcement by Ukraine of plans to suspend works on the Project for three months, instead of stopping them until the Project complied with the provisions of the Convention;

(d) That no progress had been reached in preparing the bilateral agreement;

(e) Deficiencies in the Ukrainian report on the monitoring results in 2017;

(f) The readiness of Romania to assist Ukraine in assessing the damage and in developing a plan of compensatory measures, and therefore the need for bilateral consultations and constructive discussions between the Parties.

24. The Committee requested its Chair to write to the Government of Ukraine to thank it for the information provided and to reiterate its invitation to Ukraine:

(a) To complete its legislative reform of its environmental assessment system, including the adoption of the secondary legislation on transboundary environmental assessment procedure;

(b) To implement the road map without delay, including repealing the final decision on Phase I of the Bystroe Canal Project, and to provide documentation confirming that the respective steps and decisions had been taken;

(c) To enter into consultations with Romania on implementation of the road map, including assessing the damage and development of a plan of compensatory measures;

(d) To supplement the monitoring reports with:

(i) Baseline data that would allow the assessment of changes;

(ii) An assessment of the impact of the operation, including regular maintenance dredging and shipping traffic;

(e) To report to the Committee by 15 February 2019 on the progress achieved, and to substantiate its report with relevant documentation confirming that progress.

25. The Chair was also asked to write to Romania to thank the Government for the information provided and to request the Government of Romania to transmit to the Government of Ukraine its comments with regard to the road map and the monitoring results.

Finally, the Chair was requested to urge both Romania and Ukraine to accelerate the preparation and conclusion of the bilateral agreement to implement the Convention further to paragraph 27 of decision VI/2.

26. The Committee then finalized the text of draft decision IS/1f concerning compliance by Ukraine with the Convention with regard to the Bystroe Canal Project, and requested the secretariat to transmit the draft decision to Ukraine and Romania for information and to the Meeting of the Parties for consideration at its intermediary session. The Committee agreed to continue its consideration of the matter at its forty-fourth session based on the analysis of the information to be provided by Ukraine and Romania by the curator for the matter.

(b) Rivne nuclear power plant (EIA/IC/CI/4)

27. Further to the discussions at its forty-first session, the Committee continued its consideration of the follow-up by Ukraine to decision VI/2 (paras. 68–71), further to a Committee initiative (EIA/IC/CI/4) opened at the Committee's twenty-seventh session (12–14 March 2013), and its revision of draft decision IS/1g on compliance by Ukraine with its obligations under the Convention in respect of extension of the lifetime of the Rivne nuclear power plant (Units 1 and 2).

28. At its forty-first session the Committee had requested its Chair to write to countries that had been notified by Ukraine in the context of the transboundary environmental impact assessment procedure on the Rivne nuclear power plant, asking them to provide copies of their responses to Ukraine and other relevant information. The Committee noted the information provided by the respective Parties that – in addition to Austria – Belarus, Hungary, Poland, Romania and Slovakia had responded to the notification by Ukraine of 29 January 2018 with regard to the extension of the lifetime of the Rivne nuclear power plant, expressing their wish to participate in a transboundary impact assessment procedure. The information had been communicated by Parties in letters dated 10 April 2018 (Hungary), 26 April 2018 (Slovakia), 7 May 2018 (Belarus), 10 May 2018 (Poland) and 27 July 2018 (Ukraine). Slovakia and Poland had requested Ukraine to address their comments and remarks concerning the scope of the environmental impact assessment when preparing the environmental impact assessment report. The Republic of Moldova had not responded to the notification.

29. The Committee also noted that, in its letter of 27 July 2018, Ukraine had not responded to the questions that the Committee had formulated at its forty-first session in order to clarify the nature of the proposed activity and the subsequent steps for, the timeline of and the progress made in carrying out the transboundary procedure with respect to the activity (ECE/MP.EIA/IC/2018/2, paras. 24–25). It also noted that, in line with article 3, paragraph 2, of the Convention, Ukraine should also provide clarifications regarding the nature of the proposed decision.

30. Taking into account the information made available to it, the Committee finalized the text of draft decision IS/1g. It requested the secretariat to transmit draft decision IS/1g to Ukraine for information and to the Meeting of the Parties for consideration at its intermediary session.

31. The Committee requested its Chair to write to Ukraine to inform it about the Committee's deliberations at its present session and to reiterate its request to the Government to carry out without delay the subsequent steps of the transboundary environmental impact assessment procedure on the lifetime extension of reactors 1 and 2 of the Rivne nuclear power plant, as outlined in paragraph 24 (b)–(d) of the Committee's report on its forty-first session, and to invite Ukraine to report accordingly on the progress made by 15 February 2019. The Committee also requested the Chair to write to the Republic of Moldova, reiterating the Committee's request for copies of its responses to the notification by Ukraine together with

any other relevant information. The curator for the matter was invited to provide the analysis of the information for the Committee's consideration at its forty-fourth session.

4. Belarus (EIA/IC/S/4)

32. The first Vice-Chair of the Committee served as Chair for the Committee's consideration of the follow-up by Belarus to decision VI/2 (paras. 48–64), further to a submission by Lithuania of 16 June 2011 concerning compliance by Belarus (EIA/IC/S/4), and the revision of decision IS/1d on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets.

33. Further to its decision at its forty-first session, the Committee considered its analysis of the environmental impact assessment documentation prepared by Belarus with regard to the nuclear power plant in Ostrovets (see annex, paras. 21–29). In doing so, the Committee took into account the views of Lithuania provided in its letter of 28 May 2018 and the answers to the Committee's scientific and technical questions provided by Belarus on 9 July 2018.

34. The Committee found on the basis of its assessment that the environmental impact assessment documentation of Belarus on the nuclear power plant in Ostrovets included information that sufficiently addressed issues referred to in the Committee's technical and scientific questions related specifically to the Ostrovets site, including with regard to population density in the area around the nuclear power plant, water contamination and waste management. It also found that the environmental impact assessment documentation, which had been made available to the affected parties and the public, made a reference to locational alternatives for a nuclear power plant and to criteria for the site selection, but did not provide sufficient information supporting and justifying the selection of the Ostrovets site to take the final decision on the activity in accordance with the Convention.

35. On the basis of its findings, the Committee revised draft decision IS/1d, taking into account the comments provided by Belarus on the draft text at the seventh meeting of the Working Group.

36. The Committee requested the secretariat to transmit draft decision IS/1d to Belarus and Lithuania for information and to the Meeting of the Parties for its consideration at its intermediary session.

37. With reference to paragraph 63 of decision VI/2, and in order to facilitate consideration of the matter by the Meeting of the Parties at its intermediary session, the Committee agreed to annex to the present report a summary of its deliberations regarding the Belarusian nuclear power plant in Ostrovets since the sixth session of the Meeting of the Parties. It agreed that the details regarding the Committee's analysis of the environmental impact assessment documentation referred to in paragraphs 33 and 34 above should be included in the annex. In that regard, the Committee stressed that the annex should constitute an integral part of the report of its forty-second session and that the text of the report concerning Belarus (paras. 32–40) should be considered incomplete without the annex.

38. The Committee noted the concerns raised by Belarus at the seventh meeting of the Working Group regarding the Committee's working methods since September 2017 with regard to the matter. In particular, Belarus had been concerned that, despite the Committee's initial decision at its ad hoc session in Minsk in June 2017 to remove one of its questions from the list of technical and scientific questions agreed at its thirty-seventh session (5–7 December 2016) that had been formulated to assist the Committee in making a finding on the matter, the Committee had subsequently come to a different conclusion. Indeed, after an in-depth analysis of the International Atomic Energy Agency Site and External Events Design Review Service (SEED) mission report regarding the Belarusian nuclear power plant in Ostrovets at its fortieth session (5–7 December 2018), the Committee found that the report did not fully answer that question. Therefore, the Committee agreed to keep the question on

the list, introducing some revisions to remove the part of the question that had been answered by the Site and External Events Design mission report.

39. The Committee recalled in that respect that Belarus had agreed to make the mission report available to the Committee by the end of April 2017, and that it had invited the co-curators to analyse the extent to which the report responded to its questions, provided that the report was released at least two weeks in advance of the seventh session of the Meeting of the Parties (Minsk, 13–16 June 2017). However, Belarus had provided the mission report only on the afternoon of 5 June 2017. Despite the delay, the Committee had nevertheless agreed to convene a last-minute ad hoc session back to back to the seventh session of the Meeting of the Parties to consider the information, with a view to supporting a constructive resolution of the compliance matter by the Parties in Minsk. The Committee admitted that, although it had acted in good faith, not having had sufficient time to analyse the report had led it to make a hasty decision.

40. Consequently, in the future, the Committee agreed to act according to its operating rule 11, paragraph 4 – that is, to consider any substantive and technical information only if it was presented to it through the secretariat at least two weeks prior to the session at which it was supposed to be considered.

B. Committee initiatives

41. Discussions on Committee initiatives were not open to observers, in accordance with rule 17 of the Committee's operating rules.

1. Committee initiative on the United Kingdom of Great Britain and Northern Ireland (EIA/IC/CI/5)

42. The Committee reviewed and revised its findings and recommendations further to its initiative on the United Kingdom of Great Britain and Northern Ireland regarding the planned construction of the Hinkley Point C nuclear power plant (EIA/IC/CI/5). In preparing the draft revised findings and recommendations, the Committee took into account information provided by the following potentially affected Parties: Austria, on 24 April 2018; Denmark, on 1 June 2018; Germany, on 7 May 2018; Ireland, on 30 April and 29 June 2018; Luxembourg, on 30 April 2018; the Netherlands, on 2 May 2018; and Norway, on 27 April 2018. It also took into consideration information provided by the United Kingdom on 11 April and 29 August 2018 and by Environmental Pillar, an Irish non-governmental organization, on 2 July 2018.

43. The Committee requested its Chair to send the draft findings and recommendations to the United Kingdom, inviting the Government to submit to the secretariat, by 22 October 2018 at the latest, its comments or representations. The draft findings and recommendations would remain confidential at that stage.

44. The Committee agreed to consider any comments or representations from the United Kingdom using its electronic decision-making procedure, and to finalize that procedure by 12 November 2018 to allow the secretariat time to process the finalized findings and recommendations as an official document. The Committee requested the secretariat to inform the United Kingdom accordingly.

45. The secretariat was also requested to subsequently provide the findings and recommendations to the United Kingdom, once issued as an official document, and to transmit them together with draft decision IS/1h on the matter for consideration by the Meeting of the Parties at its intermediary session. The related documents and information should also be posted on the Convention website.

2. Serbia (EIA/IC/CI/6)

46. The Committee considered the Committee initiative concerning compliance by Serbia with its obligations under the Convention in relation to the planned construction of a third block of the Kostolac lignite power plant in Serbia, by the River Danube, close to the border with Romania, further to the information provided by Bankwatch Romania Association (EIA/IC/CI/6). It noted the comments made by the non-governmental organization ClientEarth at the seventh meeting of the Working Group and the information received from that organization dated 18 June 2018 regarding the extension of the open-pit mine at Drmno.

47. The Committee recalled that at its thirty-sixth session (5–7 September 2016) it had found that, by notifying Romania, Serbia had brought the project into compliance with article 3, paragraph 1, of the Convention.

48. The Committee also recalled that, at the same session, it had discussed compliance by Serbia in relation to the planned extension of one of the two open-pit lignite mines (Drmno) associated with the power plant. It had noted that Serbia had concluded on the basis of a domestic assessment procedure (screening) that the increase in the yearly production limit of the open-pit lignite mine was not likely to cause adverse transboundary impacts and that consequently the application of the Convention had not been considered necessary.¹ Taking into account the information from ClientEarth, which contained new facts in relation to the procedure regarding the open-pit mine in Drmno, the Committee decided to start gathering information regarding the mine. It requested the Committee curator for the matter to prepare a detailed analysis of the information, including the history of the case and the questions for Serbia, by 15 November 2018 for their consideration by the Committee at its forty-third session (4–7 December 2018).

49. The Committee then revised draft decision IS/1e on compliance by Serbia with its obligations under the Convention with regard to the Kostolac lignite power plant. It requested the secretariat to transmit draft decision IS/1e to Serbia for information and to the Meeting of the Parties for consideration at its intermediary session.

50. The Committee asked the Chair to write to Serbia and ClientEarth to inform them about its deliberations during the session and agreed to continue consideration of the matter at its forty-third session.

C. General part of draft decision VII/2

51. The Committee then revised the general part of draft decision VII/2, which would be presented as draft decision IS/1. The Committee requested the secretariat to forward draft decision IS/1 to the Meeting of the Parties for consideration and action at its intermediary session.

III. Submissions

52. A representative of the secretariat noted that no submissions had been received since the Committee's previous session and that there were no earlier submissions still under consideration.

IV. Information gathering⁶ and review of implementation

53. Owing to time constraints, in particular the need to prioritize the preparation of draft decisions for consideration by the Meeting of the Parties at its intermediary session, the Committee postponed consideration of the pending information-gathering matters to its subsequent sessions.

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

54. The Committee confirmed that it would next meet from 4 to 7 December 2018 and would hold its forty-fourth session from 12 to 15 March 2019 and its forty-fifth session from 10 to 13 September 2019. All the meetings would be held in Geneva, unless the Committee decided otherwise.

55. The Committee adopted the draft report of its session, prepared with the support of the secretariat, with the exception of the report concerning Belarus which the Committee completed using its electronic decision-making procedure on 26 September 2018. The Chair then formally closed the forty-second session

⁶ More information on information-gathering cases, including relevant documentation, is available from <http://www.unep.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

Annex

Follow-up to decision VI/2 further to a submission by Lithuania concerning Belarus in respect of the Belarusian nuclear power plant in Ostrovets

Summary of the Committee's deliberations since the sixth session of the Meeting of the Parties

1. At its sixth session (Geneva, 2–5 June 2014), the Meeting of the Parties adopted decision VI/2 regarding Belarus (paras. 48–64). The recommendations in that decision followed the Committee's findings and recommendations at its twenty-seventh session (12–14 March 2013) on a submission by Lithuania (EIA/IC/S/4) expressing concerns in relation to the planned construction of a Belarusian nuclear power plant in Ostrovets, close to the border with Lithuania. The recommendations in decision VI/2 also included additional recommendations made by the Committee after considering extensive documentation submitted by Belarus and Lithuania prior to the sixth session of the Meeting of the Parties on steps taken to reach compliance with the Committee's earlier findings (ECE/MP.EIA/2014/4-ECE/MP.EIA/SEA/2014/4, paras. 53–56).
2. Also by decision VI/2, the Meeting of the Parties requested the Committee to thoroughly analyse the steps undertaken by the Belarus and Lithuania following the adoption of the Committee's report on its twenty-seventh session, to reflect the conclusions of its analysis in the report of its thirty-third session at the latest, and to report to the Meeting of the Parties at its seventh session on the matter.
3. Further to paragraph 59 of draft decision VI/2, Belarus and Lithuania have submitted regular reports and information since the sixth session of the Meeting of the Parties and have copied the Committee on their correspondence. To facilitate its deliberations, the Committee also held discussions, which did not constitute a formal hearing on the matter, with the delegations of Belarus and Lithuania at its thirty-fifth session (15–17 March 2016).
4. When examining the steps taken by both Parties since the Committee's twenty-seventh session, the Committee noted the persistent disagreement between Belarus and Lithuania related, in particular, to scientific and other technical matters concerning the construction of the nuclear power plant, for example, regarding reasonable locational alternatives and the methodology and data used in determining the siting as described in the environmental impact assessment documentation.¹ In the 2014–2017 intersessional period, the Committee considered that it had neither the capacity nor the mandate to examine the scientific issues raised by the two Parties, and agreed to ask for expert advice, as provided for in its rules of procedure.² It noted, however, that there were no resources for such a proceeding. Therefore, in December 2015, the Committee recommended to the two Parties that they consider establishing and financing an expert body modelled after the inquiry commission provided for under appendix IV to the Convention. Belarus, despite encouragement from the Bureau in January 2016,³ maintained its reservations regarding the

¹ ECE/MP.EIA/IC/2015/4, para. 32; ECE/MP.EIA/IC/2016/2, para. 24; ECE/MP.EIA/IC/2016/4, para. 33; and ECE/MP.EIA/IC/2016/6, para. 26.

² ECE/MP.EIA/6, decision III/2, appendix, paragraph 7 (d).

³ See informal notes of the Bureau meeting, available from www.unece.org/index.php?id=40421#/.

Committee's proposal, pointing to the need to exhaust all possible avenues through bilateral consultations.⁴

5. At its thirty-seventh session, in December 2016, the Committee regretted that the Parties had not agreed with its proposal to establish and finance the expert body, and also had been unable to find consensus on their points of disagreement through the bilateral expert consultations held in June and September 2016.⁵

6. With regard to the steps taken by both Parties since the Committee's twenty-seventh session, at its thirty-seventh session the Committee:

(a) Concluded that Belarus had undertaken all the required steps to reach the final decision as provided for in the Convention. However, based on the available information, the Committee could not reach a final conclusion on the compliance of the steps taken by Belarus to reach the final decision with the provisions of the Convention without answers to its five questions on technical and scientific aspects of environmental impact assessment documentation that it had put forward at that session and had annexed to draft decision VII/2 (ECE/MP.EIA/2017/8, annex I);⁶

(b) Recognized efforts made by Belarus since the sixth session of the Meeting of the Parties to satisfy the language requirements of the public consultations, further to paragraph 54 of decision VI/2;⁷

(c) Noted that Belarus and Lithuania had made some efforts in agreeing on steps for the post-project analysis with respect to the nuclear power plant, which might involve the establishment of a joint body,⁸ further to paragraphs 57 and 62 of decision VI/2, and agreed to invite the Meeting of the Parties to request Belarus and Lithuania to ensure sufficient public participation under post-project analysis regarding the nuclear power plant;

(d) Observed efforts by both Parties in negotiating a bilateral agreement for the implementation of the Convention in accordance with article 8, as set out in paragraph 58 of decision VI/2.⁹

7. At its thirty-eighth session (20–22 February 2017), with reference to its five questions (see para. 6 (a) above) the Committee further reiterated that it did not have the capacity or the mandate to examine the environmental and scientific issues that had been raised in connection with the activity at Ostrovets, but noted that its rules of procedure provided for the possibility to turn to expert advice. In the absence of resources to hire a consultant to provide such expert advice, the Committee continued the elaboration of two concrete proposals brought forward during its thirty-seventh session on how such advice could be provided to it. It then incorporated the two proposals in draft decision VII/2 on review of compliance with the Convention,¹⁰ underlining that procedural and substantive aspects of the environmental impact assessment procedure could not necessarily be treated separately when assessing compliance, in particular, if the essence of the compliance case in question was about substantive aspects.¹¹

⁴ ECE/MP.EIA/IC/2016/2, para. 23, ECE/MP.EIA/2017/4-ECE/MP.EIA/SEA/2017/4, para. 40.

⁵ ECE/MP.EIA/IC/2016/6, para. 26.

⁶ *Ibid.*, para. 27 and annex I, ECE/MP.EIA/IC/2017/2, para. 8, and ECE/MP.EIA/2017/4-ECE/MP.EIA/SEA/2017/4, para. 41.

⁷ ECE/MP.EIA/IC/2016/6, para. 29.

⁸ *Ibid.*, para. 30.

⁹ *Ibid.*

¹⁰ ECE/MP.EIA/2017/8, paras. 57–61, and annex II.

¹¹ ECE/MP.EIA/IC/2017/2, para. 9.

8. At the same session, the Committee remarked that the report on the Site and External Events Design Review Service mission conducted by the International Atomic Energy Agency (IAEA) in Belarus in January 2017 might provide answers to some of its questions, but noted that the report would not be publicly released until April 2017. It therefore agreed to ask the co-curators for the case to try to find answers to its five questions in that report, if it was released at least two weeks in advance of the next session of the Meeting of the Parties. The Committee also agreed that, based on the co-curators recommendations, it would convene a virtual meeting to consider which questions had been properly answered by the report. It further agreed that its Chair would inform the Meeting of the Parties to the Convention of the outcomes of any further deliberations on the matter at its seventh session.¹²

9. With regard to the Site and External Events Design mission, the Committee regretted that, according to the information available at the thirty-eighth session, Belarus had not entirely followed the suggestion of the Meeting of the Parties in paragraph 64 of its decision VI/2, as it had not specifically invited IAEA to evaluate the site selection criteria as well. The Committee nevertheless congratulated Belarus for having taken that confidence-building measure, and encouraged it to continue with such measures in the future.¹³

10. After finalizing its recommendations to the Meeting of the Parties before its seventh session, the Committee stressed that, with the active support of both Parties, it had attempted over the 2014–2017 intersessional period all reasonable approaches to assist the Parties to fully comply with their obligations under the Convention.¹⁴

11. Further to its decision at its thirty-eighth session, the Committee at its ad hoc session in Minsk in June 2017 examined the Site and External Events Design mission report provided by Belarus on 5 June 2017. In particular, after the presentation by the co-curators of their analysis of the report, the Committee considered which of the five questions on technical and scientific aspects of the environmental impact assessment documentation had been duly answered by the mission report and revised annex I to decision VII/2 accordingly.

12. At the ad hoc session, the Committee recalled that its first question had referred to the characteristics of an aircraft whose direct crash on a commercial nuclear power reactor should be assessed before building a reactor. It noted, based on the mission report, that according to the IAEA Safety Guide No. NS-G-3.1 that “the plant should be protected against crashes of aircraft of any type”.¹⁵ The Committee also noted that the mission report indicated that Belarus had conducted a “Detailed Aircraft Hazard Assessment” following which protection measures for large aircraft, and design protection measures for small aircraft, had been implemented. The Committee remarked that, according to the report, no safety issues had been found. The Committee concluded that the report had properly answered its first question and, therefore, decided to follow the recommendation of its co-curators and remove it from annex I to decision VII/2.

13. The Committee then reviewed the report with respect to its next three questions, but it did not find answers to them. It thus decided to maintain them on the list.

14. Regarding the fifth and last question, the Committee noted that, although there was no mention in the report of the application of selection and exclusion criteria, such as the geological and seismotectonic structure of the site and seismic hazard assessment (probabilistic assessment), for the assessment of the suitability of the nuclear power plant site, the report had included specific reference to the current seismic hazard at Ostrovets. The

¹² Ibid., para. 10.

¹³ Ibid., para. 11.

¹⁴ Ibid., para. 12.

¹⁵ *External Human Induced Events in Site Evaluation for Nuclear Power Plants*, IAEA Safety Standards Series No. NS-G-3.1 (Vienna, 2002), para. 5.11.

information in the report indicated that there were no safety issues connected to seismic hazards related to ground motion and fault displacement, nor to geotechnical issues such as liquefaction, slope stability, cavities and karstic formations. For that reason, the Committee found that the information in the report properly answered the fifth question, and decided to also remove that question from the list.

15. At its seventh session, the Meeting of the Parties to the Convention was unable to reach consensus regarding draft decision VII/2, agreeing to finalize decision VII/2 at an intermediary session to be convened at the end of 2018 or the beginning of 2019. The Committee was mandated to prepare a revised draft decision VII/2 for consideration at the intermediary session, taking into account the work already carried out and progress achieved before, during and in the margins of the Minsk meeting.¹⁶ The Committee took note of the comments from Belarus and the European Union to draft decision VII/2 at the seventh session of the Meeting of the Parties. The Committee noted, among others, that Belarus had not found the two alternatives for obtaining the expert advice referred to in annex II to decision VII/2 to be feasible. Belarus had proposed that the Committee should instead seek expert advice from IAEA.

16. At its fortieth session in December 2017, the Committee maintained its opinion that the site selection remained the key issue. During its further deliberations on the matter, it also concluded that the Site and External Events Design mission report did not fully answer the fifth question. To support its subsequent deliberations, the Committee decided to revise that question and, in addition, introduced some modifications to the three remaining questions of annex I to draft decision VII/2. As the Meeting of the Parties in Minsk had not reached consensus regarding the Committee's proposals to obtain external expert advice, and as suggested during the sessional period, the Committee agreed to turn to IAEA for advice on its remaining questions.¹⁷

17. As requested by the Committee, the ECE Executive Secretary wrote to IAEA, inviting it to provide answers to the Committee's questions regarding the Belarusian nuclear power plant in Ostrovets in advance of the Committee's forty-first session in February 2018. Moreover, the Committee noted that although Belarus had already provided extensive information on the matter, the Committee still needed a clear and concise summary from Belarus of the site selection procedure in order to support its assessment.¹⁸ To assist Belarus in that process, the Committee formulated a set of specific questions that were communicated to Belarus on 10 January 2018.

18. At its forty-first session the Committee noted, *inter alia*, that the summary of the information on the site selection provided by Belarus contained no new information that would have explained the rationale for choosing the Ostrovets site over the alternative sites. The Committee also noted that, in its responses to the Committee's questions, IAEA had provided references to its relevant safety standards without elaborating how those standards had been applied in the case of the nuclear power plant in Ostrovets.¹⁹

19. The Committee regretted that its questions on technical and scientific issues remained unanswered. Having exhausted all avenues for receiving external expert advice, and considering the unprecedented circumstances related to the compliance matter, the Committee decided exceptionally to examine the documentation prepared by Belarus under

¹⁶ ECE/MP.EIA/23-ECE/MP.EIA/SEA/7, para. 23.

¹⁷ ECE/MP.EIA/IC/2017/6, para. 32–33.

¹⁸ ECE/MP.EIA/IC/2017/6, para. 34.

¹⁹ ECE/MP.EIA/IC/2018/2, paras. 43–44.

the environmental impact assessment procedure by itself²⁰ and, as appropriate, to seek the services of scientific experts and other technical advice or to consult other relevant sources in accordance with its structure and functions.²¹

20. The Committee agreed through its electronic decision-making procedure on the key elements to be considered during its examination of the environmental impact assessment documentation of Belarus in order to answer its remaining technical and scientific questions. In addition, the Committee invited Belarus to provide answers to the questions and, for the sake of transparency, also invited Lithuania to provide its views on the matter.²²

21. At its forty-second session (Geneva, 11–14 September 2018), the Committee considered the results of its examination of the environmental impact assessment documentation of the nuclear power plant in Ostrovets prepared by Belarus, also taking into account the answers to the Committee’s scientific and technical questions provided by Belarus on 9 July 2018 and the views of Lithuania on the matter presented in a letter of 28 May 2018.

22. With regard to the Committee’s question concerning the population density and the size of the area to be considered in the environmental impact assessment documentation, the Committee agreed that Belarus had addressed the matter in an acceptable manner. It found that the IAEA guidelines established criteria to determine preventive safety measures for such an area, although those criteria were not specifically in relation to the preparation of environmental impact assessment documentation. It also agreed that the environmental impact assessment documentation prepared by Belarus described an area within a radius of about 25 to 30 kilometres, but that the information provided regarding the territory of Belarus to be considered in the environmental impact assessment documentation was more thoroughly described than the information concerning the territory of Lithuania that was concerned. It also noted the information from Belarus that it had experienced some difficulties in obtaining more detailed information related to the Lithuanian population within the prescribed area.

23. Concerning the second question, on the contamination of rivers and groundwater, the Committee found that the information in the environmental impact assessment documentation covered both the conditions related to normal operation of the nuclear power plant and the effects of accidents, including “beyond design basis” accidents. It considered that the long-term effects of airborne fallout were described in general, and while it did not specifically address Lithuanian territory, the description was found to be sufficient. The Committee also considered that the information provided in the environmental impact assessment documentation regarding risks for pollution to water in case of an emergency was acceptable for the purposes of the Convention as a basis for a final decision.

24. When considering the question on the management of radioactive waste and spent fuel, the Committee noted that the environmental impact assessment documentation included information regarding the planned management of radioactive waste and spent fuel. According to the environmental impact assessment documentation, the contracts for the management of spent nuclear fuel that were foreseen had not been concluded at the time, which, in the view of the Committee was common at that stage of the process and, in that regard, the Committee found that the item had been addressed in an acceptable manner.

²⁰ The Committee’s composition since the sixth session of the Meeting of the Parties had also changed, providing it with more expertise and capacity to examine the scientific and technical aspects of the environmental impact assessment documentation.

²¹ ECE/MP.EIA/IC/2018/2, para. 45.

²² *Ibid.*

However, the Committee underlined the need to ensure proper implementation of the management of waste, according to the planned procedure.

25. With regard to its last question, concerning the site selection, the Committee recalled its previous opinions that the environmental impact assessment documentation had to evaluate and justify different elements to be taken into account for the reasonable locational alternatives referred to in appendix II to the Convention. The choice of the location of the proposed activity should result from the environmental impact assessment procedure and should not be determined before the final environmental impact assessment report was issued, unless the choice of the location was determined in an appropriate strategic environmental assessment procedure that included a transboundary procedure.²³ Furthermore, the Committee noted that, according to appendix II to the Convention, the environmental impact assessment documentation should contain, as a minimum, inter alia, a description, where appropriate, of reasonable alternatives to the proposed activity and also the no-action alternative; and “a description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance”.

26. In the Committee’s view, for certain activities, in particular for nuclear power plants where the magnitude of a significant adverse transboundary impact could be very high in case of a severe accident, integrating sufficient information in the environmental impact assessment documentation on the selection of alternatives and the likely impacts is of extreme importance, in keeping with the precautionary principle enshrined in the Convention and the Convention’s objective of enhancing international cooperation in assessing environmental impact, in particular in a transboundary context.

27. The Committee noted that it had provided Belarus with several opportunities to demonstrate that the issue of site selection had been properly addressed, but that Belarus had failed to provide the Committee with information to sufficiently justify the selection of the Ostrovets site over the other alternative sites (see paras. 17, 18 and 20 above). Given that lack of information, the Committee concluded that the issue had not been addressed in an acceptable manner under the Convention to support the final decision on the activity.

28. The Committee agreed on its findings that:

(a) The environmental impact assessment documentation, which had been made available to the affected parties and the public, made reference to locational alternatives for a nuclear power plant and to criteria for the site selection, but did not provide sufficient information supporting and justifying the selection of the Ostrovets site to take the final decision on the activity in accordance with the Convention;

(b) By not providing such evidence in the environmental impact assessment documentation and the final decision on the activity, Belarus had failed to comply with article 4, paragraph 1, article 5, paragraph (a), and article 6, paragraph 1, of the Convention.

26. The Committee recommended that the Meeting of the Parties at its intermediary session:

(a) Urge Belarus to ensure that, in the context of any future decision-making regarding any planned activity that fell under the Convention, the environmental impact assessment documentation contained a proper evaluation of reasonable alternatives, including the no-action alternative, and justification for the selection of the option decided upon;

(b) Express its regret that the bilateral agreement for the implementation of the Convention had not yet been concluded, and encourage Belarus and Lithuania to accelerate

²³ ECE/MP.EIA/IC/2013/2, annex, para. 54.

the preparation of such an agreement further to article 8 of the Convention and request them to report on the progress at the eighth session of the Meeting of the Parties;

(c) Encourage Belarus and Lithuania to continue bilateral expert consultations on issues of disagreement, including on matters that were beyond the scope of the Convention;

(d) Also encourage both Parties to continue working on the post-project analysis and to reach an agreement on establishing a joint bilateral body and the procedures for such analysis, in particular to ensure sufficient public participation in the framework of the post-project analysis regarding the activity at Ostrovets;

(e) Request Belarus and Lithuania to report annually to the Implementation Committee on the progress made in implementing the recommendations in subparagraphs (b) and (c) above.
