

PERMANENT MISSION OF THE REPUBLIC OF
AZERBAIJAN TO THE UNITED NATIONS OFFICE
AND OTHER INTERNATIONAL ORGANIZATIONS
AT GENEVA



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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations at Geneva presents its compliments to the Secretariat of the United Nations Economic Commission for Europe (UNECE) and has the honour to transmit herewith the views of the Republic of Azerbaijan on paragraphs 45 and 46 of Draft Finding and recommendations further to a submission by the Republic of Azerbaijan regarding the Republic of Armenia (EIA/IC/S/3) and the response of the Republic of Azerbaijan in respect of the submission of the Republic of Armenia relating to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations at Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations Economic Commission for Europe the assurances of its highest consideration.

Enclosure: 9 pages.

Geneva, 14 August 2012

Secretariat
United Nations Economic Commission for Europe
GENEVA



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**Views of the Republic of Azerbaijan on paragraphs 45 and 46 of
Draft Finding and recommendations further to a submission by the Republic
of Azerbaijan regarding the Republic of Armenia (EIA/IC/S/3)**

Notification process and exchange of information, public participation, and consultations are crucial and integral part of the environmental impact assessment process.

Notification process and exchange of information

The Article 3.1 of the Espoo Convention sets out the procedural framework of notification process. According to the Article: a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers an affected Party as early as possible and no later than when informing its own public about the proposed activity.

The Article 3.2 of the Convention also indicates the requirements for the content of the notification without prescribing any specific means of communication for the notification process.

The Azerbaijani side believes that the very nature of notification process is to inform the Affected Party on proposed activity. It is, therefore, all commonly accepted written means of communication i.e. letter, fax, e-mail messages for the purposes of notification process should be considered valid and compatible with the requirements of the Convention.

With regard to response by the Affected Party to the notification, we believe that the core purpose of such response should be an expression of the will (which may or may not include an opinion on substance and merits) to participate in the environmental impact assessment process. Unlike the notification, the Convention does not set out specific requirements as for the format and content of the response to the notification.

Therefore, all above-mentioned written means of communication that deliver the will of the Affected Party to the Party of Origin are legally valid and in line with the provisions of the Convention. Thus, any means of communication specified above cannot and should not justify the failure of the Party of Origin to comply with its obligations under the Convention.

In the absence of the diplomatic relations as a result of the continuing occupation of the territories of the Republic of Azerbaijan by the Republic of Armenia, the Azerbaijani side is of the view that within the environmental impact assessment process notification or response via an intermediary body (in this case the Secretariat) would be an appropriate way of communication.

Moreover, we believe that the non-existence of diplomatic relations does not preclude Parties to the Convention fulfill their obligations, including those pertaining to notification and exchange of information be it directly or via an entrusted intermediary.

Public participation

Article 3.1 of the Convention obligates Armenia, for the purpose of ensuring adequate and effective consultations under Article 5, to notify an Affected Party, namely Azerbaijan, as early as possible and no later than when informing its public about the proposed activity. In this respect, it should be noted that Armenia failed to inform Azerbaijan before informing its public about the proposed activity. This is evident from the letter by Mr. Aram Harutyunyan to Mr. Nicolas Bonvoisin, dated 27 August 2010 informing the Secretariat, inter alia, about the public hearing on the planned project proposal which should have taken place on 24 August 2010. In accordance with Article 3.1, Armenia should have informed Azerbaijan prior to informing its public and conducting public hearing on the planned project proposal. Thus, by informing its public and conducting public hearings on the Nuclear Unit as a proposed activity, Armenia has breached the requirements of Article 3.1.

Consultations

Taking into consideration the exceptional circumstances, the Azerbaijani side is ready to engage in consultations with the Armenian side with participation of an intermediary body (in this case the Secretariat) in accordance with provisions of Article 5 of the Convention.

The Response of the Republic of Azerbaijan in respect of the submission of the Republic of Armenia relating to the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (the "Convention")

In accordance with the submission of the Republic of Armenia (Armenia) as of 31.08.2011 (the "Submission"), Armenia alleges that the Republic of Azerbaijan (Azerbaijan) by failing to notify Armenia as an allegedly affected party concerning the proposed activities, listed in Appendix I of the Convention, namely developing Azeri-Chirag-Guneshli, Shah Deniz as well as Baku-Novorossiysk pipeline, Baku-Tbilisi-Ceyhan pipeline, South-Caucasian pipeline and Sangachal terminal (together referred to as "Projects") which falls within the scope of paragraphs 1, 8, 15 and 16 of that Appendix, has breached a number of provisions of the Convention (namely Articles 2 (4) and 3 (1) and para. 5(b) of the Decision II/2 on Review Compliance of the Convention (as adopted by the Meeting of the Parties to the Convention, 3rd meeting, 1-4 June 2004, Cavtat (Croatia)).

We believe that the allegations set out in the Submission are not based on valid substantive and legal procedural grounds as provided in the relevant provisions of the Convention and the recognized principles of international law and for that reasons the Submission shall be dismissed.

We believe that Armenia has not been an affected party under the definition of the Convention in connection with the implementation of the Projects in the Caspian Sea by taking into accounts, including but not limited to, geographical, technical and legal considerations required under the Convention and therefore, Azerbaijan was not obliged under the Convention to notify Armenia about the Projects and involve Armenia in preparation of the relevant environmental impact assessments.

I. Non-Retroactive Legal Effect of the Convention

1. We believe that the allegations in the Submission are not valid, *inter alia*, by the non-retroactive legal force of the Convention in relation to Azerbaijan. Pursuant to Article 18 of the Convention "for each State or organization...which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession". Pursuant to the records of status of ratification of the Convention, Armenia has ratified the Convention on 21 February 1997 and Azerbaijan has ratified the Convention on 19 February March 1999. Henceforce, under Article 18 of the Convention and the date of the legal force of the Convention by Azerbaijan as of 25 March 1999, the below mentioned-projects pre-dates the effective date of the Convention in relation to Azerbaijan and therefore, Azerbaijan did not have any obligation to notify Armenia or other Parties to the Convention about such projects including conducting of environmental impact assessments.
2. We would like to bring to your attention that the major oil and gas projects of Azerbaijan which the Submission refer to were signed and conducted prior to the date both Armenia and Azerbaijan has acceded to the Convention and such activities did not qualify within the scope of the Convention and the conducting of the EIAs related thereto, namely:
 - (i) The production-sharing agreement on exploration, development and production of Azeri-Chirag-Deepwater Guneshli oil field between SOCAR, BP, Unocal, Lukoil,

- Statoil, ExxonMobil, TPAO, Devon Energy, Itochu and Amerada Hess was signed on September 20, 1994 and ratified by the Parliament of Azerbaijan on December 1994 (the "ACG PSA");
- (ii) The production-sharing agreement on exploration, development and production of **Shah Deniz** gas field between SOCAR, BP (operator), Statoil, LukAgip, TotalFinaElf, OIEC of Iran and TPAO was signed on June 4, 1996 and ratified by the Parliament of Azerbaijan on October 17, 1996 (the "Shah-Deniz PSA");
 - (iii) A contract on the transportation of Azerbaijani oil via Russia to the Black Sea port of Novorossiysk was signed on 18 February 1996. The trilateral contract for **Novorossiysk pipeline** was concluded between the Azerbaijan International Operating Company, SOCAR and Transneft. The oil transportation through the pipeline started on 25 October 1997;
 - (iv) The **Sangachal terminal** is not a separate project as such, it is envisioned under the the ACG PSA. The construction of the Sangachal terminal began in 1996 in relation to Early Oil Project under the ACG PSA which foresaw construction of pipelines, including but not limited, to Novorossiysk. Oil was first exported from the Sangachal terminal in October 1997.
3. Subject to the foregoing, we believe that the effective date (25 March 1999) of the Convention in relation to Azerbaijan invalidates the Submission's allegation in respect of breach of a number of provisions of the Convention by Azerbaijan.

II. Armenia was not an affected Party under the Convention

4. The Submission alleges that "Armenia is considered an affected party under the provisions of the Convention", however, the Submission fails to substantiate and prove an alleged significant impact of the implementation of the Projects on Armenia and Armenia have not indicated its willingness and failed to inform Azerbaijan that it would be affected by a significant adverse transboundary impact in connection with the Projects under the relevant terms and conditions of the Convention.
5. We believe that a Party claiming to be an affected party under the definition of the Convention should prove beyond reasonable doubt and provide reasonable justification to the party of origin that it will reasonably be affected by potential significant impact of the activities listed in the Appendix 1 of the Convention. This assertion derived from the general principle of law, as well as from the purposes of the Convention. Therefore, we would like to reiterate that "likely transboundary impact" of a proposed activity should be proven by an allegedly affected Party with the higher standard of "beyond reasonable doubt" supported by all internationally recognized relevant documentations and data rather than statement of speculative assumptions. Hence, we believe that there should be a heavy burden of proof on a Party claiming to be an affected Party under the Convention. Otherwise, the Convention may be interpreted by some countries in bad faith, which would establish undesirable precedent. As a result, major development projects within the meaning of Appendix 1, may be potentially hindered and the purpose and objectives of the Convention would be defeated.
6. We believe that the allegations in the Submission in relation to alleged qualification of Armenia as an affected Party, *inter alia*, fails to pass any test of reasonableness under Articles 1 (iii), 2.4 and 3 of the Convention. Subject to the foregoing, Armenia in its Submission failed to show and prove beyond reasonable doubt: (i) to what extent Armenia, *without being a littoral state in the Caspian Sea*, was significantly affected by transboundary

effect of offshore oil and gas development projects in the Caspian Sea conducted by international consortia (namely, ACG PSA, Shah Deniz PSA); (ii) under what reasonable conditions (including but not limited to geographical, technical and legal) Armenia can be qualified as an affected Party by virtue of construction of Novorossiysk pipeline and Sangachal project, Baku-Tbilisi-Ceyhan and Baku-Tbilisi-Erzurum gas pipelines.

7. Moreover, if Armenia considered itself, as alleged in the Submission, that it would be affected by a significant adverse transboundary impact as a result of implementation of the Projects, even if it was not served a notification by Azerbaijan regarding the Projects, as an allegedly affected party it could have requested Azerbaijan during the implementation of the Projects and preparation of environmental impact assessments and the Parties exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact as required under the Convention. Pursuant to Article 3.7 of the Convention, when a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in Appendix I and when no notification has taken place in accordance with paragraph 1 of this Article, the concerned Parties shall, *at the request of the affected Party*, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact.
8. However, in light of Article 3.7 of the Convention, Armenia failed to make such request to Azerbaijan during the implementation of the Projects and preparation of environmental impact assessments and Armenia's current allegations, after the completion and full-functionality of the Project and environmental impact assessments relating thereto, are not consistent with the requirements of the Convention, namely Article 3.7 of the Convention and good faith approach.
9. The failure of Armenia, allegedly an affected party, to request Azerbaijan under the Convention or otherwise during the implementation of the Projects and conducting of environmental and socio-economic impact assessments in relation to thereto coupled with the position of Azerbaijan as to the non-recognition of Armenia as an affected Party under the Convention, constitutes an acknowledgement and recognition by Armenia on the non-existence of transboundary effect of the Projects on Armenia under the general principles of international law, namely, including but not limited to, the principles of *estoppel/acquiescence*. Accordingly, subject to the foregoing, Armenia cannot invoke the allegations as set out in the Submission to wrongly claim breach of a number of provisions of the Convention after the completion of the Projects.
10. In addition to the above-mentioned points, we believe that Armenia cannot reasonably be considered as an affected Party under the requirements of the Convention since no environmental impact assessments conducted by internationally reputable environmental companies in consistence with internationally recognized environmental standards in connection with the below-mentioned Projects identified significant transboundary environmental impact on Armenia:

Novorossiysk Oil pipeline

11. Baku-Novorossiysk pipeline— North Route Export Pipeline (NREP), as a part of the same Early Oil Project was reconstructed for oil transportation from Chirag oil field to Novorossiysk. This pipeline was already operated in soviet period and was reconstructed later. Therefore, the decision on this pipeline restoration was also made before Espoo

Convention ratification in 1996. It lies along the Caspian seashore and in no way affects Armenia.

Azeri-Chirag-Guneshli and Shah Deniz projects

12. "The contract between the Government of the Republic of Azerbaijan and international oil consortium, operator of which is BP Company, on exploration and development of Azeri-Chirag-Guneshli oil field" was ratified in 1994. The corresponding agreement on development of Shah Deniz gas field was signed and ratified in 1996.
13. Notwithstanding the fact that the ACG and Shah-Deniz PSA were signed and the implementation of these projects were conducted and completed before the entering into force of the Convention in relation to Azerbaijan, we would like to bring to your attention that there were conducted extensive environmental and social impact assessments (including Environmental and Social Action Plan, Public Consultation and Disclosure Plan, Monitoring and Reporting) related to ACG PSA (Phase 1, 22 and 33) and the Shah-Deniz gas field (Phase 14 and Phase 25) by internationally recognized companies. It should be reiterated that the ACG and Shah-Deniz environmental and socio-economic impact assessment reports respectively did not identify any transboundary effects of the oil and gas development projects in relation to Armenia.
14. The hydrocarbons fields mentioned by Armenian side - Azeri-Chirag-Guneshli (ACG) and Shah Deniz are located in the Caspian Sea at a very long distance away from seashore. Armenia has not an access to the sea and located hundreds kilometers away from it and therefore, can not be an affected party in these projects.
15. The Sangachal terminal is 55 km to the south from Baku on the Caspian shore that is no way to be considered a transboundary object. Besides, the decision on the terminal construction as a part of Early Oil Project was also made in 1996.

Baku-Tbilisi-Ceyhan Pipeline

Two other pipelines - Baku-Tbilisi-Ceyhan (BTC) and South-Caucasian pipeline (SCP) lie in one corridor from Baku to the north-west of the country up to the border with Georgia.

16. The Baku-Tbilisi-Ceyhan pipeline was designed, built and operated in accordance with BP's corporate environmental requirements, policies and management systems and the relevant host-government agreements.⁶ On 11 June 2003, the International Finance Corporation and the EBRD approved the BTC's Environmental Impact Assessment for Azerbaijan, Georgian and Turkish sections of the pipeline, carried out by several consultancy companies, including Environmental Resources Management (ERM), for BTC Co, and released them for a 120-day period of public consultation.

¹ ACG Environmental Impact Assessment Phase 1

<http://www.bp.com/genericarticle.do?categoryId=9006658&contentId=7013335>

² ACG Environmental Impact Assessment Phase 2

<http://www.bp.com/genericarticle.do?categoryId=9006659&contentId=7013347>

³ ACG Environmental Impact Assessment Phase 3

<http://www.bp.com/genericarticle.do?categoryId=9006660&contentId=7013409>

⁴ Shah Deniz Environmental and Socio-Economic Impact Assessment Report for Stage 1, August 2002

<http://www.bp.com/genericarticle.do?categoryId=9006662&contentId=7014175>

⁵ Shah Deniz Environmental and Socio-Economic Impact Assessment Report for Stage 2 (Infrastructure Project), 2011, <http://www.bp.com/sectiongenericarticle.do?categoryId=9039185&contentId=7071810>

⁶ Baku-Tbilisi-Ceyhan Environment Impact Assessment Azerbaijan Section December 2002;

http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BTC_English_ESIAs_Azerbaijan_Content_Technical_Appendix_BTC_ESIA_Tech_A-cial_Issues.pdf

17. The closest to Armenia pipeline sections lie at the height 300m above sea level when at the border with Armenia this indicator makes 619 m above sea level. The smallest distance from the pipelines to the Armenian border makes 15 km. Thus, even in case of biggest hypothetical accident, when maximum volume of oil will be released, it will flow to the opposite to Armenia plain area of Azerbaijan. According to the Oil spills prevention and response plan developed for this pipeline and agreed by the Ministry of Ecology and Natural Resources in 2005 maximum volume of oil spill in worst case scenario could make from 2600m³ up to 11000m³ and in average 4000m³. This amount of oil in no way can spread over 15 km (the minimum distance to the border with Armenia) and rise up to 300m.
18. The BTC Environmental Impact Assessment has not identified any transboundary effects of the construction and operation of the pipeline in relation to Armenia.

Baku-Tbilisi-Erzurum Gas Pipeline (South Caspian Pipeline)

19. The South Caspian Pipeline ("SCP") Project was designed, built and operated in a manner intended to conform with a number of legislative and regulatory requirements and other environmental guidelines and policies, the main categories of which are set forth below:⁷
- National legislation (including the Intergovernmental Agreement and Host Government Agreement – the IGA and HGA, respectively – which form a prevailing legal regime under domestic law in Azerbaijan);
 - International Finance Institution (IFI) Policies;
 - International treaties which the Republic of Azerbaijan is a party;
 - BP Corporate Policies.
20. The South Caspian Pipeline Environmental Impact Assessment has not identified any transboundary effects of the construction and operation of the pipeline in relation to Armenia.⁸
21. Pipelines project has several levels of protection – from design development and quality of pipes up to fibre-optical system of trouble and leaks detection. Emergency response plan considers all accidents scenarios depending on accident level up to season of year, weather conditions and place of spill. There are 2 oil spill response basis along pipelines on the territory of Azerbaijan which have all necessary equipment. The most vulnerable sections of pipelines equipped with concrete cover. Besides all mentioned measures constant and independent patrol is arranged along pipeline corridor by state security services and operators of project for accidents prevention. International Environmental standards were applied to all mentioned by Armenian side projects in particular standards of World Bank and the International Finance Corporation for environmental and social impact assessment (ESIA) documents preparation. Every ESIA document related to development, exploration, operation, storage and transportation of oil and gas includes section of possible transboundary effect of each project after 1999.

⁷ South Caspian Pipeline Environmental and Social Impact Assessment for Azerbaijan, 2002, Part 6 (Legislation and Policy Framework) <http://subsites.bp.com/caspian/CAU/Eng/esia1/Sumnt/chp06.PDF>

⁸ South Caspian Pipeline Environmental and Social Impact Assessment for Azerbaijan, 2002, <http://www.bp.com/genericarticle.do?categoryId=9006634&contentId=7013340>

22. Environmental and social impact assessment for these projects and monitoring program (post project analysis) were developed and implemented by leading international companies such as Woodward Clyde International (UK branch), Dames & Moore, Det Norske Veritas (Norway), RSK (UK), AETC - Azerbaijan branch of RSK (UK) and others which have good reputation and work experience in oil and gas industry all over the world.

23. National procedure of EIA was applied to each above-mentioned project. All these EIA projects include information presented in the Appendix 2 of the Convention and developed in accordance to the requirements of the International Finance Corporation (IFC) and their compliance to environmental safety is confirmed by environmental audit of mentioned objects yearly. The program of impact assessment of these projects included mandatory consultations with public and environmental NGOs. Public awareness began at earliest stage of projects development. Initial version of EIA was presented to public 60 days before official presentation of the document to official interested parties. The information about public hearing of pipelines case was placed in press in Azerbaijan, Russian and English. Several meetings of public with the authors of projects were arranged at this stage and also symposiums were held.

The public was informed about planned hearings by mass media, posters along pipelines route, public hearings were held in the regions of Azerbaijan. The deadline for comments and proposals submission for each project was 60 days after EIA documentation placing on BP website, central libraries, universities, settlements administrations, and in the BP office. Booklets with non-technical resume of projects were prepared and distributed among public.

Pipelines construction projects were financed by major financial organizations such as World Bank (WB) and European Bank of Reconstruction and Development (EBRD). ESIA documentation was reviewed by experts of these organizations and they have not identified any transboundary effect on Armenia and granted finance for projects implementation.

At the same time, transboundary effect was also assessed in ESIA documentation of Baku-Tbilisi-Ceyhan oil pipeline (BTC) and South-Caucasian gas pipeline (SCP). Designers of these projects, international financial organizations and the Ministry of Ecology and Natural resources of Azerbaijan did not identify "a transboundary effect" on Armenian side in the impact assessment documentation.

Thus, all the above-mentioned facts and details prove that the allegations set out in the submission of the Republic of Armenia are groundless and therefore, the Republic of Azerbaijan has no any obligations with respect to Armenia.

24. Furthermore, as additional information it should be mentioned that the expertise is carried out by the specialists of the State Expertise Department of the Ministry of Ecology and Natural Resources with participation of supernumerary experts (scientist of academic institutions and specialist in narrow fields which have good reputation, representatives of environmental NGOs). Specialist of wide profile were enlisted for these projects-ecologists, zoologists, botanists, geologists, geographers, hydrogeologists, chemists, geophysicists, soil scientists, risk assessment experts, sociologists and etc.

Work on significant projects (appendix 1 of Espoo Convention) begins from scope of work definition which agrees with the Ministry of Ecology and Natural Resources. Then public hearings are held and draft version of EIA document is submitted to the expertise. After the expiry of time (minimum 3 months) the Conclusions of the State Expertise is sent to initiator of project for elimination of defects and making necessary corrections.

After certain period of time corrected version of EIA is returned to the Ministry of Ecology and repeatedly reviewed by experts and could be returned for revision again if it is necessary. In case of need meetings and consultations are held with initiators of project.

Initiators of projects hold public hearings for projects.

EIA documentation requires the following:

- description of baseline environment condition
- technology and target of the project
- alternatives to the proposed project
- possible impacts of unusual and unforeseen situations
- concrete measures to reduce impact in routine and emergency situations
- risk assessment
- methods of impacts definition and measures to reduce impacts
- short term and long term (if necessary) environment monitoring program
- non technical resume only for major projects
- public hearing protocol
- after 1999-description of possible transboundary effect

Post project monitoring is carried out after project implementation according to agreement with project initiator. Besides daily departmental monitoring is carried out for above mentioned projects and results are submitted to the Ministry of Ecology and Natural Resources.

The result of EIA documentation consideration is Conclusion of the state environmental expertise which could be positive, and then project implementation is possible, or negative. In case of negative conclusion the initiator of the project is required to make necessary correction or give more precise definitions in EIA project afterwards it could submitted again to the expertise.

Positive conclusion of the State Expertise gives the right for project implementation but it could contain obligatory conditions for permission. The Ministry of Ecology and Natural Resources takes the control of these conditions implementation.