



Economic and Social Council

Distr.: General
1 November 2013

Original: English

Economic Commission for Europe

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

Implementation Committee

Twenty-eighth session
Geneva, 10–12 September 2013

Report of the Implementation Committee on its twenty-eighth session

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I. Introduction

1. The twenty-eighth 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 10 to 12 September 2013 in Geneva, Switzerland.

A. Attendance

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

B. Organizational matters

3. The Chair of the Committee, Ms. Kolar-Planinšič, opened the session. The Committee adopted its agenda (ECE/MP.EIA/IC/2013/3).

4. The Committee stressed again the obligation of all members to participate at its sessions and that, if in exceptional cases a member were unable to participate, the respective Party should make every effort to provide a suitable replacement for that session, informing the Chair and the secretariat accordingly well in advance.

II. Submissions

5. Discussions concerning submissions were not open to observers, according to rule 17, paragraph 1, of the Committee's operating rules (ECE/MP.EIA/10, annex IV). The member of the Committee representing Azerbaijan was not present.

6. The Committee continued its consideration of the submission by Armenia (EIA/IC/S/5),¹ received on 31 August 2011, expressing concerns about compliance by Azerbaijan with its obligations under the Convention regarding six named gas and oil projects. The Committee finalized its findings and recommendations further to the submission (annex), taking into account the information brought to its attention before, during and after the hearing of the two Parties held at the Committee's twenty-sixth session, in November 2012.

7. The Committee requested the secretariat to inform the two Parties accordingly. The secretariat was also requested to provide the findings and recommendations to the concerned Parties, once issued as an official document, and to subsequently transmit them for consideration by the Meeting of the Parties to the Convention (MOP) at its sixth session (MOP-6), scheduled to take place in Kyiv from 2 to 5 June 2014. The related documents and information (as specified in operating rule 16) should also be posted on the Convention website.

¹ Information on submissions to the Committee is available from http://www.unece.org/env/eia/implementation/implementation_committee_matters.html.

III. Follow-up to decision V/4

8. Discussions concerning follow-up to decision V/4 of the Meeting of the Parties to the Convention were not open to observers, according to rule 17, paragraph 1, of the Committee's operating rules.

A. Ukraine

9. The Committee considered the report submitted by the Government of Ukraine on 31 December 2012 and the additional information it provided on 26 August 2013 on the steps taken to bring about compliance with its obligations under the Convention, as requested by the MOP at its fifth session (MOP-5) (Geneva, 20–23 June 2011) (ECE/MP.EIA/15, decision V/4, para. 24).

10. The Committee welcomed the report and noted that it presented the situation in a systematic and comprehensive way. It was pleased to learn about the steps taken by Ukraine to initiate negotiations with the aim of concluding a bilateral agreement with Romania and to monitor the situation in the Danube Delta. The Committee, however, expressed concern at the lack of progress in relation to the implementation of the strategy of the Government to implement the Convention (as requested in decision IV/2, para. 12 (see ECE/MP.EIA/2008/4); see also decision V/4, para. 21), in particular in relation to the adoption of concrete legislative measures to that effect. It also observed that, although Ukraine had agreed on adequate steps to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, through the conclusions of the established intergovernmental coordinating council, it had provided no information to the Committee on whether the implementation of those steps had started.

11. The Committee agreed on the preparation of its report for MOP-6 on its evaluation of the steps taken by the Government of Ukraine, as requested by MOP-5. It acknowledged that it needed sufficient time to thoroughly assess the situation and to prepare recommendations for further steps to be taken by Ukraine. The Committee asked the Chair to write to the Government of Ukraine to remind it of its obligation to report to the Committee and to invite it to send the report by no later than 25 November 2013. That would allow the curator, with the assistance of interested Committee members, time to prepare elements for a draft report, including the recommendations, by 2 December 2013, for consideration by the Committee at its twenty-ninth session (Geneva, 10–12 December 2013). The Committee stressed that in preparing its final report and recommendations to the Meeting of the Parties it would only consider the information provided by 25 November 2013 and any additions to it, if necessary, by no later than 31 December 2013.

B. Romania

12. The Committee recalled that MOP-5 had urged the Governments of Romania and Ukraine to accelerate negotiations to cooperate in the preparation of a bilateral agreement or other arrangement in order to support further the provisions of the Convention, as set out in article 8 of the Convention (decisions V/4, para. 30); and had invited them in this context to consider extending the list of activities subject to the Convention in relation to the protection of the Danube Delta and to introduce provisions on management and monitoring. The Committee asked the Chair to write to the Government of Romania to request detailed information by 18 November 2013 on how Romania had implemented the decision V/4. The Committee agreed that it would prepare its report to the next session of the MOP on the basis of that information.

C. Armenia

13. The Committee also recalled that MOP-5 had welcomed the preparation by the Government of Armenia, with the assistance of the Implementation Committee and the Convention secretariat, of draft revised legislation for the implementation of the Convention in accordance with the Committee's findings (see decisions V/4, para. 27); and had requested Armenia to adopt the draft legislation. The Committee asked the Chair to write to the Government of Armenia to request detailed information by 18 November 2013 on how it had implemented decision V/4. The Committee agreed that it would prepare its report for the next session of the MOP on the basis of that information.

IV. Committee initiative

A. Azerbaijan

14. In regard to Committee initiative EIA/IC/CI/2,² the Committee considered the written and oral reports by the Committee member nominated by Azerbaijan regarding that country's progress in implementing recommendations by an international consultant to the secretariat to further strengthen Azerbaijan's capacity to comply fully with its Convention obligations. It also noted the text of the draft law on environmental impact assessment (EIA) provided by Azerbaijan in English and Azerbaijani on 4 September 2013. The Committee was informed that the draft law was currently undergoing interministerial consultations for its further improvement, and was expected to be adopted by the parliament next year. The law would constitute a framework law on environmental assessment, covering both EIA and strategic environmental assessment (SEA), and would be later complemented by more detailed implementing regulations of the Cabinet of Ministers in line with the Convention.

15. The Committee welcomed the information provided and agreed to review the progress at its next meeting. It requested the Committee member nominated by Azerbaijan to report on the steps taken for the adoption of the draft EIA law in advance of that meeting.

B. Ukraine

16. Further to its twenty-seventh session (Geneva, 12–14 March 2013), the Committee considered its initiative on Ukraine regarding the planned extension of the lifetime of two reactors at the Rivne nuclear power plant (NPP) in Ukraine, close to the border with Belarus and Poland (EIA/IC/CI/4).

17. The Committee considered the reply from the Government of Ukraine of 11 June 2013 to the Committee's letter of 25 March 2013 and the additional information received on 26 August 2013. The Committee welcomed the delegation of Ukraine and invited it to present information and opinions on the matter. The Committee then questioned the delegation on the basis of a list of questions, which it had finalized prior to the hearing.

18. The Committee agreed to consider the matter further and to prepare its draft findings and recommendations at its next session on the basis of the information made available to it. To that end, the Committee invited the Chair to write to the Government of Ukraine to

² Information on Committee initiatives is available from <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/committee-initiative.htm>.

provide it with the Committee's questions and to request that it submit its responses to them also in writing by 15 October 2013. In addition, Ukraine should be invited to provide the Committee with the following further information:

- (a) The chronology and exact dates of the main events relating to units 1 and 2 of the Rivne NPP since its construction in the 1980's, including the dates for all the safety checks, environmental permits and the renewal of the licence;
- (b) An English translation of the relevant legal provisions of Ukraine for:
 - (i) The issuance of a licence for the construction of a new NPP;
 - (ii) The renewal of such a licence, such as in the case of the extension of the lifetime of an NPP;
- (c) An English translation of the respective legislative provisions for issuing the original licence in the 1980's and for determining the lifetime of 30 years for units 1 and 2 of the Rivne NPP, and the possible conditions for the extension of that lifetime;
- (d) A copy of the original licence and an English translation of the licence;
- (e) Evidence that the EIA documentation prepared for unit 4 in 1998 had addressed the cumulative impacts from all four units of the NPP.

19. The curator was invited take the further information requested into account, once provided, and to prepare a draft document with findings and recommendations with the assistance of the secretariat by 19 November 2013.

V. Review of implementation

A. Draft reviews of implementation of the Convention and the Protocol

20. The secretariat informed the Committee that it had prepared the draft fourth review of implementation of the Convention (ECE/MP.EIA/WG.2/2013/8) and the draft first review of implementation of the Protocol (ECE/MP.EIA/WG.2/2013/9) for consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its third meeting (Geneva, 11–15 November 2013) and for their subsequent submission to the next sessions of the MOP and the MOP serving as the Meeting of the Parties to the Protocol (MOP/MOP). The draft reviews were based on the completed questionnaires by Parties.

21. The Committee took note of the information, including that not all Parties had reported. The Committee noted that, upon the adoption of the reviews, it would be invited by the MOP and the MOP/MOP to consider possible general and specific compliance issues arising from them. It observed that, unlike in the past, it would be useful in the future if the Committee could also consider the draft reviews before their adoption. It proposed that that be reflected in the workplan for the next intersessional period setting the time schedule for the next reporting round and for the subsequent preparation of the reviews.

B. Specific compliance issues from the Third Review

22. The Committee continued its examination of the pending specific compliance issue regarding Portugal that had emerged from the Third Review of Implementation (EIA/IC/SCI/3/2).³ It was concerned that it had not received the information from the Government of Portugal requested in the Committee's letter of 13 May 2013, despite repeated reminders from the secretariat.

23. The Committee asked the Chair to write to the minister responsible for environmental matters in Portugal, drawing attention to the difficulty the Committee was having in obtaining the clarifications it had been requesting from the Government for two years now, and inviting the Government to submit the requested information as soon as possible but by no later than 31 October 2013. Considering the important role of National Focal Points in facilitating contacts and ensuring the systematic exchange of information on matters relevant to the Convention and the Protocol on SEA, the Government of Portugal should be invited to confirm or possibly review its nomination of its contact point for fulfilling those functions and to inform the secretariat accordingly.

VI. Information gathering

A. Romania

24. Further to its twenty-seventh session, the Committee continued to consider the information it had gathered on the planned construction of a radioactive waste repository in Romania, close to the border with Bulgaria, further to information provided by a Romanian non-governmental organization (NGO) (EIA/IC/INFO/8).⁴ The Committee considered a reply from the Government of Romania received on 20 May 2013 in response to its letter of 25 March 2013 regarding the assessment of locational alternatives and the extent to which they would be subject to the EIA and SEA procedures in line with the Convention and its Protocol. The member nominated by Romania was not present in accordance with rule 17 of the Committee's operating rules.

25. The Committee welcomed the timely information provided by the Government of Romania and agreed that the response was sufficient at present. In the light of the information that Romania had no pending environmental assessment procedures regarding the proposed nuclear waste repository, and that the partial location authorization of the repository had been cancelled by a court decision, the Committee decided that there was no need to further pursue its information gathering regarding the issue.

26. The Committee asked the Chair to write to the Government of Romania to inform it accordingly, with a copy to the Romanian NGO. The Chair should also request agreement that the correspondence between the Committee and Romania be placed on the Convention's website, as an illustration of the Committee's approach to information gathering and of a proper and sufficient response from a Party to address the issue.

³ Information on specific compliance issues is available from http://www.unece.org/env/eia/implementation/implementation_committee_letters.html.

⁴ Details on information gathered by the Committee from other sources is available from <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/information-from-other-sources.html>.

B. Lithuania

27. Further to its twenty-seventh session, the Committee continued its consideration of the information it had gathered on the planned construction of the Visaginas NPP in Lithuania, close to the border with Belarus, further to the information provided by a Belarusian NGO (EIA/IC/INFO/9). The Committee reviewed the clarifications from the Government of Lithuania of 13 May 2013 in response to the Committee's letter of 22 March 2013, and those received from the NGO on 7 June 2013 in response to the Committee's letter of 25 March 2013.

28. The Committee agreed that it would continue its consideration of the matter at its next meeting and asked the Chair to write to the Governments of Lithuania and of Belarus, with a copy to the Belarusian NGO, to request for the following further clarifications and information in English by 20 November 2013:

(a) Questions for Lithuania:

(i) How had Lithuania provided the public of Belarus an opportunity to participate in the EIA procedure, in compliance with article 2, paragraph 6, of the Convention?;

(ii) How had Lithuania ensured that the opportunity to participate provided to the public of Belarus was equivalent to that provided to the public of Lithuania?;

(iii) Had Lithuania participated in the public hearing in Breslaw, Belarus, on 14 October 2008? If so, Lithuania should provide details of its participation;

(iv) Had the public from Belarus participated in the public hearing in Lithuania, on 22 December 2008? When had Lithuania sent the report of that public hearing to Belarus?;

(v) Lithuania had informed the Committee that the final decision for the Visaginas NPP of 21 April 2009 had been the decision on the feasibility of the construction. According to which legislative provisions was the Ministry of Environment the competent authority to decide on the proposed activity? Had the Government or the parliament taken another decision after the decision on the feasibility of the construction? Could Lithuania explain why the seismic evaluation had been performed after the final decision?;

(vi) Could Lithuania provide updated information regarding the activities of the special working group established by the Lithuanian Government and the political decision on the planned construction of the new Visaginas NPP?;

(b) Questions for Belarus:

(i) When had Belarus indicated it wished to participate in the transboundary EIA procedure for the planned construction of the Visaginas NPP?;

(ii) How had Belarus ensured that its public was informed of and could participate in the EIA procedure?;

(iii) Had there been public hearings concerning the project in Belarus? If yes, when and where had those been held? How and by what means had the Belarusian public, including NGOs, been informed?;

(iv) Had Belarus been informed of the public hearings in Lithuania about the Visaginas NPP project, and if yes, when and how? Had Belarus participated in those hearings? How had the Government of Belarus informed its own public about the hearings in Lithuania?;

- (v) When had the Government of Belarus received the final decision from Lithuania on the proposed activity, including the reasons and considerations upon which it had been based?

C. Ukraine

29. Further to its twenty-seventh session, the Committee continued its consideration of the information it had gathered further to the information provided by a Belarusian NGO regarding the planned construction of nuclear reactors 3 and 4 at the Khmelnytskyi NPP in Ukraine, close to the border with Belarus (EIA/IC/INFO/10). The Committee considered a reply from the Government of Ukraine, received on 11 June 2013 in response to its letter (of 25 March 2013), and the additional information provided by Ukraine on 26 August 2013.

30. The Committee asked the Chair to write to the Government of Ukraine, to request it to provide by 18 November 2013:

(a) Clarification on the national legislation and the decision-making procedure regarding the location, design and construction of NPPs;

(b) An English translation of the national legal provision requiring the Government of Ukraine to take into account the outcomes of the transboundary EIA procedures, including consultations and public participation. Ukraine should clarify whether it was legally possible for it to change an existing decision regarding the site, design and/or construction of a plant based on the transboundary procedures;

(c) The full account of the transboundary EIA proceedings with respect to the planned construction of reactors 3 and 4 of the Khmelnytskyi NPP with each of the potentially affected countries that it had notified, in particular with regard to consultations and public participation;

(d) Clarification on how the adverse transboundary environmental impact had been assessed and the potentially affected Parties determined.

31. The Committee asked that the Chair also write to the Governments of Austria, Hungary, Poland, the Republic of Moldova, Romania and Slovakia to inform them of the above, and to ask whether they considered that the legal, administrative and other measures taken by the Government of Ukraine in that particular transboundary EIA procedure had been sufficient for proper implementation of the Convention.

D. Azerbaijan

32. The Committee considered responses from the Government of Azerbaijan and the Government of Kazakhstan, received on 20 June and 4 July 2013, respectively, in response to its letters of 25 March 2013 requesting information on the likely significant adverse transboundary impacts of, and the transboundary EIA process for, two activities by Azerbaijan vis-à-vis the other Caspian Sea coastal States Parties to the Convention (EIA/IC/INFO/11). The member of the Committee representing Azerbaijan was not present.

33. The Committee asked the Chair to write to the Government of Kazakhstan, to request the following further clarifications by 18 November 2013:

(a) Did the National Plan for Oil Spill Response in the Sea and Inland Water of the Republic of Kazakhstan as approved by Government Decision No. 422 of 6 April 2012 and/or the annual national reports on the implementation of international conventions,

specifically the Espoo Convention, cover the possibility of an oil spill occurring in the south of the Caspian Sea?;

(b) Did Kazakhstan have any observations regarding the two projects that Azerbaijan had undertaken in the Caspian Sea — i.e., the project on the joint development and production sharing for the Azeri and Chirag oil and gas fields and the deep water portion of the Gunashli oil and gas field in the Azerbaijan sector of the Caspian Sea, including the Sangachal terminal (ACG project); and the project on the Exploration, Development and Production Sharing for the Shah Deniz Prospective Area in the Azerbaijan Sector of the Caspian Sea, including the expansion of the Sangachal terminal (Shah Deniz project) — and in particular, did Kazakhstan consider there might have been significant transboundary environmental impacts from those projects on its territory?

34. The Committee asked that the Chair also write to the secretariat to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Teheran Convention) to enquire about any possible information it might have on the likelihood of significant adverse transboundary environmental impacts of offshore oil and gas projects undertaken in the south of the Caspian Sea on the territory of Kazakhstan.

E. United Kingdom of Great Britain and Northern Ireland

35. The Committee considered the information received on 12 March 2013 and on 10 July 2013 from a member of the German parliament representing the Green Party expressing concerns regarding the planned construction of the Hinkley Point C NPP by the United Kingdom of Great Britain and Northern Ireland, and noting that the German Government had not been notified and the German public had not been consulted on the planned activity (EIA/IC/INFO/12). Information on the same subject had also been submitted by an Irish NGO on 27 March 2013.

36. The Committee held preliminary discussions on the matter and invited the curator to prepare questions to be put to the concerned Governments within a week. It agreed that the United Kingdom should be invited to clarify, inter alia: whether the Government had notified any potentially affected Parties; if so, which ones; in what form the notification had been made; whether they had used the format for notification provided in MOP decision I/4; and what had been the response received, if any.

37. The Chair should also write to the Governments of Germany and Ireland to clarify whether they had been informed by the United Kingdom about the planned activity, whether they had received a formal notification and whether and how they had responded to it. The two Governments should also be invited to provide the Committee with a copy of their responses to the notification.

38. The information should be requested by 18 November 2013 for analysis by the curator and for consideration by the Committee in December 2013.

VII. Structure, functions and operating rules

39. Further to the MOP request in decision V/4 that the Committee keep under review its structure, functions and operating rules and, if necessary, develop them, including by providing recommendations on the imposition of sanctions for non-compliance, and further to the Committee's agreement that some issues be further developed (ECE/MP.EIA/IC/2013/2, paras. 35–38), the Committee held initial discussions on the matter. Committee members were invited to comment a draft document with proposals from the curators, Ms. Hernando and Mr. Zaharia, by 30 September 2013.

VIII. Preparations for the next sessions of the Meetings of the Parties

40. The Chair reported on the outcome of the second meeting of the Working Group on EIA and SEA (Geneva, 27–30 May 2013). The Committee was informed that the third meeting of the Working Group was scheduled to take place in Geneva, from 11 to 15 November 2013 to finalize the draft decisions for MOP-6 and the MOP/MOP at its second session, which was scheduled to be held back to back with the sixth session of the MOP, in Kyiv, from 2 to 5 June 2014. The Working Group would also be informed on the draft decision on the review of compliance with the Convention and the Protocol to be prepared by the Implementation Committee.

41. The Committee discussed the elements for the draft decisions on the review of compliance with the Convention and the Protocol, to be submitted for information to the Working Group. It invited the secretariat to review the draft document prior to providing it for information to the Working Group. It agreed to further develop the draft decisions and to prepare its draft report on the activities of the Committee to be submitted to MOP-6 and the MOP/MOP at its second session, as well as for subsequent sessions.

IX. Other business

42. The Committee took note of the information provided by Belarus and Lithuania, subsequent to the Committee's last session, on activities undertaken for the implementation of the Committee recommendations further to the submission by Lithuania regarding Belarus (EIA/IC/S/4). The Committee noted that its recommendations to the concerned Parties had been submitted to MOP-6 and not yet endorsed by it. The Committee recalled that in its recommendations it had proposed to request that the two Parties report by the end of each year to the Committee on the implementation of the recommendations (see ECE/MP.EIA/2013/2, annex, para. 74 (k)).

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

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

44. The Committee decided that it would next meet from 10 to 12 December 2013. The Chair then closed the twenty-eighth session.

Annex

Findings and recommendations further to a submission by Armenia regarding Azerbaijan (EIA/IC/S/5)

I. Introduction — Submission and the Committee's procedure

1. On 31 August 2011, the Government of Armenia made a submission to the Implementation Committee expressing concerns about the compliance of Azerbaijan with its obligations under the Espoo Convention with respect to six oil and gas projects, which the Deputy Minister of Ecology and Natural Resources of Azerbaijan had identified at the fifth session of the MOP in June 2011 as projects developed by Azerbaijan. The submission referred to the following projects: the Azeri-Chirag-Gyuneshli pipeline; the Shah Deniz pipeline; the Baku-Novorossiysk pipeline; the Baku-Tbilisi-Ceyhan pipeline; the South-Caucasus pipeline; and the Sangachal oil terminal (later referred to in conjunction with the Azeri-Chirag-Gyuneshli Pipeline as the ACG project) (see paras. 24 et seq. below).
2. The submission claimed that all the above-named projects were activities listed in appendix I to the Convention, under items 1, 8, 15 and 16, which were likely to cause a significant transboundary impact.
3. Armenia considers itself an affected Party under the Convention and in its submission alleged that Azerbaijan was in non-compliance with several provisions of the Convention. In its initial submission, Armenia referred specifically to breaches of article 2, paragraph 4 (general obligation for the Party of origin to ensure that affected Parties are notified of proposed activities listed in appendix I); and article 3, paragraph 1 (obligation to notify).
4. The submission also argued that Azerbaijan was in non-compliance with paragraph 5 (b) of the appendix to MOP decision III/2 (ECE/MP.EIA/6, annex II), according to which, submissions by Parties may be brought before the Committee by “a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention”.
5. On 1 September 2011, the secretariat, further to paragraph 5 (a) of the appendix to decision III/2, forwarded a copy of the submission to the National Focal Point of Azerbaijan requesting that the Government send any reply and information in support thereof to the secretariat within three months, that is, by no later than 30 November 2011.
6. The Government of Azerbaijan provided its reply to the submission on 29 November 2011. At its twenty-third session (Geneva, 5–7 December 2011), the Committee took note of the submission by Armenia and the reply from Azerbaijan.
7. At its twenty-fourth session (Geneva, 20–23 March 2012), the Committee agreed that it needed to receive additional information from the two concerned Parties by 15 June 2012. In two separate letters dated 25 April 2012, the Committee requested Armenia to provide more detailed information on the submission, including on the possible transboundary environmental impact of each of the six named projects, and asked Azerbaijan to submit all relevant information on the EIA procedure and the decision-making for each of the projects. The Committee also decided to invite the concerned Parties to its twenty-sixth session (Geneva, 26–28 November 2012), where it would continue the consideration of the submission.
8. In response to the Committee's request, Armenia provided clarifications on 15 June and Azerbaijan on 15 August 2012.

9. At its twenty-fifth meeting (Geneva, 11–13 September 2012), the Committee drafted questions to both Parties, and invited them to respond in writing, as well as to be prepared to be questioned at the Committee’s next session. Both concerned Parties submitted their replies on 9 November 2013.

10. At its twenty-sixth session, the Committee considered the submission, inviting the delegations from Armenia and Azerbaijan to describe the submission and reply, respectively. The two delegations also replied to questions posed by members of the Committee. The Committee then drafted its findings and recommendations at its twenty-sixth and twenty-seventh sessions, held in November 2012 and March 2013, respectively, taking into account the information made available to the Committee by the two Parties.

11. Before finalizing the findings and recommendations, in accordance with paragraph 9 of the appendix to decision III/2, the Committee sent the draft findings and recommendations to the two Parties, inviting their comments or representations by 31 May 2013. At its twenty-eighth session (12–14 September 2013), the Committee finalized its findings and recommendations taking into account the comments and representations from both Parties.

II. Summary of facts, information and issues

A. Summary of the information subsequent to the submission

12. In its response to the Committee of 15 June 2012, Armenia added another project, the Shah Deniz 2, to the list of projects mentioned in its initial submission (see para. 1 above). In that response, in addition to the provisions of the Convention referred to in the initial submission (see para. 3 above), Armenia further alleged that Azerbaijan was in non-compliance with article 2, paragraph 2, article 3, paragraph 8, article 5 and article 6, paragraph 1, of the Convention.

13. In its response to the Committee of 29 November 2011, Azerbaijan claimed that Armenia, because of its geographical location, could not be an affected Party under the Convention. It argued that the ACG project and the Shah Deniz project were located offshore in the Caspian Sea, to which Armenia had no direct access. Azerbaijan also argued that Armenia could not be affected by an industrial accident in connection with the other projects, such as a spill from the pipelines, because the elevation of Armenia’s territory was above those pipelines. Based on the EIA documentation, Azerbaijan also excluded the likelihood of significant transboundary atmospheric pollution, including safety concerns, triggered by an accident.

14. Moreover, according to Azerbaijan (information sent on 14 August 2012), Armenia had not proven its allegations of being an affected Party “with the higher standard of ‘beyond reasonable doubt’ supported by all internationally recognized relevant documentations and data”; and felt that a “heavy burden of proof” should be placed on a Party claiming to be an affected Party under the Convention.

15. Azerbaijan also contended that, with the exception of the South-Caucasus pipeline, the planning and subsequent decision on the implementation of the oil and gas projects mentioned by Armenia took place before the Convention had entered into force for Azerbaijan. Azerbaijan referred specifically to the production-sharing agreements concluded by the State Oil Company of the Azerbaijan Republic (SOCAR) with several major oil companies with regard to three of the projects, as well as to the contract on the transportation of Azerbaijani oil via the Russian Federation to the Black Sea port of Novorossiysk. Thus, Azerbaijan had no conventional obligation to notify Armenia, because

at the moment the final decisions had been taken, Azerbaijan had not been a Party to the Convention.

16. In its written responses of 9 November 2012 to the Committee's questions, Azerbaijan maintained that, pursuant to the legislation of Azerbaijan, the concluded production-sharing agreements were final decisions for the purposes of the Convention. According to Azerbaijan, all agreements contained "appropriate extensive provisions on further development of rules and policies in regard to the sustainable protection of environment".

17. During the hearing at the Committee's twenty-sixth session, Azerbaijan presented the EIA procedure that it had conducted in conformity with its national legislation (1999 Law on the Protection of the Environment) and the international conventions to which it was a Party, especially the Espoo Convention and the Teheran Convention, the latter providing for the obligation of Contracting Parties to introduce and apply EIA to any planned activity likely to cause significant adverse impact on the marine environment of the Caspian Sea (art. 17). The developer had submitted the EIA documentation of the activities at issue to the Ministry of Ecology and Natural Resources, which had then reviewed and commented the documentation, and requested its resubmission after the comments had been taken into account. The revised documentation had then be resubmitted and subsequently approved by the Ministry, in line with the State ecological expertise system.⁵

18. According to Azerbaijan, the assessment concluding that there was no likelihood of a significant adverse transboundary impact had been made by international and national consultants to the projects' developers. That assessment was confirmed by the Ministry. Based on the assessment, Azerbaijan had not notified any Party to the Convention about the projects.

19. Azerbaijan also noted that the post-project analysis of the activities was an integral part of the environmental conditions for implementing those activities. As a consequence, comprehensive EIA and monitoring activities had been conducted annually by the developers and the results had been included in reports submitted to the Ministry. None of the assessments so far had identified any transboundary effects either with respect to Armenia or any other Party to the Convention. Nevertheless, Azerbaijan expressed its willingness to transmit the monitoring reports to Armenia and provided one such report to Armenia during the hearing.

20. Finally, Azerbaijan also stressed that Armenia had not exercised its right under article 3, paragraph 7, of the Convention to request Azerbaijan to hold discussions on the likelihood of a significant adverse transboundary impact. In its view, Armenia had thus acknowledged that there were no transboundary effects of the projects on its territory.

21. Armenia explained that, although it had been aware of the projects since their planning phase, it had not realized that there could be risks of adverse transboundary

⁵ A description of the OVOS/expertiza system is provided in the draft revised general guidance on enhancing consistency between the Convention and environmental assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia to be adopted by the Meeting of the Parties to the Convention at its sixth session. Briefly, under the OVOS/expertiza system the developer has the duty to prepare the EIA and all other necessary project-related documentation, and to submit the finalized one to the relevant authorities. The authorities review the documentation to ensure that it complies with the requirements of national legislation. If the documentation does not comply, the authorities ask the developer to revise it and resubmit it. If the authorities consider that the documentation fulfils the requirements of national legislation, they endorse the documentation which then constitutes the substantial part of the final decision.

environmental impacts on its territory until the fifth session of the MOP.⁶ Armenia also mentioned that, because of the lack of diplomatic relations and direct contacts between the two Parties, it had not requested information from Azerbaijan concerning the projects nor held discussions with Azerbaijan in line with article 3, paragraph 7, on whether there was a likelihood of significant adverse transboundary environmental impact of the projects.

22. In relation to that last point, Azerbaijan stressed that, in principle, it was ready to participate in a transboundary EIA procedure.

23. Armenia also underlined that, although by the time of the Committee hearing it had not yet finalized its domestic research regarding the likelihood of a significant adverse transboundary impact of the activities implemented by Azerbaijan, based on the information available online regarding the seismic risk of the region, the possible effects on water in the region and the security concerns, it considered that the likelihood of a transboundary impact on its environment could not be excluded, and that on that basis it was an affected Party. The Committee was not provided with the results of the domestic research referred to by Armenia.

B. Specific activities

24. In its submission, and in subsequent information it provided to the Committee, Armenia referred in total to seven projects implemented by Azerbaijan, which could have a transboundary impact on the territory of Armenia (see paras. 1 and 12 above). However, further to the clarification provided by Azerbaijan during the hearing, the Committee noted that because of their complexity, Azerbaijan had decided to implement some of the projects in several development stages. Some, but not all, of those development stages had been subjected to a separate EIA procedure. Therefore, in the view of the Committee there were five projects for it to analyse: the Committee considered that the construction of the Sangachal terminal was not a separate activity, but a component of the development of the offshore oil and gas fields in the context of the ACG project; and viewed the development of the Shah Deniz offshore gas field as a single project, to date consisting of two development stages (Shah Deniz 1 and Shah Deniz 2). The projects are summarized in the following paragraphs.

1. The ACG project

25. On 20 September 1994, which is considered by Azerbaijan as the date of the final decision (but see para. 17 above, on the presentation of Azerbaijan's EIA procedure), an Agreement on the Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deep Water Portion of the Gunashli Field in the Azerbaijan Sector of the Caspian Sea (a production-sharing agreement) was signed between SOCAR and several major oil companies in order to conduct petroleum operations (exploration, appraisal, evaluation and development of crude and natural gas resources) within and with respect to the area lying in the Azerbaijan sector of the Caspian Sea, approximately 120 kilometres (km) south-east of Baku, and approximately 500 km from the border between Armenia and Azerbaijan (the ACG contract area).

26. The Agreement was ratified by the Azerbaijani parliament in December 1994. In 1996, in connection to that Agreement, and as a component of the development of the ACG

⁶ During the fifth session, the Deputy Minister of Ecology and Natural Resources of Azerbaijan acknowledged the possibility of a transboundary impact of the oil and gas projects implemented in Azerbaijan (see statements by Ministers and high-level representatives, available from the Convention website at: http://www.unece.org/env/eia/meetings/mop_5.html).

project, a decision was made to build the Sangachal terminal 55 km south from Baku, and approximately 400 km from the Azerbaijan-Armenia border. Oil exportation from the terminal began in October 1997. According to Azerbaijan, the terminal is neither a crude oil refinery under item 1, nor a major storage facility for petroleum under item 16 of appendix I to the Convention.

27. According to the information made available to the Committee, the project in question consisted of two development stages: the initial development stage (also referred to as the Early Oil Project); and the full field development project. In addition, the Committee reviewed other information on the project that was publicly available on the Internet, referring to a third development stage. The EIA documentation for that third stage of the project had been finalized in 2004. The initial development stage included the following activities: upgrade of the Chirag 1 production platform; construction and laying of sub-sea oil and gas pipelines; construction of an oil reception terminal at Sangachal; upgrade of the northern route export pipeline; construction of the western route export pipeline; and the drilling of six appraisal wells within the ACG contract area.

28. In February 2002, the EIA documentation concerning the second stage was submitted to the Ministry of Ecology and Natural Resources for the initial analysis. The documentation was resubmitted on 27 November 2002 and approved by the Ministry on 13 March 2003. The EIA concluded that the majority of environmental aspects identified would not result in significant transboundary impacts. As to potential accidental events, although it was concluded that they would result in significant impacts on the environment where they occurred, the possibility of their occurrence was considered to be remote or extremely remote.

29. According to Azerbaijan, the construction activities were initiated in 1996, and they are still ongoing.

2. The Shah Deniz project

30. On 4 June 1996, an Agreement on the Exploration, Development and Production Sharing for the Shah Deniz Prospective Area in the Azerbaijan Sector of the Caspian Sea (production-sharing agreement) was signed between SOCAR and several major oil companies in order to conduct petroleum operations (appraisal, evaluation, and development of crude oil and natural gas resources) within and with respect to the Shah Deniz gas-condensate field, in the Azerbaijan sector of the Caspian Sea, approximately 100 km south of Baku, and 500 km from the Azerbaijan-Armenia border.

31. The Agreement was ratified by the Azerbaijani parliament on 17 October 1996, which Azerbaijan considers as the date of the final decision.

32. Due to the size of the Shah Deniz field, Azerbaijan has implemented the project in stages. Stage one of the project (Shah Deniz 1) targeted approximately one third of the total potential resources of the Shah Deniz field and included the following main components: an offshore drilling and production platform; two export pipelines, one for gas and one for fluids; and an extension of the processing facilities at the Sangachal terminal. There was no final decision on stage two (Shah Deniz 2).

33. On 27 June 2002, the EIA documentation concerning Shah Deniz 1 was submitted to the Ministry of Ecology and Natural Resources for the initial analysis. The documentation was resubmitted in August 2002 and approved on 10 October 2002. The EIA did not find significant transboundary effects concerning States Parties to the Convention.

34. According to Azerbaijan, the construction activities started in 2002, and are still ongoing.

3. Baku-Novorossiysk pipeline — northern route export pipeline

35. On 18 February 1996, which Azerbaijan considered as the date of the final decision (but see para. 17), a contract for the transport of Azerbaijan's oil via the Russian Federation to the port of Novorossiysk was signed between the Azerbaijan International Operating Company, SOCAR and Transneft (the Russian partner). Accordingly, the oil would be channelled through a Soviet-era pipeline that had been refurbished to upgrade, among other things, its safety standards. Oil transportation began on 25 October 1997. The EIA documentation had been submitted to the Ministry of Ecology and Natural Resources on 26 March 1996, resubmitted on 10 July 1996 and approved in August 1996.

36. The reconstruction of the northern route export pipeline was included in the initial development stage of the ACG project (see para. 27).

4. The Baku-Tbilisi-Ceyhan pipeline

37. On 18 November 1999, an Agreement relating to the transportation of petroleum via the territories of Azerbaijan, Georgia and Turkey through the Baku-Tbilisi-Ceyhan Main Export Pipeline (Baku-Tbilisi-Ceyhan pipeline) was signed between the respective countries in order to implement a project consisting of the development, design, acquisition, construction, installation, financing, insuring, ownership, operation, repair replacement, refurbishment, maintenance, capacity expansion or extension and protection of the pipeline system for the transportation of petroleum (crude oil and natural gas) from Baku to Ceyhan.

38. Azerbaijan maintained that the final decision in relation to that project was taken on 29 October 1998, the date of the Ankara Declaration (on the Transport of Caspian and Central Asian Oil to Western Markets through an East-West Corridor) signed by the Presidents of Azerbaijan, Georgia, Kazakhstan, Turkey and Uzbekistan, and witnessed by the Secretary of Energy of the United States of America.

39. The pipeline system, 442 km of which are in Azerbaijan territory, was intended to deliver up to 1 million barrels per day of crude oil from the Sangachal terminal in Azerbaijan to a new marine terminal in Ceyhan, Turkey. The pipeline is situated in close proximity to the border with Armenia (15 km at the closest point).

40. The EIA documentation was submitted for an initial evaluation to the Ministry of Ecology and Natural Resources in May 2002, resubmitted in August 2002, and approved on 24 September 2002. The documentation was subsequently approved on 11 January 2003 by the International Finance Corporation and the European Bank for Reconstruction and Development. The EIA concluded that the transboundary environmental impact associated with the related activities was negligible.

41. The construction activities for the project, consisting mainly of a large diameter oil pipeline and pumping stations, according to Azerbaijan, started in 2004 and were finalized in 2006.

5. Baku-Tbilisi-Erzurum Gas pipeline — South-Caucasus pipeline

42. On 17 October 2000, a Host Government Agreement was concluded between the Government of Azerbaijan and several major oil companies in order to build the necessary infrastructure for the transport of gas from Sangachal terminal to the Azerbaijan/Georgia border, and further to Turkey. The project included the building of gas supply infrastructure at Sangachal terminal and approximately 442 km of gas transmission pipeline. The natural gas pipeline runs parallel to the Baku-Tbilisi-Ceyhan pipeline (para. 39 above), and therefore also lies close to the border with Armenia (15 km from the border at its closest section).

43. Azerbaijan claims that the final decision in relation to this activity was taken in early 2001, when a number of intergovernmental agreements were signed.

44. The EIA documentation was submitted for an initial evaluation to the Ministry of Ecology and Natural Resources in April 2002, resubmitted in September 2002 and approved on 30 September 2002. The EIA concluded that the overall transboundary environmental impact associated with these activities was negligible.

45. The construction activities for the project started in 2004 and were finalized in 2006.

III. Consideration and evaluation

A. General observations

46. The Committee gathered information allowing it to identify in a sufficiently precise manner all the activities to which Armenia referred, and to evaluate the application of the Convention to those activities. As the Committee had deemed that Armenia's initial submission was not supported by sufficient information for the Committee to consider it, the Committee had invited Armenia and Azerbaijan to provide precise information, both in writing and orally during the hearings.

B. Legal basis

47. In considering the case, first the Committee had established the legal basis for Armenia's submission. It then considered whether the activities in the submission were subject to appendix I to the Convention, and whether they were undertaken at the time when the Convention was in force for both Parties. The Committee also examined whether the activities could be considered as "proposed activities" in the meaning of the Convention (article 1, para. (v)), having in mind that some of them had been finished several years before the submission. Finally, the Committee analysed whether the activities could be considered as having a likely significant adverse transboundary impact on the territory of Armenia.

48. Armenia deposited its instrument of accession to the Convention on 21 February 1997 and the Convention entered into force for Armenia on 10 September 1997, that is, on the ninetieth day after the date of deposit of its instrument of accession (see Espoo Convention, art. 18, para. 3). Azerbaijan deposited its instrument of accession to the Convention on 25 March 1999 and the Convention entered into force for Azerbaijan, on 23 June 1999.

49. Paragraph 5 (a) of the appendix to decision III/2 provides that a submission may be brought before the Committee by "one or more Parties that have concerns about another Party's compliance with its obligations under that instrument. Such a submission shall relate specifically to those concerns and shall be addressed in writing by the focal point of the Party in question to the secretariat and supported by corroborating information."

50. The Committee concluded that Armenia had fulfilled the conditions mentioned in paragraph 5 (a) of the appendix to decision III/2, allowing it to initiate the submission procedure before the Committee. Armenia proved that it had concerns about the compliance of Azerbaijan under the Convention, and its submission and subsequent replies related specifically to those concerns.

51. Paragraph 5 (b) of the appendix to decision III/2 provides that a submission may be brought before the Committee by a Party “that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention”.

52. The Committee considered that the language of that provision was not mandatory, and therefore Azerbaijan did not have an obligation to bring a submission before the Committee in case it concluded that it was or would be unable to comply with the Convention.

53. The Committee referred to the articles of the Convention mentioned by Armenia and concluded that for the purposes of the present findings and recommendations, the only relevant articles were article 2, paragraph 4, article 3, paragraphs 1 and 8, article 5, and article 6, paragraph 1. The Committee noted that with respect to article 2, paragraph 2, there was a Committee initiative concerning Azerbaijan to support strengthening Azerbaijan’s capacity to comply with its obligations under the Convention (EIA/IC/CI/2).

54. As the activities had been conducted since 1994, the Committee had to establish to which of the activities the Convention should have been applied. The Committee appreciated that the relevant moment for each activity was the date of the final decision. It also reiterated its previous conclusion (ECE/MP.EIA/10, decision IV/2, annex I, para. 51) that the Convention could not be applied retroactively.

55. The Committee recalled its previous interpretation of article 6 of the Convention, according to which, the final decision in the meaning of the Convention was the decision that “in real terms set the environmental conditions for implementing the activity” (decision IV/2, annex I, para. 61) and that “if the conditions attached to a decision can be altered subsequently by other decisions, the former cannot be considered the ‘final decision’ in the meaning of the Convention” (ECE/MP.EIA/IC/2009/2, para. 21).

56. At the same time, the Committee was aware of the fact that Azerbaijan considered that in relation to the activities mentioned above, the final decision consisted either of the production-sharing agreements (in the case of the development of the oil and gas fields) or, for the other projects mentioned in Armenia’s submission, of different documents, such as political declarations or intergovernmental agreements. Nevertheless, the Committee appreciated that while some of the alleged final decisions mentioned by Azerbaijan set some environmental conditions for implementing the activities, the fact that they were taken before the EIA procedures were conducted, meant that they should not be considered as final decisions in accordance with article 6 of the Convention. The Committee was concerned that the presentation by Azerbaijan of different documents as final decisions under article 6 of the Convention might indicate a lack of legal certainty as to the implementation of the respective provisions of the Convention by Azerbaijan.

57. The Committee recalled its earlier opinion (ECE/MP.EIA/IC/2010/2, para. 40) that:

The final decision should provide a summary of the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5, and should describe how they and the outcome of the environmental impact assessment had been incorporated or otherwise addressed in the final decision, in the light of the reasonable alternatives described in the environmental impact assessment.

58. The Committee referred instead to the approvals by the Ministry of Ecology and Natural Resources of the EIA documentations following the state ecological expertise approvals.

59. The Committee underlined that article 3, paragraph 7, of the Convention provided for a special procedure to be followed when a Party considered that it would be affected by a significant adverse transboundary impact of a proposed activity and no notification had

taken place in accordance with article 3, paragraph 1. In the view of the Committee, in principle, the submission procedure should not be considered as a substitute to the application of article 3, paragraph 7. Furthermore, in the view of the Committee, it would be reasonable to follow the procedure under article 3, paragraph 7, before making a submission, unless the affected Parties had learned about the projects after they had been implemented, in which case the application of article 3, paragraph 7, would be deprived of its purpose.

60. In this context, the Committee noted that, for the purposes of the compliance procedure, a “proposed activity” is “any activity or any major change to an activity subject to a decision of a competent authority” (Espoo Convention, art. 1, para. (v)), even if at the moment of the submission that decision had already been taken.

61. The Committee also recalled its previous opinion, according to which “even a low likelihood of a [significant adverse transboundary] impact should trigger the obligation to notify affected Parties”, and that “notification is necessary unless a significant transboundary impact can be excluded” (decision IV/2, annex I, para. 54).

62. The Committee considered that, in the light of the information which was made available by Azerbaijan, the activities mentioned in the submission could fall under two items of appendix I, either the large-diameter oil and gas pipeline (item 8) or offshore hydrocarbon production (item 15). The continuous development of the Sangachal terminal was considered ancillary to the offshore hydrocarbon production or to the operation of the large-diameter oil and gas pipeline (see para. 24 above).

C. Main issues/the activities

1. The ACG project

63. The Committee noted that, while the initial development stage, including the building of the Sangachal terminal, had been finalized before the entry into force of the Convention for Azerbaijan, the final decision in relation to the next stage (full field development project) was taken only on 13 March 2003, well after the Convention had entered into force for Azerbaijan.

2. The Shah Deniz project

64. The Committee noted that the final decision in relation to Shah Deniz 1 was taken on 10 October 2002, again well after the Convention had entered into force for Azerbaijan. It also noted that no final decision had been taken concerning Shah Deniz 2.

3. Baku-Novorossiysk pipeline

65. The Committee noted that the Baku-Novorossiysk pipeline (also known as the northern route export pipeline) had been finalized before the entry into force of the Convention for Azerbaijan.

4. Baku-Tbilisi-Ceyhan pipeline

66. The Committee noted that the final decision in relation to the Baku-Tbilisi-Ceyhan pipeline had been taken on 24 September 2002, the date of the approval by the Ministry of Ecology and Natural Resources of the EIA, which was after the Convention had entered into force for Azerbaijan.

5. Baku-Tbilisi-Arzrum gas pipeline

67. The Committee noted that the final decision in relation to the Baku-Tbilisi-Arzrum gas pipeline (also known as the South-Caucasus pipeline) had been taken on 30 September 2002, the date of the approval by the Ministry of Ecology and Natural Resources of the EIA, which was after the Convention had entered into force for Azerbaijan.

IV. Findings

68. Having considered the above, the Committee adopts the following findings with a view to bringing them to the attention of the Meeting of the Parties for formal adoption in accordance with paragraph 13 of the appendix to decision III/2 (ECE/MP.EIA/6, annex II).

69. The Committee holds that decision III/2 creates a right for every Party to the Convention that “has concerns about another Party’s compliance with its obligations” under the Convention to bring a submission before the Committee (*ibid.*, appendix, para. 5 (a)). This right, however, should not be abused. The Committee expects that concerned Parties act in good faith and provide substantial proof of their concerns.

70. The Committee finds that the approvals of the Ministry of Ecology and Natural Resources (referred to as “compliance documents” by Azerbaijan) should be considered as final decisions under article 6 of the Convention. It further finds that the Convention did not apply to the initial development stage of the ACG project, nor to the Baku-Novorossiysk pipeline, because at the moment when the final decision concerning these projects was taken the Convention had not yet entered into force for Azerbaijan.

71. However, the Committee further finds that, in relation to the other activities, including the full development stage of the ACG project, the Convention could have been applied, provided that the condition concerning the likelihood of a significant adverse transboundary impact was met. In this context, the Committee underlines that Armenia could have used the means provided by article 3, paragraph 7, before making a submission.

72. The Committee notes that the Parties concerned essentially disagree about the likelihood of a significant adverse transboundary impact. Armenia argues that the projects implemented in Azerbaijan have a significant adverse transboundary impact on its territory, while Azerbaijan argues the contrary, stressing that none of these projects has a significant adverse transboundary impact on any of the Parties to the Convention in the region. The Committee finds that Azerbaijan substantiates its position with the EIA documentation drafted by the developer and approved by the responsible Ministry. Armenia informed the Committee on the general physical characteristics of the region, including the seismic risk. It also referred to the possibility of adverse effects on water quality that could result from the projects at issue. However, the Committee was not provided by Armenia with corroborating evidence to this effect.

73. At the same time, the Committee underlines that article 3, paragraph 7, of the Convention also provides for a specific procedure if the Parties “cannot agree that there is likely to be a significant adverse transboundary impact”, namely the inquiry procedure (appendix IV to the Convention). The Committee notes that the Parties have not used this procedure so far. The Committee also notes that the Parties have not used the post-project analysis procedure provided in article 7 of the Convention, including, in particular, the common determination of any adverse transboundary impact.⁷

⁷ In its comments to Committee’s draft findings and recommendations, Azerbaijan refers to post-project analysis reports being prepared on a regular basis that have revealed no transboundary effects

74. The Committee is nevertheless aware of the fact that the lack of diplomatic relations between the Parties could present challenges to the application of the Convention. It notes that, during the hearing, both Armenia and Azerbaijan expressed their willingness to participate in transboundary impact assessment procedures, provided those procedures were undertaken through an intermediary.⁸

75. Therefore, the Committee finds that it is within its mandate to secure “a constructive solution” (decision III/2, appendix, para. 4 (a)), and to attempt to identify it.

76. The Committee turns to the determination of a significant adverse transboundary impact for the projects mentioned above. It finds this determination particularly difficult to make, considering that several of the projects have been implemented in phases and over several years. The Committee, nevertheless, considers that it has to respond to the questions asked by Armenia, and finds that, in the absence of a contrary determination by an inquiry commission established under article 3, paragraph 7, of the Convention, the physical characteristics of the offshore oil projects and their location warrant the conclusion that a significant adverse transboundary impact can be excluded. Therefore, the Committee finds that Azerbaijan was not in non-compliance with its obligations under article 2, paragraph 4, article 3, paragraphs 1 and 8, article 5 and article 6, paragraph 1, of the Convention in relation to the ACG project and the Shah Deniz project.

77. Also, with respect to the two pipelines it considered, the Committee finds that, in the absence of a contrary determination by an inquiry commission established under article 3, paragraph 7, the physical characteristics of the pipelines and their location warrant the conclusion that a significant adverse transboundary impact can be excluded. Therefore, Azerbaijan was not in non-compliance with its obligations under article 2, paragraph 4, article 3, paragraphs 1 and 8, article 5, and article 6, paragraph 1, of the Convention in relation to the Transportation of Petroleum via the Territories of the Azerbaijan, Georgia, and Turkey through the Baku-Tbilisi-Ceyhan pipeline project, and the Baku-Tbilisi-Erzurum gas pipeline project.

V. Recommendations

78. The Committee recommends that the Meeting of the Parties:

(a) Endorse the finding of the Implementation Committee that, in accordance with the information provided to the Committee, Azerbaijan was not in non-compliance with its obligations under article 2 paragraph 4, article 3, paragraphs 1 and 8, article 5 and article 6, paragraph 1, of the Convention, with respect to the following projects:

- (i) The ACG project;
- (ii) The Shah Deniz project;
- (iii) The Baku-Novorossiysk pipeline;
- (iv) The Baku-Tbilisi-Ceyhan pipeline project;
- (v) The Baku-Tbilisi-Erzurum gas pipeline;

and, due to this, in accordance with article 7 of the Convention Azerbaijan did “not consider it necessary to inform Armenia on the results of the post-project analysis”. For further information, Azerbaijan refers the Committee to the website of British Petroleum ([www. bp.com](http://www.bp.com)).

⁸ Azerbaijan has expressed its wish for the secretariat of the Convention to act as an intermediary. Armenia, in turn, has opposed the involvement of the secretariat.

(b) Encourage Azerbaijan to continue monitoring and submitting monitoring reports to Armenia with a view to taking all appropriate and effective measures to control any significant adverse transboundary impact from the activities mentioned in the submission, in accordance with article 2, paragraph 1, of the Convention;

(c) Encourage Azerbaijan to continue improving the legal, administrative and other measures to reach full compliance with the Convention, in line with the recommendations made under the Committee initiative on Azerbaijan, including clearly designating in its legislation what decision constitutes a final decision and ensuring that this decision complies with the requirements of article 6 of the Convention.
