

## Comments of the Republic of Armenia related to Draft Findings and Recommendations of Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context

### Introduction

1. In the framework of its objective of assisting Parties to comply fully with their obligations under the Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter referred to as “The Convention”), by executing its duty of *considering any submission (...) the (Implementation) Committee decides to consider (...), with a view to securing a constructive solution*<sup>1</sup> and *recalling that the present compliance procedure is non-adversarial and assistance-oriented*<sup>2</sup>, the Implementation Committee, in its Draft Findings and Recommendations further to a submission by Azerbaijan regarding Armenia (EIA/IC/S/3), prepared at its twenty-fourth session for comments and representations by the two Parties by 15 August 2012 (hereinafter referred to as “Findings and Recommendations”) has invested noticeable efforts, done an important work in analyzing in depth the issues deriving out of the submission and underlining the true intentions of the Parties, as well as, to a certain extent, the omissions of the Secretariat of the Convention (hereinafter referred to as “The Secretariat”).

2. Considering that, in accordance with rule 13 of Operating rules of the Committee: “*Once prepared, the draft findings and recommendations should be transmitted to the Parties involved inviting them to comment (or make representations) within a reasonable deadline and to submit their comments through the secretariat (...)*” Armenia submits the following comments on the Findings and Recommendations.

3. The first part hereof will be dedicated to the presentation of the background of the case, an essential element, which has not appropriately become subject of attention of the Implementation Committee. The second and the third parts will treat respectively Secretariat’s role and responsibility as intermediary and the affected Party’s behavior, two important aspects, which derive from the background of the case. The fourth part will contain Comments on Part IV (Findings) of the Findings and Recommendations. Subsequently, fifth part will concern additional issues and the last part will contain conclusions, which among other aspects, relate to the (interim) recommendations prescribed by the Implementation Committee in the Findings and Recommendations.

<sup>1</sup> Paragraph 4(a) of Decision III/2 on Review of Compliance

<sup>2</sup> Rule 12 (2) of Annex IV, Operating Rules of the Implementation Committee, ECE/MP.EIA/10

## **I. Background of the case (Exceptionality of Relations between the Parties)**

4. There are certain issues within the scope of the submission, which have not been appropriately and adequately presented in the Finding and Recommendations. Particularly, among those issues predominates the context or background of the relations<sup>3</sup> between the Parties, a key factor, which led to the present situation and from which derive all the issues below discussed. Even though the background of the relationship between the Parties has been invoked in a superficial manner in paragraph 10 of the Findings and Recommendations, which simply mentions that “*Armenia and Azerbaijan do not have diplomatic relations*”, it is important to note that a mere mention about absence of diplomatic relations does not reflect actual situation between the two Parties.

5. The conflict of Nagorno-Karabakh, which had started in 1988, ceased officially by the establishment of cease fire signed on 5 May 1994 between Nagorno-Karabakh and Azerbaijan, and joined by Armenia. Since February 1992 the process of mediation on the settlement of the conflict within the OSCE framework has began. At the meeting of the CSCE (now OSCE) Council of Ministers, held in Helsinki on the 24th of March 1992, a decision on convening a conference on Nagorno-Karabakh in Minsk under the auspices of the OSCE as a permanently acting negotiations forum aimed at the achievement of the peaceful solution of the crisis on the basis of the OSCE principles, commitments and provisions was adopted. On 6 December 1994, the Budapest Summit of Heads of State or Government of the CSCE (now OSCE) decided on establishment of a co-chairmanship for the process of mediation and settlement of the conflict. On 23 March 1995, the Chairman-in-Office, in view of implementing the Budapest decision, issued the mandate for the Co-Chairmen (US, France and Russia) of the Minsk Process. The peace talks, mediated by the OSCE Minsk Group have been held ever since by Armenia, Nagorno-Karabakh and Azerbaijan. Starting from 2008, the negotiations are conducted based on the Madrid Principles, presented by the Co-Chairs in November, 2007 (the elements and principles of the proposals are reflected in statement of Heads of Cho-chair countries in l'Aquila (2009), Muskoka (2010), Deauville (2011) and Los – Cabos (2012) ).

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<sup>3</sup> A short remark on the nature of relations between Parties has been reflected in the Preamble of the response of Armenia to the questionnaire of the Implementation Committee, as well as in the answers to questions 10, 11 and 12.

6. Currently, relations between the Parties are tense and peace process is fragile. In this context, it may be mentioned, that during the last months Azerbaijan incurred to multiple violations of the ceasefire in the line of contact with Nagorno-Karabakh and on the border with Armenia. In particular, during the month of June 2012 alone, Azerbaijani side perpetrated four attempts to penetrate through the line of contact with Nagorno-Karabakh and border with Armenia. Two such attempts that took place during the visit of US Secretary of State Hillary Clinton to Yerevan, ended up with the death of three soldiers and injuries of six.

7. In response to the constant breaches of the ceasefire by Azerbaijani side, in their joint statement in Los Cabos, Mexico, in the margin of the G8 meeting of June, 2012<sup>4</sup> the OSCE Minsk Group Co-Chair countries' presidents stressed that the Parties did not take decisive steps to avoid the use of force and opt for reaching a lasting and peaceful settlement in accordance with Deauville statement of May 26, 2011, where Co-Chairs had declared: *"The use of force created the current situation of confrontation and instability. Its use again would only bring more suffering and devastation, and would be condemned by the international community. We strongly urge the leaders of the sides to prepare their populations for peace, not war."*

8. These, already routinely, military actions are accompanied by Azerbaijani highest political authorities' hostile rhetoric towards Armenia and war propaganda<sup>5</sup>. Specifically, instead of preparing public for settlement of the conflict and peace process, as is urged by the OSCE Minsk Group Co-Chairs, hatred towards Armenia is preached, which not only endangers negotiations, but also obstructs any possibility for the societies to establish contacts. Thus, there is an explicit negative predisposition towards Armenia and Armenians not only at the state level, but also within Azerbaijani society, which commonly perceives the neighboring country and its people as "the enemy"<sup>6,7</sup>. It was the President of Azerbaijan Ilham Aliyev that stated on February 28, 2012, "Our (Azerbaijan's) main enemies are the Armenians of the world..."

9. Therefore, the case of Armenia and Azerbaijan differs from the relationship of Armenia with other states, with which it does not have diplomatic relations and their mutual attitude towards each

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<sup>4</sup> See Attachment 1, Statement of Los Cabos

<sup>5</sup> See "UNO, Azerbaijan violates Treaty on Conventional Arms", 23 July 2012, <http://lurer.com/?p=32748&l=ru>

<sup>6</sup> See "Aliyev Calls Armenians Fascists at Euronest", April 5, 2012, <http://www.armenianweekly.com/2012/04/05/aliyev-calls-armenians-fascists-at-euronest/>

<sup>7</sup> See "Aliyev Blames Armenian Lobby for Azeri Human Rights Abuses", April 17<sup>th</sup>, 2012, <http://asbarez.com/102409/aliyev-blames-armenian-lobby-for-azeri-human-rights-abuses/>

other is neutral, thus, the establishment of diplomatic relations is viable. The specificity of the relationship between the given Parties lies in the fact that there is a fragile ceasefire between them, with periodical military confrontations initiated by Azerbaijan and no possibility to establish contacts, nor cooperate in whatsoever sphere. Azerbaijan has always refused to cooperate with Armenia both, on the bilateral and multilateral basis. As states the Implementation Committee in paragraph 35 of the Findings and Recommendations: “*relations between Armenia and Azerbaijan may be considered as exceptional circumstances*”. In other words, in the present case, instead on emphasizing the lack of diplomatic relations between the Parties, impossibility to establish any contacts at all should be stressed.

10. Azerbaijan has itself acknowledged the absence of diplomatic relations as a cause for not implementing its obligations under Convention as Party of origin. For example, Deputy Minister of Ecology and Natural Resources of Azerbaijan, Mr. Novrus Guliev, stated during the high-level meeting on June 23, 2011, which took place in the context of the fifth meeting of the Espoo Convention Parties: “All these projects are subject to transboundary assessment; however this procedure has not been carried out for a number of reasons. One reason is that only one country bordering Azerbaijan on land and another bordering it on the Caspian Sea have ratified the Convention on Transboundary Environmental Impact Assessment<sup>8</sup>.”

11. Considering the nature of the Espoo Convention, which requires cooperation between the Parties, and furthermore, direct interaction at the different levels of its implementation, existence of diplomatic relations (or at least factual possibility to establish any contacts and ensure cooperation) becomes a key element, which is indispensable for the application of the Convention. Therefore, Committee’s following statement may be described as unsubstantiated and superficial: “*Nevertheless, in the view of the Committee, these exceptional circumstances, including the lack of diplomatic relations, do not prevent the two Parties from implementing the Espoo Convention.*”

12. When analyzing the content of the Convention, it becomes clear that, in essence, starting from the reception by the affected Party of the notification of the Party of origin, execution of the duties of the Parties under the Convention implies constant exchange of information, effective two-sided review of the implementation process, direct contacts and, thus, inherent active collaboration between the Party of origin and the affected Party. In this context, the current relationship between

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<sup>8</sup> Экологическая экспертиза и процедура ОВОС в Азербайджане (Ecological Expertise and EIA Procedure in Azerbaijan), UNECE, 23.06.2011. [http://www.unece.org/fileadmin/DAM/env/eia/documents/mop5/statement\\_Azerbaijan.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/mop5/statement_Azerbaijan.pdf)

the given Parties does not provide with the necessary bases for the execution of Convention's provisions.

13. Taking into account the above-mentioned, as a Party of origin, at the material time of the notification process and generally in regard to the given Party, the need for an intermediary was imminent for the fulfillment of Armenia's obligations under the Convention. In that context, Secretariat was requested to act as intermediary<sup>9</sup>.

### **Proposals**

*In the light of the above-stated, the Republic of Armenia proposes to reformulate:*

*a. the paragraph 10 of the Findings and Recommendations. Particularly, besides mentioning the absence of diplomatic relations, the given paragraph shall contain a description of the actual situation between the Parties, with an inclusion of the factual side of the conflict and an appropriate emphasis on the exceptional character of the relations and on the impossibility to establish any direct contact between the Parties;*

*b. the paragraph 33 of the Findings and Recommendations. Specifically, the following sentence: "in line with article 8 and appendix IV to the Convention, where appropriate<sup>10</sup>, Parties may agree on including such specific procedural requirements in bilateral or multilateral agreements" needs to be accompanied by a mention that it does not concern the present case, since the Parties had no possibility to establish any contacts because of the exceptionality of their relations;*

*c. the paragraph 35 which states "these exceptional circumstances, including the lack of diplomatic relations, do not prevent the two Parties from implementing the Espoo Convention". In this respect, it is important to note, that the character of the Convention requires constant interaction and direct contacts between the Parties, which is impossible to carry out under the given circumstances.*

<sup>9</sup> See Part II, Intermediary's Role and Responsibility

<sup>10</sup> Underline emphasis is ours

## II. Secretariat's role and responsibility as intermediary

14. With the intention of implementing its obligations under the Convention by any possible means, since no other manner of fulfilling its obligations of Party of origin under the Convention was viable, and considering that Secretariat is an experienced and specialized organ under the Article 13 of the Convention, Armenia asked for the intermediary role of the Secretariat. Moreover, it is important to mention, that Article 13(c) of the Convention, states, that the Secretariat shall carry out, *inter alia*: “*the performance of other functions as may be provided for in this Convention or as may be determined by the Parties*”. It is important to note that, the term “*the performance of other functions as may be determined by the Parties*” may be interpreted as performance of functions determined not only by all Parties to the Convention, but also by at least two Parties. In the present case, the Party of origin has explicitly asked for intermediary services of Secretariat, which has accepted, and the affected Party implicitly approved that. By that Secretariat's intermediary role became effective.

15. Typically, intermediary is defined as a person (or organ) that acts as a mediator or agent between parties and brings them to a harmonious agreement. Moreover, intermediary role may not be described as a passive one, since it requires certain objective and neutral activity, which is aimed to assisting parties to reach an agreement or a settlement. Intermediary is also defined as a person or organ who takes messages from one party to another. The main qualities it should possess are impartiality, independence and neutrality, which are essential for the implementation of its duties.

16. However, in the given case, secretariat failed to promptly and appropriately execute its intermediary duties. In paragraph 40 of the Findings and Recommendations the Implementation Committee assertively noted: “*It was the first time an intermediary was used in the notification procedure, inherent miscommunications appeared (...)*.” Moreover, as states the Chair of the Implementation Committee in her letter dated 2<sup>nd</sup> December, 2011, addressed to the Head of Staff of the Ministry of Nature Protection of the Republic of Armenia: “*(...) had the Secretariat had more time to prepare, it might have taken further precautions to ensure that there was a common understanding with Armenia of the procedure and deadlines.*”

17. Still, even though in the Findings and Recommendations the omissions of the secretariat, as intermediary, were recognized, they were attributed to Armenia. Particularly, in paragraph 37(a) Implementation Committee states: “*regardless of the fact that the secretariat served as an*

*intermediary, this does not release Armenia from its obligations under the Convention.*” In addition to it, paragraph 38 reads: *“If under exceptional circumstances, the Party of origin seeks the assistance of an intermediary in fulfilling its obligations in this respect, the Party of origin retains responsibility for any actions or omissions of the intermediary in this regard.”* However, if Secretariat’s sole responsibility is not conceived, it is unclear why the burden of Secretariat’s omissions is put uniquely on the Party of origin, instead of recognizing both Parties’ responsibility, since the mechanism chosen and accepted did not work as it should. This seems a more balanced and impartial approach. Otherwise said, if the Party of origin retains responsibility for the actions or omissions of the intermediary, so does the affected Party, since the only possible explanation and justification for holding any of the Parties responsible for an organ’s omissions, lies in the argument that both Parties should share responsibility for making use of a tool, which did not work as expected.

The same way the affected Party accepting the intermediary role of the Secretariat also retains responsibility for any actions or omissions of the intermediary in this regard.

18. In regard to the above-stated, is important to note, that Armenia’s intention was not releasing itself from its obligations under the Convention. If it would have been so, Armenia, considering the exceptional circumstances of its relationship with the respective affected Party, would have avoided notification, as the affected Party had done previously in numerous occasions in respect to it<sup>11</sup>. Moreover, as a Party of origin, Armenia showed a proactive approach and used the only available recourse possible under the given circumstances, to be able to execute its obligations under the Convention.

19. The Secretariat could have refused to act as an intermediary, since it had no experience of acting as such. However, in good faith, it accepted the proposed role. The affected Party also recognized implicitly Secretariat as intermediary, when it submitted its response to the notification to the Secretariat to forward it to the Party of origin. In other words, both Parties accepted to implement the procedure under the Convention with the assistance of the Secretariat, as intermediary. However, it is unclear, why after assuming as an intermediary upon Party of origin’s request, in the Findings and Recommendations the Implementation Committee considers that the intermediary automatically became an extension or agent only of the Party of origin, but not as an agent of affected Party.

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<sup>11</sup> See the Submission of the Republic of Armenia having concerns about Azerbaijan’s compliance with its obligations under the Convention ( EIA/IC/S/5 , 31 August, 2011)

20. In this regard, it is important to notice that intermediary should be perceived separately from both the Party of origin and the affected Party. Otherwise, it would not be able to impartially carry out its obligations. Moreover, considering the intermediary as a continuation of the Party of origin may entail serious complications as to the application of the Convention. Particularly, in case the intermediary, after receiving the notification from the Party of origin fails to submit it to the affected Party for any reason, that omission should not entail Party of origin's responsibility for non-execution of its duty to notify affected parties. In contrast to that, if using the reasoning proposed by the Implementation Committee on not separating the responsibility of the Secretariat from the responsibility of the Party of origin, in the above-mentioned situation, one would conclude that the Party of origin did not notify to the affected Party at all. Thus, the omissions of the intermediary would constitute a breach of the Convention by the Party of origin. Besides undermining Secretariat's impartiality, neutrality, independence and its capacity to act as an intermediary, the proposed reasoning creates an unforeseeable situation for both the Party of origin and the affected Party, for which the intermediary's effectiveness is indispensable to execute their own duties and rights under the Convention.

21. Paragraph 37 of the Finding and Recommendations exempts Secretariat from any responsibility and disregards the fact that Secretariat assumed such responsibility, when accepting to act as an intermediary. Moreover, in the mentioned paragraph (37(c)) it is erroneously stated that: "*Any miscommunications between the Party of origin and the intermediary do not have influence in the application of the provisions of the Convention.*" In practice, miscommunications do have influence in the application of the provisions of the Convention, since any miscommunication may entail Parties' impossibility to comply with timeframes set in accordance with the Convention and thus end up in the breach of other Party's rights, which would mean also Parties' incompliance with the Convention. In the given context, paragraph 37(d), which states: "*the Party of origin retains responsibility for any actions or omissions of the intermediary in the process of notification*", remains an imperative statement, which does not take into consideration the context of the case, including Party of origin's intention to fulfill its obligations under the Convention, and the consequences of intermediary's impossibility to carry out properly the obligations derived from the role it assumed.

22. Furthermore, Secretariat, as an intermediary, was responsible of submitting the necessary documentation to the other Party. Its competencies did not include interpretation of the content of the submitted documents and the presentation of its allegations, appreciations and comments neither on

the notification of the Party of origin, nor on the response of the affected Party<sup>12</sup>. In the given case, intermediary failed to neutrally, timely and efficiently submit the documents provided to it by a Party, in order to be forwarded to the other Party. Particularly, instead of forwarding Party of origin's letters<sup>13</sup> to the affected Party, it acted as an agent of the latter, by interpreting affecting Party's "true intentions" and insisting that the Party of origin should accept the response of the affected Party<sup>14</sup>. Particularly, in his letter dated 15<sup>th</sup> December 2010 to the Minister of Nature Protection of Armenia, the Executive Secretary writes: "(...) regarding the letter from Azerbaijan, the key phrase is in point 2: *"The Republic of Azerbaijan wishes to participate in the environmental impact assessment process"*, this again being the response to the question posed in my letter. The reference to Azerbaijan submitting its official position (its point 1), and its statement regarding suffering arising from the current nuclear power plant in Armenia (its point 3), are beyond the scope of the Convention and can simply be regarded as additional information."

### **Proposals**

*In the light of the above-stated, the Republic of Armenia proposes to reformulate:*

- a. the paragraph 12 of the Findings and Recommendations, particularly, its first sentence which reads: "Instead of notifying directly the points of contact of Azerbaijan, Georgia, Turkey as well as the Islamic Republic of Iran, Armenia asked Convention's secretariat to send the notifications on its behalf", by replacing by the following "... Armenia, as a Party of origin, which was incapable of notifying directly to Azerbaijan, asked the Secretariat to act as intermediary and the latter accepted, so did implicitly the affected Party."*
- b. paragraphs 37 and 38. Particularly, paragraphs 37(a and d) and 38 fail to separate the obligations and the responsibility of the secretariat from those of the Party of origin. Being two different subjects, each of them, is responsible for its own omissions. Paragraph 37(b) should include a mention about the fact that in the given case no conditions on the issuance of notification and on timeframes were established between the affected Party and the intermediary. Moreover, we cannot agree with the statement contained in paragraph 37(c), since the given miscommunications proved the inefficiency of the intermediary, which was the only possible means the Parties could undertake to execute their obligations under the Convention and secretariat's omissions resulted in the impossibility to continue with the prescribed procedure.*

<sup>12</sup> See ECE/EHLM/407/2010/L, 15 December, 2012

<sup>13</sup> See letters of 18 October, November

<sup>14</sup> See paragraph 18 of the Findings and Recommendations

### III. Affected Party's behavior

23. When deciding on the further application of the Convention to the present case, it is important to consider Parties' intentions and readiness to fulfill the obligations prescribed by the Convention. In this regard, it should be mentioned, that even in the context of hostile relations between the Parties, Armenia decided to comply with the Convention and even though the Convention did not contain any provision on the means to apply its provisions in cases like the present case, Armenia tried to make use of an instrument to carry out its duties under the Convention. As stated the Committee in paragraph 35 of the Findings and Recommendations: “(...) Armenia's decision, as the Party of origin, to notify Azerbaijan, through the secretariat of the Convention was in compliance with the provisions of the Convention.”

24. On the other hand, in contrast to the requirement provided by paragraph 34 of the Findings and Recommendations, which reads: “*The Committee considers that the affected Party must clearly express its will to participate in the transboundary environmental assessment procedure*”, the verbal note<sup>15</sup> provided by the affected Party in response to Party of origin's notification, may hardly be considered a final and clear one. Even though it contained a statement on the Party's intention to participate, it stated that “*The subject issue is currently being reviewed by the Government of Azerbaijan and the official position of the Republic of Azerbaijan regarding the development of a new nuclear plant in Armenia will be submitted to the UNECE secretariat soon*”. A response is considered clear, final and official if it contains the official position, which was not the case. **It should be stated, that the official response has not been submitted to the Party of origin up to date.**

25. The submission of the affected Party in response to the notification of the Party of origin was merely a formality aimed to ensure participation in the process, or obstruct it. Particularly, even at the very preliminary stage, the affected Party's predisposition is clear, since the letters reads: “*It has to be mentioned that, the Republic of Azerbaijan is still suffering from the work of the Metsamor Nuclear Power Plant. Hence the development of another nuclear power plant in the territory of Armenia would further make difficult to eliminate the negative consequences of the already caused environmental and other related damages. Therefore, the Republic of Azerbaijan, as well as the civil*

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<sup>15</sup> N 359/10/N of the Permanent Mission of the Republic of Azerbaijan to the UN Office and other international organizations at Geneva, dated 6 October 2010 and addressed to the Secretariat

*society is very concerned about the implementation of the above-mentioned project in Armenia. ”* However, **firstly**, no supporting evidence or information has been submitted by the affected Party to somehow prove the veracity of the above-mentioned statement. **Secondly**, the predisposition of the affected Party and its unsubstantiated distrust in regard to any activity that Armenia may intend, is exposed. The given paragraph not only points out the explicitly negative perception of the project by the affected Party, but also denotes that any consultation under Convention is condemned to fail. Furthermore, it is not certain, how the affected Party could know its civil society’s negative opinion and the concerns about the project without any survey, consultations or whatsoever. In other words, the statement not only lacks of basis, but also, in case of existence of real concerns, which is doubtable, it lacks of any constructive proposal on providing with additional information, holding consultations or requesting the opinion of its own public.

26. Besides its failure to submit an official response, the affected Party has not even asked for any information related to the proposed activity. In that regard, we would like to refer to the paragraph 47 (d) of the Opinions of the Implementation Committee (2000-2010), which reads: *“Parties ensure that the EIA documentation meets the requirements of appendix II of the Convention and, as a matter of good practice, is of sufficient quality (ECE/MP.EIA/WG.1/2006/4, paragraph 18). The documentation should properly address issues **that the affected party identifies in response to the notification**<sup>16</sup>, if they are reasonable and based on appendix II (decision IV/2, annex III, paragraph 29).”* Affected Party has not identified or submitted any issue to the consideration of the Party of the origin, proving once more its lack of commitment towards the effectiveness of the assessment procedure to be implemented under the Convention.

27. The ambiguity between affected Party’s compliance with formalities and inconsistent will to collaborate with the Party of origin, led Armenia conclude that implementation of the procedure prescribed by the Convention will end up in one-side efforts, which will be obstructed by the other Party’s unwillingness to cooperate. Furthermore, the only recourse available (Secretariat) proved to be ineffective in practice, mostly because of lack of regulation of its activity as intermediary, absence of experience, as well as inability to predict its actions in accordance with the nature of the situation.

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<sup>16</sup> Bold and underline emphasis ours

## **Proposals**

*In the light of the above-stated, the Republic of Armenia proposes:*

**a.** *include the following paragraph of the response by Azerbaijan in paragraph 15:*

*“It has to be mentioned that, the Republic of Azerbaijan is still suffering from the work of the Metsamor Nuclear Power Plant. Hence the development of another nuclear power plant in the territory of Armenia would further make difficult to eliminate the negative consequences of the already caused environmental and other related damages. Therefore, the Republic of Azerbaijan, as well as the civil society is very concerned about the implementation of the above-mentioned project in Armenia. ”*

*This paragraph is not just additional information, but it holds key importance, since, as it has been stated above, it denotes the negative and unconstructive predisposition of the affected Party in regard to the proposed activity.*

**b.** *Moreover, Paragraph 17 of the Findings and Recommendations should state that Armenia did not consider Azerbaijan’s response as official not only because of the deadline set (as mentions the given paragraph), but also because the letter itself stated that “(...) the official position of the Republic of Azerbaijan regarding the development of a new nuclear power plant in Armenia will be submitted to the ECE secretariat soon.”Therefore, a letter containing a mention about another document which will contain the official position cannot be considered itself the official response.*

#### IV. Comments on Findings (Part IV)

28. Besides the above-mentioned aspects, paragraph 36 of the Findings and Recommendations states: “(...) *the Committee notes that as Armenia notified the affected Party only after informing its own public about the proposed activity, it is non-compliance with article 3, paragraph 1 of the Convention.*” The mentioned article prescribes the following: “*For 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 may be an affected Party as early as possible and no later than when informing its own public about the proposed activity.*” In paragraph 43 of the Findings and Recommendations, Committee found that “(...) *the claims in the submission by Azerbaijan proved to be substantiated with respect to the provision of article 3, paragraph 1 of the Convention (...).*”

29. However, in its submission (letter dated 05 May 2011 of the Deputy Minister of Ecology of the affected Party to the Secretary), the affected Party did not make a claim on the breach of Article 3(1), by stating that “*The Armenian Party, provided, through the secretariat, a notification to its neighboring states, including Azerbaijan further to article 3, paragraph 1, of the Convention.*” By this, the affected Party affirms that Armenia’s obligation to notify has been fully fulfilled, and subsequently, the rules contained on the mentioned article have not been breached. Moreover, among the alleged breaches, no mention is provided about Armenia’s breach of its obligations under the given article. In other words, the given claim falls out of the scope of the Submission on which the Findings and Recommendations are based, thus it shall be excluded.

#### **Proposals**

*On the basis of the above-stated, the given claim should be excluded from the Findings and Recommendations, and its substantiality issue should not become a subject of discussion, since, in its Submission the affected Party did not mention a breach of article 3(1) of the Convention by Armenia.*

## V. Other issues

30. It should be noted, that even though the Findings and Recommendations relate to Azerbaijan's submission regarding Armenia, they contain numerous mentions and information related to Armenia's notification to Georgia, Iran and Turkey, which are not parties to the Espoo Convention. This information is additional, since it does not concern to the scope and subject matter of the submission.

### Proposals

31. *In view of the above-mentioned, the paragraphs 12, 16, 17 and 19 of the Findings and Recommendations, which treat the notification to the mentioned neighboring countries by Armenia are to be reformulated and information and comments on notification to neighboring states, which are not members to the Convention be excluded, since the mentioned paragraphs relate to an issue, which is not contained in the scope of the given submission.*

## Conclusion

32. Further to the Responses submitted by Armenia to Reporter's questionnaire for the elaboration of the Findings and Recommendations, it is not opportune to disregard the context of the relations between the Parties, not only the military aspect, but also the anti-Armenian atmosphere in Azerbaijan, and the latter's uncooperative approach towards Armenia in different international fora, including, the reservations to a number of treaties in regard to Armenia and the refusal to cooperate even when reservations have not been made. On that basis, considering the specificities of the present case, particularly, the above-mentioned exceptionality of relations between the Parties and the serious obstacles for direct contacts and consultations between them, moreover, taking due regard of the fact that the Espoo Convention provides for only direct official communications and consultations between the Party of origin and the affected Party and lacks of effective mechanisms for its implementation between the Parties, which do not have diplomatic relations, further compliance with the provisions of the Convention would have been possible only through mediation, in the event of proper execution of the whole Notification process, which was not the case.

33. Even though Armenia made efforts to carry out its duties under the Convention, the chosen intermediary did not fulfill its functions appropriately, it lacked the capacity of showing a sensitive, prompt, balanced and unbiased approach towards the Parties, cooperate on equal basis with them. Therefore, *at this stage there are serious obstacles for direct contacts and consultations with Azerbaijan, which would have required a great deal of detailed and scrupulous preparation and acceptance of the ad hoc rules and procedure by both sides*<sup>17</sup>.

34. *This specific case between Armenia-secretariat-Azerbaijan has shown that there is a need for the development of new mechanisms in the framework of the Espoo Convention, for its effective implementation*<sup>18</sup>. Even though Armenia is consistent in its intention to continue to implement the provisions of the Convention, it is certain that the current mechanisms provided by it are restrictive and inflexible in nature, not applicable to the present case, since they do not comprehend the necessary means to be undertaken by the Parties to fulfill their obligations under the Convention.

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<sup>17</sup> See Responses of Armenia

<sup>18</sup> See Responses of Armenia