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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations at Geneva presents its compliments to the Secretariat of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and has the honour to transmit herewith the comments of the Republic of Azerbaijan on the Implementation Committee's draft findings and recommendations further to the submission by Armenia regarding Azerbaijan (EIA/IC/S/5).

It would be highly appreciated if the Secretariat of the ESPOO Convention could kindly acknowledge the receipt of this Note-Verbale and attached comments of the Republic of Azerbaijan.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations at Geneva avails itself of this opportunity to renew to the Secretariat of the Espoo Convention the assurances of its highest consideration.

Enclosure: 3 pages.

Geneva, 29 May 2013

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Comments of the Republic of Azerbaijan
on the Implementation Committee's Draft findings and recommendations
further to a submission by Armenia regarding Azerbaijan (EIA/IC/S/5)

1. In its submission against Azerbaijan and subsequent deliberations, Armenia, notwithstanding the Committee's request, has failed to provide more detailed information on its submission including on the possible transboundary environmental impact of the oil and gas projects developed by Azerbaijan.

The submission about another Party's compliance should be supported by detailed information and substantial proof of concern regarding the likelihood of significant transboundary impact of the projects. Otherwise it is an abuse of the right to bring a submission about another Party's compliance with its obligations under the Convention. It also impairs the efficiency of the work Committee leading inter alia, to unnecessary communication, meetings, which in its turn involves budgetary implications for the Secretariat as well as the Parties.

The Committee should thoroughly examine submissions and whether or not they are supported by substantial proof of concern. It is believed that a comprehensive and timely review of submissions will also enable to avoid unnecessary politisation of emerging processes and issues.

2. Para 15. It should be specified what is meant under "compliance documents" and "building permits". Generally, any type of construction activity in Azerbaijan that may affect the environment (such as the construction of pipelines and etc.) needs to be approved by the Ministry of Ecology and Natural Resources of the Republic of Azerbaijan in accordance with legally confirmed procedures (The delegation of Azerbaijan informed the Committee on general principles of such procedures at its 26th session). Furthermore, although the Ecological Expertise conclusion is necessary for the start of construction, other permits can be also required (e.g. from the Ministry of Emergency Situations, Ministry of Health and etc.). To avoid any confusion in the interpretation of the scope and application of the State Ecological Expertise, the following amendment should be included either after the second sentence of the very paragraph or as a footnote.

"The approval or conclusion of the State Ecological Expertise is given based on the results of the analysis of the possible environmental impact and reflects the environmental conditions related to the implementation of those activities for the environmental protection and mitigation arrangements."

It should be also clarified what is meant under the following sentence:

"Although there are not included in building permits, they cannot be modified by a subsequent decision."

3. Para 33. It should be taken into account that due to the fact that Baku-Novorossiysk pipeline was constructed long before the collapse of the USSR the date of February 18, 1996 cannot be treated as a date of final decision for this

project. A contract for transportation of gas through Russia did not provide for the construction of the pipeline. Further reconstruction works at the already employed pipeline were aimed among others to increase the latter's safety standards.

4. Para 71. Post-project analysis reports are prepared on a regular basis (for more information, please, visit www.bp.com) and they have never revealed any transboundary effect howsoever. Moreover, Azerbaijan, in accordance with Article 7 of the Espoo Convention does not consider it necessary to inform Armenia on results of post project analysis due to absence of any possible transboundary effect. In addition, Armenia has never inquired Azerbaijan on the status of environmental impact of oil and gas projects.
5. Para 72. For the purposes of the present draft "intermediary" means the Secretariat of the Convention. Azerbaijan appreciates the support provided by the Secretariat to enhance our work as well as communication among the Parties. Azerbaijan is of view that the Secretariat of the ESPOO Convention should retain its ownership and management of the issue and continue providing the good offices of the UNECE as the Administrator of the Convention. The issue under review is a compliance issue, and the means to ensure compliance is definitely not through resorting to non-Administrator means.
6. Para 74. The Committee, in its findings (para 74), inter alia, states that the physical characteristics of the offshore oil projects, and their location, warrant the conclusion that a significant adverse transboundary impact can be excluded and finds that Azerbaijan was not in non-compliance with its obligations under article 2 paragraph 4, article 3 paragraph 1, and paragraph 8, article 5 and article 6, and paragraph 1 of the Convention.

From this statement, it can be inferred that status of diplomatic relations between the Parties has not prevented full implementation and application of the Convention. Equally, the status does not automatically qualify Parties as compliant or non-compliant. It is therefore, Azerbaijan is of view that the lack of diplomatic relations between parties shall not be treated as a very factor that hinders the application and implementation of the Convention.

7. Para 76

(b). Azerbaijan takes note of the Committee's recommendations made under the Committee Initiative and the Committee's decision that the Chair would make practical arrangement for the proposed advice. The progress on the Committee's Initiative has been reviewed and reported in accordance with the format, procedures and timeframe as agreed between the Committee and Azerbaijan. The latter continues to participate in the follow up process. It should be also noted that the present draft seeks to review a country-specific compliance submission and the recommendations contained herein are expected to address the matters arising from the very submission. Therefore, Azerbaijan is of view that the reference to the Committee's Initiative in the recommendation part of the draft is out of context and misleading, and thus should be deleted.

(c) Any Party to the Convention undertakes commitment to comply with the obligations arising from the Convention. This holds true for all Parties to the Convention without distinction as to their geographic location, size of economy or status of diplomatic relations with other Parties of the Convention. The absence of diplomatic relations shall not be treated as a factor justifying/mitigating non-compliance of one Party of the Convention vis-à-vis the other concerned Party and excluding possibility to find practical ways to fully implement all provisions of the Convention.

In this context, it should be also specified what is meant under “ “constructive solution” to ensure full compliance with the provisions of the Convention”.