

Economic Commission for Europe

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

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Second meeting

Geneva, 27–30 May 2013

Item 3 of the provisional agenda

Compliance and implementation

Proposals to assist Armenia and Azerbaijan with implementation of the Convention

Note by the secretariat

I. Recommendations by the Implementation Committee

1. At its twenty-sixth session (26-28 November 2013), the Implementation Committee under the Espoo Convention finalized its findings and recommendations further to the submission by Azerbaijan expressing concerns about Armenia's compliance with its obligations under the Convention regarding the planned construction of nuclear power plant in Metsamor, Armenia (EIA/IC/S/3), received on 5 May 2011. The findings and recommendations reflected the advice the Committee had sought from the Bureau regarding its proposal to assist the two Parties with the implementation of the Convention¹. The Committee requested the secretariat to bring the findings and recommendations to the attention of the concerned Parties and to subsequently transmit them for consideration by the Meeting of the Parties to the Convention at its sixth session (MOP-6) in June 2014².

2. The Committee acknowledged the presence of exceptional circumstances, involving the absence of diplomatic relations, direct contacts and cooperation between the two Parties. It also welcomed the willingness of both Parties to continue implementing the provisions of the Convention, while noting that neither of them had proposed concrete ways to do so under the exceptional circumstances.

¹ Report of the Implementation Committee on its twenty-fifth session (ECE/MP.EIA/IC/2012/4)

² Report of the Implementation Committee on its twenty-sixth session (ECE/MP.EIA/IC/2012/6)

3. Consequently, the Committee decided to invite the Working Group on EIA and SEA, in consultation with the Bureau, to consider establishing an ad hoc group to prepare proposals for MOP-6 regarding the implementation of the Convention by Armenia and Azerbaijan, including notably the possible designation of an intermediary and the use of new communication technologies to assist Armenia and Azerbaijan in implementing the Convention regarding the construction of the nuclear power plant in Metsamor.

4. The Committee based its decision to seek assistance from the Bureau and the Working Group on the following provisions:

(a) Article 11, paragraph 2, of the Convention requiring that the Parties shall keep under continuous review the implementation of the Convention;

(b) Paragraph 4 (a) of the structure and functions of the Committee, which determines that the Committee shall secure “a constructive solution” to “assist Parties to comply fully with their obligations”;

(c) Decision I/2 of the Meeting of the Parties mandated the Working Group to make recommendations for consideration at the meetings of the Parties on further work on, inter alia, legal, administrative and technical aspects necessary to ensure the effective implementation of the Convention and international cooperation in environmental impact assessment in a transboundary context, bearing in mind the special needs of countries in transition;

(d) The proposal by the delegation of Armenia, supported by the Armenian non-governmental organization Ecoglobe, at the first session of the Working Group (24–26 April 2012), to establish an ad hoc group to examine how to apply the Convention between Parties that had no diplomatic relations, and the decision of the Working Group that it might come back to that proposal, following the finalization by the Implementation Committee of its findings and recommendation on related submission.

5. To facilitate the deliberations by the Working Group and the Bureau the Committee prepared a draft terms of reference for the possible intermediary (annexed to the present document as Annex 1).

II. Decisions by the Bureau

6. At its meeting on 31 January and 1 February 2013, the Bureau acknowledged and supported the Committee’s recommendations to assist Armenia and Azerbaijan to implement the transboundary EIA procedures regarding the construction of the nuclear power plant in Metsamor, and to submit proposals in this regard to MOP-6. In addition, the Bureau endorsed the draft terms of reference prepared by the Committee for the possible intermediary, and considered available options, resources and requirements for assisting the two Parties in the most optimal manner. Following discussions, the Bureau asked its Chair to write to the European External Action Service (EEAS) of the European Union to seek advice and technical assistance to support Armenia and Azerbaijan in this process, including through possibly acting as an intermediary³. The letter of the Chair of 8 March 2013 conveyed that the Bureau believed that EEAS has an important role in this region and would seize the opportunity to use the Espoo Convention as a tool to build confidence in the relations between the two countries. The Bureau had requested the EEAS to respond in advance of the meeting of the Working Group on EIA and SEA to be held in Geneva on 27–30 May 2013, where the matter would be discussed. This letter was sent for information to the members of the Implementation Committee.

7. On 25 April 2013, the EEAS responded to the Chair of the Bureau, that it cannot respond positively to the proposal for it act as an intermediary, as it did not consider this to be its role in the given context. However, as regards the provision of technical

³ Informal notes on meeting of the Bureau 31 January–1 February 2013.

assistance, it stated that it was “always open to requests for such assistance”. It referred for example to the recent launch of the EU funded “Greening Economies in the Eastern Neighbourhood” (EAP-Green) to which both Armenia and Azerbaijan were partners and which promoted the application of EIA and SEA, in line with the EU Directives, the Espoo Convention and the Protocol on SEA. In addition, the EU foresaw the possibility of assistance for activities promoting sustainable development and the improvement of the environment. It encouraged suitable requests for support to be directed to the European Commission.

III. Views of the Republic of Azerbaijan

8. On 25 April 2013, H.E. Dr. Murad N. Najafbayli, the Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Republic of Azerbaijan to the UN Office and other international organizations at Geneva sent a letter to Mr. Sven Alkalaj, the ECE Executive Secretary, with the position of the Republic of Azerbaijan regarding the letter of the Chair of the Bureau to the EEAS (scanned copy of the letter mentioned above is attached to the present document as Annex 2).

IV. Expected decisions by the Working Group

9. Taking into account of the information provided by the Chair of the Implementation Committee and of the Bureau, the Working Group is invited to

(a) Consider establishing an ad hoc group to prepare proposals for MOP-6 regarding the implementation of the Convention by Armenia and Azerbaijan, including the possible designation of an intermediary and the use of new communication technologies. The membership, tasks, methods of work and lifetime of the ad hoc group should also be specified;

(b) Agree on the draft terms of reference for the possible intermediary;

(c) Agree on possible other actions for assisting the two Parties.

Annex 1

Terms of reference for an intermediary to assist Parties without diplomatic relations (Armenia and Azerbaijan) to implement the Espoo Convention

Prepared by the Implementation Committee under the Espoo Convention and endorsed by the Bureau at its meeting on 31 January–1 February 2013

Introduction

1. With a view to assisting Parties with no diplomatic relations (Armenia and Azerbaijan) to implement the Convention on environmental impact assessment in a transboundary context (the Espoo Convention), the Implementation Committee under the Espoo Convention proposed, at its twenty-sixth session (26–28 November 2012), the establishment and application of specific modalities or measures to facilitate contacts and communication between the concerned Parties, including notably the possible designation of an intermediary (ECE/MP.EIA/2012/6, para. 13).

2. To this end, the Committee decided to invite the Bureau and the Working Group on EIA and SEA to consider establishing an ad hoc group to prepare proposals on the matter for endorsement by the sixth session of the Meeting of the Parties to the Convention. The Committee agreed to prepare draft terms of reference (ToR) for the possible intermediary for consideration by the Bureau and the Working Group building on the proposals drafted by one of its members, Mr. J. Jendroska, at the request of the Chair, and as discussed at its twenty-sixth session in 26–28 November 2012.

3. The present draft terms of reference describes the role and responsibilities of an intermediary as well as the general principles and main modalities of proposed procedure to be followed.

I. General principles

4. The Parties concerned should agree on applying the procedure to facilitate the contacts between them, via an intermediary, in line with the present ToR.

5. The intermediary should accept to carry out his/her/its functions as provided for in this ToR.

6. Both the Parties concerned and the intermediary may withdraw their agreement at any moment providing a written notice of their will to withdraw to each other with a copy to the Espoo Convention secretariat. The notice should be given at least three months in advance and provide the reasons for the withdrawal.

II. Role and tasks of the intermediary

7. The role of the intermediary is to provide a goodwill service aiming at facilitating contacts between Parties that do not have diplomatic relations but that are willing to carry out the transboundary procedures provided for by the Espoo Convention.

8. The intermediary is not expected to mediate between the Parties concerned;

9. The responsibility of the intermediary is limited only to transmitting documents in a timely and accurate manner using a standard cover note for enclosing the documents/information provided. The intermediary should therefore not be held responsible for the content of the documents or any information transmitted.

10. The tasks of the intermediary cover the exchange of documents related to the

transboundary procedure under the Espoo Convention, including notifications, statements or other related documents or information in written, visual or in any other form;

11. The intermediary applies the confidentiality rules set out in the operating rules of the Implementation Committee under the Espoo Convention;

12. After receiving the information/documents, the intermediary has a time limit of [two] [three] weeks to transmit them.

III. The procedure

13. General rules: All procedural steps involving the concerned Parties are conducted in written form via an exchange of correspondence and documents through the intermediary. To the extent possible, e-mail should be used for all communication and information exchange¹.

¹ To reduce their size, large files should be compressed/zipped.

14. Language: [English] [Russian] is the language used for all contacts and documents.

15. Notification under article 3 of the Convention: The notification is sent through the intermediary.

16. Public participation under article 2, para 6; article 3 para. 8 and article 4 para 2 of the Convention: The affected Party is responsible for:

(a) Providing its own authorities and public likely to be affected by the activity with the information and the possibility to participate in relevant environmental impact assessment procedure(s) on the basis of documents submitted by the Party of origin via the intermediary.

(b) Submitting all comments and/or summary of comments received to the Party of origin via the intermediary in English.

17. Consultation under article 5 of the Convention: The consultations are conducted by way of exchanging statements via the intermediary.

18. Final decision according to article 6 of the Espoo Convention: The final decision together with the reasons and considerations on which it is based are submitted to the affected Party via the intermediary.

19. Deadlines: All deadlines set within the procedure are to be met bearing in mind the timeframe set out for the intermediary to transmit documents (see paragraph 13 above).

Annex 2

The copy of the letter of H.E. Dr. Murad N. Najafbayli to Mr. Sven Alkalaj, 25.04.2013

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MISSION AZERBAIJAN

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



AZƏRBAYCAN RESPUBLİKASININ BMT-nin
CENEVRƏ ŞƏHƏRİNDƏKİ BÖLMƏSİ VƏ
DİGƏR BƏYNƏLXALQ TƏŞKİLATLAR YANINDA
DAİMİ NÜMAYƏNDƏLİYİ

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№ 136 /13/L

Geneva, 25 April 2013

Excellency,

Highly appreciating the level of cooperation between the Republic of Azerbaijan and the United Nations Economic Commission for Europe (UNECE), I am pleased to address you the position of my country with regard to the letter of Mr. Dmytro Mormul, the Chair of the Bureau under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) to the European External Action Service (EEAS) of the European Commission. The Bureau mentioned in its letter that the purpose of the letter was "to seek advice and technical assistance from the EEAS for supporting Armenia and Azerbaijan to comply with the Convention" and it had considered that "the designation of an Intermediary and the use of new (IT) communication technologies could be ways to solve the difficulties in communication and build progressively confidence between the two countries".

First of all, on behalf of the Government of the Republic of Azerbaijan, I would like to emphasize the vital importance of the fulfillment of the obligations, set out in the provisions of the Espoo Convention. The Republic of Azerbaijan attaches great importance and reiterates its strong commitment to the implementation of the Espoo Convention.

H.E. Mr. Sven Alkalaj
The Executive Secretary
Under-Secretary-General
United Nations Economic Commission for Europe
Fax: 022 917 06 59
022 917 00 36

cc: Ms. Tea Aulavuo
Secretary of the Espoo Convention

Fax: 022 917 01 07

We highly appreciate the work undertaken by the Espoo Secretariat so far and have full trust in the competence of the Secretariat. Azerbaijan has never challenged the role of the Secretariat as an intermediary, and agreed to fulfill its obligations of exchange of information, public participation and consultations via Secretariat. It is our view that the Secretariat shall continue to carry out function of the transmission of reports and other information received in accordance with the provisions of this Convention to the Parties in accordance with Article 13 (b) of the Espoo Convention, not another intermediary that has no any linkage to the process. Besides, the existence or non-existence of diplomatic relations between the Parties could not be a reason for non-realization of the functions which has been entrusted to the Espoo Convention Secretariat.

We also note certain ambiguity with regard to the role and functions of intermediary prescribed in Terms of Reference (TOR) and in the letter addressed to EEAS. While paragraphs 7, 8, 9 and 10 of ToR describes the role of intermediary and states that "the Intermediary is not a mediator and its responsibility is limited only to transmitting documents in a timely and accurate manner". Taking into account that the Espoo Convention Secretariat carried out this function very well and in good faith so far, it shows that this proposal does not have any new value for adding to the process. So, there is no need for another intermediary which is not aware of the processes, and which will do the same function.

Besides, in its letter to EEAS the Bureau asks the advice and technical assistance from the European Commission to support the Parties concerned in this process. In this regard, it should be emphasized that the Government of the Republic of Azerbaijan has not filed any request for a technical assistance, as well as, we do not share the view that the failure of the Republic of Armenia to fulfill its obligations under the Convention arises from the availability or lack of technical assistance.

At the same time, unlike Armenian side Azerbaijan has never questioned the rationale behind the application of information technologies in the framework of the Convention and more importantly, the legitimacy of documents received by electronic means of communication. Having said this we agree to and kindly request the continuation of the service of document by the Secretariat, including by electronic means.

Moreover, please be informed that the nuclear security issue in the region is being discussed for a long time between EU and Azerbaijan. Azerbaijani side has requested EU side for carrying out relevant measures regarding the destruction of very dangerous old nuclear plant in Armenia. However, the Republic of Armenia disregarded all the requests made by the EU side. The last such request was mentioned in "Progress Report for Armenia-2012" prepared by EU. Therefore, it is questionable that which added values could bring the intermediacy of EU to the process.

furthermore, it should be emphasized that the submission of the Republic of Azerbaijan against the Republic of Armenia was absolutely connected with non-compliance of the Republic of Armenia with its obligations under the Espoo Convention. If the Convention and its Implementation Committee is not able to ensure the implementation of the obligations by the Armenian side, how the regional organization or another third party could do this?! So, the reason for non-implementation of the Convention is not a need for technical assistance. The reason is that the Republic of Armenia rejects to implement its obligations deriving from the Espoo Convention.

The Espoo format is not a political format and bringing the issue from the UN multilateral environmental framework to the bilateral political framework of EU-Azerbaijan and EU-Armenia does not coincide with the objectives of the Espoo Convention and will not serve to the progress of the process. It should be also noted that, there are hundreds of international treaties which a number of its parties has no diplomatic relations, however those parties implement their obligations via Secretariat. Therefore, we consider the current situation as an attempt to politicize the issues and an attempt to claim that the Secretariat of the Convention and the Administrator (UNECE Secretariat) have exhausted all their means and failed in their mission and mandate, which is not the case and which may be interpreted by some parties to the Convention in bad faith and as a result would establish a negative precedent.

We sincerely hope that the UNECE will retain its ownership and management of the issue and continue providing its valuable services as an Administrator of the Convention, and kindly ask you to bring our concerns before the Working Group on Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) that will hold its Second Meeting on 27-30 May 2013 in Geneva.

Please accept, Excellency, the assurances of my highest consideration.



Dr. Murad N. Najafbayli
Ambassador, Permanent Representative