

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

Bringing into line the three authentic language versions of the Convention

Note by the secretariat

I. Decisions and observations by the Implementation Committee

1. From the report of the Implementation Committee at its twenty-second session, held from 5 to 7 September 2011 (ECE/MP.EIA/IC/2011/6, paras. 48–52)

48. The Committee considered the letter of 7 June 2011 from the European Commission seeking clarification on the appropriate interpretation of the provisions of the Convention, in particular with a view to establishing whether the description of the no-action alternative to a proposed action as set out in appendix II, item (b), was compulsory or whether the national authorities had any margin of discretion. The European Commission argued that there was a discrepancy between the English, French and Russian language versions of the Convention that might lead to different interpretations and inconsistencies in the application of the Convention by the Parties.

49. The Committee noted also the clarifications that the secretariat had communicated to the European Commission on 3 May 2011 in response to the informal inquiries of the Commission.

50. The Committee acknowledged, in general terms, that it was important to ensure the alignment of the three authentic texts of the Convention and of the Protocol in English, French and Russian. It noted that in particular the Russian translation of the Convention might contain several linguistic inaccuracies and inconsistencies potentially creating uncertainty for the Parties to the Convention as to the appropriate implementation of the Convention obligations, and possibly indicating the existence of more systematic problems with the different authentic language versions.

51. The Committee noted that it was not within its mandate to provide its opinion on the general issue regarding the linguistic discrepancies between the three language versions of the Convention and the most appropriate way to interpret any of them, as well as on the particular provision of appendix II, item (b) (i.e., whether the no-action alternative was compulsory and whether the national authorities had any margin of discretion). The Committee nevertheless referred to the opinion it had expressed in 2010 with respect to information gathering on Belgium: “It was important that the no-action alternative should be addressed fully so that the evolution of the environment in the absence of the project could be considered” (ECE/MP.EIA/IC/2010/2, para. 33).

52. In the light of the above, the Committee decided to bring the issue of potential inconsistencies between the three authentic language versions of the Convention to the attention of the Working Group of the Parties and the Bureau, and to recommend that those bodies consider establishing a task force with a view to bringing into line the three language versions. The Committee asked the Chair to write to the European Commission informing it of the above.

II. Decisions and observations by the Bureau and the Working Group

2. At its meeting on 31 January and 1 February 2012, the Bureau supported the Committee proposal for a small group to examine possible inconsistencies between the authentic language versions of Convention. The group should differentiate between what it considered to be linguistic alignment, on the one hand, and substantive interpretation, on the other. The Working Group would then decide on possible further action. (See the informal notes of the meeting of the Bureau, para. 14).

3. At its first meeting, held from 24 to 26 April 2012, the Working Group on EIA and SEA raised concerns about inconsistencies in the three authentic language versions of the Convention and the Protocol. Its deliberations were prompted by the above mentioned proposals by the Implementation Committee supported by the Bureau (the below text is from the report ECE/MP.EIA/WG.2/2012/2, para. 23).

4. France pointed out one error in the French version of the Protocol: the last sentence of article 4, paragraph 2, should refer to “any other project listed in annex II that requires environmental impact assessment under national legislation”, and not to “évaluation stratégique”.

5. To bring the different language versions into line, starting with the Convention, the Working Group invited the secretariat to try and arrange for a review of the text to be undertaken by the United Nations, which would list all the inconsistencies. It noted that, alternatively, that work might also be done by a consultant to the European Commission.

6. The Working Group also decided to set up a task force, including lawyers and native speakers of English, French and Russian, that would work through electronic means to consider the listed inconsistencies. The task force should aim at distinguishing between the linguistic and typographical errors to be corrected and the possible substantive interpretation issues that could be subject to a MOP decision. It should specify the legal consequences, if any, of the possible changes to the Convention. The Working Group welcomed the participation of the European Commission, France, Switzerland, and Ukraine and observers from the European ECO Forum and Ecoglobe in the task force, and encouraged others to join, by informing the Bureau. In addition, the secretariat was invited to contact the United Kingdom of Great Britain and Northern Ireland, Canada and Ireland to encourage their participation in the task force.

7. Finally, the Working Group agreed that the proposals from the task force should be first considered by the Working Group and the Implementation Committee in 2013, prior to their submission to the next MOP in 2014.

8. At its meeting in 31 January and 1 February 2013, the Bureau requested the secretariat to inform the Working Group at its meeting in May 2013 of the possibilities for arranging for a review of the text of the three authentic language versions of the Convention (English, French and Russian) by the United Nations, with a view to listing all inconsistencies. The Bureau requested the secretariat to also identify the “preparatory works” of the Convention that had preceded its adoption in 1991. As decided by the Working Group at its first meeting, the listed inconsistencies would be first considered by an ad hoc task force comprising of lawyers and native speakers of English, French and Russian prior to their submission to the Working Group and further to the Meeting of the Parties to decide on further action at its next session (see informal notes of the meeting, para. 10).

III. A review of the text of the Convention by the United Nations

9. In line with the Working Group’s request, the secretariat arranged for a review of the text of the three authentic language versions of the Convention by editors of the UN Geneva office.

10. As a basis of their work, the editors referred to the “certified true copy” of the Convention, deposited with the Secretary-General and published in the United Nations Treaty Series, vol. 1989, (registration no 34018, at p. 309). This version however contained several typos in all three languages which the editors deemed were due to scanning of the document. The editors suggested that the text of the Convention and its introduction page (p. 309) in the Treaty Series be retyped, proofread and replaced: as especially in Russian some of the typos impact on meaning. The editors noted that the text cannot be used as a valid document even for reference.

11. Based on the above, the secretariat suggests that further work to be carried out by the Working Group and its ad hoc group, be based on the text of the Convention available on the UN Treaty Collection website under "Certified True Copies"¹. The secretariat has contacted the Treaty Section of the UN Office of Legal Affairs to draw their attention to the bad quality of the scanned copy in the Treaty Series.

12. Furthermore, as recommended by the editors, it will also be to the secretariat to ensure that the text of the Convention available on the United Nations official site, on the Convention website and as published will correspond to the verified text of the Convention (CTC)

13. The outcomes of the work of the UN editors is presented in the annex to this document.

IV. Addressing inconsistencies

14. The Working Group will be invited to consider the inconsistencies listed by the UN editors in the three authentic language versions of the Convention. It is expected to agree on the further actions to be taken by the ad hoc task force with a view to bringing the language versions of the Convention in line. The inconsistencies identified include editorial errors and substantive discrepancies.

15. Editorial errors can be addressed through a corrigendum to the Convention text issued for technical reasons. The corrigendum can then be incorporated into the text to provide a revised, consolidated text for publication.

16. Substantive discrepancies can be addressed by amendment. However, they can also be pointed out to the Parties or an interpretation agreed upon, for example through a decision by the Meeting of the Parties, having applied article 33 (Interpretation of treaties authenticated in two or more languages) of the Vienna Convention on the Law of Treaties (notably para. 4):

¹ http://treaties.un.org/doc/Treaties/1991/02/19910225%2008-29%20PM/Ch_XXVII_04p.pdf

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 [(on General rule of interpretation and Supplementary means of interpretation, respectively)] does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Annex

Concordance table for the Espoo Convention

Prepared by the UN editors

Preliminary remarks:

The table below lists discrepancies, with editor's comments thereon, noted while cross reading the Convention in its three original languages, English, French and Russian.

Please note that, underlined text included in the certified true copy" of the Convention, deposited with the Secretary-General and published in the United Nations Treaty Series, vol. 1989, (registration no 34018, at p. 309), has been replaced by italics, which is the current practice in presentation of the United Nations documents and it should be followed in all three languages when the text is retyped.

Please also note that the table below does not list the missing accents in French, including on capital letters, which of course should be added when the text is retyped.

Art.	Lang.	Discrepancy	Editor's Comments
Title p. 352 of the UN Treaty Series	R	"ВОЗДЕЙСТВИЯ ЗА" should read "ВОЗДЕЙСТВИЯ НА"	See Preliminary Remarks on typos due to scanning.
	R	A footnote 1 should be added to the text of the Convention in Russian	The text of the footnote should be translated into Russian.
New paragraph	R	A new paragraph should be added below the title of the Convention: " <i>Принята 25 февраля 1991 года</i> "	Missing paragraph.
Preamble	E/F/R	none	n.a.
Art. 1	E/F/R	none	n.a.
Art. 2	E/F/R	none	n.a.
Art. 3, § 2	E/F/R	There is an inconsistency in capitalization in the text following the subparagraphs	While not a substantive change, it may be worth pointing out for future reference if the text is to be reprinted. Change would be cosmetic.
Art. 3, § 2 b	E	French and Russian match and have "Des renseignements sur", which is missing in English	As the syntax of subparagraphs <i>a</i> and <i>b</i> in French and Russian matches, it may be advisable to align the English.
§ 4	E/F/R	Mention of paragraphs, 5, 6, 7 and 8, could be listed as 5 to 8.	All language versions match. Change would be cosmetic.
§ 6	F	French use definite art: " <i>La partie touchée communique à la partie d'origine</i> " English use first indefinite and then definite	Legal advice may be sought.
Art. 4	E/F/R	None	n.a.
Art. 5, last paragraph	R	"временных" should read "временных"	Missing accent (twists meaning of a word).
Art.6, § 1		"указанных в Статье 5" should read "указанные в Статье 5"	Conjugation error.
§ 3	E/F	Possible discrepancy in the use of adverbs : <i>sensiblement</i> / <i>materially</i>	May be worth seeking advice as to whether the meaning is not slightly different.
Art. 7, § 2	F	... à penser que l' activité proposée a un impact... important...	To the editor's view this is not major, it seems clear that "there" stands for the "proposed activity".

<i>Art.</i>	<i>Lang.</i>	<i>Discrepancy</i>	<i>Editor's Comments</i>
		... that there is a significant impact...	
Art. 8		none	n.a.
Art. 9 § c)	F	"impact" singular in French whereas plural in English	"Impact" is rarely used in plural form in French. Seems cosmetic.
Art.10		none	n.a.
Art. 11 § 1 § 2 c)	E/F/R F	Acronym: CEE Order of occurrence is different in English from French and Russian: "comités scientifiques et d'organismes internationaux"	Improper usage. The full name is correctly used afterwards. Order should be from bigger to smaller entities ?
Art. 12		none	n.a.
Art. 13		none	n.a.
Art. 14		none	n.a.
Art. 15		none	n.a.
Art.16	R	"передали полномочия" should read "включая полномочия"	Semantic error.
Art.17		none	n.a.
Art.18		none	n.a.
Art.19		none	n.a.
Art.20		none	n.a.
APPENDICES			
I § 1	R	"500 тонн или более" should read "500 или более тонн"	Combination of the words error.
I § 9	R	"допускающих" should read "допускающие"	Semantic error.
I § 12	R	"10 миллионов кубических метров или более" should read "10 или более миллионов кубических метров"	Combination of the words error.
II § (b)	E/F	In English, there are the words "to the proposed activity" which are missing in French	The words are implied in French, but could be aligned to match the English.
II § e)	E/F	"autant que possible" "to a minimum"	Legal advice may be sought to find out whether the two terms carry the same obligation.
§ f)	E/F	"retenues" / "underlying", the two adjectives have slightly different meaning. In "retenues" there seems to be an intent (gardé, mis en reserve), which may not be the case in "underlying"	Legal advice may be sought.
III § 1 b)	E/F/R	"Convention de Ramsar"	Full title of instrument should be given: Convention sur les zones humides d'importance internationale (Convention de Ramsar); in English "Convention on wetlands of international importance especially as waterfowl habitat" (Ramsar Convention)
IV § 5 (cf to VII § 6)	E/F	French uses similar verb "arrête" whereas English uses "adopt" and "draw up" English use similar phrase "rules of procedure" whereas French uses "règlement intérieur" and "procédure"	Legal advice may be sought. From a legal point of view the difference in French terms seems justified, since a Commission would have "règlement intérieur" whereas a tribunal a "procédure", legal advice may be needed.

<i>Art.</i>	<i>Lang.</i>	<i>Discrepancy</i>	<i>Editor's Comments</i>
§ 12	E/F	Last part of the sentence, variation in syntax which may impact on obligations: “est, éventuellement , assorti de l'exposé” whereas English reads “shall include any..”	To match the syntax, French should read “est assorti, le cas échéant ou s'il y a lieu .” in which case the obligation would be the same: if there are dissenting views, there shall be included. As it is now, in French “éventuellement” makes this inclusion optional.
V	F	“notamment”, does not appear in the two other languages	
VI	F	“élargir le champ” should read “élargir le champ d'application”	optional
VII 6 (cf. to IV § 5)	E/F	See previous comment above at IV § 5	
VII § 1	R	"Статьи 5" should read "Статьи 15"	Semantic error.
Treaty Series, Vol. 1989, No. 34028 p. 378	R	[<i>Illegible – Illisible</i>] should be replaced by the name of the person who signed the Convention in the name of the USSR	Missing text.