



ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՄՇՏԱԿԱՆ ՆԵՐԿԱՅԱՑՈՒՑԻՉ
PERMANENT REPRESENTATIVE OF THE REPUBLIC OF ARMENIA

URGENT

312/190/2013

The Permanent Mission of the Republic of Armenia to the United Nations Office and Other International Organisations at Geneva presents its compliments to the Secretariat of the Convention on Environmental Impact Assessment in a Transboundary Context and has the honour to convey the comments of the Republic of Armenia on the Draft Findings and Recommendations, prepared by the Implementation Committee at its 27th session (12-14 March, 2013) further to the submission by Armenia regarding Azerbaijan.

The Permanent Mission of the Republic of Armenia to the United Nations Office and Other International Organisations at Geneva avails itself of this opportunity to renew to the Secretariat of the Convention on Environmental Impact Assessment in a Transboundary Context the assurances of its highest consideration.

Attached: 2 pages.

Geneva, 31 May 2013



SECRETARIAT OF THE CONVENTION
ON ENVIRONMENTAL IMPACT ASSESSMENT
IN A TRANSBOUNDARY CONTEXT
Geneva

Comments of Armenia

on the Draft Findings and Recommendations
further to the submission by Armenia regarding Azerbaijan
(Prepared by the Implementation Committee at its twenty-seventh session,
Geneva, 12-14 March 2013)

The Committee found that in relation to some activities, including the full development stage of 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, the Convention could have been applied provided that the condition concerning the likelihood of a significant adverse transboundary impact was met. However, the Committee failed to recognize Azerbaijan's failure to notify, by stating that Armenia should have used the means provided by article 3, paragraph 7, before making a submission¹.

In this regard, it should be noted that the Espoo Convention does not provide for a sequence of use of rights after the affected party's right to be notified has been breached. According to the Convention, any party, which considers that it may be affected by the impact of the proposed activity carried out by other party of the Convention (party of origin)², has the right upon notification³ (obligation of the party carrying out the proposed activity) to claim the status as affected party and subsequently take part in the proceedings provided by the Convention.

In order to defend the rights of the affected party, which has been deprived of its right to be notified (the breach is already present), the affected party may (at its discretion) when no notification has taken place, in accordance with article 3, paragraph 7, request for information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact⁴. However, by its wording, this is not a mandatory rule, and as the

¹ Paragraph 69 of the Findings

² Article 1 (iii) Affected Party: the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity. In Point 68. In the last paragraph it is mentioned that Azerbaijan hasn't implemented the provisions of the Convention, because the final decision concerning these projects was made before the Convention had been ratified by Azerbaijan.

However, the Document of the British Petroleum Corporation shows that Azerbaijan determined the environmental impact assessment and the scope of the affected countries after the ratification of the Convention.

³ Article 3, Paragraph 1: 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 that proposed activity.

⁴ When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in Appendix I, and when no notification has taken place in accordance with Paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of Appendix IV to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question

Committee found it is not a substitute of article 3, paragraph 1⁵. Accordingly, the affected party may or may not use that right, as it may or may not present a submission, or try to contact the party of origin by other means (being all of them auxiliary rights) because the breach has already taken place.

Therefore, this connection traced by the Committee is, in our opinion, not endorsed by the wording of the Convention. Additionally, Azerbaijan's failure to notify is a breach of its obligations under the Convention, while Armenia's failure to use the means provided by Article 3, paragraph 7 constitutes *per se* non use of a right. In our view, these two aspects need to be analysed separately, without associating, relating or conditioning Azerbaijan's breach with Armenia's discretion. While taking any actions, Azerbaijan does not consider Armenia to be an affected country. Thus, Azerbaijan mainly tries to justify its position by geopolitical and political issues. The abovementioned Azerbaijani position is fully, unfortunately, supported by the Implementation Committee of the Convention.

In other words, no party may be obliged to make use of its rights, while every party is deemed to meet its obligations.

Another issue exposed by the Committee is Armenia's failure to present sufficient supporting information to endorse its claim on transboundary impact. In this regard, two factors should be considered. First, the existing relations between the Parties⁶, and the deriving information blockage, hinder Armenia's possibility to get information beyond what is provided by open sources. Second, while Azerbaijan, as a party of origin, in the view of the Committee has substantiated its position on absence of significant transboundary impact⁷, the evidence presented by Armenia, has not even been considered in the Findings. Particularly, even the statement of Azerbaijani high level official⁸ related to the explicit recognition of the transboundary impact of the given projects has been ignored by the Committee.

Summing up, it should be stated that Armenia had filed the submission with a view of bringing the Committee's attention towards Azerbaijan's ongoing incompliance with its obligations under the Convention. Instead, the findings of the Committee denote a position of burdening the affected party's right of being notified with a sequence of actions, which according to the Committee, the affected party shall initiate (first, use the means under article 3, paragraph 7 and only after that file a submission). Moreover, the Committee not only failed to explicitly recognize that Azerbaijan had never notified Armenia, but it also disregarded Azerbaijan's official recognition of the transboundary impact of the undertaken projects. Thus, in our view, at the given stage, the findings and recommendations create the necessary conditions for Azerbaijan's continuing breach of the Convention.

⁵ Paragraph 57 of the Findings

⁶ Stressed by the Committee in the Paragraph 72 of the Findings.

⁷ Paragraph 70 of the Findings

⁸ Deputy Minister of Ecology and Natural Resources of Azerbaijan, Mr. Novrus Guliev's statement during the high-level meeting on June 23, 2011, *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