

Introduction

Azerbaijan, the third-largest oil producer in the former Soviet Union after Russia and Kazakhstan, is constantly increasing its oil and gas production. In 2011, it produced 45.6 million metric tons of oil, and gas output was of 25.8 billion¹. From 2005 to 2010 the volume of the annual commercial production of oil in Azerbaijan reached 50692 tones, while the annual commercial production of gas up to 16673 cubic meters².

In recent years, Azerbaijan has implemented a number of large scale oil and gas projects, particularly, Azeri-Chirag-Gyuneshli, Shah-Deniz, oil terminal Sengachali, Baku-Novorossiisk, South Caucasus, Baku-Tbilisi-Ceyhan. This projects' transboundary impact is undeniable. In addition to these, a new Shah-Deniz 2 project is underway, with possible trans-border implications.

From the viewpoint of environment and population security, one of the most important tasks is the safety of major oil and gas projects, including the openness and accessibility of the pertinent information regarding these projects. Information provided by the country of origin is a key tool to prevent negative environmental impact, and lack of it may have a crucial impact on affected countries.

Armenia, as a country sharing a border with Azerbaijan, is affected by the scale of production of oil and gas in large in closed water basins in the neighboring country, as such activity constitutes a serious threat to the environment, which is a common value.

Article 2.2 of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, to which both Armenia and Azerbaijan are parties, provides that "the Party of origin shall, consistent with the provisions of the Convention ensure that the affected parties are notified of a proposed activity listed in Appendix I that is likely to cause an adverse transboundary impact." The activities carried out by Azerbaijan are included in the list of activities prescribed by Appendix I. Particularly, they fall under the eighth category, being "large-diameter oil and gas pipelines." However, Armenia, as an affected party³ has never been notified about Azerbaijan's planned activities, which had a transboundary impact, as will be presented below. By this, Azerbaijan, failed to fulfill its conventional obligations prescribed on Article 3.1 of the Espoo Convention⁴.

Azerbaijan's assertion on the given projects

¹ "Azerbaijan Predicts 12% Growth in Gas Output by 2015, Trend Says," businessweek.com, 12.06.2012

² See attachment 1 on Oil and Gas production in Azerbaijan

³ Article 1, (iii) of the Convention on Environmental Impact Assessment defines Affected Party as " the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity."

⁴ "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."

Deputy Minister of Ecology and Natural Resources of Azerbaijan, Mr. Novrus Guliev, stated, after enumerating the mentioned six projects, 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 Assessment⁵.” By this the high ranking official makes an official statement on the need of a transboundary assessment and accepts, that even recognizing its need, such a procedure has not been carried out by Azerbaijan.

Moreover, on May 2011, at Regional Conference on Espoo Convention dedicated to the implementation of the Convention’s provisions, the Head of Subdivision of Azerbaijan’s State Environmental Expertise Department Ministry of Ecology and Natural Resources of Azerbaijan and country’s representative, Ms. Tatyana Javanshir, in her statement speaking about the same projects said, “All these six projects are subject to transboundary assessment, however, the assessment was not conducted due to a number of reasons.”

We would like to cite Azerbaijan’s responses to the Espoo Questionnaire for 2003-2005 regarding the implementation of the Convention and, in particular, on question 46: “Are there projects that need the Assessment which has not been realized? Explain why.” Azerbaijan responded to that question: “There are such projects. Due to the lack of bilateral and multilateral agreements with the neighboring states, the procedure has not been carried out. The majority of the countries are not Parties to this Convention⁶.” The same pattern of responses is noted in Questionnaire for 2006-2009.

It is clear that for a neighbor country these statements do not seem to be convincing and well founded. Moreover, Armenia, as an affected country, party to the Espoo Convention since 1997, cannot accept these answers, as the latter are a violation of the Espoo Convention and particularly of its Article 3.1 and 3.8, both concerning Notification, Article 5 (Consultations on the basis of Environmental Impact Assessment documentation), Article 6.1 (Final decision).

Resuming, all the six projects mentioned above have transboundary impact and according to the Appendix I to the UN Convention on the “Assessment of the Impact on the Environment in Transboundary Context,” are subject to the conduct of the corresponding

⁵ 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

⁶ REPORT OF AZERBAIJAN FOR 2003-2005 ON THE IMPLEMENTATION OF THE ESPOO CONVENTION ON ENVIRONMENTAL IMPACTASSESSMENT IN A TRANSBOUNDARY CONTEXT for the period mid-2003 to end of 2005, 1 March 2006, <http://www.unece.org/fileadmin/DAM/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003-2005%20-%20Azerbaijan%20-%20English%20-%20informal.pdf>

procedures envisaged by the Convention. This fact, as it has been stated above, is accepted by the Azerbaijani side itself.

In this regard, we would like to mention, that Armenia expressed its remarks on Azerbaijan's violations of the Convention in different occasions. Particularly, during the fifth meeting of the Convention parties, i.e. the high-level segment on May 23, after the intervention by the Deputy Minister of Azerbaijan, the Chairman of the meeting Mr. Himanen, gave Armenia a right of reply. In our reply we underscored that a country, which at the high-level meeting declares brazenly about the violation of its obligations regarding the Convention, undermines the very base of the Convention, its letter and spirit.

As a result, up to day, Armenia lacks of information on any of these projects. By this Azerbaijan, is violating Article 2.2 of the Espoo Convention, which states that "the party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in Appendix I that is likely to cause a significant transboundary impact".

With the intention of justifying its behavior, it states that it has never tried to implement the provisions of the Convention for different reasons. This is a vague definition for absence of diplomatic relations. As it has been mentioned, Azerbaijan is a closed country from the point of view of dissemination of information, and for Armenia in particular, Azerbaijan remains a "closed" country.

Analysis of Projects

The present analysis is founded on the information which is available from open sources.

BTC (Baku-Tbilisi-Ceyhan) and BTE (Baku-Tbilisi-Erzurum) Pipelines⁷ cross several active tectonic entities that have experienced large earthquakes in the past. Past earthquakes have clearly shown that earthquakes cause major damage to pipelines, not only in the form of direct damage (such as the interruption of flow due to breakage, huge repair and restoration costs, widespread fires, environmental pollution), but also indirect economic losses due to business interruptions and disruptions on other lifelines (e.g., power, water, communication lines). Damage to a pipeline due to a large earthquake in one of the countries will affect directly or indirectly all the other countries that pipeline extends, impacting large geographic regions and disrupting global economies⁸.

Unfortunately, as stated the report, before the NATO supported program conducted assessment of the seismic risks of the pipelines, "none of these pipelines had ever been

⁷ See Attachment 2 (Maps)

⁸ Seismic hazard and Risk Assessment for Southern Caucasus-Eastern Turkey Energy Corridors, NATO, April 2008, <http://www.koeri.boun.edu.tr/depremmuh/eski/nato/project/pdf/Proposal.pdf>

evaluated comprehensively (other than the standard code-based design studies) for their seismic safety and risk⁹.”

In complement to the given information, hereby we present the excerpts from the internet sources:

The Baku-Ceyhan Pipeline: BP's Time Bomb¹⁰

BP cuts a path of environmental and social irresponsibility from Caspian to Mediterranean

The pipeline legal agreements also give BP effective governing power over a strip of land 1,750 miles long, where the company will likely override all national environmental, social, human rights laws for the next 40 years.

The project is governed by an Inter-Governmental Agreement (IGA) between the governments of Azerbaijan, Georgia and Turkey, which was drafted by BP's lawyers, and by individual Host Government Agreements (HGA) between each of the three countries and the BP-led consortium.

Georgia's president, Mikheil Saakashvili, has described the Georgian agreement for BTC as “a horrible contract, really horrible”. These agreements have largely exempted BP and its partners from local laws – and allow BP to demand compensation from the governments should any law (including environmental, social or human rights law) make the pipeline less profitable.

In 2005, British Petroleum organized Public Consultations and Disclosure Plan¹¹ and in conclusion it is clearly stated, that:

“Azerbaijan joined the Convention in 1999. The main objective of the Convention is to promote environmentally sound and sustainable economic development through the application of environmental impact assessment, especially as a preventive measure against transboundary environmental degradation. Under the terms of this Convention, Azerbaijan is required to notify other states if there is a potential impact upon their environment resulting from a development on the territory of Azerbaijan including its waters.

⁹ Seismic hazard and Risk Assessment for Southern Caucasus-Eastern Turkey Energy Corridors, NATO, April 2008, <http://www.koeri.boun.edu.tr/deprenmmuh/eski/nato/project/pdf/Proposal.pdf>

¹⁰ ***The Baku-Ceyhan Pipeline: BP's Time Bomb, Hannah Ellis, CorpWatch, June 2, 2005,*** <http://www.globalpolicy.org/component/content/article/221/46969.html>

¹¹ Page 16, Espoo Convention on Environmental Impact Assessment in a Transboundary Context,” Public Consultation and Disclosure Plan/ Azerbaijan, South Caucasus Pipeline Company, April 2003 http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/xyz/BT_C_English_PCDPs_Azerbaijan_Content_Az_PCDP_Final_A-3_no_photos.pdf

Although the Convention does not specifically deal with public participation in environmental decision-making, it provides the requirement for a country conducting a proposed activity to provide an opportunity to the public of a country (ies) likely to be affected to participate in the process of environmental impact assessment regarding the proposed activity.

The Espoo Convention is only applicable if both the party conducting a proposed project and the affected party have ratified the Convention. Currently Armenia is the only Caucasus state that borders with Azerbaijan by land, and Kazakhstan is the only Caspian state that borders with Azerbaijan by water that has ratified the Espoo Convention. As per the Convention, Azerbaijan should notify Kazakhstan and Armenia about the proposed project as soon as possible and no later than informing its own public. This notification should include information about the proposed project. Armenia and Kazakhstan will be expected to respond to this notification indicating whether they wish to participate in the environmental impact assessment process. Should these countries wish to participate, Azerbaijan will ensure that the public of these countries be provided with the opportunity to participate in the EIA process equivalent to that provided to the public of Azerbaijan”.