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

**Ad hoc Working Group on the Protocol
on Strategic Environmental Assessment**

REPORT OF THE SECOND SESSION

1. The second session of the ad hoc Working Group on the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context took place in Geneva from 26 to 28 September 2001.
2. It was attended by the delegations of: Albania, Armenia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Kazakhstan, Latvia, Liechtenstein, Lithuania, Netherlands, Norway, Poland, Republic of Moldova, Romania, Russian Federation, Slovakia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom, United States of America, Uzbekistan and Yugoslavia.
3. The meeting was also attended by representatives of the Commission of the European Communities. The following international and non-governmental organizations were also represented: the Regional Office for Europe of the World Health Organization (WHO/EURO), Ecoterra, European ECO Forum, the International Association for Impact Assessment (IAIA), and the Regional Environmental Center for Central and Eastern Europe (REC).

4. The meeting was opened by Mr. Terje Lind, Chairman of the ad hoc Working Group. In his opening statement, Mr. K. Bärlund, Director of the ECE Environment and Human Settlements Division, drew the attention of the Working Group to the Ministerial Statement for the World Summit on Sustainable Development, which referred to the preparation of the protocol. He also underlined the importance of the participation of countries in transition in the work on the protocol, and indicated that these countries should strengthen cooperation and consultation at national level.

I. ADOPTION OF THE AGENDA

5. The Working Group adopted the agenda as contained in document MP.EIA/AC.1/2001/4.

II. ELECTION OF OFFICERS

6. The Working Group confirmed the election of Mr. Terje Lind (Norway) as Chairman, and Ms. U. Platzer (Austria) and Mr. J. Jendroska (Poland) as Vice-Chairpersons. It decided to elect a third vice-chairperson at a later stage, if needed.

III. PREPARATION OF A DRAFT PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT

7. The Working Group continued the preparation of a draft protocol on strategic environmental assessment on the basis of the draft elements included in document MP. EIA/AC.1/2001/3 and the alternative texts included in document MP.EIA/AC.1/2001/5. Both documents had been prepared by the secretariat. Proposals by several delegations were also circulated.

8. In discussing the report of its first meeting, the ad hoc Working Group found that the last two sentences of paragraph 8 and the whole of paragraph 9 should be understood as follows: "Several delegations suggested that 'strategic decisions' should also be defined. There were mixed views as to how flexible the public-participation provisions should be, whether they should apply to strategic decision-making procedures in general, or only to the strategic environmental assessment part of such procedures, and to which stages in those procedures. Regarding the scope of the protocol, some delegations felt that there should be a distinction between plans and programmes on the one hand, and policies and legislation on the other. It would, however, be important to consider the content and function of the relevant decision-making procedures and not merely their name (plan, programme, etc.). On the access-to-justice article, two broad views emerged. Some delegations wished to remove the provisions wholly or in part from the draft. Others argued that this was an important article giving teeth to the protocol. Among the delegations in favour of access-to-justice provisions, some were of the opinion that such provisions should cover procedural rights only, while others expressed the view that substantive issues might also be covered. The Chairman suggested that these provisions should remain as they were for the time being and be discussed later."

9. The Working Group discussed article 14 on monitoring. The Chairman, when summarizing the discussion, stressed that so far no final conclusion had been drawn on this or any other point but that a range of views had been expressed on the following issues:

- Article 14 on monitoring should not be combined with the article on quality control;
- Monitoring was a complex issue and any requirement should be flexible and address the various types of strategic decisions;
- The article could include wording related to transboundary impacts or could be included in the article on transboundary impacts;
- Monitoring could focus on “significant environmental effects” and positive effects could also be included in this article;
- Public participation could form part of monitoring;
- Paragraph 4 could be moved to another part of the protocol, for instance to article 16 on the Meeting of the Parties. Several delegations considered that it could be deleted entirely.

The Bureau revised the wording of article 14, as included in annex I to this report. It was agreed that paragraph 4 should be discussed at a later stage.

10. The Working Group discussed article 15 on strategic decisions with transboundary effects. A number of proposals on the underlying principles of this article were put forward and the Chairman in his summary mentioned the following issues:

- The relevant wording of the Espoo and Aarhus Conventions as well as the EC Directive could be considered;
- The term “strategic decision” might not be used in the protocol, but if it was, it would need to be defined;
- The adoption or finalization of the decision may be too late in the procedure for notifying the affected Party;
- The affected Party could participate in the assessment procedures and not in the decision-making;
- Public participation could be part of scoping and monitoring also in a transboundary context;
- All procedural steps of the Espoo Convention, including consultation, could be maintained;
- Bilateral and multilateral agreements could be addressed;
- It was proposed to delete or move paragraphs 4 and 5.

The Working Group took note of the comments made and decided to come back to this issue at a later stage, when there was a clearer understanding of how the protocol would operate at national level.

11. The Working Group considered article 2, paragraphs 1 to 6, to be generally acceptable, the Chairman in summarizing the discussion on paragraph 7 on strategic environmental assessment (SEA), indicated that the following issues had been put forward:

- According to some, a definition was not needed;

- The word “strategic” should not be used in relation to “assessment”, but to decision-making;
- The term “structural changes” could be introduced;
- The concept of plans, programmes, policies and legislation should be defined;
- Two possible ways of defining SEA were proposed: a descriptive definition, listing the procedural elements related to SEA, or a normative definition focusing on the requirements (information, decision-making, participation);
- The term “effects” could be replaced by “implications” or “impacts”;
- The definition could point to possible significant effects;
- The definitions could establish a link to sustainability at national and international levels.

12. The definition of SEA should be further discussed in the light of the outcome of the discussion on article 5 in particular. The need for a definition of “strategic decisions” was generally accepted. Accordingly, a proposal made by an informal group on a possible definition was discussed and generally accepted as a basis for further discussion (see annex II). Land-use plans, master plans, zoning concepts, waste management strategies, regional development programmes, national transport programmes, water management plans, energy policy, physical plans, forest management plans and a tourism development strategy could fall within the scope of plans and programmes. It was argued that it would perhaps not be necessary to distinguish very clearly between plans and programmes. A nuclear act, waste management act or water management act were mentioned as examples of legal acts. Examples of policies could include White Papers or new political initiatives.

13. The Working Group also discussed proposals for a possible definition of strategic environmental assessment and prepared texts as included in annex III to this report.

14. In discussing article 2, paragraph 8, on public authority, the following items were put forward, as summarized by the Chairman:

- The concept of public authority must be discussed in the light of the scope of the protocol;
- The term “competent authority” could also be defined;
- The term “local level” could be replaced by “other level”;
- There were mixed opinions as to whether subparagraph (b) should be kept in or deleted. If kept, “where regulated or co-funded by public bodies” could be added;
- The term “health authorities” could be defined.

15. Article 2, paragraphs 10 and 11, on public and public concerned were not resolved, but the delegation of ECO Forum noted that the definition of “public concerned” did not include a reference to non-governmental organizations, which were automatically included as in article 2, paragraph 5, of the Aarhus Convention.

16. Some concern was expressed that the draft elements used different formulations for obligations under the protocol, such as “Each Party shall ensure..”, “Each Party shall arrange....” or “The draft decision shall be made available....”. These formulations should be reviewed for general consistency.

17. In summarizing the discussion on article 5, the Chairman said that many delegations had

spoken in favour of a binding protocol on plans and programmes and more flexible arrangements for policies and legislation, and that a clearer understanding of these different concepts was essential in order to secure an even implementation. The delegation of the International Association for Impact Assessment proposed alternative wording for article 5, as included in annex IV below, for discussion at a later stage.

18. The Chairman proposed that the further negotiations should concentrate on binding elements regarding plans and programmes. When a structure for these elements was established, the negotiation could concentrate on more flexible approaches for policies and legislation. The need to arrive at a common understanding of what was understood by these concepts was essential, either by definitions or sets of criteria or examples. This was generally accepted.

19. In concluding this agenda item, the ad hoc Working Group had before it draft elements for the report. Several delegations provided comments. The Working Group requested the Bureau, with the assistance of the secretariat, to finalize the report taking into account the comments made.

IV. OTHER BUSINESS

20. The delegation of Poland reminded the Working Group that Workshop on Subregional Cooperation would be held on 22-23 October 2001 in Warsaw. The delegation of REC circulated information about the regional Workshop on Strategic Environmental Assessment of Regional Development Plans in Central and Eastern Europe in Bled (Slovenia) on 10-11 December 2001. The delegation of Armenia indicated that it would like to host a meeting on the negotiations of the SEA protocol in its country and launched an official appeal to possible donor countries to assist in the organization of such a meeting.

21. The Working Group was informed that its third session would be held from 21 to 23 November 2001 in Orvieto, (Italy) at the invitation of the Government of Italy.

22. The meeting was closed on Friday, 28 September 2001.

Annex I

REVISED TEXT FOR ARTICLE 14: MONITORING

1. Each Party shall make the necessary arrangements to monitor the actual significant effects of the implementation of the strategic decisions referred to in article 12 in order, inter alia, to assess the effectiveness of the measures taken to prevent or mitigate their negative effects, and to be able to undertake appropriate remedial action.
2. The results of the monitoring undertaken in accordance with paragraph 1 shall be made available to the authorities involved and to the public.
3. When the results of the monitoring give reasonable grounds for concluding that the strategic decision has significant negative effects, the competent authority, taking into account the comments submitted by the public and by environmental and health authorities, shall reconsider the relevant aspects of the strategic decision, including the possibility of its modification or termination.
- [4. Each Party shall prepare, at least on a biennial basis, a monitoring report to review the negative effects of strategic decisions for which a strategic environmental assessment has been prepared. The monitoring report shall be made publicly accessible.]

Annex II

ARTICLE 2: DEFINITIONS

8. “ Strategic decisions” means:

(a). Programmes, plans, strategic concepts and other decisions of similar nature (hereinafter referred to as “programmes and plans”), as well as any modifications to them, which are specifically envisaged by legislative, regulatory or administrative provisions, and which are subject to preparation and/or adoption by a public authority, or which are prepared by a public authority for adoption, through a formal procedure, by Parliament or Government, with the exception of strategic decisions referred to in subparagraph (b) below;

(b). Legislative acts, regulations and any other generally applicable legally binding normative instruments (hereinafter referred to as “legal acts”), as well as any modifications to them, which are prepared by a public authority for adoption, through a formal procedure, by Parliament or Government;

(c). Any other decisions of a strategic nature which sets policy objectives (hereinafter referred to as “policies”), as well as any modifications to them, which are subject to preparation and/or adoption by a public authority.

[Area of application and screening system to be defined]

Annex III

**ARTICLE 2, PARAGRAPH 7:
DEFINITION OF STRATEGIC ENVIRONMENTAL ASSESSMENT**

ITALY:

SEA is a participatory process to address systematically the environmental considerations and consequences of policies, plans, programmes and legislative or administrative proposals with a view to ensuring the integration of environmental concerns into the decision-making process.

SPAIN/IAIA:

SEA means a participatory evaluation of potential significant consequences for the environment of a proposed plan, programme, strategy, policy, regulatory or legislative instrument, with the purpose to be integrated into the decision. SEA is a process ensuring in decision-making by referring to the international agreements to which a country is a signatory and relevant national policies and strategies which are already in place.

ARMENIA, KAZAKHSTAN, TAJIKISTAN, UZBEKISTAN:

“Strategic environmental assessment” is the whole process of evaluating the consequences during the implementation of a strategic decision taking into account the outcome of the environmental assessment, of the public participation and of monitoring to reduce its negative effects.

“Environmental Assessment” is the evaluation of the impact of a planned activity on the environment and on public health.

“Strategic decision” is the process of decision-making on all levels and in all spheres of activity with public participation with the aim of ensuring sustainable development with minimal effect on the environment, including transboundary aspects.

DENMARK:

“Strategic environmental assessment” means a process to evaluate the likely effect of a proposed strategic decision on the environment and related health.

UZBEKISTAN:

“Environmental assessment of strategic decisions” means a process to evaluate the likely effect of a planned strategic decision on the environment and related health aspects.

ECO FORUM:

“Strategic environmental assessment or SEA” means a process for taking into account environmental considerations and public concerns in preparing, authorizing and implementing strategic decisions.

“Strategic decision” means a policy, plan, programme, regulation, legislation or any other set of coherent measures and rules guiding future actions and formally adopted by a decision of a public authority.

“Environmental consideration” means a potential environmental effect of a proposed strategic decision as well as its relation and potential interaction with objectives, activities and measures relevant to the environment, such as national and international environmental objectives and environmental agreements.

Annex IV

PROPOSAL FOR MODIFICATION OF ARTICLE 5

Proposal by IAIA

Each Party shall apply the provisions of the Protocol, at international, national, regional and local levels and in transboundary and non-transboundary contexts, to strategic decisions (plans, programmes, strategies, policies, concepts, legislative acts, regulatory documents and any other decisions with long-term strategic goals) which: (a) are proposals in the form of a document; (b) set the framework for the projects that may be subject to EIA; and (c) are subject to approval by a competent authority.