

Bystroe Canal Project and Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991)

UNECE Secretariat

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Bystroe Canal Project

- Implementation Committee
 - NGO information (2003)
 - 1st submission (2004)
- Inquiry Procedure (2004-6)
 - Significant adverse impacts
- Implementation Committee
 - 2nd submission (2007-8)
- International Organizations (April 2008)
 - Agreement on future actions
- Meeting of the Parties (May 2008)
 - Commitments by Ukraine
 - Decision by the Meeting
- Possible ramifications (May 2008 - ...)



Implementation Committee

- NGO (EcoPravo Lviv) complaint to Implementation Committee
 - Sent August 2003
 - Rejected December 2003
- Romanian submission to Implementation Committee
 - Submission May 2004
 - Could not be considered because of inquiry procedure (November 2004)
- *Meanwhile*
 - Joint Mission of the Expert Team of the European Commission and International Conventions (October 2004)

Inquiry Procedure

- Request by Romania for establishment of Inquiry Commission (August 2004)
 - Romania, Ukraine, independent Chair
- 2 preparatory meetings (January – February 2005)
 - pending provision of funds
- 3 meetings and site visit (October 2005 – May 2006)
- Opinion delivered (July 2006)
 - Unanimous
 - 6 subjects have likely significant adverse transboundary impacts
- Convention therefore applies

Significant adverse transboundary impacts

1. Impact of dredging or deepening of the rifts on the distribution of the flow discharge between the Bystroe and the Starostambulski branches and on the water level dynamics along the Bystroe branch, resulting in loss of floodplain habitats, important for fish (spawning and nursery) and birds (nesting, feeding)
2. Impact of habitat loss on birdlife and fish:
 - coverage of riparian dump sites
 - dredging through the offshore sandbar measures for bank protection
3. Impact on fish by increase of suspended sediment concentration, downstream of the dredging sites (local and temporal)
4. Impact on the increase of turbidity of marine waters as a result of dumping of spoil at the dump-site at sea
5. Impact on fish of repeated maintenance dredging hampering the recovery processes of affected areas in the long term
6. Cumulative impact fish and birdlife by loss and/or disturbance of habitats by shipping traffic on a large scale and long term

Implementation Committee

- Romanian submission to Implementation Committee (January 2007)
- 4 Committee meetings, including 1 involving Romania and Ukraine (February 2007 – January 2008)
 - Findings and recommendations
- Information on "Final Decision" on Phase II of Project (February 2008)
- Further consideration by Implementation Committee
 - Addendum to findings and recommendations

International Organizations (1/2)

- Informal (International) Consultation Meetings on the Bystroe Canal
 - September 2004
 - April 2008
- Participants in April 2008 meeting
 - Permanent Secretariat of International Commission for Protection of Danube River
 - Council of Europe Secretariat of Bern Convention
 - Secretariat of Ramsar Convention, also representing Secretariat of Biodiversity Convention
 - UNEP (Regional Office for Europe)
 - UNESCO Man and Biosphere Programme and World Heritage Convention
 - UNECE secretariat of Espoo, Water and Aarhus Conventions

International Organizations (2/2)

- The organizations agreed:
 - to continue to coordinate their actions
 - each to notify the other organizations on the outcomes of key events in the following months (including meetings of Parties)
 - to join, if possible and appropriate, a Bern Convention “on-the-spot appraisal visit” to Ukraine in July 2008
 - to meet again within one year to exchange information and experiences on specific issues common to the agreements and also to review developments on the matter discussed at the meeting
- The organizations agreed to invite European Commission to follow-up meeting, to be more focused on implementation of practical measures

4th Meeting of Parties (May 2008)

– commitments by Ukraine

- Preparing a notification on proposed activity on Dniester Hydropower Station, for transmission to affected Parties
- To carry out consultations with Moldova on 21-22 May 2008 on likely transboundary impact of Dzurdzulensky Oil Terminal Project (planned in Moldova) and Dniester Hydropower Station
- Nominated new focal point in Ukraine for the Convention
- Ready to reconsider final decision taken regarding Bystroe Canal Project
- Additional consultations with affected Parties on the Project could be arranged and carried out
- Ready to host independent expert sent for analysis of environmental legislation in Ukraine, as recommended by Implementation Committee
- Again inviting secretariat and members of Implementation Committee for on-site visit to the Project
- Ready to sign bilateral agreements with Romania
- Would appreciate assistance of secretariat in submission of implementation strategy for Ukraine, as also recommended by Implementation Committee
- Would repeal final decision on implementing Phase II of the Project

4th Meeting of Parties (May 2008)

– decision on review of compliance

- *Endorses* the findings of the Implementation Committee that Ukraine has been in **non-compliance** with its obligations under the Convention, in particular Articles 2, 3, 4, 5 and 6
- *Decides* to issue a **declaration of non-compliance** to the Government of Ukraine
- *Takes note* of the commitment by the delegation of the Government of Ukraine made during the Fourth Meeting of the Parties to reconsider the final decision of 28 December 2007, and *urges* the Government of **Ukraine** to repeal without delay the final decision of 28 December 2007, concerning the implementation of the [Bystroe Canal Project], and not to implement Phase II of the project before applying fully the provisions of the Convention to the project, taking into account the findings of the Implementation Committee, and to report to the Committee at its 15th meeting (October 2008) and subsequent meetings if necessary

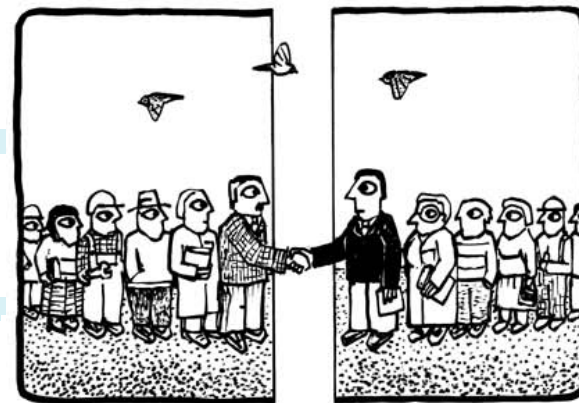
Decision (cont'd) (2/3)

- *Decides* to **issue a caution** to the Government of Ukraine to become effective on 31 October 2008 **unless** the Government of Ukraine stops the works, repeals the final decision and takes steps to comply with the relevant provisions of the Convention
- *Requests* the Government of Ukraine to ensure that its legislation and administrative measures are able to implement fully the provisions of the Convention, and agrees to support the Government of **Ukraine** in the undertaking of an **independent review** of its legal, administrative and other measures to implement the provisions of the Convention for consideration by the Implementation Committee in the first half of 2009. This independent review shall be undertaken by a consultant to be nominated by the Committee and financed from the budget of the Convention

Decision (cont'd) (3/3)

- *Also requests* the Government of **Ukraine** to submit to the Implementation Committee by the end of 2009 a **strategy**, taking into account the efforts by the Government of Ukraine to implement the provisions of the Convention and based on the outcome of the independent review, including its time schedule and training and other actions to bring about compliance with the Convention, and thereafter report to the Committee on the implementation of the strategy
- *Further requests* the **Implementation Committee** to **report** to the fifth meeting of the Parties on the strategy and its implementation and to develop if appropriate further recommendations to assist Ukraine in complying with its obligations under the Convention
- *Invites* the Government of **Ukraine** to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of **bilateral agreements** or other arrangements in order to support further the provisions of the Convention, as set out in Article 8, and to seek advice from the secretariat. The Government of Ukraine is invited to report on progress with the elaboration of such agreements, particularly with Romania, to the Implementation Committee by the end of 2010 and to the fifth meeting of the Parties

Possible ramifications



- Intergovernmental Coordination Council on the Implementation of the Espoo Convention in Ukraine, headed by Deputy PM
- Suspension/annulment of Final Decision on Phase II? (press reports, June 2008)
- Consultation with neighbouring states?
 - Discussions with Moldova on proposed activities in both Moldova and Ukraine (23 May 2008)
- Notification of neighbouring states?
 - Indication that will notify Moldova regarding Dniester Hydropower Station (due by 1 July 2008?)
- Works on the Bystroe Canal Project?
- Possible suspension/annulment/review of decision on Bystroe Canal Project?

Contacts

- For more about the Espoo Convention, visit our website: www.unece.org/env/eia
- Or email: eia.conv@unece.org