GUIDANCE ON THE PRACTICAL APPLICATION OF THE ESPOO CONVENTION

CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANS-BOUNDARY CONTEXT

(UNITED NATIONS/ECONOMIC COMMISSION FOR EUROPE)

Contents

Lead statement

As a response to the decision (work plan 2001-2003, item 4) at the Second Meeting of the Parties (Sofia, February 2001) to the Convention on Environmental Impact Assessment in a Transboundary Context, the Netherlands, Finland and Sweden have led a process to develop guidance on the practical application of the Convention and on bilateral and multilateral agreements and arrangements. The guidance is the outcome of this process in which all Parties to the Convention have participated.

The lead countries suggest the following conclusions for adoption by the Third Meeting of the Parties.

The Meeting

adopts the document "Guidance on the Practical Application of the Espoo Convention" as appended to this decision;
notes that the Parties can facilitate and greatly improve the practical application of the Convention by appropriate organisation of tasks and responsibilities within their countries;
recommends that the Parties take into account the contents of the guidance when planning the rules of procedure for applying the Convention and when planning specific cases where the Convention is to be applied;
calls on the Parties to distribute the guidance to authorities, specialists, developers, NGOs and other stakeholders to enhance the awareness of the existence and contents of the Convention and to support them in applying the Convention;
suggests that the Parties report on the use of the guidance to the Secretariat and the Convention working group on environmental impact assessment in connection with reporting on the application of the Convention;
invites the Parties to submit links to their draft and final bilateral and multilateral agreements and arrangements to the Convention Database (EnimPas).

1. Introduction

The UN Convention on Environmental Impact Assessment in a Transboundary Context, the so-called Espoo Convention (http://www.unece.org), hereafter the Convention, was signed in 1991. It requires that assessments are extended across borders between Parties of the Convention when a planned activity may cause significant adverse transboundary impacts. The Convention was a response to a growing concern about transboundary emissions and the emergence of environmental impact assessment as a tool to reduce the negative environmental effects of new activities.

The Convention came into force in 1997. Since then the number of Parties and the practical application of the Convention have increased steadily. This guidance document has been written for competent authorities in the Parties to the Convention. It provides hints and suggestions that can improve the practical application of the Convention and that may be used in forming bi-and multilateral agreements among Parties that have to deal with transboundary impacts on a regular basis. The overall approach taken in this guide is that the application of the Convention can and preferably should be part of a systematic way of managing international environmental requirements. In practice this means that all procedural stages should be documented and that clear responsibilities should be identified in advance for all the stages of the application of the Convention.

The guide may also be useful to the national Points of Contact regarding the notification as well as other local, regional, state or national authorities and to Non-Governmental Organisations (NGO), International Financing Institutions (IFI) and the public who are likely to become involved in the practical application of the Convention. The guide goes through each of the steps in the application of the Convention and identifies good practices based on accumulated experiences from the different Parties to the Convention.

The guide focuses on issues that

- have been identified to cause difficulties when applying the Convention or that

- are important to take into consideration when developing bi- or multilateral agreements to support the application of the Convention.

1.1 The mandate

The Second Meeting of the Parties (Sofia, February 2001) to the Convention on Environmental Impact Assessment in a Transboundary Context – the Convention, decided to include the elaboration of guidance on practical application of the Convention and on bilateral and multilateral agreements and arrangements in the work plan for 2001-2004. The Netherlands, Finland and Sweden took the responsibility of acting as lead countries of the activity. The lead countries contracted the Finnish Environment Institute (SYKE) to co-ordinate the practical work.

Previous work under the work plan for 1998-2000 of the Convention has provided material to support the practical implementation of the Convention. The reports "Practical Application of the Espoo Convention" (Report of the second Meeting of the Parties, Annex II, http://www.unece.org/env/eia), "Bilateral and Multilateral co-operation in the framework of the Espoo Convention" (Report of the second Meeting of the Parties, Annex I, http://www.unece.org/env/eia) and "Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context" (Environmental Series No. 6, UN/ECE, 1996) (http://www.unece.org) give background information and additional suggestions. This guide provides a compilation of practical ideas for those involved in transboundary EIAs according to the Convention.

1.2 The need for systematic approaches in applying the Convention

Transboundary assessments according to the Convention have proved worthwhile. The transboundary approach ensures that assessments analyse entire spatial scale of impacts. In addition, transboundary assessments mitigate tensions between concerned Parties by providing information before rumours develop and by letting citizens in the affected Party present their opinions on activities that may have an impact on their environment.

Environmental impact assessments (EIA) are multidisciplinary in nature. The issues that arise are also affected by the knowledge and values of the different stakeholders and the public. EIAs in a transboundary context (henceforth transboundary assessments) are even more complex. In neighbouring Parties the EIA-process may be differently structured in legislation or carried out in practice in different ways depending on the historical and cultural background. Differences are commonly seen in criteria for identifying activities that should be subject to EIA, in the criteria for what is regarded as a significant environmental impact and in the philosophy of EIA including issues such as the role of EIA in decision making and the role of the public in the EIA.

Neighbouring Parties can reduce difficulties that arise due to differences in legislation and practice by increasing the exchange of information on legislation and practices. Difficulties in applying the Convention have also arisen due to too complicated or poor organisation within a Party. Clear rules of procedure and with clearly identified responsibilities to organise the transboundary assessments have proved to help in carrying out the assessments.

For those Parties that frequently apply the Convention, bilateral or multilateral agreements/arrangements may be a practical way to overcome difficulties due to discrepancies between legislation and practice of the Parties. Henceforth the term "agreement" will be used to mean any kind of "bilateral and multilateral agreement or other arrangement" for transboundary assessments. Such agreements can provide a tailored framework for running the assessment procedure between the two Parties. These agreements are also important in regions where joint EIA´s are common.

1.3 The Convention in the context of international environmental law

The Convention (full text in Annex 1) introduced a new way of dealing with transboundary impacts: the transboundary environmental impacts assessment (EIA). Environmental impact assessment existed in the national legislation of most Parties and thus it was technically possible to extend the assessment across the border under the Convention. This extension had also been made in the Council Directive on the assessment of the effects of certain public and private projects on the environment (No. 85/337/ECC, 03 2175, 5.7.1985, p. 40) as amended by Council Directive (No. 97/11/EC, 03 273, 14.3.1997, p.5) (http://europa.eu.int/comm/environment/eia) of the European Union and with the Convention this demand has been extended to cover all Parties to the Convention.

Although the Convention is the most specific piece of international legislation for transboundary impacts it is not the only one. For example the Convention on long-range transboundary air pollution (1979) (http://www.unece.org/env/lrtap/), the Convention on early notification on nuclear accidents (1986) (http://www.iaea.or.at/worldatom/Documents/Infcircs/Others/inf335.shtml) and the Convention on the control of transboundary movements of hazardous wastes and their disposal (1989) (http://untreaty.un.org/English/TreatyEvent2002/Basel_Conv_16.htm) also deal with related issues. There are also three UN/ECE environmental conventions that refer to the Convention. These are the Convention on the Transboundary Effects of Industrial Accidents (http://www.unece.org/env/teia), The Convention of the Protection and Use of Transboundary Watercourses and International Lakes (http://www.unece.org/env/water) and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (http://www.unece.org/env/pp). Many general environmental global conventions such as the Biodiversity Convention (1992) (http://www.biodiv.org/) set requirements for environmental impact assessments and explicitly encourage also transboundary assessments.

2. Practical solutions in applying the Convention

2.1 Responsibilities

The competent authority is the authority that is designated by the Party to carry out the practical application of the Convention nationally and may also have the decision-making powers regarding a proposed activity. The competent authority may be, depending on the nature of the issue, a local, regional, state or national authority. The Point of Contact is the authority, which is designated by the Party to be the official contact towards other Parties and towards the Secretariat of the Convention. An updated list of the Points of Contact is available from the Secretariat or from the website: http://www/unece/org/env/eia

Although the practical application is the responsibility of the competent authority, some tasks are clearly part of the mandate of the Point of Contact. The responsibilities of the two should be made clear and the information flow should be ensured between these two authorities in clear national rules of procedure or separately in each case. An agreement can help in defining the roles by designating contact points and their functions (e.g. mailbox, executive function, initiating function, use of a joint body). An agreement should also take note of other stakeholders such as the developer, International Financing Institutions (IFI) and Non-Governmental Organisations (NGO).

2.2 Management

The Convention requires Parties to take all appropriate and effective measures to prevent, reduce and control significant adverse environmental impacts from proposed activities. The environmental impact assessment process is carried out to achieve this. Successful management of the process and the related formal procedures depend on smooth practical application of the provisions of the Convention and on a reciprocal understanding of differences and similarities in the assessment procedures across the border.

Lack of understanding of the differences in EIA legislation in the Parties involved makes the application of the Convention often cumbersome or, in the worst case, unsuccessful as there are many elements in the Convention that require close cooperation between the Parties. Open discussions at an early stage reduce

misunderstandings and help in avoiding friction between the Parties. As a last resort the Convention includes a formal legal dispute resolution process.

Negotiations can be organised before the actual start of transboundary EIAs on an ad hoc basis or by forming a permanent working group that discusses the practical matters of ongoing and upcoming applications of the Convention. The following issues could be discussed:

- institutional arrangements;
- time schedules;
- translations;
- cost sharing and other financial matters.

At a national level, permanent rules of procedure that specify as clearly as possible the different tasks and the responsibilities of all actors involved have been found useful. If no clear plans for the implementation of the Convention have been set in national primary or secondary legislation, the practical application of the Convention can be perceived to be complicated. This is due to the fact that it includes many steps and stakeholders.

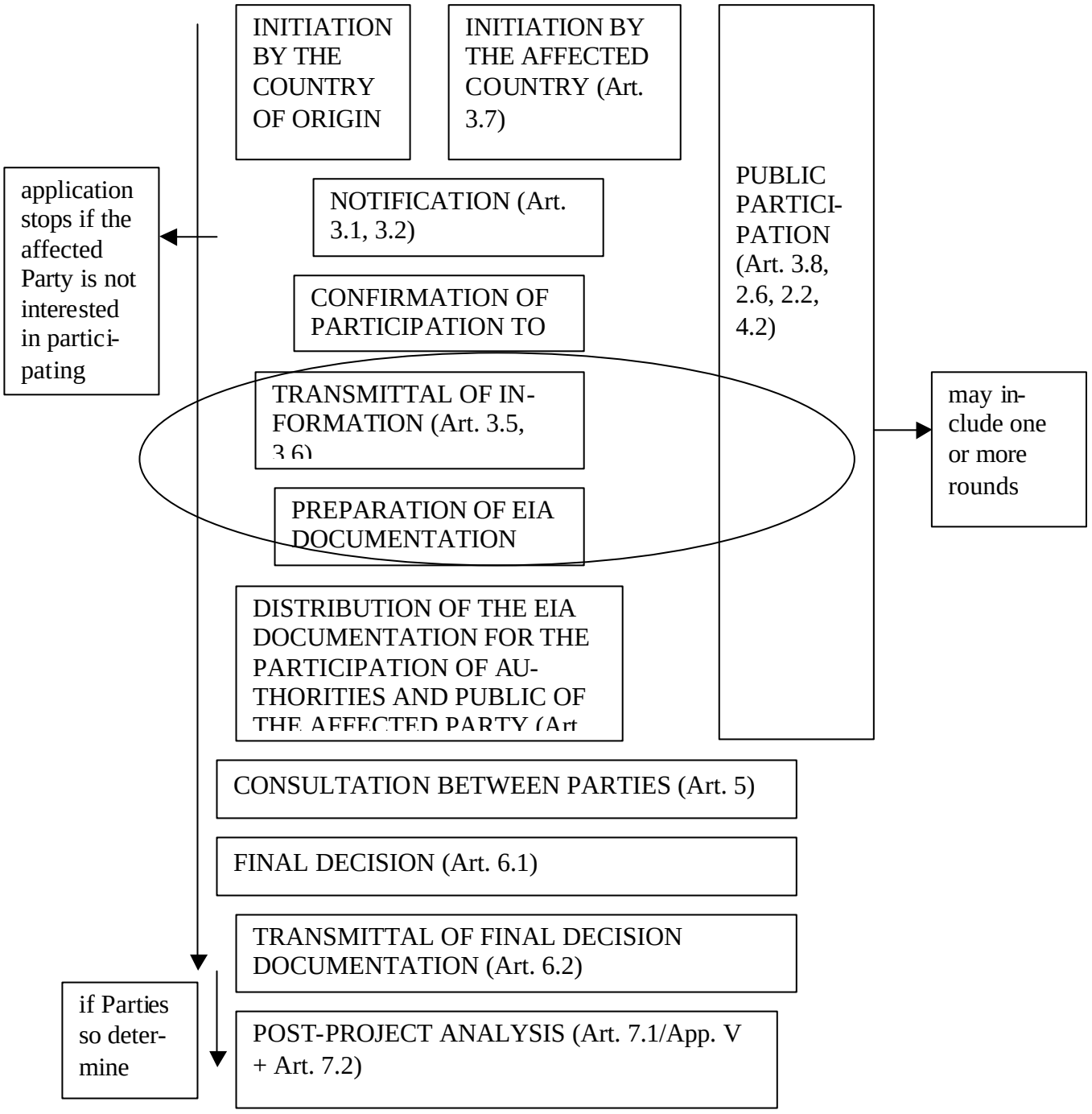
Rules of procedure provide a basis for the process in each individual case. The level of detail and the degree of formalism in the rules of procedure may vary depending on the administrative culture. When a new application procedure is forthcoming, a plan for carrying out the application needs to be tailored according to the rules of procedure but taking into account the special circumstances of the case in question. It is advisable to go through all the stages of the application procedure and examine their practical implementation for each case in advance (see chapter 2.3).

Parties with one or several agreements with varying combination of Parties build the national rules of procedure in consistency with the contents of the different agreements.

2.3 The procedure

The procedure has distinct stages, each of which needs to be carried out in a way that serves the case in question, fits into the procedures and the culture of the Parties concerned and fulfils the requirements of the Convention. These stages include notifying the affected Parties, organising participation and information flow and providing EIA documentation and final results. In case the affected party decides not to participate in applying the Convention in the notified case, the process is stopped and it is up to the Party of origin to decide whether it carries out an EIA or not. An overall plan is needed for the entire procedure. Each step requires careful preparation before being carried out. National legislation plays an important role when applying the Convention. On the other hand, it may lead to rearrangement of the phases, e.g. the notification and transmission of EIA documentation.

The flow-chart of the stages of an assessment according to the Convention



2.4 Initiating the process

According to the Convention, the practical application starts with a notification. In practice, there are tasks to be carried out before sending out the notification. This chapter gives an overview of the tasks involved in the initiation of the process and suggestions for how they can be carried out.
The legal or natural person who raises the question of applying the Convention in a Party may vary from case to case. It is important that the Convention is well known in those Parties that are Parties to the Convention. Authorities within different sectors and at all levels of administration in particular, but also NGOs, IFIs, developers and the public, should receive information on the Convention and its contents through various means such as environmental committees. In this way one can ensure that knowledge of potential cases reaches the competent authorities and Points of Contact, which can officially initiate the procedure.

2.4.1 Screening

In the Convention Appendix I includes a list of activities that automatically require an application of the Convention if significant impacts may extend across the border. The first task is thus to determine whether an activity may have significant impacts across borders. This exercise is often called screening. Some Parties may find that the list of activities in the Convention does not cover all relevant activities. An agreement could thus include further activities, which always require transboundary EIAs. Appendix III contains general criteria to assist in the determination of the environmental significance of activities not listed in Appendix I.

Furthermore, there may be other types of activities that in the special circumstances of the border area are likely to cause significant transboundary impacts. Such activities can be locally identified in advance to ensure smooth initiation of transboundary assessments. Special issues may also arise in the connection with the assessment of policies, plans and programmes and in issues related to long range transport of pollutants. The concerned Parties should discuss the need to apply the Convention also in these cases (Art. 2.5).

In most cases the Convention will be applied between neighbouring Parties. However it should be noted that the Convention does not only apply to transboundary impacts between neighbouring Parties but also to long range transboundary impacts. Activities that can make long-range impacts in transboundary context include activities with air pollutants or water pollutants, activities potentially affecting migrating species and activities with linkages to climate change.

The legislation varies between Parties with respect to the criteria for initiating environmental assessments at the national level. This may confuse decision making concerning the applicability of the Convention. International, national and regional environmental programmes may provide useful criteria to be used as a basis for finding thresholds and other criteria. In the ECE Environmental Series Nr. 6., the chapter called “Specific methodological issues of Environmental Impact Assessment in a transboundary Context” (http://www.unece.org) contains information on the determination of “significance”. An agreement can define criteria such as large and major and thus provide mutually agreed threshold values.

It may be advisable to notify neighbouring Parties also of activities that appear to have a low likelihood of significant transboundary impacts. It is better to inform potentially affected Parties and let them decide on their participation instead of taking the risk of ending up in an embarrassing situation in which other Parties demand information on activities that have already progressed past the EIA phase. There are several cases where the affected Party has wished only to be kept informed.

In cases where an affected Party feels that it is likely that the Convention should be applied although it has not received a notification, the affected Party may initiate discussions on the issue of significance with the Party of origin (Art.3.7). Sometimes, the public in the affected Party raises the issue of negative impacts from another Party´s activity and demands the Parties to start exchanging information according to the Convention (3.7). The public can submit these requests to the competent authorities in the affected

Party, either directly, or through authorities at local, regional or national level. Clear rules on screening will help in dealing with this kind of situations and in resolving any disputes that may arise.

2.4.2 Institutional arrangements

The Convention specifies the formal steps and Points of Contact, but has no provisions on the informal contacts and negotiations that occur in many border areas between authorities at different levels. Formal contacts and negotiations must be carried out to meet the legal requirements of the Convention. It is nevertheless worth contacting the Point of Contact well in advance to give the Party time to get organised. It may also be useful to designate a "contact point" at the regional or even local level.

It is important to trigger informal negotiations throughout the process and especially at the start. Such negotiations should be conducted between:
- Points of Contact, developer and responsible authorities within the Party of origin
- responsible authorities in border regions within and between Parties
- the developer, authorities and IFIs
- the developer, authorities and NGOs

The IFIs play a major role in EIAs in many Parties of the Convention. The IFIs are not, however, Parties of the Convention and are thus not able to apply formally the Convention although practically all IFIs have internal rules for EIAs. It is therefore advisable to clarify the relationships between the IFI and the actual Parties to the Convention. In this way the internal rules of the IFI for EIAs can be matched with the legal requirements of the Parties as well as the Convention.

2.4.3 Financial aspects

The application of the Convention has several financial implications. The “polluter pays” principle has been interpreted to mean that e.g. translation costs of the various EIA documents should be covered by the Party of origin, respectively by the developer. Furthermore there are some procedural steps with clear financial implications (publication in the affected Party, presentation of the documentation for public inspection, public hearings etc.).

It is necessary to go through the financial arrangements in an early phase. When all actors are informed early of their future responsibilities they are able to reserve finances and to link the matter with other processes. Agreements may specify financial aspects such as:
- costs of special transboundary studies;
- costs of translations;
- costs of public hearings and other participatory procedures in the affected Party.

The costs can be covered by
- the developer,
- the affected Party,
- the Party of origin,
- an IFI,

or by a combination of two or more of the above mentioned bodies. In some cases e.g. NGOs may provide contributions in kind by translating additional documentation of specific interest to the organisation, for example wildlife inventories.

2.4.4 Time schedule

It is in the interest of everyone involved in a transboundary EIA that time schedules are specified as clearly as possible. The authorities involved can prevent or minimize possible delays by planning the time schedule at an early stage. Opportunities to combine steps of the EIA procedure can be explored to increase efficiency. For example, the provision of extra information after a confirmation of the participation by the affected Party may be unnecessary if the notification already contains the complete information.

The timing of the application procedure process should be set at the initiation phase so that the entire process is given a clear structure with a start and an end. Then all Parties are aware of the time sequencing involved. The timing should be discussed with everyone concerned in an early phase. Parties may have strict rules on time schedules for public participation and these may cause difficulties in linking the transboundary EIA to the national EIA. IFIs may also have their own rules concerning timing. By identifying the different requirements at an early stage it may be possible to develop a smooth process that avoids delays and/or rushes that may be intimidating for those participating in the transboundary EIA.

Clear rules on the timing are as important as the actual allocation of time for each step.
Timing is important especially:
- In sending the formal notification;
- In responding to the notification;
- In public consultation and participation;
- In informing of the final decision.

2.5 The notification (Art. 2.4 and 3.1-3.2)

Notification is the formal and mandatory start of the application procedure. Informal contacts may have preceded the notification. The notification may be passed between the official Points of Contacts or by other authorities, which are responsible for this step according to national legislation or through agreements. To avoid misunderstandings, the notification or a copy of it should be sent to the Point of Contact, which will then pass the notification to the actually responsible authority. The pre-notification (informal) contacts are highly recommendable to give both Parties time to get prepared for the coming procedure. The importance of the official notification lies in the formality it gives to the procedure. The format for notification can be found in the Convention´s website (http://www.unece.org).

2.5.1 Timing the notification

The notification must be sent the latest when the public in the Party of origin is being informed of the national-EIA process. It is recommendable to send the notification as early as possible, favourably before the scoping, if such a phase is being carried out (see 2.4.4). All Parties that have been identified to be potentially affected should receive a notification. In the case of joint transboundary EIAs. i.e. when two Parties to the Convention are simultaneously affected Parties and Parties of origin e.g. in connection with transboundary transport routes, reciprocal formal notifications help to clarify the roles of both Parties.

In agreements, the moment of notification should be specified. The precise time of the notification depends on whether the EIA procedure of the Party of origin includes a) a formal stage with mandatory public participation for the identification of issues to be studied, b) a formal identification stage without participation or c) no such formal stage at all. The formal stage for the identification of issues to be examined in the EIA, often called scoping, provides a suitable moment for an early notification.

2.5.2 Contents of notification (Art.3.2)

The contents of the notification is specified in Article 3.2. In addition, a format of notification has been provided by the UN/ECE working group (Report of the First Meeting of the Parties, http://www.unece.org/env/eia). It is recommendable to add "other" information (Art. 3.5) already to the notification. This speeds up the process since it removes one round of information exchange. The additional information on the activity and its likely impacts also helps the affected Party to consider whether it wants to be part of the EIA or not.

2.5.3 Responding to the notification and confirmation of participation (Art. 3.3)

Parties should always respond to notifications within the time specified by the Party of origin. A negative response to the Party of origin is also important. The Party of origin can then proceed in planning the national EIA process. While responding to the notification and confirmation of participation, the time of

carrying out environmental impact assessment specified in national legislation of the Parties should be taken into account.

2.6 Transmitting information (Art. 3.4-3.7)

If a potentially affected Party decides not to participate and indicates this in its reply to the notification, the application procedure ends. On the other hand, if the affected Party wants either to be informed or to participate, the application procedure continues with further exchange of information.

If other information has not been provided to the affected Party already in the notification, it must be sent as soon as the affected Party has expressed its interest in participating in the process. The exchange of information then continues between the Parties throughout the process. The time limits given by the responsible body should be followed. The time limits should preferably be agreed upon in advance so that the time limits are both legally acceptable and realistic (see chapter 2.4.4).

2.6.1 Selection of material

The documentation has to include all relevant items mentioned in Appendix II of the Convention. The identification of alternatives is usually felt to be the most difficult part in preparing the documentation but also among the most important ones. The alternatives set the scene for the entire assessment and thus they should be identified at an early stage.

2.6.2 Submitters and receivers of information

The Convention provides (art. 3.8 and 4.2) that both concerned Parties shall ensure that the public of the affected Party is informed and be provided with possibilities of making comments. Comments of the public to the EIA documentation may be sent by the public either to the competent authority or, where appropriate, through the Party of origin. The Convention does not contain more specific information on the authority to be addressed.

The Parties should know from the very beginning, at the latest at the time of notification, who the concerned authorities are that exchange information. The roles may vary depending on the type of information exchange:
- sending documents (e.g. notification),
- providing information to the public, and
- sending comments of the public.

It should be clear how the information from the public is transferred to the Party of Origin. It should be clarified who is responsible for informing the public of the affected Party and the way that comments of the public shall be transferred.

Documents like the notification and the EIA documentation will always be passed between the authorities of the respective Parties. For the provision of information to the public and the transmission of comments of the public there are various options:

- the responsibility is with an authority of the affected Party (Point of Contact or other authority); it is possible that the public of the affected Party sends comments either directly to the competent authority of the Party of origin or through the Point of Contact or competent authority in the affected Party;
- the responsibility for informing the public of the affected Party is with the authority in the Party of origin (competent authority) or the proponent (developer); the public of the affected Party sends comments directly to the competent authority of the Party of origin; or even directly to the proponent and sends copies of the comments to the competent authority of the affected Party;
- there is a shared responsibility between authorities in both Parties.

The advantage of the first option is that the authority of the affected Party is usually well informed of the ways and means of publishing and making available the EIA documents for public inspection. A draw-

back, depending on the specific arrangements, could be the timing, especially when the comments of the public are first sent to the authority in the affected Party. The advantage of the second option is that the information can be provided directly to the public and that the comments can be sent directly to the Party of origin. This will enhance the timing of the process. A disadvantage may be that the authority of the Party of origin is not familiar with the local ways of publishing and practice regarding making available documents for public inspection. The advantages of both alternatives could be combined by the third option: sharing the responsibility between the authorities or both Parties but that needs a further specification and division of tasks.

Agreements give a forum for defining the roles and responsibilities in information flow.

2.6.3 **Public participation** (Art. 2.2, 2.6, 3.8 and 4.2)

The Convention requires that the public of the affected Party is given the opportunity to participate in the environmental impact assessment process. Participation is specified in the Convention as a right to be informed and a right to express views. Thus the practical application of the Convention should include these aspects. One of the main challenges of public participation arises from the fact that the legislation and practice concerning public participation vary between Parties. Therefore, participation methods need to be tailored to fit the practices of the affected Party.

Apart from the broad public, bodies worth consulting include different authorities, specialists, IFIs and NGOs on both sides of the border. To pass information in correct form, in relevant scope and in the most appropriate language, the stakeholders and the target groups need to be clearly defined. Many stakeholders may hold information and may positively take part in gathering information. The competent authority should, however, ensure that the information is non-biased and of adequate quality (see also 2.4.3).

Public participation is considered very important in the application of the Convention and thus there is guidance specifically meant for planning the participatory process. This guidance is being developed and will be available on the website of the Convention (http://www.unece.org/env/eia). Detailed arrangements on informing the public on the involvement in the transboundary process may be included in an agreement. An agreement could make clear what the roles and responsibilities are in informing the public and in transferring the comments of the public to the competent authority of the Party of origin.

The UN Convention on access to information, public participation and access to justice in environmental matters (the Aarhus Convention, 1998) sets the basic requirements on public participation. (http://www.unece.org/env/pp)

2.6.4 Translation of documents

A special feature of the practical application of the Convention is the multilinguality of the concerned Parties. Studies have shown that even minor difficulties in understanding the language may retard participation of the public and the authorities. This is the case with closely related languages such as the Scandinavian, German-based and Slavic languages.

Although the Convention does not specify issues of language, it is important that information is provided in a language understood by those participating. The Parties are recommended to plan and decide upon responsibilities concerning translations in the initiation phase. The target group needs to be well defined before planning the translations is taking place.
It is necessary to decide:

- Which parts of the documents are planned to be submitted to:
  - the affected Party,
  - the regional/local level in the affected Party,
  - the public in the affected Party;
- What language requirements are set by the chosen target groups;
- Which documents will be translated into which language;

- In which language the responses can be given;
- Who is responsible for the translations and the quality both in given and received information;
- Who covers the costs of translations both in given and received information.

Translating into English or Russian instead of the language of the affected Party is sometimes done when there is an IFI involved or when the assessment deals with more than two Parties. It is important that at least parts of the documents are translated to the language of the affected Party.

Needs for translations are determined according to the language differences between the Parties. These matters can be generally specified in an agreement between Parties: which documents should be translated, who is responsible for the translations, for their quality and for their costs. Agreements can also set requirements on time allocated to translations and the timing of translations. In agreements Parties can also state who is responsible for the interpretation at hearings.

2.7 Screening the likelihood of significant adverse transboundary impacts by the affected Party (Art. 3.7)

The Party of origin should have carried out the screening of the potential adverse impacts of the planned activity in the initiation phase. Even if the Party of origin comes to the conclusion that the Convention does not have to be applied, the affected Party may have another view and thus initiate discussions with the Party of origin. If no common view is reached, any of the Parties may ask an inquiry commission in accordance with the provisions of Appendix IV to give advice. One way to avoid situations of this kind is to open unofficial discussions with the affected Party already in the initiation stage or to just notify the affected Party.

2.8 Preparation of the EIA documentation (Art. 4.1 and 4.2)

Once the developer has compiled all the material in the environmental impact assessment nationally and in the affected Parties, he or she produces a documentation. When the assessment is based on an application of the Convention, the documentation shall cover, as a minimum, the items that are listed in the Appendix II of the Convention.

The documentation has to be provided to the affected Party. In practice the documentation may be sent to the Point of Contact of the affected Party or to another authority of the affected Party, which is responsible for this step according to national legislation or if both Parties so agreed in general (e.g. in an agreement) or for the specific case. In both cases the delivery may be carried out through a joint body, where one exists and where this is appropriate.

The document shall be provided to the public for comments, which are collected later. According to the Convention, both Parties are jointly responsible for the distribution and collection of comments. It is necessary to decide which Party shall perform this task and which way. The chapter on transmitting information (2.6.2) suggests ways how to arrange the information flow. It is important to decide these issues in the initiation phase or at the latest immediately after the notification. It is also highly important to provide time limits for the submission of the documentation and especially for the public to respond. The time limits should be realistic both from the participants' and from the authorities' point of view.

2.9 Consultations (Art. 5)

After completing the documentation, the Party of origin has to initiate without delay consultations with the affected Party. Matters to be decided upon when planning the consultation process include
- which authorities and bodies can and should participate in consultations
- how and when consultations are carried out
- how the Parties are informed of the consultations outcomes and their use

Due to the sensitivity of different cultures to issues such as participation and time-frames, agreements could include provisions on the consultations.

2.9.1 Timing

A reasonable time-frame for the duration of the consultations has to be set (see also 2.4.4). One way is to agree on a case-by-case basis on the time-frame within which the consultations has to be finished. The consultations should always be conducted before the final decision is made so that their outcome can affect the decisions and the conditions it may specify for the activity.

2.9.2 Issues

Article 5 suggests issues to be discussed in consultations, e.g. possible alternatives to the proposed activity, other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity and any other appropriate matters relating to the proposed activity. Another important item worth to negotiate is monitoring during the construction phase. It seems likely that Parties propose in consultations additional items (e.g. specific mitigation measures, monitoring, post-project analysis).

2.9.3 **Roles of different stakeholders in consultations**

The Convention does not unambiguously specify who should participate in consultations. Official consultations should, however, take place at sufficiently high level because they represent negotiations between national states. The Parties may wish to include other bodies in the consultations. It may be essential to meet more often and to start with an exchange of information at an expert level (e.g. experts of sector authorities). In order to ensure that consultations will focus on the most important items, the presence of experts has been found useful. Consultations may also be done in writing. (see also 2.4.2)

2.9.4 **Means to be used in consultations**

In consultations it is useful to use many different means in order to ensure efficient information flow in different consultation phases, taking into account cultural differences in communication and negotiation. The different forms include:

- A joint body;
- Meetings of experts;
- Electronic meetings/exchange of emails or official letters;
- Meetings of medium and high level officials (see also 2.9.3)

2.10 Final decision (Art. 6.1)

The Party of origin has to provide the final decision with the reasons and considerations to the affected Party. These should also reflect the impact on the affected Party.

Trust may be raised by clearly specifying how comments of the authorities and the public of the affected Party and the outcome of the consultations will be dealt with. However, this does not mean that the Party of origin has to strictly follow the proposals or requests of the affected Party in detail, but it will have to take them into due account and to balance them against other items according to existing legislation. The basic premise is that comments are treated equally, irrespective of national boundaries. If it is unclear how the comments of the authorities and the public of the affected Party are considered, future motivation to participate is affected negatively and distrust may arise. If individuals in the affected Party have the right to appeal against the decision in the Party of origin, the information about such a right of appeal should be given in the decision or in an annex to it. (see also 2.6.3)

2.10.1 Consultations on the basis of additional information after the decision

In case additional information relevant to the decision is obtained after the final decision but before the activity is started, the Party of origin should deliver this information to the concerned Parties. If one of them so requires, additional negotiations have to be carried out on the revision needs of the decision e.g. monitoring, additional conditions or mitigation measures etc..

2.10.2 Responsibilities

The Point of Contact or other authorities, responsible according to the legislation of the Party of origin or to an agreement, may send the final decision to the affected Party. For the way by which the authorities and the public of the affected Party are informed and provided with the final decision see chapter 2.6.2. In an agreement roles in dissemination of the decision could be dealt with in detail.

3 Specific issues

3.1 Dispute prevention and settlement (Art. 15)

The Convention includes a framework and procedure for dispute resolution. The first requirement is to have negotiations between the concerned Parties. This article refers to negotiations after the dispute has arisen. Information exchange and negotiations before the application of the Convention reduce the likelihood of a dispute in a first place and are thus worth carrying out. Dispute resolution mechanisms can also be included in agreements based on the Convention.

3.2 Long range impacts (Art. 1.8)

The definition of transboundary impact used in the Convention includes long range impacts, which means that it is mandatory to examine the likelihood of long range impacts, as well.

3.2.1 The activities and the impacts

Identifying types of activities that may have long range impacts is the first step. The main difficulty lies in deciding when a specific activity contributes significantly to a long range impact. For example, industrial pollutants travelling long distances may cause long range impacts, but the contribution of a single activity is often very small. On the other hand, an activity that causes impacts on migrating animals, have transboundary long range implications. Agreements may list specific activities to be screened for long range impacts.

3.2.2 The area

When the activities have been identified, the possible affected Parties for the impacts of these activities should be found. The difficulties relate to deciding on “realistic” areas of impact in order to determine which Parties of the Convention may be affected and thus informed of the activity. Thinking of areas or regions as geographical entities such as river basins, watershed, mountain regions and waterways and identifying the mechanisms through which impacts may occur help in dealing with the scale of impacts. A crucial issue will be the magnitude of the impact due to the activity relative to other "background" effects caused by other activities.

3.2.3 Dealing with the complexity

When long range impacts are in question, the setting is far more complicated than in a two-Party transboundary assessment. For example, there may be several affected Parties with different languages. To keep translations at a realistic level it is advisable to use, as appropriate, one or several of the three official UN languages in the notification (see also 2.6.4). Problems may also arise when legislative requirements of various Parties have to be considered. Database on EIA in a trasboundary context, EnimpAs (http://www.unece.org/env/eia) including information from legislation in different nations would support

the practical application. Each Party could contribute to this data source by providing regularly updated information on their legislation into the web, in one or several of the official UN languages.

3.3 Joint EIA (Art. 2.1, App. VI g)

A joint EIA is a special case in applying the Convention. In practice two situations may occur:

- joint projects with impacts on one or both of the two Parties of origin (e.g. boundary-crossing motorway), and

- joint projects with impacts not only on the two Parties of origin but also on other Parties (e.g. pipelines in a water basin)

In the first case the Parties should agree when starting the projects, whether they are going to carry out two separate EIA´s, (i.e. two different procedures including the elaboration of two different EIA documentations and notify each other), or whether some or most of the steps will be carried out jointly. The ways in which the steps of the EIA procedure may be joined and the distribution of tasks between the two Parties are manifold. In the second case Parties will also have to cope with the problem of how the participation of these other affected Parties may be carried out. From the practical point of view, it may be helpful to share the responsibilities among the Parties, but the obligation to carry out the process rests separately on those Parties that count themselves as Party of origin. To make the joint EIA smooth, the roles of the two Parties should be specified from the beginning for each stage of the assessment. Parties which are expected to have joint transboundary assessments on a regular basis, for example because they are geographically located in such a way that resources or pathways overlap borders, can resolve many issues by developing bilateral agreements on transboundary EIA.

3.3.1 Getting started

A joint EIA can be initiated by holding a preparatory meeting between the two (or several) joint Parties of origin to prepare the notification and the procedure. At this meeting the practical issues such as time schedules, level of participation and steps to be taken should be decided upon. It is worth specifying separate time schedules for each Party to respect the national legislation. However, informing the other Parties help to build a flexible time schedule that suits all the Parties and is known by all of them. One way to solve the practical issues is to form a joint body. The body could meet regularly throughout the process and have a general coordination role with respect to the schedules and other practical matters related to the process management. Meetings may be held face to face or by using electronic devices such as email and AV-equipment.

3.3.2 Notification

Notification should be sent to all the affected Parties. At this stage, the notification may be exchanged because of the dual roles: Party of origin and affected Party. In addition there may be third Parties involved, which are only affected by the activity. The reason for cross-notification are 1) to fulfil the requirements of the Convention, 2) to keep the process well defined and 3) to keep it connected to the national EIA process. The documents may be partly the same and they should include cross-references so that the receiver knows that the different notifications deal with the same case.

3.3.3 The assessment

When the Parties interested in participating in the joint EIA have been identified it is rational to carry out screening, scoping, the documentation and possibly other steps jointly, although there may be special features of the impacts on one side of the border that warrant partly separate analyses. Joint bodies are likely to be useful in ensuring e.g. coherent documentation. If the Parties give very different weighs to the impacts, a joint assessment is more difficult to carry out and is likely to require extensive negotiations

throughout the assessment. In these cases a joint body consisting of EIA authorities with general supervisory function is highly recommendable.

3.3.4 After the assessment

The decisions on the activities will be made separately by all the Parties of origin. This is due to the national legislation and it is also supported by the requirements of the Convention. On the other hand, monitoring that extends over more than one Party´s territory is useful to carry out jointly, for example by forming a joint task force or by using some bi- or multilateral body for dealing with the case specific monitoring

3.4 Policies, plans and programmes (Art. 2.7)

The Convention requires that the Parties endeavour to apply the Convention to level of policies, plans and programmes. Thus, it is not mandatory as such. There is still a lack of tradition and experience. However, the recent EC Directive on SEA 2001 (Directive 2001/42/EC of the European parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment) (http://europa.eu.int/comm/environment/eia/sea-legalcontext.htm) sets requirements for Member States of the European Union to carry out transboundary assessments also for plans and programmes. This requirement will cover also UNECE countries in the future because a Protocol on Strategic Environmental Assessment under Espoo Convention was finalized in January 2003.

The level of policies, plans and programmes has been considered important in the context of the Convention and thus an ad hoc working group has been set up to develop a protocol on strategic environmental assessment under the auspices of the Convention.

If the assessment of PPPs is included in a bi- or multilateral agreement it is essential to agree on the type of PPPs that are made subject to transboundary assessments on a reciprocal basis. For example transport is one sector that is advisable to be included in the list.

3.5 Post-project analysis (Art. 7)

Post project analysis is not a mandatory activity that would be included in all transboundary EIAs. Still, the Convention provides that the Parties shall determine at the request of one of the Parties whether a post-project analysis shall be carried out. In practice both concerned Parties may have different views whether such an analysis is necessary. As a result of consultations on such an issue a post-project analysis may or may not be carried out.

If a post project analysis is carried out as an application of the Convention, it has to analyse, as a minimum, both the activity as well as its potential adverse transboundary impacts. If the post project analysis provides unexpected results, the Party of origin has to inform the affected Party and carry out consultations concerning necessary measures.

A post project analysis can be included in the final decision as a requirement related to the monitoring of the activity. Alternatively, it could be made part of the overall plan for the transboundary assessments from the start of the procedure. A post project analysis is typically based on the monitoring of the activity and its impacts. Monitoring can also be carried out jointly by the Parties and within the territory of all Parties concerned. The Parties should exchange any results gained of the monitoring. Requirements concerning post project analysis can be included in agreements on transboundary EIA.

4 Transposition into national legislation (Art. 2.2)

A ratification of the Convention is based on a transposition of the requirements of the Convention into national legislation. This can be achieved by including the necessary transboundary considerations into the national EIA legislation, wherever such legislation exists. The requirements of the Convention may also be included in different pieces of legislation, e.g. those covering environmental protection or physical planning.

The transposition of the requirements of the Convention ensures that national authorities organise the practical application of the Convention. The requirements of the Convention can be further strengthened and clarified by specifying in primary or secondary legislation issues such as the responsibilities of different authorities and the rules of procedures of joint bodies. The national legislation may thus help the other Parties to understand the relationship of a Party to the requirements of the Convention and helps in identifying links between the EIA procedures of the Parties.

5 Creating bi- and multilateral agreements and arrangements (Art. 2.2 and 8 and App. VI)

As noted throughout this guide there are many issues that can be agreed upon in advance by Parties which expect to have transboundary assessments on a regular basis. The Convention provides a legal basis for agreements (App 2.2 and 8). Annex VI to the Convention contains elements for such agreements. These agreements are not a precondition for the application or ratification of the Convention but should be seen as a way of achieving effective application.

The study on bilateral agreements ("Bilateral and Multilateral co-operation in the framework of the Convention" (http://www.unece.org/env/eia) has shown that there are different types of agreements. First there are general agreements, which contain a statement or declaration of intent to apply the Convention. Those agreements are prepared on national government level. The text of those agreements mainly refers to the text of the Convention. Practical details will have to be dealt with in a different way, for example by creating a joint body or joint Commission.

Another type of agreement is a more specific agreement. Those agreements contain detailed practical guidance or recommendations for the application of the Convention in practice. National government levels as well as regional level authorities are involved in preparing those agreements. Some Parties have signed bilateral agreement on how to carry out EIAs in a transboundary context between them. More agreements of this kind are on the way and there are many draft agreements under negotiations. The Convention refers to these agreements as well as to multilateral agreements (Article 2.9).

In addition, there are several other agreements that support the application of the transboundary assessments. These include general environmental agreements between two or more Parties. The challenge in developing successful agreements is to take into account the national legislative requirements on time schedule, on steps and on the order of the steps from both Parties in a way that satisfies both Parties. A tentative list of the general contents of a bi- or multilateral agreement is as follows

- AREA OF APPLICATION OF THE CONVENTION
- CRITERIA FOR DECIDING WHAT IS A SIGNIFICANT IMPACT
- NAMING PEOPLE OR ORGANIZATIONS TO ACT AS CONTACT POINTS
- SETTING UP A JOINT BODY
- NOTIFYING THOSE WHO NEED TO KNOW
- PROVIDING INFORMATION AND PUBLICITY
- PUBLIC PARTICIPATION (PUBLIC HEARINGS, INFORMATION MEETINGS, ENSURING COMMENTS ARE PASSED ON)
- CONSULTATION BETWEEN THE CONCERNED PARTIES
- REACHING A DECISION
- POST PROJECT ANALYSIS
- PREVENTING DISPUTES OR SETTLING THEM
- ARRANGING TRANSLATIONS
- DECIDING WHO PAYS

Annex 1: Economic Commission for Europe:
Convention on environmental impact assessment in a transboundary context
done at Espoo (Finland), on 25 February 1991

The Parties of the Convention,

Aware of the interrelationship between economic activities and their environmental consequences,

Affirming the need to ensure environmentally sound and sustainable development,

Determined to enhance international co-operation in assessing environmental impact in particular in transboundary context,

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context,

Recalling the relevant provisions of the Charter of the United Nations, the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Co-operation in Europe (CSCE) and the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE,

Commending the ongoing activities of States to ensure that, through their national legal and administrative provisions and their national policies, environmental impact assessment is carried out,

Conscious of the need to give explicit consideration to environmental factors at an early stage in the decision-making process by applying environmental impact assessment, at all appropriate administrative levels, as a necessary tool to improve the quality of information presented to decision makers so that environmentally sound decisions can be made paying careful attention to minimizing significant adverse impact, particularly in a transboundary context,

Mindful of the efforts of international organizations to promote the use of environmental impact assessment both at the national and international levels, and taking into account work on environmental impact assessment carried out under the auspices of the United Nations Economic Commission for Europe, in particular results achieved by the Seminar on Environmental Impact Assessment (September 1987, Warsaw, Poland) as well as noting the Goals and Principles on environmental impact assessment adopted by the Governing Council of the United Nations Environment Programme, and the Ministerial Declaration on Sustainable Development (May 1990, Bergen, Norway),

Have agreed as follows:

A1 - Article 1

Article 1

DEFINITIONS

For the purposes of this Convention,

(i) "Parties" means, unless the text otherwise indicates, the Contracting Parties to this Convention;

(ii) "Party of origin" means the Contracting Party or Parties to this Convention under whose jurisdiction a proposed activity is envisaged to take place;

(iii) "Affected Party" means the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity;

(iv) "Concerned Parties" means the Party of origin and the affected Party of an environmental impact assessment pursuant to this Convention;

(v) "Proposed activity" means any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure;

(vi) "Environmental impact assessment" means a national procedure for evaluating the likely impact of a proposed activity on the environment;

(vii) "Impact" means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;

(viii) "Transboundary impact" means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is situated wholly or in part within the area under the jurisdiction of another Party;

(ix) "Competent authority" means the national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity;

(x) "The Public" means one or more natural or legal persons.

A2 - Article 2

Article 2

GENERAL PROVISIONS

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.

3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.

4. 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 adverse transboundary impact.

5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in

Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated.

General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.

9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.

10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

A3 - Article 3

Article 3

NOTIFICATION

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.

2. This notification shall contain, inter alia:

(a) Information on the proposed activity, including any available information on its possible transboundary impact;

(b) The nature of the possible decision; and

(c) An indication of a reasonable time within which a response under paragraph 3 of this Article is required, taking into account the nature of the proposed activity; and may include the information set out in paragraph 5 of this Article.

3. The affected Party shall respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification, and shall indicate whether it intends to participate in the environmental impact assessment procedure.

4. If the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification, the provisions in paragraphs 5, 6, 7 and 8 of this Article and in Articles 4 to 7 will not apply. In such circumstances the right of a Party of origin to determine whether to carry out an environmental impact assessment on the basis of its national law and practice is not prejudiced.

5. Upon receipt of a response from the affected Party indicating its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so, provide to the affected Party:

(a) Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments; and

(b) Relevant information on the proposed activity and its possible significant adverse transboundary impact.

6. An affected Party shall, at the request of the Party of origin, provide the latter with reasonably obtainable information relating to the potentially affected environment under the jurisdiction of the affected Party, where such information is necessary for the preparation of the environmental impact assessment documentation. The information shall be furnished promptly and, as appropriate, through a joint body where one exists.

7. 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.

8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

A4 - Article 4

Article 4

PREPARATION OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

1. The environmental impact assessment documentation to be submitted to the competent authority of the Party of origin shall contain, as a minimum, the information described in Appendix II.

2. The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the environmental impact assessment documentation. The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin,m either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity.

A5 - Article 5

Article 5

CONSULTATIONS ON THE BASIS OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

The Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact.

Consultations may relate to:

(a) Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin;

(b) Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity; and

(c) Any other appropriate matters relating to the proposed activity.

The Parties shall agree, at the commencement of such consultations, on a reasonable time-frame for the duration of the consultation period. Any such consultations may be conducted through an appropriate joint body, where one exists.

A6 - Article 6

Article 6

FINAL DECISION

1. The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5.

2. The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.

3. If additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that activity commences, that Party shall immediately inform the other concerned Party or Parties. If one of the concerned Parties so requests, consultations shall be held as to whether the decision needs to be revised.

A7 - Article 7

Article 7

POST-PROJECT ANALYSIS

1. The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out, taking into account the likely significant adverse transboundary impact of the activity for which an environmental impact assessment has been undertaken pursuant to this Convention. Any post-project analysis undertaken shall include, in particular, the surveillance of the activity and the determination of any adverse transboundary impact. Such surveillance and determination may be undertaken with a view to achieving the objectives listed in Appendix V.

2. When, as a result of post-project analysis, the Party of origin or the affected Party has reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it shall immediately inform the other Party. The concerned Parties shall then consult on necessary measures to reduce or eliminate the impact.

A8 - Article 8

Article 8

BILATERAL AND MULTILATERAL CO-OPERATION

The Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under this Convention. Such agreements or other arrangements may be based on the elements listed in Appendix VI.

A9 - Article 9

Article 9

RESEARCH PROGRAMMES

The Parties shall give special consideration to the setting up, or intensification of, specific research programmes aimed at:

(a) Improving existing qualitative and quantitative methods for assessing the impacts of proposed activities;

(b) Achieving a better understanding of cause-effect relationships and their role in integrated environmental management;

(c) Analysing and monitoring the efficient implementation of decisions on proposed activities with the intention of minimizing or preventing impacts;

(d) Developing methods to stimulate creative approaches in the search for environmentally sound alternatives to proposed activities, production and consumption patterns;

(e) Developing methodologies for the application of the principles of environmental impact assessment at the macro-economic level.

The results of the programmes listed above shall be exchanged by the Parties.

A_10 - Article 10

Article 10

STATUS OF THE APPENDICES

The Appendices attached to this Convention form an integral part of the Convention.

A_11 - Article 11

Article 11

MEETING OF PARTIES

1. The Parties shall meet, so far as possible, in connection with the annual sessions of the Senior Advisers to ECE Governments on Environmental and Water Problems. The first meeting of the Parties shall be convened not later than one year after the date of the entry into force of this Convention. Thereafter, meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

2. The Parties shall keep under continuous review the implementation of this Convention, and, with this purpose in mind, shall:

(a) Review the policies and methodological approaches to environmental impact assessment by the Parties with a view to further improving environmental impact assessment procedures in a transboundary context;

(b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements regarding the use of environmental impact assessment in a transboundary context to which one or more of the Parties are party;

(c) Seek, where appropriate, the services of competent international bodies and scientific committees in methodological and technical aspects pertinent to the achievement of the purposes of this Convention;

(d) At their first meeting, consider and by consensus adopt rules of procedure for their meetings;

(e) Consider and, where necessary, adopt proposals for amendments to this Convention;

(f) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

A_12 - Article 12

Article 12

RIGHT TO VOTE

1. Each Party to this Convention shall have one vote.

2. Except as provided for in paragraph 1 of this Article, regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

A_13 - Article 13

Article 13

SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

(a) The convening and preparing of meetings of the Parties;

(b) The transmission of reports and other information received in accordance with the provisions of this Convention to the Parties; and

(c) The performance of other functions as may be provided for in this Convention or as may be determined by the Parties.

A_14 - Article 14

Article 14

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.

2. Proposed amendments shall be submitted in writing to the secretariat, which shall communicate them to all Parties. The proposed amendments shall be discussed at the next meeting of the Parties, provided these proposals have been circulated by the secretariat to the Parties at least ninety days in advance.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

4. Amendments to this Convention adopted in accordance with paragraph 3 of this Article shall be submitted by the Depositary to all Parties for ratification, approval or acceptance. They shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

5. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

6. The voting procedure set forth in paragraph 3 of this Article is not intended to constitute a precedent for future agreements negotiated within the Economic Commission for Europe.

A_15 - Article 15

Article 15

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 of this Article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with the procedure set out in

Appendix VII.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this Article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

A_16 - Article 16

Article 16

SIGNATURE

This Convention shall be open for signature at Espoo (Finland) from 25 February to 1 March 1991 and thereafter at United Nations Headquarters in New York until 2 September 1991 by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of the Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence in respect of matters governed by this
Convention, including the competence to enter into treaties in respect of these matters.

A_17 - Article 17

Article 17

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.

2. This Convention shall be open for accession as from 3 September 1991 by the States and organizations referred to in Article 16.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations, who shall perform the functions of Depositary.

4. Any organization referred to in Article 16 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not been entitled to exercise rights under this Convention concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in Article 16 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any relevant modification to the extent of their competence.

A_18 - Article 18

Article 18

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.

3. For each State or organization referred to in Article 16 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

A_19 - Article 19

Article 19

WITHDRAWAL

At any time after four years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from this Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary. Any such withdrawal shall not affect the application of Articles 3 to 6 of this Convention to a proposed activity in respect of which a notification has been made pursuant to Article`3, paragraph 1, or a request has been made pursuant to Article 3, paragraph 7, before such withdrawal took effect.

A_20 - Article 20

Article 20

AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Espoo (Finland), this twenty-fifth day of February one thousand nine hundred and ninety-one.

A_PX - Appendices

APPENDIX I

LIST OF ACTIVITIES

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. Thermal power stations and other combustion installations with a heat output of 300 megawatts more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste.

4. Major installations for the initial smelting of cast-iron and steel and for the production of non-ferrous metals.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 tonnes finished product; for friction material, with an annual production of more than 50 tonnes finished product; and for other asbestos utilization of more than 200 tonnes per year.

6. Integrated chemical installations.

7. Construction of motorways, express roads */ and lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.

8. Large-diameter oil and gas pipelines.

9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

10. Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes.

11. Large dams and reservoirs.

12. Groundwater abstraction activities in cases where the annual volume of water to be abstracted amounts to 10 million cubic metres or more.

13. Pulp and paper manufacturing of 200 air-dried metric tonnes or more per day.

14. Major mining, on-site extraction and processing of metal ores or coal.

15. Offshore hydrocarbon production.

16. Major storage facilities for petroleum, petrochemical and chemical products.

17. Deforestation of large areas.

*/ For the purposes of this Convention:
- "Motorway" means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(a) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;

(b) Does not cross at level with any road, railway or tramway track, or footpath; and

(c) Is specially sign-posted as a motorway.

- "Express road" means a road reserved for motor traffic accessible only from interchanges or controlle junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

APPENDIX II

CONTENT OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

Information to be included in the environmental impact assessment documentation shall, as a minimum, contain, in accordance with Article 4:

(a) A description of the proposed activity and its purpose;

(b) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;

(c) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;

(d) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;

(e) A description of mitigation measures to keep adverse environmental impact to a minimum;

(f) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;

(g) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;

(h) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and

(i) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

APPENDIX III

GENERAL CRITERIA TO ASSIST IN THE DETERMINATION OF THE ENVIRONMENTAL SIGNIFICANCE OF ACTIVITIES NOT LISTED IN APPENDIX I

1. In considering proposed activities to which Article 2, paragraph 5, applies, the concerned Parties may consider whether the activity is likely to have a significant adverse transboundary impact in particular by virtue of one or more of the following criteria:

(a) Size: proposed activities which are large for the type of the activity;

(b) Location: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects on the population;

(c) Effects: proposed activities with particularly complex and potentially adverse effects, including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area and those causing additional loading which cannot be sustained by the carrying capacity of the environment.

2. The concerned Parties shall consider for this purpose proposed activities which are located close to an international frontier as well as more remote proposed activities which could give rise to significant transboundary effects far removed from the site of development.

APPENDIX IV

INQUIRY PROCEDURE

1. The requesting Party or Parties shall notify the secretariat that it or they submit(s) the question of whether a proposed activity listed in

Appendix I is likely to have a significant adverse transboundary impact to an inquiry commission established in accordance with the provisions of this Appendix. This notification shall state the subject-matter of the inquiry. The secretariat shall notify immediately all Parties to this Convention of this submission.

2. The inquiry commission shall consist of three members. Both the requesting party and the other part

to the inquiry procedure shall appoint a scientific or technical expert, and the two experts so appointed shall designate by common agreement the third expert, who shall be the president of the inquiry commission. The latter shall not be a national of one of the parties to the inquiry procedure, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the matter in any other capacity.

3. If the president of the inquiry commission has not been designated within two months of the appointment of the second expert, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party, designate the president within a further two-month period.

4. If one of the parties to the inquiry procedure does not appoint an expert within one month of its receipt of the notification by the secretariat, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the inquiry commission within a further two-month period. Upon designation, the president of the inquiry commission shall request the party which has not appointed an expert to do so within one month. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The inquiry commission shall adopt its own rules of procedure.

6. The inquiry commission may take all appropriate measures in order to carry out its functions.

7. The parties to the inquiry procedure shall facilitate the work of the inquiry commission and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, facilities and information; and

(b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

8. The parties and the experts shall protect the confidentiality of any information they receive in confidence during the work of the inquiry commission.

9. If one of the parties to the inquiry procedure does not appear before the inquiry commission or fails to present its case, the other party may request the inquiry commission to continue the proceedings and to complete its work. Absence of a party or failure of a party to present its case shall not constitute a bar to the continuation and completion of the work of the inquiry commission.

10. Unless the inquiry commission determines otherwise because of the particular circumstances of the matter, the expenses of the inquiry commission, including the remuneration of its members, shall be born by the parties to the inquiry procedure in equal shares. The inquiry commission shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

11. Any Party having an interest of a factual nature in the subject-matter of the inquiry procedure, and which may be affected by an opinion in the matter, may intervene in the proceedings with the consent of the inquiry commission.

12. The decisions of the inquiry commission on matters of procedure shall be taken by majority vote of its members. The final opinion of the inquiry commission shall reflect the view of the majority of its members and shall include any dissenting view.

13. The inquiry commission shall present its final opinion within two months of the date on which it was established unless it finds it necessary to extend this time limit for a period which should not exceed two months.

14. The final opinion of the inquiry commission shall be based on accepted scientific principles. The final opinion shall be transmitted by the inquiry commission to the parties to the inquiry procedure and to the secretariat.

APPENDIX V

POST-PROJECT ANALYSIS

Objectives include:

(a) Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures;

(b) Review of an impact for proper management and in order to cope with uncertainties;

(c) Verification of past predictions in order to transfer experience to future activities of the same type.

APPENDIX VI

ELEMENTS FOR BILATERAL AND MULTILATERAL CO-OPERATION

1. Concerned Parties may set up, where appropriate, institutional arrangements or enlarge the mandate of existing institutional arrangements within the framework of bilateral and multilateral agreements in order to give full effect to this Convention.

2. Bilateral and multilateral agreements or other arrangements may include:

(a) Any additional requirements for the implementation of this Convention, taking into account the specific conditions of the subregion concerned;

(b) Institutional, administrative and other arrangements, to be made on a reciprocal and equivalent basis;

(c) Harmonization of their policies and measures for the protection of the environment in order to attain the greatest possible similarity in standards and methods related to the implementation of environmental impact assessment;

(d) Developing, improving, and/or harmonizing methods for the identification, measurement, prediction and assessment of impacts, and for post-project analysis;

(e) Developing and/or improving methods and programmes for the collection, analysis, storage and timely dissemination of comparable data regarding environmental quality in order to provide input into environmental impact assessment;

(f) The establishment of threshold levels and more specified criteria for defining the significance of transboundary impacts related to the location, nature or size of proposed activities, for which environmental impact assessment in accordance with the provisions of this Convention shall be applied; and the establishment of critical loads of transboundary pollution;

(g) Undertaking, where appropriate, joint environmental impact assessment, development of joint monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies with a view to rendering the data and information obtained compatible.

APPENDIX VII

ARBITRATION

1. The claimant Party or Parties shall notify the secretariat that the Parties have agreed to submit the dispute to arbitration pursuant to

Article 15, paragraph 2, of this Convention. The notification shall state the subject-matter of arbitration and include, in particular, the Articles of this Convention, the interpretation or application of which are at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant Party or Parties and the other Party or Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

6. Any arbitral tribunal constituted under the provisions set out herein shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures in order to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, facilities and information; and

(b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention having an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.