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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee
24th meeting

Strasbourg, 29 November - 3 December 2004

Possible New File

**Shipping canal in the Bystre estuary
(Danube Delta, Ukraine)**

Report by the Secretariat

*Secretariat Memorandum
prepared by
the Directorate of Culture and Cultural and Natural Heritage*

The purpose of the "files" is to find a satisfactory solution to problems encountered in implementing the Convention and to monitor as effectively as possible the means chosen to resolve them.

I. Review of the facts

The Secretariat received a complaint by letter dated 10 February 2004 from the “*Danube Environmental Forum*” association concerning the ecological impact of the Bystroye shipping canal project on biological diversity in the Danube Delta.

The Secretariat contacted the Ukrainian authorities on 26 February, asking them for a summary of the environmental impact study for the works envisaged, on the grounds that these works could seriously affect populations of species protected by Appendix II to the Bern Convention and might be in breach of Ukraine’s international commitments, particularly in respect of articles 4 and 6 of that Convention.

Contact were also established with Unesco (MAB Programme) and the Ramsar Convention Bureau, which had visited the site in 2003 to analyse the three possible options for the digging of the canal and their foreseeable impact on the status and functioning of the Ukrainian Danube Biosphere Reserve.

II. Application of the Convention

The implementation of such a project is likely to breach several provisions of the Convention, particularly:

- Article 4, which stipulates that:

"1. Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats.

2. The Contracting Parties in their planning and development policies shall have regard to the conservation requirements of the areas protected under the preceding paragraph, so as to avoid or minimise as far as possible any deterioration of such areas."

[...];

- Article 6, which stipulates that:

" Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:

- a. all forms of deliberate capture and keeping and deliberate killing;*
- b. the deliberate damage to or destruction of breeding or resting sites;*
- c. the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention" [...].*

III. Examination of the file by the Bureau

The Bureau examined the complaint at its meeting on 16 April 2004 and proposed that an on-the-spot appraisal be organised; the Ukrainian authorities agreed to the appraisal in principle on 12 May 2004

At its meeting of 10 September 2004, the Bureau decided to present this case as a "possible file" for the next meeting of the Standing Committee.

IV. On-the-spot appraisal

The on-the-spot appraisal was carried out by Mr Hervé Lethier. It took place from 22 to 25 July 2004, in the presence of the Head of the Council of Europe's Natural Heritage and Biological Diversity Division.

Its purpose was to:

- Examine the project to build a shipping canal using the Bystre estuary, located in the Ukrainian sector of the Danube Delta;
- Assess the possible impact on fauna and flora species and their habitats;
- Study the legal status of the area concerned, paying particular attention to the transfrontier context;
- Examine financing arrangements;
- Dialogue with the authorities and the NGOs concerned;
- Make appropriate recommendations to the Standing Committee of the Bern Convention.