



Book Unit 2 - The Convention on Environmental Impact Assessment in a Transboundary Context

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Course: Introductory course to the international legal framework on Environmental Impact Assessment

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1. The Convention on Environmental Impact Assessment in a Transboundary Context

Initiated through a seminar on EIA held in Warsaw, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) is the most comprehensive international agreement on EIA. I

It entered into force in 1997 and has currently (as of June 2015) 45 parties. Parties adopted two amendments to the Convention in 2001 and 2004. Once the 2001 amendment enters into force it will allow all members of the United Nations to accede the Convention, although the Espoo Convention is a regional agreement of the United Nations Economic Commission for Europe.

Objective and scope

The main objective of the Espoo Convention is the creation of EIA-based mechanisms to effectively monitor and control transboundary pollution. Article 2(1) of the Convention provides that “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.”

The Espoo Convention stipulates the obligations of its parties to assess the environmental impact of certain development activities early in the decision making process. Each party must establish an EIA procedure for the development projects listed in Annex I of the convention (e.g., waste processing plants, infrastructure construction, deforestation, etcetera).

The scope of the Espoo Convention is generally limited to projects listed in its Annex I. However, when an unlisted project may cause a significant transboundary environmental impact, the affected signatories are entitled to request an EIA. Should the parties disagree about the likelihood or severity of a transboundary environmental impact, the affected party can call for the establishment of an Inquiry Commission to advise the affected parties. The party initiating the disputed project is not obligated to follow the advice of the Inquiry Commission.

Obligation to notify and consult

The Espoo Convention also obligates its parties to notify and consult with each other on all major projects under consideration that are likely to have a significant transboundary environmental impact. The procedure must allow for public participation and preparation of an EIA. The affected party and its citizens have the right to participate in the preparation of the proposed project's EIA.

Public participation

Public participation in the development of an EIA figures heavily in the Espoo Convention. In accordance with Rio Principle 10, the Espoo Convention foresees that public participation in the development of transboundary EIA will:

- Improve relations between peoples and countries and prevent transboundary environmental conflicts;
- Develop civil society and democracy;
- Promote the timely disclosure of relevant information to participants in the environmental decision-making process;
- Help people understand, respect, and accept final decisions on projects; and
- Provide insight into environmental protection and the mitigation of long-term environmental problems that result from development decisions.

Content of EIA documentation

Article 4 of the Espoo Convention requires the EIA to contain certain information, including (Appendix II):

- Description of the proposed activity and its purpose;
- Description of reasonable alternatives, where appropriate, including a “no-action” alternative;
- Description of the likely environmental impacts resulting from the proposed activity and its alternatives;
- Description of available mitigation measures;
- Explicit indication of predictive methods and underlying assumptions, as well as relevant environmental data relied upon for development of the EIA;
- Identification of gaps in knowledge encountered in developing the EIA;
- Outline for monitoring and management programmes and plans for post-project assessment; and
- Non-technical summary, including presentation of visual aides.

Implementation and Compliance

In 2001, the MOP established the Implementation Committee to review compliance and assist Parties to meet their obligations under the Convention and, more recently, the Protocol. The Committee considers submissions made by the MOP, one or more Parties concerned about another Party's compliance or by a Party concerned with its own compliance (self-referral). The Committee can take the initiative based on information provided in the periodic report submitted by Parties according to the Convention's Review of Implementation or based on information received by the public. The Espoo Convention compliance procedure is set up to be "non-adversarial and assistance-oriented".

The 2004 amendment, not into force yet, inserts a new article (*article 14 bis*)[1]; the "Review of compliance" allows a party to review compliance with the provisions of the Convention or any Protocol adopted under the Convention on the basis of the compliance procedure, as a non-adversarial and assistance-oriented procedure to be adopted by the Meeting of the Parties. The review shall be based on, but not limited to, regular reporting by the Parties.

[1] It sums up the procedure already in place adopted by the Meeting of the Parties (MOP) procedure and amendment adopted in 2004.

2. Protocol on Strategic Environmental Assessment

Strategic Environmental Assessment (“SEA”) has been described to be “The formalised, systematic and comprehensive process of evaluating the environmental impacts of a policy, plan or programme and its alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in publicly accountable decision-making” (Thievel).

The Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (“2003 SEA Protocol”) was adopted in 2003 by the Parties of the Espoo Convention. It entered into force in 2010 and, as of June 2015, it has 26 Parties.

Objective

The SEA Protocol's objective is to utilize Strategic Environmental Assessment-concepts to fully integrate environmental objectives into development plans and programmes in a manner that will support sustainable development and further environmental conservation.

The 2003 SEA Protocol defines an SEA to be "The evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme".

The 2003 SEA Protocol requires parties to evaluate the environmental consequences of their official draft development plans and programmes, but not policies. The SEA Protocol provides for extensive public participation in governmental decision making in areas such as land use, transportation, agriculture, and industrial activities. Again, in accordance with Rio Principle 10, public participation includes public comment and accountability of the final decision-makers.

The SEA Protocol not only covers typical environmental effects of plans and programmes, but also places a special emphasis on human health effects. This is the result of the participation of the World Health Organization ("WHO") during the agreement's negotiations, as well as the commitments made at the 1999 London Ministerial Conference on Environment and Health.

Key provisions

Article 4 of the SEA Protocol outlines those instances in which an SEA must be undertaken. Articles 8, 9 and 10 of the SEA Protocol deal with public participation in the SEA process, which must be provided “early” in the project assessment and in a manner that is “timely and effective.” Public health officials and environmental authorities are similarly entitled to “early, timely and effective” submission of their opinions on the effects of a proposed project.

The 2003 SEA Protocol requires decisions on plans and programmes take due account of the conclusions of any EIA, as well as comments of the public, health and environmental officials and the affected parties. A final project decision must disclose how environmental considerations were taken into account and the *rationale* for the adoption of the plan or programme in light of the SEA.

Like the Espoo Convention, the 2003 SEA Protocol seeks to mitigate the effects of transboundary pollution, but focuses more on a parties domestic plans and programmes in the context of Strategic Environmental Assessment.