

Convention (1991) on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)

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ABSTRACT

Environmental Impact Assessment (EIA) is termed as one of the best policy innovations in the 1900s. The main aim of EIA is to conserve the environment and bring out the best combination of economic and environmental costs and benefits. EIA is a process through which an environmental impact of a proposed development is evaluated. The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) was negotiated under the auspices of the United Nations Economic Commission for Europe (ECE) and was signed in Espoo, Finland, in 1991. Following six meetings of the signatories, the Convention entered into force in 1997 and the first Meeting of the Parties (MoP) took place in Oslo in 1998. The Strategic Environmental Assessment (SEA) Protocol to the Convention was adopted in 2003, and has been signed by thirty-six States as well as by the EC. The Bureau of the Convention was established as an organ to co-ordinate the work pertaining to the development of the system of the Convention between the Meetings of the Parties. As of April 2014, the treaty had been ratified by 44 state and European Union.

Convention has adopted many important decisions pertaining to the institutional structure of the Espoo Convention.

INTRODUCTION

EIA full form is Environmental Impact Assessment. In simple terms, the meaning of EIA is that it is a process through which an environmental impact of a proposed development is evaluated. While undertaking Environmental Impact Assessment (EIA), the inter-related socio-economic, cultural, and human-health impacts are considered. EIA is termed as one of the best policy innovations in the 1900s. The main aim of EIA is to conserve the environment and bring out the best combination of economic and environmental costs and benefits. Read the below-mentioned points to understand the Environmental Impact Assessment evolution and history. The birth of EIA is dated back to the 1970s. In 1969, The USA had brought its first National Environment Policy Act (NEPA) 1969. The EIA was initially practised by developed nations but slowly it was also introduced in developing nations including India. Columbia and the Philippines are the earliest examples of developing nations who introduced EIA in their policies. Columbia brought it in 1974 while the Philippines in 1978. Worldwide, EIA is now practised in more than 100 countries. By the mid-1990s, some 110 countries applied EIA as a major environmental policy. In 1989, EIA was adopted as the major development project by the World Bank.

Objectives of Environmental Impact Assessment

1. Identifying, predicting, and evaluating economic, environmental, and social impacts of development activities.
2. Providing information on the environmental consequences for decision making.

3. Promoting environmentally sound and suitable development by identifying appropriate alternatives and mitigation measures.

The 1991 Convention on Environmental Impact Assessment

- The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) was negotiated under the auspices of the United Nations Economic Commission for Europe (ECE) and was signed in Espoo, Finland, in 1991. Following six meetings of the signatories, the Convention entered into force in 1997 and the first Meeting of the Parties (MoP) took place in Oslo in 1998.
- *The Strategic Environmental Assessment (SEA) Protocol to the Convention was adopted in 2003, and has been signed by thirty-six States as well as by the EC. The Bureau of the Convention was established as an organ to co-ordinate the work pertaining to the development of the system of the Convention between the Meetings of the Parties.*
- As of April 2014, the treaty had been ratified by 44 states and the European Union
- (Convention of States: A national movement to call a convention under Article V of the United States Constitution)
- Convention has adopted many important decisions pertaining to the institutional structure of the Espoo Convention.
- Secretariat tasks are handled by the ECE. The MoP is now assisted by the Working

Group on Environmental Impact Assessment (EIA) and the Implementation Committee.

- The Working Group on EIA assists the MoP in the implementation of the Convention and the management of the work-plan, and the Implementation Committee has the dual task of developing the reporting system and considering individual cases of non-compliance.

Amendments

- The convention has been amended twice. The first amendment was adopted in Sofia in 2001, it has entered into force 26 August 2014.
- It opens the convention to accession upon approval by United Nations Member States that are not members of the UNECE.
- The second amendment was adopted in Cavtat, Croatia, in 2004, as for the September 2016, it is not in force yet. Once in force it will: allow, as appropriate, affected Parties to participate in scoping, require reviews of compliance; revise the convention's Appendix I (list of activities); and make other minor changes.

Procedure

The Convention involves a Party (or Parties) of origin (States where an activity is planned) and an affected Party (or Parties)). The convention's main procedural steps are The need to have a separate provision for dispute resolution arose in the first (of six) meetings of the *ad hoc* Working Group that was entrusted by the Senior Advisers of the ECE to draw up an international agreement on the matter.

- Application of the convention by the Party of origin (Art. 2.2, 2.5/App. I+III)
- Notification of the affected Party by the Party of origin (Art. 3.1).

- Confirmation of participation by the affected Party (Art. 3.3).
- Transmittal of information from the affected Party to the Party of origin (Art. 3.6)
- public participation in the affected Party (Art. 3.8)
- preparation of EIA documentation (Art. 4/App. II)
- distribution of the EIA documentation for the purpose of participation of authorities and public of the affected Party (Art. 4.2)
- consultation between the concerned Parties (Art. 5)
- final decision by the Party of origin (Art. 6.1)
- transmittal of final decision documentation to the affected Party (Art. 6.2)
- post-project analysis (Art. 7.1/App. V)

Dispute resolution

1. The basic dispute resolution mechanism under the Convention
- The need to have a separate provision for dispute resolution arose in the first (of six) meetings of the *ad hoc* Working Group that was entrusted by the Senior Advisers of the ECE to draw up an international agreement on the matter.
 - The Espoo Convention thus came to include a provision on dispute settlement which also applies to the SEA Protocol.¹⁶ The provision is set out in article 15.
 - Article 15 sets out two main channels for resolving disputes between contracting States about the interpretation or application of the Convention

2. Special dispute resolution: the inquiry commission procedure

- If a dispute centres on whether the origin State is required to initiate a transboundary EIA procedure of the Espoo Convention, then the Convention provides a special dispute settlement mechanism known as the inquiry commission procedure.
- The only treaty before the Espoo Convention to have had such a procedure is the 1974 Nordic Environment Protection Convention.
- The basic provision establishing an obligation on the part of the origin State to commence a transboundary EIA procedure is article 3(1).
- The inquiry commission procedure has been invoked in one recent case. On 19 August 2004, the Secretariat of the Espoo Convention notified all the parties to the Convention.

Compliance control

- Compliance control is the mechanism whereby the treaty community monitors and reviews whether the States parties have observed their obligations as set out in the Convention.
- The Espoo Convention did not originally provide much in the area of compliance control. It did establish the basis for institutional development in article 11 by creating the Meeting of the Parties and defining its terms of reference.

The system for reviewing treaty compliance

- In contrast to its SEA Protocol, the Espoo Convention does not impose any reporting obligation on the parties.

- Unlike some international environmental treaties, the Convention did not require the parties to provide an initial submission of information, nor does it require them to submit regular reports.
- The farthest the Convention has gone in this respect is the terms of reference of the MoP, essentially requiring the parties to continuously review implementation of the Convention in numerous ways.

The non-compliance mechanism: the Implementation Committee

- The Espoo Convention has no provisions on non-compliance, but the work-plan for the years 1998 to 2000, formulated in 1998 at the first MoP in Oslo, included work on non-compliance guidelines.
- The delegation of the United Kingdom, which was assigned to lead a task force in this area, produced a background paper entitled 'Compliance with Multilateral Environmental Agreements', in which it outlined the existing non-compliance mechanisms and identified certain trends in these mechanisms for the Working Group on EIA to consider.

Enforcement

- The Implementation Committee can only draft a recommendation on a compliance case to the MoP, which makes the final decision.
- If consensus cannot be reached in the MoP, the recommendation by the Implementation Committee will be accepted if a three-quarters majority of the parties present and voting favours it.

Evaluation

- A number of general trends can be identified with respect to reporting, non-

compliance mechanisms and enforcement rules and procedures in the Espoo regime.

- First, the Convention itself provides no guidance in these matters; the MoPs have developed the compliance system as it presently stands.
- Secondly, in the third MoP, the second amendment to the Convention was adopted which, if and when it enters into force, will provide a formal basis for a compliance system.
- Finally, the SEA Protocol has seemingly learned the lesson lost on its parent Convention and provided for a compliance system in its article

CONCLUSION

International environmental treaties – the Espoo Convention among these – exhibit a clear trend towards having similar provisions for dispute resolution. They keep dispute settlement in the hands of the States parties but provide the parties with the possibility of

making a declaration that they will have their disputes resolved by a third-party procedure. Significantly, the general dispute settlement clause of the Espoo Convention seems to have established a ‘precedent’ for other ECE environmental protection conventions. EIA convention plays crucial role in addressing the developmental activates across the nations and in local contexts. Dispute resolution among different parties helps in solving the various environmental issues. Compliances and evaluation mechanisms strengthen the implementation of convention protocol.

REFERENCES

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