Meeting of the Parties to the Espoo Convention, 8th session
Meeting of the Parties to the Protocol on SEA, 4th session
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High-level event to mark the thirtieth anniversary of the Convention
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The Espoo Convention in a Global Context: Its Contribution to the Development of International Environmental Law

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Distinctive features of the Espoo Convention as a legal instrument : The Basis of its strengths and weaknesses in a global context

- Solely laying down "procedural" rules on transboundary hazardous activities: no restriction on the right of Contracting Parties (CPs) to decide to authorize or undertake them but requirement of taking certain procedures as precondition
- Adopting a cross-sectoral approach
- Formulating a continuous process of transboundary EIA (TEIA) that consists of notification, preparation of EIA documentation, consultation, report of the final decision, post-project analysis
- Requiring public participation in various stages
- Institutionalizing various mechanisms for restricting the discretion of a State of origin in undertaking a TEIA: Annexes I, II, III, IV & V
- Introducing mechanisms for ensuring compliance in a non-adversarial manner or for avoiding or resolving disputes: review of compliance (Art.14 bis) , inquiry (Annex V) and arbitration (Annex VII)
- Complemented by regional/bilateral agreements concluded by CPs (Annex VI)
- Involving extensive intervention into relevant domestic systems on EIA, legal and administrative, of CPs for managing transboundary hazardous activities

State of implementation: relatively good

- Relatively active commitment by CPs at various levels
- Active work of treaty institutions, i.e. MOPs, Implementation Committee (IC), an ad hoc Inquiry Commission, *etc.*
- Various successful arrangement for resolving practical problems, enhancing capacity- building or sub-regional cooperation through a series of technical guidelines or guidance, relevant workshops, *etc.*
- Certain number of regional/bilateral agreements that complementarily work
- Harmonization or standardization of domestic law and practice on EIA among CPs
- Abundant cases in various fields where the Convention has been applied
- Adoption of the SEA Protocol in 2003

The precedent value of the Espoo Convention in the development of rules on EIA in international law

- Contributing to the emergence of a customary rule on TEIA
- Demonstrating how to make basic principles of international environmental law on harm-prevention, precaution and co-operation work effectively through requirements of TEIA, in a particular context and concerning transboundary hazardous activities
- Constituting part of the expanding fabric of treaty-rules or non-legally binding commitments on EIA
- Providing a leading model of a continuous process of managing transboundary hazardous activities from the viewpoints of procedural regulation
- Showing an effective way to substantiate the public participation in a transboundary context
- Indicating harmonization or standardization of domestic EIA systems among relevant States as a critical factor for a successful TEIA
- Confirming the importance of institutional mechanisms that continuously facilitate relevant States in undertaking TEIA and monitor the state of their implementation to make the procedures work well

Table 1: Emergence & development of rules/commitments on EIA in international law

	1970s-1980s	1990s	2000s	2010s
A customary duty of under- taking a TEIA		(EIA as an effective tool for managing transboundary risk suggested in the ICJ judgment)	(EIA as an implementing tool of the co-operative prin- ciple suggested by ITLOS)	**Recognized** in ICJ judgments (2010, 2014), ITLOS advisory op. (2011), arbitral award (2017)
MEA: Cross-sector	Nordic Convention (1974), **World Charter for Nature (1982)**, EC EIA Directive (1985), **UNEP EIA Goals & Principles (1987)**	**Espoo Convention (1991)**, **Rio Declaration (1992)**, North American Agreement on Environmental Cooperation (1993), EBRD environmental policy (1996)	**ILC Draft articles on prevention of transboundary harm (2001)** , EU SEA Directive (2001), **Kiev Protocol on SEA (2003)**	(Ocean: discussion in progress for drafting ISA exploitation regulations & a intel legally-binding instrument under UNCLOS on biodiversity of areas beyond national jurisdiction)
Ocean	UNCLOS (UN Convention on the Law of the Sea) (1982)	Implementation agreement of Part XI of UNCLOS (1994), FAO Code of Conduct for Responsible Fisheries (1995), The 1996 Protocol to London Convention on sea-dumping	ISA (Int'l Seabed Authority) exploration regulations on polymetallic nodules (2000)	ISA exploration regulations on polymetallic sulphides (2010) /on cobalt-rich ferromanganese (2012) & ISA guidance on EIA (2013)
Regional sea	Noumea Convention (S. Pacific) (1982) , Kuwait Protocol (1989) to ROPME Convention(1978),*etc.*	Helsinki Convention (1992), Barcelona Convention (1995) & Madrid Protocol (1997), *etc.*	EIA Guidelines in Caspian Sea (2004) for Teheran Convention (2003)	TEIA Protocol (2018) to Teheran Convention (2003)
Watercourses		UNECE Water Convention (1992), Convention on non-navigational use of int'l water-courses (1997)	SADC revised Protocol (2000), **ILC Draft articles on the law of transboundary aquifers (2008)**	Technical guidelines on TEIA in the Lower Mekong Basin finalized under MRC
Biodiversity/na- ture conservation	ASEAN Agreement (1985, not entry into force)	Convention on Biological Diversity (CBD) (1992)	**CBD voluntary guidelines on EIA & SEA (2004)**	
Nuclear energy		Nuclear safety Convention (1994), Joint Convention (1997)		**IAEA Safety Standards: GSR Part 3 (2014) & GSG-8, 9 & 10 (2018)**
Polar regions		Antarctic: Madrid Protocol (1991), **Arctic EIA Guidelines (1997)**		

Synergy effects between the Espoo Convention and other international instruments

- Ultimately contributing to achieving goals and principles of international regimes on various environmental issues by managing environmentally hazardous activities in a transboundary context
- Substantially strengthening the procedural requirements of other instruments by offsetting their limits based on its distinctive features as an advanced legal framework of TEIA where one proposed activity is subject to procedural regulation under the Espoo Convention and other instruments simultaneously
- Leading to complementary interaction between implementation processes of multiple instruments where one proposed activity subject to the Espoo Convention is regulated, either substantively or procedurally, by other instruments simultaneously, if some kind of coordination is made among the relevant institutions

Table 2: Major MEAs that have overlapping procedural requirements/commitments on transboundary hazardous activities with the Espoo Convention

	Regional instruments that may apply to CPs to the Espoo Convention	Global treaties & instruments for their implementation	Non-legally binding instruments
Cross-sector	Nordic Convention, EC EIA Directive, Bucharest Agreement, Arhus Convention (public participation in decision-making), EBRD environmental policies		Rio Declaration, World Charter for Nature, UNEP EIA Goals & Principles, ILC Draft articles on prevention of transboundary harm
Ocean	Helsinki Convention, OSPAR Convention (Consultation and/or notification only: C/N), Barcelona Convention & Madrid Protocol, Black Sea Convention, Teheran Convention & TEIA Protocol	UNCLOS	FAO Code of Conduct for Responsible Fisheries
Watercourses	UNECE Water Convention, Danube River Protection Convention (C/N)	Convention on non-navigational use of international watercourses	ILC Draft articles on the law of transboundary aquifers
Biodiversity/Nature conservation	The 1998 & 2000 Protocols to Alpine Convention, Convention on the Carpathians	Ramsar Convention (C/N), CBD & voluntary guidelines on EIA & SEA	
Nuclear energy	EURATOM Treaty (C/N)	Nuclear safety Convention , Joint Convention	IAEA Safety Standards: GSR Part 3 (2014) & GSG-8, 9 & 10 (2018)
Polar regions	Arctic EIA Guidelines		

Implication of the Espoo Convention in the context of non-UNECE regions, particularly with regard to the Asian region

- **Current situations**: increasing number of various kinds of transboundary hazardous activities; very few regional frameworks or bilateral arrangements on TEIA; non-statement of TEIA in environmental policies of MDBs/IFIs, ADB & AIIB
- **Some recent development/good signs**: participation of delegates of some Asian States in MOPs/WG meetings and in panels organized under the Convention; a series of regional workshops in North-East Asia; increase of academic research papers on the theme; finalization of technical guidelines on TEIA in the Lower Mekong Basin under the Mekong River Commission (2019); EIA legislation or administrative measures adopted by almost all Asian States; confirmation of duties on EIA and communication of its results concerning ocean activities under UNCLOS and customary international law in international jurisprudence (2016)
- **Possible option**: accession to the Espoo Convention by Asian States or developing their own arrangements based on lessons learnt from the experience of the Convention
- **Necessary action**: a thorough analysis of strengths and weaknesses of the Convention in an Asian context

Reference: international jurisprudence

- *Judgment, the International Court of Justice (ICJ), Case concerning the Gabčíkovo-Nagymaros project (Hungary v. Slovakia), 25 September 1997*
- *Order, the International Tribunal for Law of the Sea (ITLOS), The MOX Plant case (Ireland v. UK), Request for provisional measures, 3 December 2001*
- *Order, the ITLOS, Case Concerning land reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Request for provisional measures, 8 October 2003*
- *Judgment, the ICJ, Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay), 20 April 2010*
- *Advisory Opinion, Seabed Disputes Chamber of the ITLOS, Responsibilities and Obligations of State Sponsoring Persons and Entities with Respect to Activities in the Area, 1 February 2011*
- *Judgment, the ICJ, Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) & Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica), 16 December 2015*
- *South China Sea Arbitration Award (Merits), PCA Case No 2013-19 between Republic of Philippines and the Republic of China, 12 July 2016*

Thank you very much for your attention

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