

9 November 2011  
English only

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## **Economic Commission for Europe**

### **Regional Preparatory Meeting for the United Nations Conference on Sustainable Development**

Geneva, 1 and 2 December 2011

Item 5 of the provisional agenda

**Assessment of progress in the implementation of the outcomes  
of the major summits on sustainable development and  
addressing new and emerging challenges**

## **The contribution of the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment to the implementation of the Rio Principles**

**Note by the secretariat**

### **I. Introduction**

1. This paper describes how the United Nations Economic Commission for Europe (ECE) Convention on Environmental Impact Assessment (Espoo Convention) and its Protocol on Strategic Environmental Assessment concretely and effectively contribute to the implementation of several Rio Principles:<sup>1</sup> the two instruments provide a legal basis, a procedural framework and practical guidance for implementing fully Principles 2, 4 and 19. In addition, both instruments support the implementation of Principles 10, 15 and 17. The paper illustrates what the two treaties have already accomplished to date and how they can further promote the achievement of the above Rio Principles in the future.

2. The paper was prepared further to the request of the Meeting of the Parties to the Protocol, at its first session in June 2011, that the secretariat report within the preparatory process for the United Nations Conference on Sustainable Development (Rio+20 Conference) on the contribution of the Convention and, in particular, the Protocol to the implementation of the Rio Principles (ECE/MP.EIA/SEA/2, para. 20).

3. The obligations of the Espoo Convention and its Protocol are in force, implemented through the national legislation of their parties and routinely applied. The Convention was adopted in 1991, based on 10 to 15 years of prior experience in the environmental impact assessment (EIA) of proposed economic activities. It entered into force in 1997, five years after the Rio Principles were proclaimed. In contrast, the concept of strategic environmental assessment (SEA) of plans, programmes and policies has mainly been developed after 1992, influenced by the Rio Principles with a view to further promoting sustainable

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<sup>1</sup> Principles proclaimed by the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, in June 1992. See report of the Conference, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum).

development, and drawing on an understanding of the strengths and shortcomings of EIA. The Protocol on SEA was adopted in 2003 and entered into force in 2010.

4. The Convention now has 45 parties in the ECE region; the Protocol, 23. The European Union is a party to both. The Protocol is open upon approval to all Member States of the United Nations, and is not limited to States in the ECE region.

## **II. Contribution of the Convention and the Protocol to the implementation of the Rio Principles**

### **Principle 2**

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

5. The Espoo Convention implements Principle 2 by obliging its parties to “either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities” (article 2, para. 1).

6. The Espoo Convention lays down the general obligation for States to notify and consult each other on major projects under consideration that are likely to have a significant adverse environmental impact across boundaries. They are obliged, either individually or jointly, to take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities. While decision-making power is retained by the party of origin (i.e., the State under whose jurisdiction a proposed activity is envisaged to take place), the comments received from the affected party, as well as the results of the required EIA, have to be taken into due account when deciding on the planned activity. The Convention has been applied to date to over 800 activities and the application has increased over the past decade from approximately 10 to over 100 cases per year.

7. The Protocol on SEA requires countries to assess the environmental and health impacts of plans and programmes that set the framework for future development consent for projects and, to the extent appropriate, of policies and legislation. The objective of the Protocol is to provide thus for a high level of protection of the environment, including health. The Protocol applies to development plans and programmes irrespective of whether they are likely to have an impact on the territory of another State, but it contains specific provisions for transboundary consultations, similar to those in the Espoo Convention. It has been applied to numerous plans and programmes that have potential transboundary environmental impact, though practice is still evolving in this field.

### **Principle 4**

*In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*

8. The parties to the Protocol on SEA have recommitted themselves to promoting sustainable development, basing themselves on the conclusions of the 1992 Rio Conference, in particular Rio Principles 4 and 10. The objective of the Protocol is to provide for a high level of protection of the environment, including health, by integrating environmental and health concerns into measures and instruments designed to further

sustainable development. The Protocol defines SEA as “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”.

9. The parties to the Protocol are obliged to ensure that SEA is carried out for plans and programmes that are likely to have significant environmental, including health, effects. In addition parties are committed to “endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate in the preparation of its proposals for policies and legislation that are likely to have significant effects on the environment, including health”.

10. SEA is recognized as a key instrument to ensure that environmental protection constitutes an integral part of the decision-making process. It has been developed to ensure that environmental concerns are taken into account early in the decision-making process, when plans, programmes and policies are being drafted.

11. Thus environmental protection has become, or is becoming, an integral part of development process in the countries that are parties to the Protocol. The Protocol has a significant role also in establishing practice and shaping legislation through experience-sharing and capacity-development activities including in ECE countries that are not parties to the Protocol, especially in Eastern Europe, the Caucasus and Central Asia.

12. To date, SEA has been applied mostly to land-use plans and programmes at the local and regional level. In contrast, SEA has not yet been fully integrated into the preparation of policies and legislation. However, it is foreseen that, as practice develops, SEA should evolve into a strategic and forward-looking tool that effectively and concretely promotes sustainable development efficiently at the highest levels of decision-making. Parties are required to report to the Protocol’s governing body on their application of the Protocol to their policies and legislation, with the first reporting period being 2010–2012.

## **Principle 10**

*Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

13. Both the Convention and the Protocol provide for extensive public participation in decision-making.

14. The Espoo Convention obliges parties to take the necessary legal, administrative or other measures to establish an EIA procedure that permits public participation. Parties have to ensure that the public of the affected party are informed of, and provided with possibilities for making comments on or objections to, a proposed activity and that EIA documentation is distributed to the public of the affected party. The Party of origin then has to ensure that due account is taken of the comments received when deciding on the proposed activity.

15. The comments received, especially in case of high-profile projects, such as nuclear installations and long-distance gas pipelines, have been numerous and have provided

valuable information for Governments and developers. Public participation in the EIA procedure has become a well-established practice.

16. Through the Convention's compliance mechanism, private citizens and non-governmental organizations can also make the Convention's Implementation Committee aware of possible non-compliance by parties, so further encouraging parties to fulfil their obligations.

17. The Protocol has extensive provisions for public participation to ensure "early, timely and effective opportunities for public participation, when all options are open, in the strategic environmental assessment of plans and programmes" and "timely public availability of the draft plan or programme and the environmental report", and gives "the public ... the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame". Further, when making the decision about the plan or programme, due account has to be taken of the comments received from the public.

### **Principle 15**

*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*

18. EIA and SEA are commonly used and recognized as instruments for integrating the precautionary approach into planning and decision-making. Both EIA and SEA can provide an early warning signal of unsustainable development options or activities potentially seriously damaging the environment. The parties to the Espoo Convention are "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" (Convention preamble). In the Protocol on SEA, the risk to the environment is one of the criteria for determining the likely significant environmental effects (annex III, para. 6).

### **Principle 17**

*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.*

19. Almost every country applies EIA in some form to planned activities with potentially significant harmful impacts on the environment. While the Espoo Convention's focus is on transboundary aspects, it has contributed also to the development of national EIA practices by fostering cooperation and experience sharing between ECE member States. Further, the Convention requires that parties take the necessary legal, administrative or other measures to implement the provisions of the Convention, "including ... the establishment of an environmental impact assessment procedure".

20. The Protocol on SEA has already gone one step beyond Principle 17. In SEA, the environment is integrated into decision-making processes that precede project-level development. The parties to the Protocol have to ensure that SEA is carried out for plans and programmes that are likely to have significant environmental, including health, effects and, to the extent appropriate, for policies and legislation.

## Principle 19

*States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.*

21. The Espoo Convention requires that the party of origin notify any party that it considers may be an affected party as early as possible and no later than when informing its own public about that a proposed activity. The party of origin also has to provide relevant information regarding the EIA procedure, the proposed activity and its possible significant adverse transboundary impact. The Convention then requires that the affected party, and its public, be able to comment on or object to the planned activity and to comment on the EIA documentation. The Convention also provides for Government-level consultations by requiring the concerned parties to enter into consultations concerning, among other things, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. It further defines that, in the final decision on the proposed activity, due account has to be taken of the comments received and the outcome of the consultations.

22. The 45 parties to the Convention are obliged to fulfil these requirements, but the Convention is frequently applied in the region on a voluntary basis by States that are not parties.

23. Although the Espoo Convention is a regional Convention, it has also contributed to the development of transboundary EIA practice globally. The Convention can be seen as one of the influencing factors behind the recent Judgment of the International Court of Justice “that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context...”<sup>2</sup>. In the same Judgment, the Court also stated “...that an environmental impact assessment must be conducted prior to the implementation of a project” (para. 205).

24. The Protocol on SEA applies also in the transboundary context and thus goes beyond the requirements in Principle 19 by requiring countries to inform and consult each other when a plan or programme is likely to have significant transboundary environmental effects. The Protocol states that “where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental, including health, effects or where a Party likely to be significantly affected so requests, the Party of origin shall as early as possible before the adoption of the plan or programme notify the affected Party”. It provides the affected party the possibility to indicate whether it wishes to enter into consultations before the adoption of the plan or programme. It also requires that each party ensure that, when a plan or programme is adopted, due account is taken of the outcome of the consultations. Thus the Protocol enhances regional cooperation and provides an arena for addressing the transboundary effects of future development.

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<sup>2</sup> *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, International Court of Justice, Judgment of 20 April 2010, para. 204.