

Economic Commission for Europe
Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

Working Group on Environmental Impact
Assessment and Strategic Environmental Assessment
Sixth meeting
Geneva, 7–10 November 2016
Item 9 (b) of the provisional agenda
Exchange of good practices

Information on the workshop on the globalization of the Espoo Convention and the Protocol on SEA, and the role of international financial institutions.

**Palais des Nations (room XII), Geneva,
Wednesday, 9 November 2016 (10 am – 1 pm)**

Note by a consultant to the European Investment Bank

I. Introduction

1. The workshop on the global application of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA) is held as foreseen in the current workplan (2014-2017). The workshop is organized by the European Investment Bank (EIB), as the lead organization for this activity, with support from a consultant, Mr. Jiri Dusik, and in cooperation with the secretariat.
2. The workshop aims to:
 - Contribute to raising awareness on the Convention and the Protocol and their benefits among countries outside the ECE region.
 - Inform Parties and Signatories to the Convention and the Protocol, as well as other stakeholders, on current practices of non-ECE countries, international financial institutions (IFIs) and other international organisations in applying SEA and transboundary EIA.
 - Discuss expectations of the non-ECE countries and possible avenues for enhanced future collaboration, that could involve engagement of relevant international organisations in promoting the application of the provisions of Convention and the Protocol in the non-ECE countries and in supporting related capacity building activities.
3. The workshop is conceived as an additional initial step to explore opportunities for future global application of the Convention and the Protocol. It follows up on a seminar held in Geneva, on 4 June 2014, during the sixth session of the Meeting of the Parties to

the Convention, and the second session of the Meeting of the Parties to the Protocol. The workshop aims to facilitate open discussions with a few selected non-ECE countries that are interested in the application of transboundary EIA and/or national or transboundary SEAs, and are therefore willing to explore opportunities for the exchange of experience and closer collaboration with Parties and Singapore under the Convention or the Protocol, as well as international financial institutions and other partner organizations.

4. The workshop focuses specifically on Asian countries that have witnessed a rapid evolution of national SEA systems and a growing interest in transboundary EIA. Moreover, this initial focus reflects an active participation by representatives of a number of countries from Asia in meetings under the Convention and the Protocol over the past years. The previous exchanges with the Asian countries also include several Workshops on Environmental Impact Assessment in a Transboundary Context in Eastern Asia organized in Seoul by the Korean Environment Institute (KEI), to which the Convention secretariat and invited experts have contributed to.

5. It is important to note that this initial regional focus does not in any way exclude future exchanges and activities with interested countries in other regions, as decided by the Parties to the Convention and the Protocol.

6. This document presents in chapter II the provisional programme for the workshop, in chapter III the key points that will be addressed by the speakers, followed by their biographies in chapter IV. Annex 1 to the document offers basic contextual information on regional development and environmental cooperation in Southeast and Northeast Asia. Finally, Annex 2 contains background note on the global application of the Espoo Convention and its Protocol on SEA and the role of IFIs, which included updated information prepared by the secretariat for the workshop held in Geneva, on 4 June 2014.

II. Provisional programme

The workshop comprises five short sessions that will summarize key lessons from the implementation of the Convention and the Protocol, present perspectives of invited countries on SEA and transboundary EIA in Asia, and provide opportunities for discussions on challenges and opportunities for potential future cooperation between both Treaties and the invited countries and institutions. The provisional programme is as follows:

A. Introduction (10:00 – 10:10)

Mr. Bartholomew Judd, European Investment Bank, Ms. Tea Aulavuo, Secretary to the Espoo Convention and its Protocol; and Mr. Jiří Dušík, consultant to EIB will provide opening remarks and introduction to the workshop.

B. Lessons from the Espoo Convention and the Protocol on SEA (10:10 – 10:50)

This start-up session will provide a short introductory summary of:

- Key obligations and benefits of the contracting countries.
- Key success stories and examples of country experience with the Convention and the Protocol.

It will include three presentations, 10-minutes each, on behalf of the UNECE Secretariat and selected Parties and a 10-minute opportunity for questions and answers. The speakers are:

1. Mr. Jiří Dušík, consultant: Espoo Convention and the Protocol on SEA – key obligations for the contracting parties.

2. Ms. Marianne Richter, Section Sustainable Spatial Development, Environmental Assessments, Federal Environmental Agency, Germany: The Espoo-Convention in Practice – German Experience.
3. Ms. Vesna Kolar Planinšič, Head of Strategic Environmental assessment Division, Ministry of Environment and Spatial Planning, Slovenia: Transboundary SEA for hydropower national spatial plans.

C. Perspectives of invited countries and international institutions on SEA and transboundary EIA in Asia (10:50 – 12:15)

This session will provide an opportunity for the invited countries to share viewpoints and perspectives on:

- Key development processes and environmental issues of concern.
- Lessons from pilot projects and relevant activities that promote transboundary cooperation in EIA and SEA.
- Key obstacles and opportunities for improving transboundary cooperation in EIA and SEA processes.

The session will feature five presentations by the invited speakers, 10-minutes each, concluded with a 20-minute opening for immediate questions and answers. The speakers are:

1. Dr. Nankyong Moon, Director in the Land Policy Assessment Division of Environmental Impact Assessment Group, Korea Environment Institute: Initiatives to promote transboundary EIA in East Asia.
2. Dr. Li Wei, School of Environment, Beijing Normal University, People's Republic of China: Evolving experimentation with consideration of transboundary issues in Chinese EIA and SEA system.
3. Pham Anh Dung, Deputy Director, Department of Environmental Impact Assessment and Appraisal, Ministry of Natural Resources and Environment, Vietnam: Vietnam's perspectives on Transboundary EIA and SEA.
4. Mr. Danh Serey, Director, Department of Environmental Impact Assessment, Ministry of Environment, Cambodia: Legal frameworks on EIA and SEA in Cambodia.
5. Dr. Truong Hong Tien, Director of the Environmental Management Division at the Mekong River Commission Secretariat: Promotion of Transboundary EIA in Asia - Lesson of the Mekong River Commission.

D. Facilitated discussion (12:15 – 12:45)

Observations and questions from the audience to all speakers.

E. Wrap up and closing (12:45 - 13:00)

Wrap up by Jiří Dušák, workshop moderator and concluding remarks by Mr. Bartholomew Judd, European Investment Bank and Ms. Tea Aulavuo, Secretary to the Espoo Convention and its Protocol.

III. Key points by the speakers

Marianne Richter

Presentation on German experience with transboundary EIA/SEA will focus on:

- Benefits of transboundary participation according to Espoo/SEA Protocol.
- The Espoo Procedure – How does it work ?
- Challenges – Which problems may occur?
- Solutions for problems (examples).
- Conclusion.

Vesna Kolar Planinšič

Presentation on lessons with transboundary SEA for hydropower national spatial plans will focus on the following topics:

- Renewable energy: development and environmental context of the case.
- Rhe SEA: national and transboundary procedure, key steps and timeline.
- Summary of costs: additional time and costs required for the transboundary SEA.
- Benefits of transboundary consultations within the SEA.
- The key ingredients of successful transboundary SEA, lessons for other countries outside the UNECE.

Nankyung Moon

Overview of initiatives to promote transboundary EIA in East Asia will focus on:

- Effort for introduction of transboundary EIA in East Asia since 2004.
- Lessons from pilot TEIA projects between Mongolia and Republic of Korea.
- Key obstacles and opportunities for improving transboundary cooperation in EIA and SEA processes.

Li Wei

Presentation on evolving experimentation with consideration of transboundary issues in Chinese EIA and SEA system will point out the following issues:

- It is inevitable for China to deal with more transboundary environmental issues or impacts when developing overseas economic activities led by the so-called 'One Belt - One Road strategy.
- China has already acquired experiences in transboundary SEA and EIA by developing some mega-region SEAs domestically and participating in SEAs of several important development plans over Greater Mekong Subregion (GMS).
- According to new requirement of the Ministry of Environmental Protection (MEP), a mechanism composed of meetings and negotiations with neighboring provinces or municipalities will be obliged during SEA processes if transboundary airborne environmental impacts are predicted.
- The Appraisal Center for Environmental Engineering (ACEE), a sub-unit of China's MEP, has started to exercise rapid SEAs on the six important economic corridors developed by the One Belt-One-Road strategy.
- Based on the proven successful experience of implementing the Espoo Convention, developing a well-accepted technical framework on good practice and establishing platform for sharing of information and knowledge can be seen as two priority tasks for developing transboundary EIAs and SEAs globally or regionally.

Pham Anh Dung

Presentation on Vietnam's perspectives on Transboundary EIA and SEA will focus on:

- Southeast Asia and in particular lower Mekong countries are relatively small and close to each other geographically. They share many borders side-by-side and common resources such as water and also impacts such as regional climate, air-quality, etc.

- Rapid industrial development in each country in this region causes increasing impacts and burdens on national and regional environment.
- Projects as hydro-power alter the water resources, mining project may influence water quality and restrain uses in down-stream countries. Industrial zones, thermal plants, cement plant, in one country can create transboundary air pollution and acid rain in other countries.
- We now have more inter-regional project such as power-lines, railways, highways. Enhanced transboundary cooperation creates the need to assess the impacts of the project together and come up with shared-solution to mitigate the impacts, achieving the common goal as sustainable development for the region.
- With the support of USAID and others organizations, Vietnam is working on developing regional guidelines on public participation in EIA to bring up the quality of EIA processes in member countries to the same level and open up the opportunities of community involvement for transboundary-impact assessment.
- We still need to have a concrete framework for trans-boundary issues; protocols, treaty, agreements, etc. that different countries should comply with at the governmental level. Ideally these should be put into legislation in each country (e.g. lower Mekong region for near future) and this is where we could learn from EU.

Danh Serey

Presentation on legal frameworks on EIA and SEA in Cambodia will focus on:

- EIA process development in Cambodia.
- Results of EIA implementation and practical challenges.
- Opportunities for addressing transboundary issues in EIA system.
- Draft of EIA Law and its proposed provisions related to SEA.

Truong Hong Tien

Presentation of lesson of the Mekong River Commission with promotion of Transboundary EIA in Asia will focus on:

- History of cooperation on development planning of the Mekong river.
- Major achievements gained by the Mekong River Commission.
- Challenges in developing Transboundary Environmental Impact Assessment (TbEIA) Protocol for the Mekong River Basin since 2001.
- Next steps and opportunities for cooperation with the Espoo Convention.

IV. Biographies

Ms. Marianne Richter

Marianne Richter is a Senior Scientific Public Officer at the German Environment Agency, Dessau, Germany. She has an engineering degree in Horticulture from Technical University of Applied Science of Berlin and has been employed at German Environment Agency since 1989. Since 1993 she has been responsible for EIA and SEA and is Espoo Focal Point (cc) for Germany, Within these obligations she acts as a national expert of German Delegations for regular meetings under the Espoo Convention and is a member of the German- Polish and German-Czech Governmental EIA/SEA Group.

Ms. Vesna Kolar Planinšič (Mag./MSc.)

Ms. Vesna Kolar Planinšič has been working on environmental issues for 30 years. She is responsible for SEA and EIA Directive at the Ministry for Environment in Slovenia where, since 2004, she has headed up the Strategic Environmental Assessment Department. She is an active member of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), and was acting Vice

President and then President of the Implementation Committee under the Convention and its Protocol on Strategic Environmental Assessment.

Ms. Kolar Planinšič is also a member of the European Commission Group of Environmental Impact Assessment/Strategic Environmental Assessment National Experts. She has published articles on environmental issues, is a lecturer at the University of Klagenfurt, Austria, a lecturer at the High school for the Environment in Slovenia and a guest lecturer at University of Ljubljana. She has a Master's degree in Urban and Spatial Planning from the University of Ljubljana.

Dr. Nankyong Moon

Dr. Nankyong Moon is a Senior Research Fellow at the Korea Environment Institute (KEI) and she has worked as a professional reviewer for Environmental Impact Assessment (EIA) documents in KEI since 2004. She is currently serving as the Director in the Land Policy Assessment Division of Environmental Impact Assessment Group in KEI.

She is also responsible for the international cooperation project of EIA in KEI and her special interest focuses on international cooperation related to EIA including Transboundary EIA in East Asia and EIA capacity-building programs for developing countries.

Prof. Li Wei

Dr. Li Wei acquired his Ph.D. degree in the field of Environmental Geography with the dissertation on Policy Environmental Assessment at Beijing Normal University, and then completed his post-doc research on environmental risk assessment at University of Wisconsin. His research interests include strategic environmental assessment (SEA), ecological planning and biodiversity, environmental economics, climate change policy, and environmental analysis and modelling of energy system and policy.

Currently, he is serving as a major SEA consultant for the Ministry of Environmental Protection (MEP). In 2013, he was awarded by the MEP a first-class Prize of Environmental Protection Technology because of an excellent contribution to developing SEAs for the five mega regions in China.

Mr. Pham Anh Dung

Pham Anh Dung graduated from the University of Technology Hanoi, Vietnam in 1986 with major in Thermal Engineering. He has also Master of Engineering degree in Environmental Technology and Management from Asian Institute of Technology. Since 2003 up to now he was working at Ministry of Industry of Vietnam from 1986 to 1993 and at Ministry of Agriculture and Rural Development for 1993-2003. He has been working at Department of Environmental Impact Assessment and Appraisal, at the Vietnam Environmental Administration which is a part of Ministry of Natural Resources and Environment.

Mr. Danh Serey

Mr. Serey has been working in EIA in Cambodia for 15 years, especially with the Cambodia Ministry of Environment. He is a key actors and educators in the country in the sustainable development and green growth. He initiated and developed the organization and functioning of national council on Green Growth (2012), and importantly led to develop the national policy on green growth (2013), and national strategic plan on green growth 2013-2030.

Recently, he has been the main actor in formulation of the Cambodia EIA law. His background is in the public law and public administration. Moreover, he has a hands-on experience with impact assessment since the beginning of his career.

Mr. Truong Hong Tien (Dr. Eng)

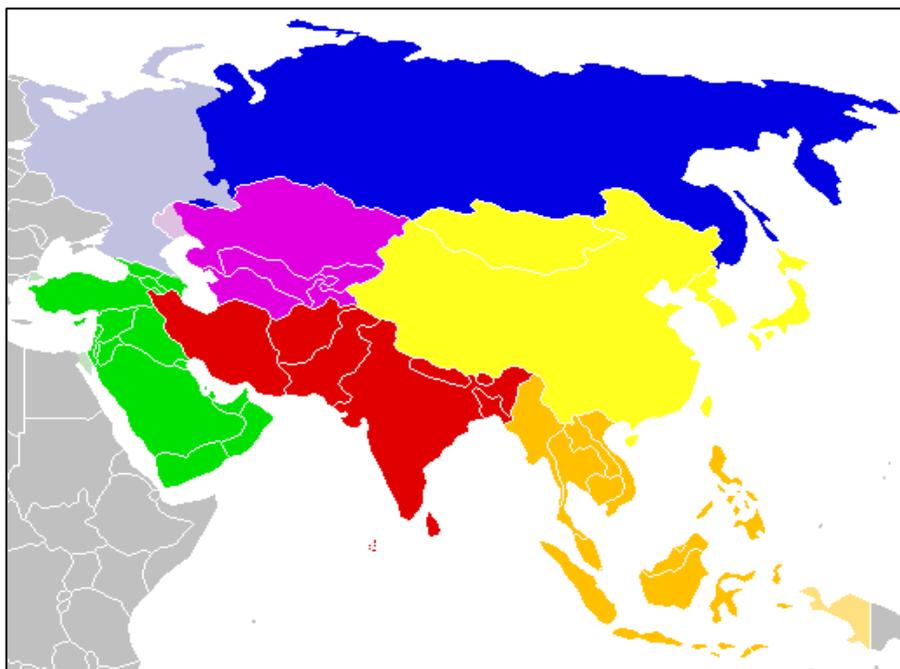
Dr. Truong Hong Tien obtained his Bachelor's degree in irrigation and drainage engineering from Moscow Water Resources University in 1989; Master's degree in water resources development from Asian Institute of Technology in 1996; Doctoral degree in civil engineering and environment from the Nagoya University (Japan) in 2000; and from 2001-2003, he conducted a postdoctoral study in Nagoya University in the field of soil and groundwater contamination and remediation.

Dr. Tien is currently working as Director of the Environmental Management Division of the Mekong River Commission's Secretariat. Before joining the MRC Secretariat, he worked as a senior researcher at the Viet Nam National Institute for Agricultural Planning and Projection from 1991-2005, Coordinator of the Regional Flood Management and Mitigation Programme (MRC Secretariat) from 2005-2009, and Deputy Director General of the Viet Nam National Mekong Committee from 2010-2013. The key experiences of Dr. Tien include integrated water resources management, basin development planning, trans-boundary impact assessment, flood risk management, and climate change adaptation.

Annex 1: Regional development and environmental cooperation in Southeast and Northeast Asia¹

Asia is the largest and the most populated continent on Earth. It covers almost 30% of the total land mass of the planet and hosts approximately 60% of the world's current human population. Approximately 4.1 billion people live in Asia at present and eastern, southern and south-east Asia are the most populated regions.

The continent can be broadly divided into six regions as shown on the map below:



Source: Geoscheme for Asia, United Nations Statistics Division

■ East Asia ■ Southeast Asia ■ North Asia ■ Central Asia ■ Western Asia ■ South Asia

The following text offers basic introductory information about the wider development and environmental cooperation context in South-East and North-East Asia. These two sub-regions are of specific interest to this workshop because they:

- Include some of the most populous countries in Asia that become increasingly engaged in regional economic cooperation.
- Represent the most economically dynamic area in the world.
- Witness growing environmental problems that are natural result of the high population density and rapid industrialization.
- Comprise countries that have either already developed or are currently developing national SEA systems.

¹ Disclaimer: This text summarizes basic contextual information for purpose of this workshop only. The regional summaries and groupings are based on geographic convenience rather than implying any assumption regarding political or other affiliation of countries or territories. The listing of events and countries is also based purely on substantive convenience for the purpose of this briefing and is not guided by chronological or alphabetic order. The views and opinions expressed in this part of the text are those of the consultant in charge of the workshop and do not necessarily reflect views of the UNECE or EIB.

- Include several countries that show interest in transboundary cooperation in environmental assessment processes.

Southeast Asia

Southeast Asia is a sub-region of Asia consisting of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. With a population of more than 600 million and a nominal GDP of \$2.31 trillion in 2015, this region is fast becoming a major economic force in Asia and a driver of global growth.

This region substantially outperforms economic performance of the Middle East, Africa and Latin America. Average annual GDP growth in the region in 2011–2015 period was 5%, just 0.8% slower than in 2004-2008. Located at the heart of the Asia-Pacific region and situated across major trade routes, this region is expected to become the fourth-largest market after the EU, U.S. and China by 2030 (JP Morgan, 2016)².

The economic growth has been stimulated by a combination of positive global trends, good policy, as well as by the regional economic cooperation within the framework of **Association of Southeast Asian Nations (ASEAN)**³. ASEAN promotes intergovernmental cooperation and facilitates economic integration amongst its 10 member states.

In 2003, ASEAN resolved to establish an ASEAN Community that comprises three pillars: the ASEAN Political-Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community. Of particular interest is **ASEAN Economic Community (AEC)** which is guided by the idea to help ASEAN countries establish a globally competitive single market and production base, with a free flow of goods, services, labour, investments and capital. AEC is regional initiative with long term aspirations and gradual implementation by ten diverse economies through reduction of tariffs, customs modernisation, treatment of foreign investors and services sector liberalisation, etc. Similar to other ASEAN initiatives, AEC is not a mechanism where strict rules agreed on regional level apply irrespective of the economic nature of member economies and changing global conditions. The key principle is still sovereignty of member states and non-interference in domestic matters. Like any integration process, AEC also generates proponents and opponents of integration and therefore should be seen as a work in progress.

Further to this, ASEAN has also established a partnership with People's Republic of China, Republic of Korea and Japan in form of **ASEAN+3** cooperation on mutual issues of interest related to energy, transport, and information & communications technology. Of specific interest with regard to possible cooperation with the Espoo Convention may be **ASEAN+1** cooperation with People's Republic of China on environmental issues that has already touched upon EIA and SEA matters.

With regard to environment, the Southeast Asia is endowed with rich natural resources that sustain essential life support systems both for the region and the world. The region is blessed with a variety of unique and has a long coastline, measuring about 173,000 kilometres in total. While occupying only 3 per cent of the world's total land area, the region is renowned for its rich biological heritage. The forest cover in ASEAN is about 45% compared to the world's average of 30% and it provides the natural habitat for up to 40 % of all species on Earth.

Increased population, rapid economic growth and social inequities have significantly increased pressures on the natural resources of the region and brought along various

² Source: www.jpmorgan.com/country/US/EN/cib/investment-banking/trade-asean-future , accessed on 20 October 2016

³ The following information on ASEAN and its cooperation arrangements is almost exclusively taken directly from ASEAN official website www.asean.org

common or transboundary environmental issues, such as air, water and land pollution, urban environmental degradation, transboundary haze pollution, and depletion of natural resources, particularly biological diversity. To this end, ASEAN launched a work-programme on the following environmental issues of common interest:

- Addressing global environmental issues
- Managing and preventing transboundary environmental pollution (transboundary haze pollution and transboundary movement of hazardous wastes)
- Promoting sustainable development through environmental education and public participation
- Promoting environmentally sound technology
- Promoting quality living standards in ASEAN cities/urban areas
- Harmonizing environmental policies and databases
- Promoting the sustainable use of coastal and marine environment
- Promoting sustainable management of natural resources and biodiversity
- Promoting the sustainability of freshwater resources.
- Responding to climate change and addressing its impacts
- Promoting sustainable forest management

Of particular interest for application of transboundary EIA and SEA within Southeast Asia is a an area of lower Mekong watershed that faces complex cross-boundary environmental challenges related to water management as well as the wider development pressures arising from rapid development of hydropower, mining, transport networks, agriculture and forest management and rapid urbanization. The following regional initiatives address the key common environmental challenges:

Mekong River Commission (MRC)⁴. The Mekong River Commission was established by Cambodia, Laos, Thailand, and Vietnam in order to collaborate for implementing the Agreement on Cooperation for the Sustainable Development of the Mekong River Basin. The MRC is engaged in diverse sectors, including fisheries sustainability, identification of opportunities for agriculture, freedom of navigation, sustainable hydropower, flood management, preservation and conservation of important ecosystems. It also helps its member states face the future effects of more extreme floods, and prolonged drought and sea level rise associated with climate change. Besides its wider environmental initiatives related especially to water quality, biodiversity protection and climate change the Mekong River Commission has for nearly 15 years promoted initiatives related to establishment of transboundary EIA framework that would help the member states consult each other and cooperate in EIA processes for major projects that could have significant environmental effects on the Mekong mainstream.

Greater Mekong Subregion (GMS)⁵ program is supported by Asian Development Bank (ADB) since 1992. The GMS is a natural economic area around the Mekong River, covering 2.6 million square kilometers and a combined population of around 326 million. The GMS countries are Cambodia, the People's Republic of China (PRC, specifically Yunnan Province and Guangxi Zhuang Autonomous Region), Lao People's Democratic Republic (Lao PDR), Myanmar, Thailand, and Viet Nam. With support from ADB and other donors, the GMS Program helps the implementation of high priority subregional projects in transport, energy, telecommunications, environment, human resource development, tourism, trade, private sector investment, and agriculture. An integral part of the GMS Economic Cooperation Program is its Core Environment Program (CEP) which serves as a platform for multi-country and multi-sector engagement on key environmental issues. The CEP has achieved a significant progress in building GMS government awareness and understanding through six Strategic Environment Assessments (SEAs) in

⁴ www.mrcmekong.org

⁵ <https://www.adb.org/countries/gms/overview>

support of energy, tourism, and provincial level land-use planning, with their results increasingly informing GMS national socio-economic development plans.

Northeast Asia

Northeast Asia subregion includes Japan, China, Republic of Korea (ROK), Mongolia, Democratic People's Republic of Korea (DPRK) and the Russian Federation.

This region currently represents the fastest growing regional economy in the world. According to Weina (undated⁶) the growth capacities arise from rich resources and huge development potentials that are fuelled by:

- Top ranking foreign exchange reserves in the world;
- Geographical proximity which facilitates transport and trade;
- Intra-regional trade and investment growing rapidly into interdependency;
- Highly diversified economies and increasing opening-up and reforms in transition economies in the region.

Liu & Regnier (2013)⁷ observe that despite the evidence of beneficial mutual economic dependency between especially Japan, South Korea and China, this economic area remains the only major region in the world which not has yet embarked on regional economic integration project.

To date, the only major intergovernmental cooperation mechanism is **Greater Tumen Initiative (GTI)** originally known as the Tumen River Area Development Programme. Tumen River is a 520 km long river bordering China, DPRK and Russia, and close to ROK, Mongolia and Japan. GTI has been so far supported by the United Nations Development Programme in Northeast Asia and focused on the following priority sectors:

- Transport Sector: aimed to develop key regional transport corridors, connecting through major ports, railways and roads in the region.
- Tourism Sector: aimed to create an environment that facilitates increasing the number of cross-border visitors to the region.
- Trade & Investment Sector: aimed to provide a platform for the facilitation of trade and promotion of investment in the region.
- Energy Sector: aimed to establish an institutional framework for consultation and policy support in the energy sector at the level of member governments.
- Environment Sector: aimed to coordinate regional activities and promote environmental sustainability in the region as a cross-cutting sector of the GTI.

GTI comprises five countries: People's Republic of China, Mongolia, Republic of Korea and Russian Federation. Implementation of this cooperative initiative has however been often challenged by the limited resources for projects and expansion of institutions; and limited substantial support from major regional financing institutions. This is valid also for cooperation in the environment sector.

With regard to wider regional environmental pressures, Northeast Asia faces the following particular environmental issues of concerns (Jung, 2016⁸):

- Fine dust and transboundary air pollution: since 2013, there have been increased

⁶ Wang Weina. Undated. Regional Economic Cooperation in Northeast Asia under the Greater Tumen Initiative. GTI Secretariat. <http://www.cn.undp.org/content/china/en/home/library/south-south-cooperation/greater-tumen-region-trade-facilitation-study-.html>, accessed on 19 Oct 2016

⁷ Fu-kuo Liu and Philippe Regnier. 2013. Regionalism in East Asia, Routledge, 2013

⁸ Woosuk Jung. 2016. Environmental Challenges and Cooperation in Northeast Asia. The Institute for Security and Development Policy. Focus Asia March 16, 2016, No. 16 <http://isdpeu/publication/environmental-challenges-cooperation-northeast-asia/> accessed on 20 Oct 2016

occurrences of severe smog throughout Northeast Asia

- Degradation of marine environment: all seas are witnessing increasing levels of marine degradation due to harmful algal blooms resulting from eutrophication; maritime environmental accidents such as oil spills;
- Increasing threats to biodiversity: IUCN especially points out the need for better conservation of intertidal habitats and migratory waterbirds of the East Asian-Australasian Flyway.

Several multilateral environmental cooperation initiatives have been established since the early 1990s - such as the North-East Asian Sub-regional Programme for Environmental Cooperation (NEASPEC), the Northwest Pacific Action Plan (NOWPAP), Acid Deposition Monitoring Network in East Asia (EANET), and the Tripartite Environment Ministers Meeting (TEMM). Countries also cooperate on a bilateral level. Jung (2016) observes that although there have been some achievements through cooperation, such as launching joint monitoring projects and sharing data collection, the efficiency of regional cooperation was so far constrained by differing priorities of the participating countries and a lack of binding environmental regimes.

Annex 2: Background note on the global application of the Espoo Convention and its Protocol on SEA and the role of IFIs

Prepared by the secretariat for the seminar held in Geneva, on 4 June 2014, during the sixth session of the Meeting of the Parties to the Convention and the second session of the Meeting of the Parties to the Protocol (Note: The information regarding the number of treaty Parties and ratifications of the amendments to the Convention has been updated)

A. Introduction to the Convention and the Protocol

1. The global application of the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) and its Protocol on Strategic Environmental Assessment (SEA) is opportune. As the complexity and magnitude of economic activity continues to grow, awareness over environmental impacts and the need for their prevention and mitigation become more and more a necessity. It is widely recognized that large-scale projects bring benefits beyond national territories – for instance, natural gas may be transferred for use to neighbouring countries and beyond via pipelines. It is also recognized that economic activities might have significant adverse environmental impacts that extend beyond national borders.

2. The **Espoo Convention** offers a legal framework under the umbrella of the United Nations to ensure international co-cooperation in assessing and managing environmental impacts of planned activities, in particular in a transboundary context. It contributes to economic growth and environmental protection, as well as helps to prevent conflicts. The Convention accomplishes these objectives by setting out procedural steps to be followed by Parties. Parties must notify and consult each other on all projects that are likely to have significant environmental impact across borders, at an early stage of planning. In addition, the Convention promotes public participation and stakeholder consultation and requires that all comments from the public and authorities as well as the findings of the assessment are taken into account when deciding on the planned activity. The transboundary EIA procedure provided for by the Convention allows for improvement of project design and identification of better alternatives and innovative approaches, enhances the understanding and public acceptance of the projects, as well as helps to reduce risks of costly mistakes. In brief, it leads to better development choices.

3. The Espoo Convention was supplemented by the **Protocol on SEA**, which concretely helps to lay the groundwork for sustainable development: it ensures that Parties integrate environmental, including health, considerations and public concerns into their plans and programmes, and to the extent possible also into policies and legislation, at the earliest stages. SEA is also recognized to be a key tool for planning and policymaking related to greening the economy and climate change adaptation. The Protocol provides for extensive public participation in the governmental decision-making. Unlike the Convention, the Protocol applies mainly at the national level, although it also provides for transboundary consultations and improved regional cooperation (e.g. to address shared protected areas, waterways or transboundary pollution).

B. What does the global application of the Convention and its Protocol mean – for current (and future) UNECE State Parties?

1. Background

4. The **Espoo Convention** was adopted in 1991 and it entered into force in 1997. It has 45 Parties across the UNECE region, including also European Union. Initially, the Convention was negotiated as a purely regional agreement, but already at the first session of the Meeting of the Parties, in 1998, the Parties to the Convention were invited to

consider possibilities for allowing non-UNECE member countries to become a Party⁹. Subsequently, in 2001, the Parties adopted an amendment to the Convention to allow accession by any Member State of the United Nations, upon approval by the Meeting of the Parties.

5. Such a decision was taken because Parties to the Convention had recognized the “significant achievements” of the treaty and wished to extend the area of application of its principles so as to share these benefits also with other regions of the world. Benefits included the Convention’s considerable impact on international and national environmental law and its promotion of environmental impact assessment and closer international cooperation, which had prevented and mitigated adverse environmental impacts at both transboundary and national levels.

6. The amendment adopted in 2001 to potentially turn the Espoo Convention into a global legal framework for environmental impact assessment in a transboundary context entered into force on 26 August 2014. Moreover, at its sixth session, the Meeting of the Parties to the Convention adopted decision VI/5–II/5, waiving the requirement for prior approval by the Meeting of the Parties, and thus providing blanket approval to any future request for accession by non-UNECE countries to the Convention. This made the procedure for accession by non-UNECE countries the same as the procedure for accession by UNECE countries.

7. Countries from outside the UNECE region will be able to join the Convention as Parties as soon as the amendment becomes operational, that is, once the amendment has entered into force for all States and organizations that were Parties to the treaty at the time the amendment was adopted on 27 February 2001, i.e. 31 Parties. To date, 10 more ratifications are needed. This is expected to take some more time, possibly even a few years, depending on the speed of the remaining ratifications. In the meantime, to promote the spirit and principles of cooperation in managing environmental issues within and beyond national borders, non-UNECE States are encouraged to unilaterally apply the procedures and to participate in the meetings and activities under the Convention.

8. The **Protocol on SEA** is a more recent instrument: it was adopted in 2003 and in force since 2010, and has to date, 30 Parties, including the European Union. The Protocol was negotiated to provide for the possibility of non-UNECE States to become Parties, upon approval by the Meeting of the Parties. In 2014, with the adoption of decision VI/5–II/5, the requirement for prior approval was lifted, rendering thus the Protocol a fully global instrument.

9. In recent years, countries outside the UNECE-region have expressed interest in the Convention and the Protocol. Government representatives and academics outside the region have participated in the meetings under the Convention and the Protocol as observers. The budgets adopted by the Parties have consistently included funding to support the participation of a number of representatives from non-ECE countries. Some activities have also been organized and planned in collaboration with countries from outside the region, including subregional workshops on the Convention in the Mediterranean Sea area (in Tunis, in 2010, and in Morocco, in 2015) and workshops for Eastern Asia hosted by the Republic of Korea (Seoul, in 2010 and 2012).

2. Expanding benefits for the existing Parties

10. It should be borne in mind that the globalization of the treaties is not intended to benefit only non-UNECE countries. It also leads to the strengthening of the treaties, ultimately through broader and more diverse membership, and enriching the practical application. In other words, the application of the Convention and the Protocol outside the UNECE will not only mean that Parties to the two instruments share their principles and the best practices developed with non-UNECE States; but that Parties actually learn and benefit from the knowledge, practices and experiences in other regions of the world, involving new

⁹ Oslo declaration, 1998.

aspects and approaches; and that they further promote transboundary cooperation between neighbouring UNECE and non-UNECE countries, and globally. The opening of the Convention and the Protocol positively impacts on environmental policies and legislation of other countries, strengthens multilateral cooperation and leads to new opportunities for collaboration between intergovernmental organizations and for financing.

11. Workplans under a global Convention and Protocol will be supplemented to include outreach and capacity building activities targeting non-ECE countries. For the implementation of globalized workplans, strengthened cooperation and new partnerships with other international organizations, including UN agencies and regional commissions, and other actors are essential, especially for implementation of activities outside the UNECE region. Such partnerships are enriching in terms of knowledge and experience; lead to more effective implementation of activities, and, can also open up new financing opportunities that benefit countries both within and beyond the region. The early involvement of other regional commissions of the UN and other partners, such as international financial institutions engaged in operations requiring EIA or SEA, can smooth subsequent interactions and make the programming and implementing of activities more efficient.

3. Financial implications and perspectives

12. From a financial point of view, it is expected that with the broadening of cooperation and membership, the level of participation by non-UNECE countries in meetings and other activities under the respective workplans is likely to rise, leading in turn to increased costs from the treaty budgets. Countries from outside the UNECE region would also require assistance for the development of legislation and capacity building. This inevitably calls for more financial resources.

13. However, some non-UNECE countries, including developing countries, can fund participation of their experts themselves, while some participants could be funded by countries or partner organizations. Moreover, extra costs can also be offset by the growing interest in and the political support for a treaty that is – or, is about to be – global. This can lead to new opportunities for collaboration with intergovernmental organizations and, as mentioned above, for financing and joint project implementation. In addition, ministries of foreign affairs and those responsible for development cooperation are interested in the globalization of the instrument, and will be able to unlock funding for development assistance. For example, the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the Water Convention) that recently became global is now receiving significant funding specifically for its opening and at least one quarter of its budget from ministries of foreign affairs or development cooperation. Such funding would not have happened without the Convention's global opening. The Water Convention has also been able to mobilize additional extrabudgetary resources from new sources and now cooperates with the Global Environment Facility, i.e. the well-known financial mechanism for several global MEAs.

C. The role of international financial institutions

14. As a rule, IFIs today have adopted internal policies and procedures on environmental assessment, including also transboundary procedures, applicable to the projects they finance. The Meeting of the Parties to the Espoo Convention, and since 2011 the Parties to the Protocol, have consistently encouraged IFIs and bilateral aid agencies to align their policies and procedures with those of the Convention and the Protocol – by encouraging them to apply the principles and procedures of the Convention to their development projects with potentially significant transboundary environmental effects; and to apply the principles of the Protocol to the development and implementation of their plans and programmes (see declarations adopted at the sessions of the Meetings of the Parties in 2011, 2004, 2001, as well as draft declaration submitted for adoption in 2014).

15. Under the 2008-2011 workplan adopted by the Meeting of the Parties at its fourth session in 2008, the European Bank for Reconstruction and Development (EBRD) was invited to take the lead in the preparation of a “checklist for financial institutions on projects with transboundary impacts”. The Parties subsequently welcomed the informal and voluntary checklist prepared by EBRD, including information that an IFI could request when considering financing of a project to document compliance by a country with the requirements of the Convention and assisting it in identifying gaps in the information provided, including potential project risks. In 2011, at its fifth session, the Meeting of the Parties to the Convention requested the secretariat to promote the use of that list by IFIs and the possible development of a consolidated list reflecting the common practice of IFIs (decision V/4 on review of compliance). In November 2013, the Working Group on EIA and SEA welcomed the offer by EIB, together with EBRD, to promote the use of the checklist within the projects that they co-implemented with other IFIs. The list was also presented to the Multilateral Financial Institutions Working Group on Environment in 2013.

16. The Parties have also encouraged the IFIs and multilateral aid agencies to assist authorities in the country of origin to carry out EIA and SEA according to the principles and procedures of the Convention and the Protocol (see e.g. 2001 Sofia Ministerial declaration). This assistance will be particularly welcome in view of the globalization of the two treaties, to support awareness rising and the development of legislation and capacity building of countries outside the ECE. The strengthened cooperation and new partnerships with IFIs will indeed be particularly essential due to the key role these institutions play at the global level, and to the knowledge and long-standing experience they have gathered in operating in the non-ECE countries. With the growing interest of the non-ECE countries in the two treaties, the current Parties and the secretariat will not only need further resources but is likely to also encounter limitations in terms of expertise and knowledge to support workplan implementation at the global level. Funding and co-funding opportunities by the IFIs for the promotion of the application of the Convention and the Protocol (through bilateral aid or through contributions to the Convention trust fund) should be explored. The compliant standards and improved capacities on EIA and SEA in the countries would directly benefit the IFIs.

D. What are the advantages for States to apply the treaties and become Parties?

1. Solid international framework

17. In the Pulp Mills Case, the International Court of Justice in its judgement recognized undertaking EIA where there is a risk that a proposed industrial activity may have significant impact in a transboundary context as a practice that has become an obligation of general international law, although it found that international law does not prescribe the scope or content of such assessments.¹⁰ That practice was above all built under the **Espoo Convention**. By becoming a Party to the Convention, a country joins the only international legal regime on the scope and content of transboundary EIA procedures, a regime that has already proven its effectiveness over the past two decades. By being Party provides rights to be notified and consulted about planned developments of other Parties that are likely to adversely affect its national territory.

18. By applying the Protocol, countries take a concrete step towards Millenium Development goal 7, and its first target: “to integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources”. Moreover, with the rising importance of procedural rights for the public to be informed and consulted in environmental matters as early as possible, by becoming a Party to the **Protocol** a country joins the only international legal regime detailing procedures for the adoption of plans and programmes while ensuring a high level of protection of the

¹⁰ Pulp mills on the river Uruguay (Argentina v. Uruguay) 2010 I.C.J. (20 April 2010).

environment, including health. The Protocol materializes principles 4 and 10 of the Rio Declaration and furthers the principles of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) for plans and programmes..

2. Recognition by the international community

19. Parties to the two treaties signal to other countries, international organizations and other actors, such as international financial institutions, their commitment to applying the norms and standards of the Convention and the Protocol and cooperate on the basis of the principles set. They gain respect and credibility for abiding to internationally recognized standards for SEA and transboundary EIA in their economic activities.

3. Access to technical and financial assistance and donor cooperation

20. Parties to the Convention and the Protocol may benefit from the use of the trust fund, which supports the effective implementation of the two treaties. Interested Parties contribute voluntarily to the trust fund, so allowing them to target efficiently their assistance and to join forces with other donors in a coordinated way. The trust fund can be used for technical support to Parties, particularly to promote and implement the Convention and the Protocol through technical assistance for the development of legislation; guidance documents; training workshops and pilot projects for capacity building, as well as for support to participation of experts from eligible countries in meetings, workshops and organized under the two treaties. While non-Parties can also benefit from the Convention's trust-fund, priority is given to Parties.

21. In particular, as a rule, IFIs today have adopted internal policies and procedures on environmental assessment, including to certain extent also transboundary procedures, applicable to the projects they finance. If a country is a Party to the Convention and has transposed its provisions into the domestic system, the chances to benefit from international aid and financing (notably co-financing) rise, because the procedures on EIA according to the Convention are already in place.

22. It should also be noted that the European Union (EU), as a Party to the Convention and the Protocol, has in place EIA and SEA legislation aligned to the two instruments. By promoting EU EIA and SEA legislation – as part of the so-called *acquis communautaire* – in its negotiations with third countries, the EU also promotes the application of the Convention and the Protocol and provides financial aid for legislative and institutional developments in countries on the way of association or accession.

4. Developed institutional platform and regime

23. A State that becomes a Party to the Convention and the Protocol can participate in their existing institutional structure and decision-making of their governing bodies, thus fostering implementation of the treaties and their further development, including by bringing in different legal traditions and practices in applying EIA and SEA procedures. States can initiate the negotiation of binding rules, such as protocols and amendments. They can also elaborate soft law instruments, such as guidelines, recommendations, checklists and other tools, to promote implementation of the provisions of the Convention and the Protocol.

24. While States outside the region that are not Parties are welcome to attend meetings under the Convention and the Protocol, in an observer-like capacity, by becoming Parties they acquire decision-making rights and can lead activities under the two treaties. Parties may appoint officers, e.g. to the treaties' Implementation Committee, and if elected, contribute to the expression of opinions by the Committee and thus provide interpretation of the treaties.

5. Advice and support from the community of Parties

25. A Party to the Convention and the Protocol benefits from the existing experience under both instruments, e.g. its guidance documents, thematic seminars held during meetings of the Working Group on EIA and SEA, sub-regional and national events and activities on the ground. The workplan under the two treaties is demand-driven and therefore able to respond to the differing and evolving needs of the Parties. All Parties – no matter whether “new” or “old” – actively participate in the sharing of knowledge and experience and learn from each other.

26. The Convention and the Protocol constitute collectives fora. A Party may bring its needs and expectations to the attention of all other Parties. In other words, a Party may voice its concerns over the implementation of the two treaties at the governmental meetings, such as the Meeting of the Parties. Moreover, the assistance oriented, Implementation Committee under the Convention and the Protocol can help Parties in all questions regarding implementation of the two treaties and facilitate the settlement of the any differences and disputes.

6. Support to bilateral and multilateral cooperation – and contribution to international peace and security

27. The Convention and (the article 10 of) the Protocol provide procedures and a framework for discussing planned developments with neighbouring countries, including to address difficult issues, concerning for example shared natural resources. Participation in and cooperation through the intergovernmental platform of the Convention and the Protocol reduces uncertainty in relations among neighbouring States – and not only, in case of long-range transboundary impacts – and helps prevent potential tensions, disagreements and differences, so contributing to the maintenance of international peace and security.

28. Both treaties encourage and provide guidance to Parties to continue existing or enter into new bilateral or multilateral agreements in implementing the treaties’ transboundary procedures. The aim of those agreements is to provide for local conditions, and allow smooth implementation of the treaty obligations, and avoidance of difficulties, through prior clarification of and agreement on, for example, the time frames; cost sharing arrangements; the content and the language of the notification and documentation; or interpretation of various terms set out in the treaties. Such treaties are particularly valuable for neighbouring countries with intensive economic activities that may result in transboundary environmental impacts or that encounter difficulties in achieving ad hoc cooperation. Existing practice has also shown the benefits of joint bi-and multilateral bodies to assist in the conduct of the transboundary procedures.

7. Improved protection of the environment and management of shared resources

29. The implementation of obligations under the Convention and the Protocol, described earlier in this document, aiming primarily at prevention, control and reduction of significant adverse impacts, provides for a high level of protection of the environment, and human health, and improves natural resources management at the national and international levels.

8. Environmental governance

30. The procedures established by the Convention and the Protocol, based on the tenets of transparency and public participation, within and beyond national borders, significantly improve the quality of development projects for several reasons: the authorities have the opportunity to benefit from contributions by other authorities and experts in the decision-making and eventually take better and informed decisions; the authorities are accountable for the choices they make in decision-making; and importantly there is a participatory approach in promoting the development of the country and the well-being of its population. In general, there is an increase in trust of the public – not only national public – for the

governing institutions and environmental concerns are prevented or mitigated at the local/regional level, before they develop to a problem of global concern.

E. How can a State become Party to the Convention and the Protocol?

31. A non-UNECE State may join the Protocol immediately. Awaiting the global opening of the Convention in the next couple of years, a non-UNECE State is encouraged to unilaterally apply its principles and procedures but also to prepare for accession to the Convention. It is invited to attend various meetings and events under the Convention and the Protocol.

32. Preparations for the accession can be made by assessing the required changes to the existing domestic legislation and policies, to fully meet the obligations of the two treaties. A possibly effective approach is to establish an official working group to assess the impact of the two treaties on domestic law and policies and on transboundary cooperation. Countries are also encouraged to develop sufficient capacity for the successful implementation of the treaties. If needed, a country can request assistance in the accession process from the Meeting of the Parties, the Implementation Committee or the secretariat. Numerous activities for pre-accession legislative assistance and capacity building have been carried out over the years under the treaties to promote their ratification and effective implementation in the UNECE region.

33. In order to become a Party, a State outside the UNECE region must deposit its instrument of accession for the Convention or the Protocol with the Secretary-General of the United Nations. Accession procedures should be separate for the Convention and the Protocol, since the two are distinct treaties under international law. Accession to either instrument implies that a State becomes bound by the decisions of the Meeting of the Parties taken before the time of its accession.
