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KINGDOM OF MOROCCO



Ministry delegate to the Minister of Energy, Mining,
Water and Environment, in charge of Environment



Subregional workshop on the Convention on Environmental Impact Assessment
in a Transboundary Context (Espoo, 1991) and its Protocol on Strategic
Environmental Assessment (Kyiv, 2003)

The application of the Espoo Convention and its Protocol in the Mediterranean region

Rabat, Morocco, 14-15 April 2015

Report

Background

The United Nations Economic Commission for Europe (ECE) Convention on Environmental Impact Assessment in Transboundary Context (Espoo Convention) addresses environmental impact assessment (EIA) in a transboundary context. It was adopted in 1991 and entered into force in 1997. Following the recent entry into force of an amendment to the Convention, the Convention has now become a global instrument and it is expected that countries outside the ECE region will soon be able to join. The Protocol on Strategic Environmental Assessment (SEA) to the Espoo Convention ensures that Parties integrate environmental assessment into their plans and programmes at the earliest stages of the decision-making. It was adopted in 2003 and entered into force in 2010. The Protocol is already open to accession by non-ECE countries.

To respond to increased interest from countries in Northern Africa,¹ the Government of Morocco hosted a workshop on the application of the Espoo Convention and its Protocol in the Mediterranean subregion, including the Adriatic Sea.² The workshop took place in Rabat, from 14 to 15 May 2015. It was jointly organized by the ECE and the Ministry delegate to the Ministry of Energy, Mining, Water and Environment, in charge of Environment, with the support of the German Development Cooperation (GIZ) and the United Nations Development Programme.

Objectives

The workshop sought to bring together Parties to the instruments with representatives of countries from the North African subregion, interested in joining the two instruments. It provided a platform for the exchange of experiences and a learning opportunity for non-Parties to familiarize themselves with the procedures set out by the Convention and the Protocol and their benefits in promoting better and informed decision-making for development consent and international cooperation in addressing environmental challenges. Parties to the Convention were also given an opportunity to understand the impact assessment systems in non-Party countries, and to be better prepared for any future transboundary consultations in the field of impact assessment. The workshop also aimed at raising awareness about the practices of international financial institutions (IFIs) in EIA and SEA.

Participation

The two-day workshop was chaired by Prof. Michel Prieur³ and counted 48 participants. Moroccan participation was very high, with representatives from the *Comité national des études d'impact sur l'environnement*, various ministries, public authorities and planning offices (*bureaux d'étude*). Representatives from Algeria and Mauritania also attended the event. From the ECE region, the following Parties were represented: France, Germany, Montenegro, Poland, Slovenia and Spain. On the part of the IFIs, the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD) and the World Bank were present, with the EIB moderating a session dedicated to the role of the IFIs in applying environmental assessment procedures in their operations.

¹ A Seminar on the globalization of the Convention and the Protocol and the role of international financial institutions was also held in the context of the sixth session of the Meeting of the Parties to the Convention and the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (Geneva, 2–5 June 2015).

² The workshop was one of the activities included in the workplan for the implementation of the Convention and its Protocol for the period up to the seventh session of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol – the workplan was adopted by decision VI/3–II/3 in June 2014 (ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3).

³ Professor emeritus of environmental law; President of the International Comparative Law Centre for Environment; Member of the Implementation Committee of the Espoo Convention and its Protocol on SEA; and Member of the Compliance Committee of the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) and its Protocols.

Programme

The workshop was held in English and French, with simultaneous interpretation. Presentations were intercepted by sessions with questions and answers and general discussion among participants. In a final session, participants agreed on conclusions of the event.⁴

The workshop was opened by Mr. Fouad Zyadi, Director, Control of Environmental Assessment and Legal Affairs, Morocco, and Ms. Viviane Brunne, Secretariat of the Espoo Convention, ECE Environment Division.

In an introductory session, Ms. Brunne presented an overview of the Espoo Convention and its Protocol, while Prof. Prieur provided an overview of the Barcelona Convention and its Protocols and its linkages with the régime of the Espoo Convention.

In following sessions, France, Germany, Montenegro, Poland, Slovenia and Spain, Parties to the Convention and/or its Protocol, provided insights to their national EIA and SEA systems, as well as to their practical experiences over the years regarding transboundary cases. Germany and Poland for example presented their bilateral agreement and how it was used in practice. On their side, non-Parties Algeria, Mauritania and Morocco, also described their national EIA and SEA systems and transboundary elements.

Representatives of the EIB, EBRD and the World Bank presented policies and procedures of IFIs regarding EIA and SEA.

Conclusions

For Parties from the ECE region and non-Parties from North Africa, the workshop provided a good opportunity to familiarize themselves with one another's systems on EIA and SEA, the transboundary aspects, and the role of the Convention and the Protocol: non-Parties could learn about the benefits of joining the Convention and the Protocol, their practical application in different contexts and address specific questions; and Parties also learned about the systems of potential future Parties.

Algeria and Morocco are currently reconsidering their legal frameworks for EIA and SEA procedures and were keen to draw some inspiration from the Convention and the Protocol. The Representative of the Ministry Delegate to the Minister of Energy, Mining, Water and Environment, in charge of Environment, said that the workshop was a preamble for future cooperation with the Espoo Convention and expressed interest in receiving more information about the functioning of the instrument. Algeria, in carrying out review of its law on environmental impact assessment, is considering integration of transboundary consultations into the new law. Mauritania suggested the organization of a similar workshop, including representatives from Senegal and Mali.

In the general view expressed by participants, the systems in place in Parties and non-Parties already share a lot of common features. Countries acknowledged that the EIA procedure was an important instrument for prevention, as it evaluates scientifically the effects of a project on the environment of a neighbouring country and allows to avoid potential negative effects

⁴ The agenda of the event and all presentations are available online: <http://www.unece.org/index.php?id=38697#/>.

in that country. A common foundation for the current international practice is Decision 14/25 of the United Nations Environmental Programme (UNEP) adopting goals and principles of environmental impact assessments.⁵ Specifically, the decision requires a study of the impact of projects that have potential transboundary effects. It invites states to conclude further international agreements, where appropriate.

In 2010, the International Court of Justice issued its judgement on a case between Argentina and Uruguay concerning pulp mills on the River Uruguay.⁶ It concluded that there was an obligation under general international law to carry out an EIA in case of an activity with potential significant adverse transboundary impacts, in particular in case of shared resources. The assessment should be carried out in the planning stages of the project followed by continued monitoring throughout the implementation stage.

This decision has boosted international negotiations on environmental matters as a *de facto* obligation for all countries. As the workshop confirmed, Governments of non-Parties to the Convention largely abide to the general obligation under international law to have transboundary consultations: this means that even without exactly following the procedures outlined in the Convention, neighbouring countries can be notified and information can be exchanged. What is more, countries do not need to be Parties to the Convention to negotiate bilateral agreements, similar to the one between Germany and Poland presented during the workshop. Such practices may help a great deal to anticipate conflicts and environmental destruction, and to appease relations.

Participants agreed that being a Party to the Convention and its Protocol provides additional benefits, such as a mechanism to mediate between countries having different views on whether or not a project may have adverse transboundary impacts. To date, the Implementation Committee, the expert body under the Convention and the Protocol mandated to review implementation and compliance, has addressed complaints between Parties and has facilitated negotiations. Moreover, the Espoo Convention sets out minimum procedural steps, e.g. the elements of the notification or the content of the EIA documentation, and thus ensures harmonized transboundary EIA consultations among Parties. Despite the 18 years of experience in applying the Convention, Parties still learn and the procedures continue to be refined in practice.

The workshop contributed to a mutual understanding between the ECE region and Northern African countries in the area of transboundary EIA and SEA. Participants expressed a general desire to continue that exchange in a similar setting in the future. The organizers wish to thank all participants for their contributions, making this event a success.

⁵ <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=100&ArticleID=1658>

⁶ Pulp Mills on the River Uruguay (Argentina v. Uruguay)