Planning new activities in transboundary basins: Role of Water & Espoo Conventions

International High Level Conference
Strengthening transboundary water cooperation in Central Asia: the role of international water law and the UNECE Water Convention

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Water Convention: planning new activities

- The principles of “no significant harm”, “equitable and reasonable utilization” and “cooperation” – a relevant substantive framework for cooperating on planned activities

- No specific procedures for planned activities but...
Water Convention: planning new activities

- Cooperation through mandatory specific agreements and joint bodies (art. 9):
  - Joint bodies serve as a forum to discuss planned activities, to exchange information
  - Joint bodies participate in EIA

- Consultations between Riparian Parties upon request on any issues covered by the Convention (art. 10):
  - Includes consultations on planned activities
  - Does not provide for procedures (see UN Convention part III “planned measures” and Espoo Convention)
Espoo: Introduction

- Convention on Environmental Impact Assessment in a Transboundary Context
- Adopted and signed in Espoo (Finland) in 1991
- Came into force in 1997, with 16 Parties
- Now has 45 Parties
## Status of ratification

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<th>State</th>
<th>UNECE</th>
<th>Water</th>
<th>Espoo</th>
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<td>Iran (Islamic Republic of)</td>
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<td>Kazakhstan</td>
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<td>Russian Federation</td>
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Espoo: Objectives (*implied*)

- To ensure environmentally sound & **sustainable development**
- To enhance **international co-operation** in assessing environmental impact*
- To **prevent**, mitigate & monitor significant adverse environmental **impact** in general, and more specifically in transboundary context
- To give explicit **consideration** to environmental factors at early stage **in decision-making** process by applying environmental impact assessment, at all appropriate administrative levels
- To improve **quality of information** presented to decision makers so that environmentally sound **decisions** can be made paying careful attention to minimizing significant adverse impact*

* particularly in a transboundary context
Espoo: Practical application

- Over 800 cases to date
  - Growth from 10 cases per year a decade ago to almost 100 now
- Common examples
  - Power plants: nuclear, coal, hydropower, gas, wind
  - Cross-border infrastructure: road, rail, power lines, pipelines
  - Mining, major quarries & on-site processing

- In water sector:
  - Hydroelectric power plants (often major changes)
  - Navigation
  - Flood protection
  - Groundwater abstraction
  - Reservoirs
Espoo: General obligation

The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.
Espoo: Obligations 1/2 (simplified)

- Establishment of environmental impact assessment (EIA) procedure
- For a planned activity:
  - Party of origin
    - Identification of planned activity likely with transboundary impact
    - Send notification to affected Party on planned activity, asking for response by a certain date
  - Affected Party
    - Inform own authorities and public
    - Decide whether participate in procedure
    - Respond within deadline, perhaps with comments on and objections to planned activity

.../...
Espoo: Obligations 2/2 (simplified)

- **Party of origin**
  - Receive **EIA documentation** from developer/proponent
  - Send EIA documentation to affected Party

- **Affected Party**
  - Distribute EIA documentation to own authorities and **public**
  - Arrange for **comments** on EIA documentation, sent directly to Party of origin or through own competent authority

- **Together:** Hold bilateral consultations

- **Party of origin**
  - Make **final decision**, taking into due account comments received and results of EIA and bilateral consultations
  - Send final decision to affected Party

- **Together:** Agree on need for post-project analysis
Espoo: Scope

- Party of origin **must notify** for a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact
- Also covers **major changes** to existing activities
- *Good practice*: notify also if affected Party requests
Espoo: List of activities (appendix I)

- Includes “Large dams and reservoirs”
- Need to refer to other sources to define what is “large”, but recall link with significant adverse transboundary impact.

- International Commission on Large Dams (ICOLD) defines a large dam as a dam with a height of 15m or more from the foundation. If dams are between 5-15 metres high and have a reservoir volume of more than 3 million cubic metres, they are also classified as large dams.

- EU Directive: “Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres”
Espoo: Final decision

- Party of origin makes final decision
- Decision-maker must **take into due account**
  - comments received
    - by authorities & public of affected Party
    - on proposed activities & on EIA documentation
  - outcome of environmental impact assessment
  - outcome of bilateral consultations
- Final decision is sent to affected Party
  - along with reasons and considerations on which was based
Benefits: cooperation & sovereignty

- Provides framework for discussing planned developments with neighbouring States
- Being a Party obliges other Parties to notify & consult you about planned developments on their territory that are likely to have a significant adverse impact on your country’s environment
- Can enhance international cooperation, including awareness of importance of the environment, and so help to avoid conflict
- Sovereignty is retained: decision-making power remains in country where the development is planned
- Confidentiality is respected: not prejudicial to industrial & commercial secrecy or national security
- Project design can be improved, including by identification of better project alternatives
- Better environmental protection, with impacts avoided or reduced by revising project design
- Decision-making better informed & more objective, providing a framework for preparing conditions to govern future project operation
Technical assistance

• Technical advice
  • Country-specific performance reviews
    • Armenia (2008-9), Azerbaijan (2011-12), Ukraine (2009-...)
  • Pre-accession legislative advice
    • Tajikistan (2010), Uzbekistan (planned)
    • Belarus, Ukraine (planned, for Convention’s Protocol)

• Pilot projects
  • Kyrgyzstan-Kazakhstan (mining)
  • Belarus-Lithuania (hydroelectric power)

• Subregional cooperation workshops
  • Exchanges of experiences
  • Dialogue

• Guidance documents, including for Central Asia
Planning new activities in transboundary basins: Role of Water & Espoo Conventions

- The two Conventions guide towards better development
- They require to consult on activities with ‘significant’ transboundary impact
- The Party of origin makes the final decision
- The procedures do lead to better decisions
For more about the Espoo Convention

- Visit our website: www.unece.org/env/eia
- Or email: eia.conv@unece.org / nicholas.bonvoisin@unece.org

For more about the Water Convention

- Visit our website: www.unece.org/env/water
- Or email: water.convention@unece.org / francesca.bernardini@unece.org