

24 October 2013

English and Russian

Economic Commission for Europe

Working document

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**

Third meeting

Geneva, 11–15 November 2013

Item 4 of the provisional agenda

Exchange of good practices

**Background paper on good practice on communication,
cooperation and conflict resolution**

**Note by the Chair of the Implementation Committee and representatives of the
European Commission and the International Association of Impact
Assessment¹**

Summary

This note was prepared at the request of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its second meeting (ECE/MP.EIA/WG.2/2013/2). It serves a background document for a seminar on sharing good practice and tools for communication, cooperation and conflict resolution, in particular in connection with countries with no diplomatic relations.

The Working Group had welcomed the proposal by Chair of the Implementation Committee, the European Commission and the International Association of Impact Assessment (IAIA), to organize a half-a-day seminar on the above theme during the third meeting of the Working Group. It agreed that recommendations from the seminar be forwarded to the Meeting of the Parties to the Convention at its sixth session to assist Parties in their implementation of the Convention. The Bureau and the secretariat with input from the Committee Chair, IAIA, and the European Commission should prepare a draft decision for the MOP,

This note attempts to reflect the content of the seminar. It is not a guidance note, but rather is intended to encourage debate on implementation of the Convention on Environmental

¹ This note was prepared by Vesna Kolar-Planinsic, Maria Partidario and Louis Meuleman (in their personal capacity), with input from Margarida Barata Monteiro (University of Lisbon) and Yuliya Rashchupkina (University of Massachusetts Boston).

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1. Introduction - Context and Purpose of the Seminar

The environment does not recognize political boundaries. Across the world there is a need for shared management of natural resources between countries, including countries that do not have strong political alliances. In some cases there are even serious diplomatic tensions between neighboring countries that rely on shared ecosystems. Fortunately, protection of the environment is often recognized as a benefit for all, regardless of the diplomatic status of the governments.

At the heart of environmental impacts lie the way decisions are made, how different stakeholders and decision-makers share views and agree on ways forward, and how personal and institutional conflicts arising from different perspectives may be responsible for impacts that otherwise could have been avoided.

The implementation of the Espoo Convention and the SEA Protocol in situations where diplomatic relations are absent or difficult can be delayed, or even impossible in practice, and this is not only unsatisfactory in terms of compliance with Convention and Protocol but also poses risks to the environment and health of people.

Such issues have been, are and will be around within the UNECE region and in other regions, and there are useful lessons to be learned from conflict resolution and other diplomatic approaches in similar situations, and not necessarily only in the realms of SEA or EIA.

In this context, the Espoo Working Group on EIA and SEA decided in May 2013 to hold a dedicated half day Seminar on this theme during the 3rd meeting of the Working Group, which has been

organized and co-hosted by the European Commission, the Chair of the Implementation Committee and the representative of the International Association for Impact Assessment IAIA, and partly financed by the European Commission.

The purpose of the seminar is to discuss environmental related conflict issues in contexts of politically sensitive conflict areas across national and regional boundaries, and to learn how conflicts have been addressed and how problems have been attempted to be resolved. Invited speakers will introduce their experiences with addressing such issues in particular cases.

The seminar presentations will provide case studies and experiences from Western Europe, Africa, and East Asia and Latin America where co-management and protection of the environment has been possible despite political tensions between the neighboring countries. The conclusions of the seminar are meant to be used as input to the work of the Implementation Committee, Working Group and Bureau and will be brought to the attention of the MOP in 2014.

This short background document introduces the case of conflict associated to environmental issues in transboundary contexts with the purpose of learning how situations of conflict in the absence of diplomatic relations can be successfully dealt with.

2. What is conflict? Categories of conflicts

Disasters, conflict and other crisis events have short- and long- term impacts. Opinions differ on whether crises cause, or are simply a catalyst, for these impacts. But it is clear that impact assessments which do not consider possible disasters and crises can produce inaccurate results. The consequences of inaccurate assessments can range from inconvenience in project implementation to, in the extreme, mortality rising above pre-disaster levels.

While lack of diplomatic relationships between certain states weakens international efforts to tackle environmental challenges, examples of some neighboring countries demonstrate that environmental challenges may trigger collaboration and develop peace-building processes: the environment can be the catalyzer for cooperation in other policy fields within diplomatic relationships, which while not necessarily neutral, allows an opportunity to initiate a dialogue.

In a more globalized world, characterized by continuous relations and interactions between different jurisdictions, national boundaries are no longer distinct or important in terms of environmental effects from nature and human activities.²

In the Stockholm Declaration in 1972 (Principles 21 and 22) and Rio Declaration in 1992 (Principles 2 and 13) the issue of environmental effects across state borders and the responsibility of transboundary damages by activities within states jurisdictions was emphasized. Other international events on transboundary effects can be highlighted³:

- The Brundland Commission's report (1987), that led to several procedures of international agreements, conventions, and soft law on management transboundary environmental effects;
- Espoo Convention 1991;
- SEA Kiev Protocol which supplemented the UNECE Convention on EIA in a Transboundary

² Purnama 2004; Makarenko 2012.

³ Hildén and Gurman 2001; Bonvoisin 2011.

Context;

- EU SEA Directive: require that transboundary consultations take place if either party considers that the implementation of a plan or programme is likely to have significant transboundary environmental effects, namely Article 7;
- EU EIA Directive, namely Article 7;
- North American agreement on Environmental Cooperation (1994)
- Kiev Framework Convention on the Protection and Sustainable development of the Carpathians (2003), Article 12, paragraph 1;
- Bonn Convention on the Conservation of Migratory Species of Wild Animals (1979), Resolution 7.2.

Mostert (1998) conducted a research on the existing literature on conflict resolution concluding that:

- The distinction between individual, group, social, and international conflicts observed in the literature lead to little attention to organizational conflicts, and too little attention to similarities and differences between the types of conflicts. For the author the more coherent distinction between conflicts lies on their sources;
- The theories of conflicts and conflict resolutions focus on struggle and power distribution, meeting human needs, or even optimization exercise;
- The literature advocates specific methods and procedures for conflict resolution without setting them in a proper framework and explicating their limitations in specific contexts.

Conflict is not just about who is right and who is wrong. For Mostert (1998) there are three possible sources of conflicts:

- **Factual disagreement** – disagreements on the course of action to be taken can come from different opinions of the impact of certain activities, the risk involved, or the existing relevant laws. Possible causes can be the uncertainty that arises from imperfect knowledge, science limitations, the abstract nature of rules and norms, conflicts between the rules, different sources of information leading to different understandings and poor communications, or even the individuals' capacity to process information.
- **Conflicting goals** – conflicts on a desired situation, in terms of interests and the distribution of costs and benefits, or values that are cultural determined;
- **Relational aspects** – the relation between the parties involved can generate problems of distrust and power struggles. In terms of distrust, this can be caused by problems or lack of communication. It also can be caused by 'punctuation problems', when A acts non-cooperatively because B acts non-cooperatively, and B acts non-cooperatively because A acts non-cooperatively – a two sided situation when both of the parties can't cooperate because of distrusts and lack of communication. In terms of power struggles, these can start with distrust or even with the feeling that one party has the intention to increase his power over other parties.

Figure 1 distinguishes four different situations:

1. Diplomatic relationships & no conflicts ('Peaceful');
2. Diplomatic relationships & conflicts ('Negotiable');
3. No diplomatic relationships & conflicts ('Frozen');
4. No diplomatic relationships & no conflicts ('Collaborative').

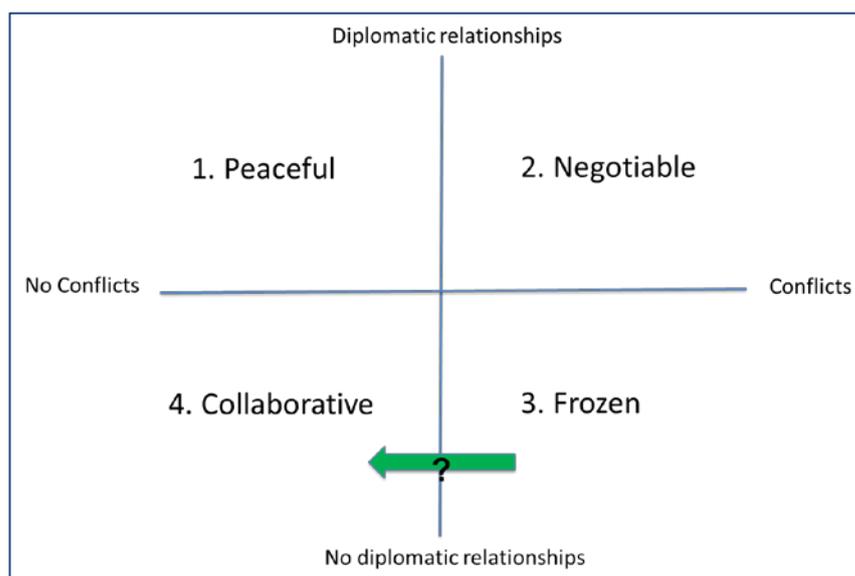


Fig.1 Breaking the ice? How to move towards collaboration (own composition).

This seminar concentrates on how to move from situation 4 to situation 3, assuming that it may very well be possible to establish environmental collaboration and communication without (re)establishing diplomatic relationships between countries.

3. Examples from practice

All over the world examples can be found of more or less fruitful transboundary collaboration under politically tense circumstances. In Europe such examples can be found in the Danube River Basin, in Africa in the Nile Basin area and the Benguela Current Large Marine Ecosystem with Namibia and Angola, in Asia situations are known regarding the Yellow Sea and the South China Sea, and the Humboldt Current.

NIGER DELTA

The extractive industry is closely associated with environmental and resource conflicts across sub-Saharan Africa. Nigeria's oil rich Niger delta provides a classical example of the extent to which exploration activities brew an inter-twined of environmental, resource and political conflict. When two elephants fight, it is the grass that suffers. This is true of thousands of resource-poor rural households in the Niger delta; they are the victims of conflict. Conflict has eroded the livelihood assets of the poor, distorted their livelihoods strategies and resulted in unplanned and undesirable livelihoods

outcomes. Some progress has been made in the implementation of government and extractive industry initiatives at resolving the conflict and supporting rural livelihoods in the region.⁴

INDIA-PAKISTAN

A large arid region of Thar Desert forms a natural boundary along the border between India and Pakistan. Over the recent years, changes in rainfall frequency; reduction in vegetal cover; improper agricultural management practices; overexploitation of natural resources; inapt use of chemical fertilizers and pesticides; extensive cultivation of a given area without allowing soils an adequate recovery period; and tourism in ecologically sensitive areas accelerated desertification issue in both countries. On the Indian side of the Thar Desert, the Churu district of Rajasthan is facing acute water scarcity due to poor groundwater quality and a lack of access to rivers and canals. The scientific communities within India and Pakistan promote gathering, analysis, and dissemination of data as a means of encouraging interaction among experts and decision-makers across national boundaries⁵.

In addition, Pakistani and Indian experts work to persuade their respective governments to declare all Himalayan glaciers as "protected areas", and demanded immediate demilitarisation of Siachen to preserve the world's second longest glacier. The experts of both countries proposed setting up an independent Indus Water Commission consisting of neutral experts from various international agencies including the World Bank, the United Nations Environment Programme (UNEP) and the European Union (EU)⁶.

TURKEY-CYPRUS

Uncontrolled development of tourism, as well as illegal hunting and trapping, habitat degradation, and habitat destruction face the entire island-nation of Cyprus, officially divided between the north and south by the UN "Green Line" in 1974. Environmental issues require island-wide collaboration between the communities to address them. Tackling issues of joint concern between both communities, issues like ensuring sea turtles have clean beaches on which to nest, the status of Cyprus's native donkey population or discussing ways to mitigate the effects of a dropping water table are approached as joint-initiatives, done outside the framework of government-to-government contacts through NGOs or multilateral organizations. Environmental NGOs on both sides of the island are currently involved in research, advocacy, awareness-raising, and conservation⁷.

IRAN – IRAQ

The centuries-old conflict between Iraq and Iran provides a poignant illustration of how managing shared environmental threats can lead to cooperative outcomes. The al Ahwar marshes of southern Iraq and Iran are the largest wetland ecosystem in the Middle East and Western Eurasia, historically covering over 12,000 km² of interconnected lakes, mudflats, and wetlands. In what the UNEP has declared "one of the world's greatest environmental disasters", over 90% of the marshlands were desiccated through the combined actions of upstream damming of the Tigris and Euphrates Rivers and

⁴(Adekoya 2009).

⁵ [http://www.stimson.org/spotlight/desert-solitaire-why-india-and-pakistan-should-collaborate-to-combat-desertification-/](http://www.stimson.org/spotlight/desert-solitaire-why-india-and-pakistan-should-collaborate-to-combat-desertification/)

⁶ <http://www.sify.com/news/indian-pak-experts-call-for-demilitarisation-of-siachen-news-international-mbmr4iedibg.html>

⁷ <http://hasna.org/program-countries/cyprus/collaborative-solutions/> and <http://www.dailykos.com/story/2010/02/20/839037/-The-History-of-the-Cyprus-Conflict-A-Background-w-Peacebuilding-Strategies> .

downstream drainage projects undertaken by the Iraqi Baathist government⁸.

The impact of warfare has compromised the vitality of these critical marshlands, leading some in the region to advocate for the creation of a peace park on the premise that such a project “could potentially result in coordination and co-management of this globally significant area, and future establishment of a demilitarized zone between the countries”.⁹ Despite the seemingly intractable nature of the political conflict, “restoration projects in the marshlands have continued” and there is “a visceral respect for conservation” among the diverse communities in the region, which ultimately “could provide a means of building trust and a cooperative nexus” between Iran and Iraq¹⁰.

In late July 2013 Iraq’s Council of Ministers named the National Park of the Marshes as the country’s first and only national park¹¹. The 1,000-square-kilometer (385-square-mile) national park in Iraq’s Central Marshes will not only help to protect the marshes but also calls for regional water cooperation in the Fertile Crescent, an agriculturally productive swath of land that cuts across the arid and semi-arid Middle East.

CHINA – JAPAN – SOUTH KOREA

Rapid industrialization and changing patterns of consumption as hallmarks of East Asian development lead to the increasingly salient depletion of natural resources and are the sources of transboundary air and ocean pollution. The Tripartite Environment Ministers Meeting (TEMM) and the Northwest Pacific Action Plan (NOWPAP) represent examples of how environmental protection can strengthen bilateral and regional cooperation when subtle diplomatic tensions exist.

The TEMM mechanism was established in 1999. It denotes an intergovernmental cooperation on environment in Northeast Asia between Japan, China, and South Korea. The priority areas of TEMM are: (1) raising the awareness that the three countries belong to the same environmental community; (2) promoting information exchange; (3) strengthening cooperation in environmental research; (4) fostering cooperation in environment-related industries and transfer of environmental technologies; (5) exploring appropriate measures to prevent air pollution and to protect the marine environment; and (6) strengthening cooperation to address global environmental issues such as biodiversity and climate change. Recently, the scope of meetings was expanded to include waste management, chemical pollution, energy, water-related issues, as well as the reconstruction of societies upon sound material cycles and circular economies.

NOWPAP is was adopted by the People’s Republic of China, Japan, South Korea, and Russia as part of UNEP’s Regional Seas Programme in 1994. The overall goal of NOWPAP is the wise use and development of the coastal and marine environment so as to obtain the utmost long-term benefits for the human population of the region while protecting human health, ecological integrity, and the region’s sustainability for future generations.

⁸ Stevens, 2007, 328. <http://www.internationalpeaceandconflict.org/group/internationalpeaceparks/forum/topics/iran-iraq-a-mesopotamian#.Uj5R61NkmCk> .

⁹ Stevens, 2007, p. 324.

¹⁰ http://www.jsedimensions.org/wordpress/content/a-sustainable-peace-from-militarized-borders-to-transnational-resource-collaboration_2012_03/ .

¹¹ <http://www.circleofblue.org/waternews/2013/world/iraqs-first-national-park-a-story-of-destruction-and-restoration-in-the-mesopotamian-marshlands/> .

Cooperation projects such as TEMM and NOWPAP, once established, continue to run despite diplomatic tensions. Political tensions come into play when agreed programs need commitment of financial support and new procedures are under reconsideration¹².

Transboundary Ecosystem Restoration in Politically High Conflict Areas

¹³The creation of two tri-national trans-frontier biosphere reserves involving the countries of Greece, Macedonia and Albania in the Balkans and the countries of Georgia, Armenia and Turkey in the Caucasus eco-region is expected to substantially contribute to sustainable biodiversity conservation and political stability in two high conflict areas. Biodiversity conservation in both regions is expected to benefit from an holistic approach to ecoregional planning, the pro-active protection of border zones as trans-boundary conservation areas, the consolidation of existing protected areas and the implementation of joint management policies aimed at the restoration of degraded ecosystems straddling international boundaries. Restoration will play a key role in rehabilitation efforts aimed at the Maliqui wetlands in Albania, the Little Prespa Lake in Greece and the deciduous oak-beech mountain forests of the Galicia Male I Thate Ridge. The latter is under protection in Macedonia but severely degraded in Albania. Likewise, the restoration of globally important but degraded wetlands and sub-alpine grasslands that characterize the unique Javakheti Plateau of Georgia and Armenia will be critical to ecosystem recovery. Both target areas continue to be threatened through inappropriate land-and resource use, uncontrolled development, and poverty as the key root cause of environmental deterioration. Both areas are recognized "ecological hotspots" of global significance. The unique ecosystems are characterized by a high level of endemism, a large diversity of terrestrial and aquatic species and critical habitat for migratory bird species. The historically well documented political instability of both areas caused mostly by territorial disputes of neighbouring ethnic minorities and clashing religions is hoped to be overcome through a well-targeted integrated land use development approach that is fully supported by the international donor community. The proposed synchronized conservation management approach is believed to benefit the local poor, the international peace movement and biodiversity conservation. Synergies are expected to be optimized through an integrated transboundary ecosystem planning and management approach.

4. Some mechanisms to help reducing conflicts

Some examples of categories on conflict resolution methods and procedures are presented by Mostert (1998):

- **Discussions and negotiations** – leave the parties with their decision-making power. Also a third party can be called into action to assist in the discussions and negotiations, always with

¹² Wirth, C. (2010). The Nexus between Traditional and Non-Traditional Security Cooperation in Japan-China Relations: Environmental Security and the Construction of a Northeast Asian Region. Waseda University Global COE Program, *GIARI*, Vol. 2, 69-86.

¹³ Goetz Schuerholz, 16th International Conference, Society for Ecological Restoration, August 24-26, 2004.

an impartial attitude towards what is the conflict and the parties involved;

- **Binding arbitration and adjudication** – parties lose their decision-making power, and a third party is the responsible for the decision. In here, the legal issues are the only issues that can be addressed, decreasing future possibilities in creating win-win solutions. This category of methods and procedures can be the best solution for powerless parties, but can lead to unwelcoming delays;
- **Institutional solutions** – meant to facilitate resolution or prevention of future conflicts. Some examples are substantive principles and legal rules; planning, consultation, and public participation procedures; network management, which generally promotes cooperation; markets, to solve conflicts through the price mechanism; platforms of discussion;
- **Evasion and violence** – evasion occurs when the parties realize the dependency between them. Violence is a dubious method and might better be called “conflict suppression”.

In conflict resolution it is very important to not neglect the contextual factors of a specific conflict, that set the basis for the effectiveness of specific methods and procedures, factors like the party political situation, the socio-economic situation, institutional context and organizational structure, and the culture of the parties that in most of the cases determines the overall approach to conflicts and conflict resolutions.

5. Preliminary lessons learned from existing practice

1. Environmental peacemaking process may start from initiatives of non-governmental entities, scientists, business sector, media, religious and other society groups.
2. The environment can often be the catalyzer for cooperation in other policy fields within diplomatic relationships, which while not necessarily neutral, allows an opportunity to initiate a dialogue
3. Environmental conflict resolution may not necessarily require that countries formalize diplomatic relationships
4. Political will of decision makers to establish mutually beneficial cooperation over environmental issues is key to enhancing the cooperation.

Further reading and links to documents available on the Internet

Examples from the UNECE web site of Espoo Convention:

1. Pipeline between Italy and Croatia (March 2004)

(http://www.unece.org/fileadmin/DAM/env/eia/documents/factsheet/Factsheet2_Pipeline_between_Italy_Croatia_Mar05.pdf)

2. Bridge over the Danube River between Vidin (Bulgaria) and Calafat (Romania) (December 2004)

(http://www.unece.org/fileadmin/DAM/env/eia/documents/factsheet/Factsheet1_Bridge_over_Danube_River_Dec04.pdf)

3. Thonon-Annemasse Road, France, Close to Switzerland (August 2008)

(http://www.unece.org/fileadmin/DAM/env/eia/documents/factsheet/Factsheet3_Road_in_France_close_to_Switzerland_Aug08.pdf)

4. Chancy-Pougny Hydropower Station, on the border between France and Switzerland (August 2008)

(http://www.unece.org/fileadmin/DAM/env/eia/documents/factsheet/Factsheet4_Hydropower_in_France_Switzerland_Aug08.pdf)

5. Nuclear power plants in Finland (March 2009)

(http://www.unece.org/fileadmin/DAM/env/eia/documents/factsheet/Factsheet5_Nuclear_power_plants_Finland_Mar09.pdf)

6. Expansion of a planned spent nuclear fuel repository in Finland (March 2009)

(http://www.unece.org/fileadmin/DAM/env/eia/documents/factsheet/Factsheet6_Nuclear_fuel_repository_in_Finland_Mar09.pdf)

Other examples:

1. Synthesis report of an expert workshop organised by DG Research and Innovation, European Commission on 19 December 2011, in Brussels

(http://ec.europa.eu/research/social-sciences/pdf/caucasus-publication_en.pdf)

2. Cultures of Governance and Conflict Resolution: A Euro-Indian Workshop; Convened by The European Commission in cooperation with the Delegation of the European Commission to India; New Delhi and Simla, India, 20-22 November 2008

(http://ec.europa.eu/research/social-sciences/pdf/euro-indian-workshop-proceedings_en.pdf)

3. From Conflict to Co-operation in International Water Resources Management: Challenges and Opportunities; International Conference UNESCO-IHE, 20-22 November 2002, Institute for Water Education, Delft, The Netherlands

(<http://unesdoc.unesco.org/images/0013/001354/135494e.pdf>)

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(<http://om.ciheam.org/om/pdf/a95/00801355.pdf>)

5. Environmental Impact Assessment in a Transboundary Context: Pilot Project in Central Asia – Project Report

(http://www.unece.org/fileadmin/DAM/env/eia/documents/ActivityReports/BishkekMar09/Pilot_project_report_en.pdf)

Further reading & references

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Annex: Draft programme of the Seminar on good practice for communication, cooperation and conflict resolution

Tentative timing: Monday, 11 November, 3–6 p.m.

3:00 Opening and welcome by the Chair of the Implementation Committee, Ms Vesna Kolar-Planinsic

3:15 Introduction to the theme and background document (Ms Maria Partidario)

3:30 Presentation Ms Mary Matthews (International Expert, UNDP-GEF International Waters)

3:55 Presentation Mr Raymond Saner (Director of DiplomacyDialogue, CSEND, Geneva)

4:20 Plenary discussion: what can we learn from the presented examples in terms of potentially successful mechanisms to achieve environmental collaboration under politically tense circumstances?

5:30 Wrapping up, first conclusions

6:00 Closure