

Module 1: Basics of SEA

**Legal Foundation
of
Strategic Environmental Assessment
(SEA)**

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The World Bank

SEA and International Law (1)

- **1985 Brundtland Commission (UNWCED) SEA**
- **1991 Convention on Environmental Impact Assessment in Transboundary Context (Espoo Convention)**
- **1992 Rio Declaration on Environment and Development**
 - **Principle 4: Sustainable development requires that the development process include environmental protection as integral part**
 - **Principle 17: EIA shall be undertaken for proposed activities likely to have significant adverse impact on environment**

SEA and International Law (2)

- **1992 Convention on Biological Diversity**
Must integrate conservation and sustainable use into relevant sectoral and cross-sectoral plans and programs.
- **1992 UNFCCC**
Policies to protect climate should be integrated with national development programs.

SEA and International Law (3)

- **1999 *Gabcikovo Case* – decision by the International Court of Justice. Separate opinion by Judge Weeramantry – “[E]nvironmental law in its current state of development would read into treaties which may reasonably be considered to have a significant impact upon the environment, a duty of environmental impact assessment....”**
- **2003 Draft Kiev Protocol on SEA to the Espoo Convention**

SEA and National Law: the United States (1)

U.S. – 1969 Statute (Law) National Environmental Policy Act (NEPA)

- EIA for any major federal action that may significantly affect quality of human environment
- NEPA establishes President's Council on Environmental Quality (CEQ)
- CEQ publishes Executive Order defining “major federal action” to include “programs [and] rules, regulations, plans, policies, or procedures; and legislative proposals”

SEA and National Law :

The United States (2)

■ Examples:

- President Clinton's timber harvesting plan (1994) (USDA/DOI)**
- Annual regulation on migratory bird-hunting**
- TVA coal contracts**
- Repeated ocean dumping in New York City harbor**
- Tanker subsidies**
- Statewide approval of gold mines in Alaska**
- Upper Mississippi river basin study**

Use: Programmatic EIS (PEIS) – where actions are forward-looking, corrected, cumulative, sufficiently similar

SEA and National Law :

China (1)

***China* – 2002 Law of Environmental Impact Assessment. Entering into force September 2003.**

- **Requires assessment of environmental impact of plans and construction projects.**
- **Specifies application to relevant land utilization plans, construction, development and utilization plans of regions, drainage areas and sea areas.**
- **Requires “analysis, forecast and evaluation” of the impact of plans. State Council approves the scope of the plans. Requirement for public consultation and explicit consideration and comments on issues raised during the consultation.**

SEA and National Law :

China (2)

- **Innovation – requiring the various Departments concerned to form an “examining team” and to have them submit a written opinion about the examination. Team selected from roster of experts.**
- **At local level, the “Plan EIA” is used as basis for considering decision-making in the future. Requirement to look back to the Plan EIA is set forth in Article 14. Monitoring and evaluation required pursuant to Article 15.**

SEA and the European Community (1)

Directive 2001/42/EC of the European Parliament on the assessment of effects of certain plans and programs on the environment

- ***Objectives:*** The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programs with a view to promoting sustainable development.

SEA and the European Community (2)

- ***Definitions:*** “Plans and Programmes” shall mean plans and programmes which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government.

SEA and the European Community (2)

- **Scope:** An environmental assessment shall be carried out for all plans and programmes prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects.

Plans and Programs shall require an environmental assessment only where they are likely to have significant environmental effects.

SEA and the European Community (3)

- ***Scope (cont'd):*** The following plans and programs are not subject to this Directive:
 - Plans and programs the sole purpose of which is to serve national defense or civil emergency
 - Financial or budget plans and programs
- ***Monitoring:*** Member States shall monitor the significant environmental effects of the implementation of plans and programs.

SEA and Multilateral Development Banks: *EBRD*

In addition to EIAs on specific projects, the EBRD may also carry out SEAs on the likely environmental consequences of proposed sector or country/regional plans or programs which have the potential to significantly affect the environment. The Bank defines “SEA” in accordance with the UNECE Definition, which is anticipated in 2003 as part of the Espoo Convention.

SEA and Multilateral Development Banks: *The World Bank*

- **Operational Policy 4.01 on Environmental Assessment**
 - **Requires environmental assessment of regional projects and sectoral loans. Has been applied to some privatization projects.**
- **Operational Directive 8.60 on Adjustment Lending**
 - **Analysis of adjustment programs considers implications for the environment.**
 - **Design of adjustment programs should take into account findings and recommendations of such reviews.**