



Example of Negotiated International Agreements:

**United Nations Economic Commission for Europe (UNECE)
Convention on Environmental Impact Assessment in a
Transboundary Context (Espoo Convention)**

**Proposed Canada-United States-Mexico Agreement on
Transboundary Environmental Impact Assessment**



Espoo Convention... a bit of history

1970 to 1980 period

- **Environmental impact assessment (EIA) was at various stages of evolution.**
- **Procedures were in place in U.S.A. and in some European countries.**
- **EIA was gaining more and more acceptance as a means to integrate environmental values in decision making.**
- **Among politicians, concerns about the environment was rising and increasing attention was paid to transboundary environmental issues at the international level.**



Espoo Convention... a bit of history (cont'd)

- **A number of important initiatives created the necessary conditions to permit the development of the Espoo Convention.**
- **Most notable:**
 - **The 1972 UN Conference on the Human Environment held in Stockholm, Sweden. The Conference concluded that States have a responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other States.**
 - **The 1975 Conference on Security and Co-operation in Europe agreed to undertake work on the long range transmission of air pollutants and on the concept of transboundary environmental assessment.**



Espoo Convention... a bit of history (cont'd)

- **In 1982, an experts group on EIA was established within the Economic Commission for Europe to give consideration to the issue of transboundary EIA.**
- **In 1987, a UNEP Group of Experts on Environmental Law undertook to draft the first principles on transboundary EIA benchmarks. These principles became important benchmarks for the subsequent development of the Espoo Convention.**
- **Also in 1987, the World Commission on Environment and Development (the Brundtland Commission) recommended the development of regional and sub-regional cooperation arrangements for the protection and sustained use of transboundary ecological systems.**
- **In October 1988, negotiations were officially initiated at the UNECE Working Group level to develop the Espoo Convention. The negotiations ended in 1991 with the signing of the Convention by 28 countries including Canada.**



Espoo Convention... scope of the application

- The Espoo Convention is an international legal treaty developed under the auspices of the United Nations Economic Commission for Europe.
- The Espoo Convention came into force in 1997. Canada ratified the Convention in 1998.
- 39 of the 55 UNECE member countries have now ratified the Convention.
- France (for Saint-Pierre et Miquelon) and Denmark (for Greenland) have ratified the Convention, but not the U.S.A.
- Obligations under the Convention are reciprocal - only owed to other parties that have ratified the Convention.
- Canada has yet to apply the Convention with France or Denmark.



Espoo Convention... Key Features

- **Timely notification to Affected Parties.**
- **Conduct of an EIA of proposed projects likely to cause significant adverse transboundary impacts.**
- **Public participation opportunities for the affected foreign public.**
- **Consultations between the Parties on the EIA documentation.**
- **Comments of the Affected Party to be considered in the final decision on the proposed project.**
- **Post-Project Analysis.**



Espoo Convention... Specific Obligations

Timely notification to Affected Parties

- **Notification to any Affected Party, as early as possible, of a proposed project listed in Appendix 1 of the Espoo Convention that is likely to cause a significant adverse transboundary impact.**
- **Notification to include: information on the proposed project; the assessment process; the possible transboundary impact of the proposed project; and the nature of the possible decision in regard to the proposed project.**
- **At the request of an Affected Party, the Party of Origin is required to enter into discussions whether a project not listed on Appendix 1 is likely to cause significant adverse transboundary impact.**



Espoo Convention... Specific Obligations (cont'd)

Conduct of an EIA of projects likely to cause significant adverse transboundary impacts

- The Party of Origin shall ensure that an EIA is undertaken prior to a decision to authorize or undertake a proposed project under Appendix 1.



Espoo Convention... Specific Obligations (cont'd)

Public participation opportunities for the affected foreign public

- The Party of Origin is required to provide an opportunity to the public in the areas likely to be affected to participate in the EIA.
- The participation must be equivalent to that provided to the public of the Party of Origin.
- Arrangements must be taken to allow the public:
 - to be informed about the proposed project; and
 - to submit comments or objections on the proposed project.



Espoo Convention... Specific Obligations (cont'd)

Consultations between the Parties on the EIA documentation

- **Following completion of the environmental assessment documentation, the Party of Origin is required to enter into consultation with the Affected Party concerning the potential transboundary impacts of the proposed project and measures to mitigate the impacts.**
- **The consultations may relate to:**
 - **possible alternatives to the proposed project, including the no-go alternative;**
 - **possible mitigation measures or measures to monitor the project;**
 - **other forms of possible mutual assistance to reduce the adverse impacts of the proposed project; and**
 - **any other appropriate matters relating to the proposed project.**



Esppo Convention... Specific Obligations (cont'd)

Comments of the Affected Party to be considered in the final decision on the proposed project

- The Party of Origin is required to ensure that in the final decision on the proposed project, due account is given to the outcome of the EIA and comments received from the Affected Party and its public.
- The Party of Origin is required to provide the Affected Party the final decision on the proposed project together with the reasons and considerations on which the decision was made.



Espoo Convention... Specific Obligations (cont'd)

Post-Project Analysis

- **At the request of a Party, the Parties shall consult to determine whether post-project analysis should be carried out.**
- **As a result of post-project analysis, a Party has reasonable grounds to conclude that a project is causing significant adverse transboundary impacts, immediate notification to the Party is required.**
- **The Parties shall consult on the necessary measures to reduce or eliminate the impact.**



Espoo Convention... Some Observations

- **The Convention was developed at a time when EIA was relatively new.**
- **It was an innovative international legal instrument. Its elements remain sound today.**
- **The Convention has influenced the development of EIA procedures and public participation requirements in Eastern European countries in particular.**



Espoo Convention... Some Observations (cont'd)

- **The Convention has influenced the development of other international agreements such as:**
 - **the Convention on Transboundary Effects of Industrial Accidents;**
 - **the Convention on the Protection and Use of Transboundary Watercourses and International Lakes; and**
 - **the Arctic Environmental Protection Strategy.**
- **The Convention aims to foster cooperation among Parties. It currently serves as an important benchmark to Canada, the United States and Mexico for the development of a North American agreement on transboundary EIA.**



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment

- **Article 10(7) of the North American Agreement on Environmental Cooperation (1993) - an important catalyst for three countries to start work on a North American agreement on transboundary EIA**
- **Some key initiatives in regard to the development of an agreement include:**
 - **the adoption of principles on good neighborliness (done in 1995 at Oaxaca, Mexico); and**
 - **an expert group recommendations on the elements of a trilateral agreement which were submitted to the Council of Ministers of the Commission on Environmental Cooperation in 1997.**



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment (cont'd)

- **Adoption of Council resolution 97-03, urging the three countries to complete a legally binding agreement on transboundary EIA. The agreement would have to include provisions on:**
 - **interjurisdictional notification;**
 - **EIA requirements;**
 - **public participation; and**
 - **the consideration of mitigation measures.**



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment (cont'd)

Interjurisdictional Notification

- Approaches being considered:
 - automatic notification for certain types of projects within 100 km of the political boundaries;
 - discretionary notification for project beyond the 100 km range; and
 - when an Affected Party has concerns about the potential significant adverse transboundary impact of a proposed project.



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment (cont'd)

EIA Requirements

- Proposed obligations would require the Party of Origin to:
 - ensure that an EIA is undertaken for proposed projects likely to cause significant adverse transboundary impacts;
 - notify the Affected Party that an EIA is being undertaken; and
 - ensure that the Affected Party has a meaningful opportunity to participate in the EIA.



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment (cont'd)

Public Participation

- Proposed obligations would require the Party of Origin to:
 - allow the public of the Affected Party to submit comments concerning the proposed project; and
 - allow the public of the Affected Party to participate in public hearings or meetings to the same extent provided to the public of the Party of Origin.



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment (cont'd)

Consideration of Mitigation Measures

- Proposed obligations would require the Party of Origin to:
 - consider mitigation measures as early as possible during the transboundary EIA;
 - consider the comments provided by an Affected Party or its public on proposed mitigation measures; and
 - transmit to the Affected Party available information resulting from post-project monitoring.



Canada, United States, Mexico... Discussions for an Agreement on Transboundary Environmental Impact Assessment (cont'd)

- **Status of discussions:**
 - **negotiations are currently at a pause to allow countries to consider how best to implement the proposed agreement as widely as possible given the degree of variance in the EA legal regimes of the three countries; and**
 - **public consultations on the proposed agreement would be sought by the Government of Canada before finalizing the agreement.**



Concluding Comments

- **Both the Espoo Convention and the proposed North American agreement are consistent in intent and scope of application.**
- **Both build on the need and importance of anticipatory policies to address significant environmental impacts.**
- **They both emphasize the importance of public participation in conserving, protecting and enhancing the environment.**