The Espoo regime

And why it is relevant for river basins, including that of the Mekong River Basin (MRB)?
Story-line

• What is the Espoo regime?
• The way the Espoo regime promotes holistic views on developing our societies towards SD
• How to do a good transboundary EIA (SEA)?
• How the Espoo Convention could influence transboundary EIA in the MRB?
• Concluding argument
What is the Espoo regime?

• The Convention on Environmental Impact Assessment in a Transboundary Context was adopted over twenty years ago and is seen as one of the key international treaties to implement sustainable development (most Rio 1992 principles reflected in the regime)
• The Convention has been supplemented by a Protocol on Strategic Environmental Assessment, having only entered into force in 2010.
• Brief intro (domestic EIA as an engine) – not many remember that Espoo is not only about TB impacts
• Together these enable a) channeling of integrated knowledge b) from various policy fields c) to various decision-making levels
Transboundary EIA

• General international law requires all nation-states to establish transboundary EIA procedures:
  – as the ICJ has affirmed “...a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource”.
• Espoo Convention is gradually opening to all the member states of the UN
  – Although the Espoo Convention is a regional Convention, it has also contributed to the development of transboundary EIA practice globally (e.g. MDB’s, CDM’s etc.)
  – The Espoo parties include most UN Economic Commission for Europe members – parties spanning from Canada to Europe and even to Central Asia (45 parties)
• Is it working well?
Setting for transboundary EIA

- We have to recognize that dealing with transboundary impact is challenging because nation-states create separate political identities, and they pursue also their own goals.
- Typical situation: origin state A benefits, affected state B bears only costs.
- This is even more so when we have shared river basins, where upstream states have less motivation to look after the interests and rights of the downstream state.
What experience do we have of transboundary EIA’s?

• There is vast and accumulating experience over how to do an effective transboundary EIA within the Espoo Convention (only limited on transboundary SEA)

• We did an evaluation of how Finland has observed its transboundary EIA obligations (Finnish involvement in transboundary EIA’s – by the end of the year 2010, Finland had been involved in 38 transboundary EIA’s)

• In terms of numbers, Finland is somewhere in the middle within the EU (2009 European Commission, DG ENV Study concerning the report on the application)

• Appr. 100 cases per year
What have we learned of transboundary EIA’s?

• Legal form matters (and contrast here to e.g. soft transboundary EIA’s):
  – Creates better trust between parties, and is more likely to be implemented (soft-law instrument normally a precursor to real commitment)
  – Legal form also lifts transboundary EIA from the field of shifting priorities of domestic politics and ensures institutional continuity (domestic officials tend to not pass their experience or duties on transboundary EIA to their followers when the co-operation is only soft)
What have we learned of transboundary EIA’s?

• Information exchange mitigates concerns in most cases in each side of the border (hence, transboundary EIA avoids these proposed activities to become conflicts between states (such as the Pulp Mills case)

• And this information covers all kinds of transboundary impacts (civil society and the affected state are best positioned to raise env. and socio-economic concerns)

• For instance, consultations are very rarely organized even if it is a legal requirement!
Are these lessons useful for river basins, including the MRB?

- Espoo type of transboundary EIA seems to function well (general legal requirements, but main focus on information exchange)
- Alternative was used in the Caspian Sea – Guidelines on transboundary EIA (aim was for the Protocol – 2 non-parties, 1 non ECE member state, 2 parties)
- Espoo secretariat heavily involved in this
- Could the same take place in MRC? Would it be possible for the Espoo C spreading
Could the Espoo regime could become applicable in the MRB?

• At first, seems like an odd idea: why would a regional broad treaty regime be the best option. Few reasons:
  – Diverse membership already in the Espoo
  – Possibility to tap into intellectual and other resources of the Espoo regime
  – Specialisation enables the regime to be expert in its own area (e.g. the BSGP)
  – Functioning EIA, which is based on de-politization of issues
• One of the main reasons:
• Good balance between general legal obligations and their implementation on the ground by implementation agreements, but mostly via sub-regional groups (where there are non-parties)
Could the Espoo regime could become applicable in the MRB?

- Activities in the subregions:
  - Baltic Sea (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation, Sweden)
  - Black Sea (Bulgaria, Georgia, Romania, Russian Federation, Turkey, Ukraine)
  - Caspian Sea (Azerbaijan, Iran (Islamic Republic of), Kazakhstan, Russian Federation, Turkmenistan)
  - Caucasus (Armenia, Azerbaijan, Georgia)
  - Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan)
  - Eastern Europe (Belarus, Republic of Moldova, Ukraine)
  - Mediterranean Sea
  - South-Eastern Europe (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Montenegro, Romania, Serbia, The former Yugoslav Republic of Macedonia)
Could the Espoo regime could become applicable in the MRB?

- Sub-regional co-operation has lead also to broadening of transboundary EIA procedures, as, e.g. took place in the transboundary EIA of the Baltic Sea Gas Pipeline, where altogether five states were origin states and nine took part as affected states.
- Impacts of this proposed energy infrastructure were looked upon from the viewpoints of livelihoods (in particular fisheries), and ecosystem disturbance, etc.
- And there were demands of even transboundary SEA, that is, alternatives for transporting gas from Russia to Western-Europe, CC consequences, etc.
Concluding argument

• Now when the Espoo regime is gradually opening to all member states of the UN – and the ICJ has emphasized that all states are legally obligated to undertake transboundary EIA (SEA) – it would be also important to think:
  – How the Espoo Convention could contribute to making of effective transboundary EIA’s (via states becoming parties) or developments like in the Caspian Sea
  – Whether the soft-law transboundary EIA co-operation in the Mekong River Basin could be translated – over time - into a sub-regional grouping functioning under the overall umbrella of the Espoo regime
• This should at least be seriously discussed in the long-run