CHAPTER 4
ENVIRONMENTAL IMPACT ASSESSMENT AND PROCEDURAL RIGHTS

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 17, Rio Declaration on Environment and Development, 1992

A. INTRODUCTION

One of the more established principles of environmental law is the obligation to carry out an assessment of the environmental impact of development activities at the national level. Closely linked to the concept of sustainable development, an environmental impact assessment (EIA) is an invaluable tool to achieve the principle of integration—to integrate environmental concerns into the economic development process.

The United States was the first country in the world to introduce the environmental assessment process into the law. It requires all major federal projects to undergo an environmental assessment. Since then, the environmental assessment process has undergone profound development in many parts of the world, and now constitutes one of the principal tools of environmental protection. Many national systems now incorporate the EA process, which, in some countries, leads to public participation and other procedural rights.

The rationale underlying the environmental assessment process is the principle of prevention, discussed in Chapter 3. In order to prevent environmental degradation, it becomes necessary to understand the environmental consequences of a proposed project as early as possible in the

1 Discussed in Chapter 2, Section E.1.

project cycle. Once these environmental consequences are identified, mitigatory measures could be taken to minimize the impact on the environment. On the other hand, the decision maker may decide that the impact on the environment is irreversible or that it far outweighs the benefits from the proposed project or that there is no justification for the project to go forward. Thus, the environmental assessment process provides the decision maker with a valuable tool to evaluate a project for its environmental, economic\(^3\) and social consequences,\(^4\) before a decision is taken whether to implement the project or not. Often, EIAs include an analysis of alternatives\(^5\) that are less harmful to the environment, which enables the decision maker to evaluate the alternatives against the proposed activity. Ideally, an EIA should provide the decision maker with a set of options from which the decision maker can choose the best possible one for the proposed activity. In practice, however, this may not happen. Very often, EIA procedures are criticized for coming too late in the decision-making process, where some decisions have already been taken.\(^6\) Sometimes EIAs are prepared to justify a decision that has already been taken. Despite these drawbacks, which are more in relation to the procedure, rather than the process itself, an EIA provides a valuable tool to achieve sustainable development, as it seeks to integrate environmental protection into the development process.

The environmental protection movement at the international level originated from purely cross-border issues such as transboundary pollution. Aside from cross-border issues international law had no role to play in regulating activities that could lead to environmental pollution within national boundaries. Such regulation fell squarely on the shoulders of national agencies that did or did not take much action, depending on the level of interest in relation to environmental issues. As a result, states only had to ensure that activities within their jurisdiction or control did not cause extra-territorial environmental damage.\(^7\) This principle, also referred to as the principle of good neighborliness,\(^8\) was first articulated in the famous *Trail Smelter*

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\(^3\) See the discussion on cost-benefit analysis in Section A.2.

\(^4\) Some countries require the preparation of a separate social impact assessment, See discussion in Section A.1.

\(^5\) See infra note 73 and accompanying text.


\(^8\) See Brian Popiel, *From Customary Law to Environmental Impact Assessment: A New*