

NARBO 8th IWRM Training Programme
"Enhanced Water Security Through IWRM - Mahaweli Experience"
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Water Security **in International Rivers**

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Guiding Principle

1997 United Nations Treaty

**Regulatory framework for Transboundary
Environmental Impact Assessment (EIA)**

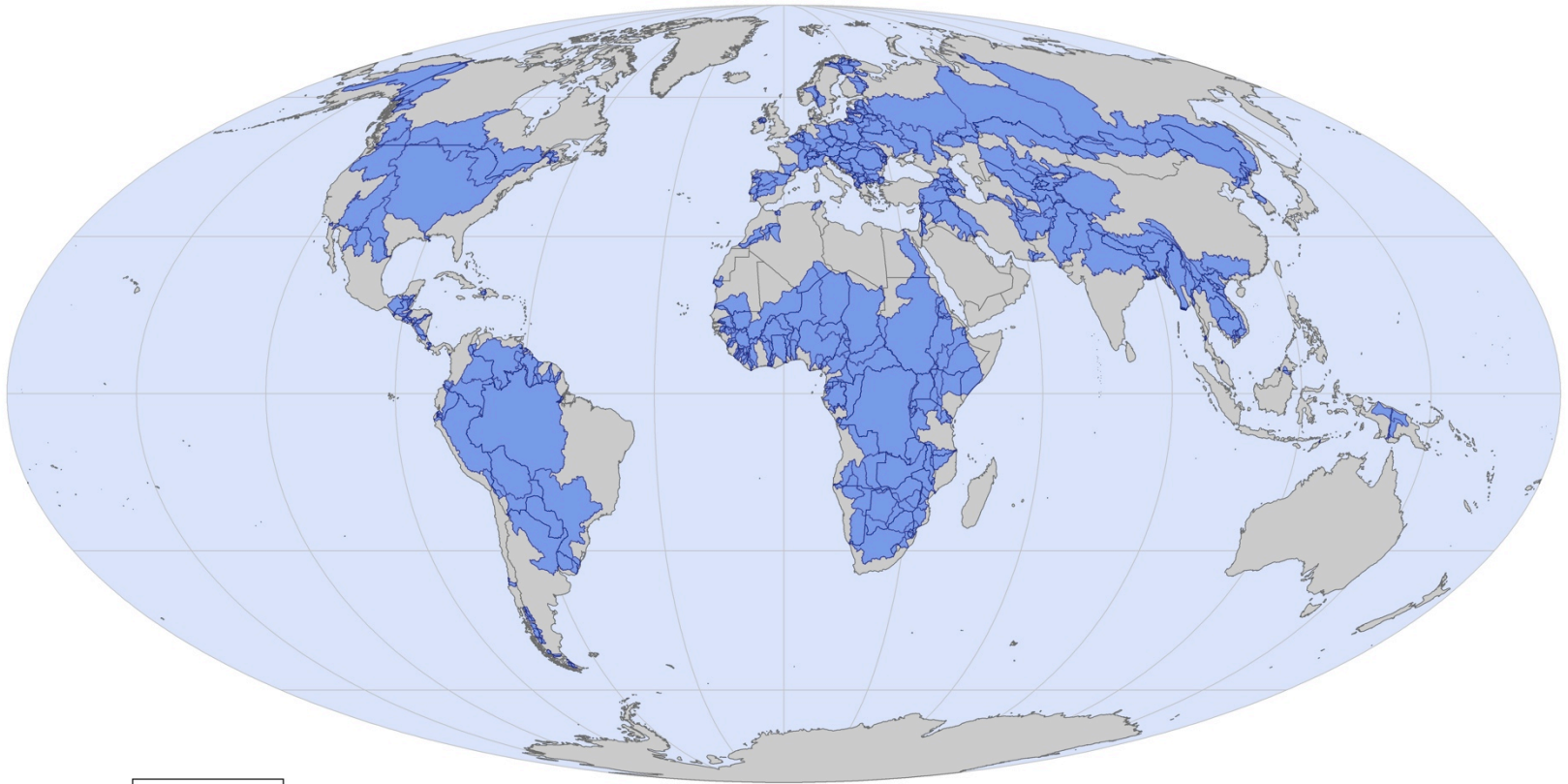
Espoo Convention and its application

Role of RBO

Information Transparency and Symmetry

Packaging Multiple Sectoral Issues

International River Basins



Legend
■ Basins

Transboundary Freshwater Dispute Database
Oregon State University, 2010

International River Basins of ASIA

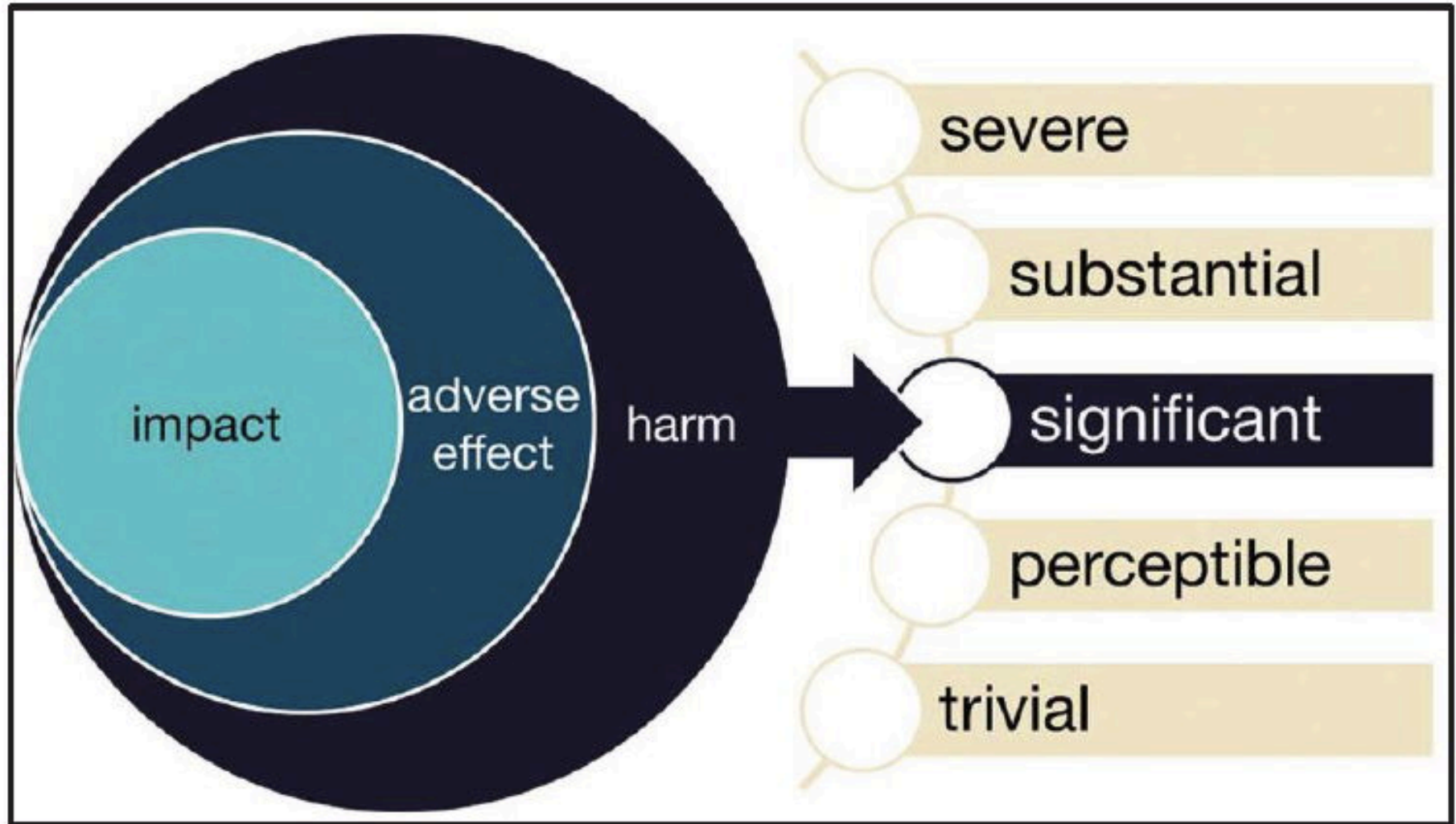


1997 Convention on the Law of the Non-Navigational Uses of International Watercourses

as Guiding Principle

- **Adopted by the United Nations in 1997 pertaining to the uses and conservation of all waters that cross international boundaries.**
- **To enter force, the document requires ratification by 35 states (31 ratifications at this stage).**
- **Though not in force, the document is regarded as Global Customary Law.**
- **Article 7 "Obligation not to cause significant harm" is a great step while controversial.**

How to determine what constitutes “significant harm”



Source: Rieu-Clarke, et al. *UN Watercourses Convention – User’s Guide*, at 121

As Global Customary Law

- **In 1997, the International Court of Justice, in a dispute concerning the Danube, invoked the UN Watercourses Convention to justify its decision.**
- **The 2000 Revised SADC Protocol on Shared Watercourses and the Senegal River Charter make express reference to the UN Watercourses Convention as a basis for their drafting.**
- **The 1996 Ganges Treaty is based on the draft of the UN Watercourses Convention.**

Update: UN Transboundary Water Treaty Moves Forward As Cote d'Ivoire Approves Ratification

WEDNESDAY, 27 NOVEMBER 2013 12:33

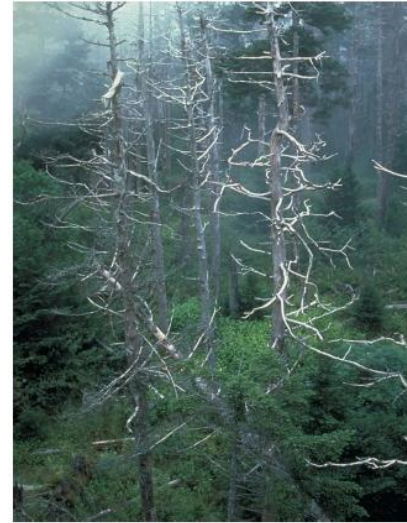
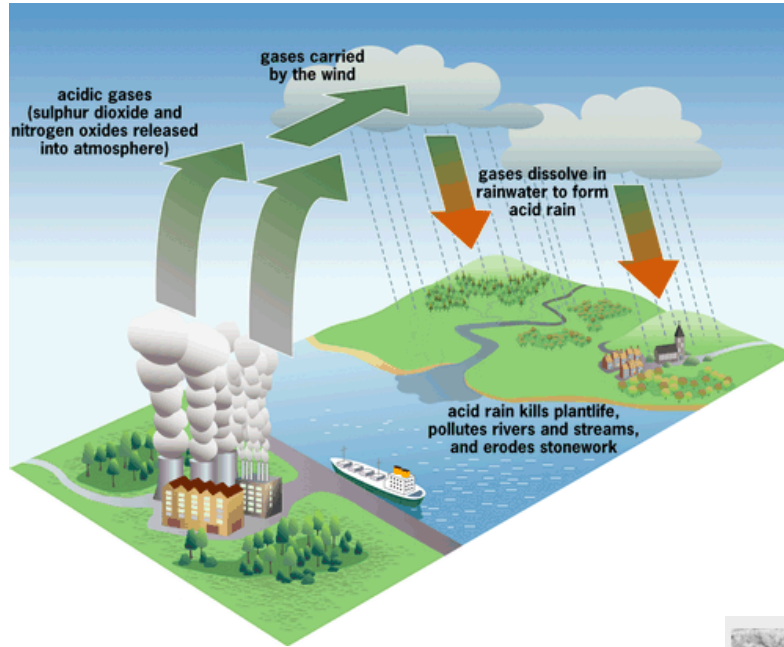
Though three more ratifications are needed before the UN Watercourses Convention has the force of law, advocates assert that four countries are close: Ireland, Tanzania, the United Kingdom, and Vietnam.



Only three more countries are required!

Transboundary Environmental Impact Assessment (EIA)

“Initiated” by Acid Rain in Europe

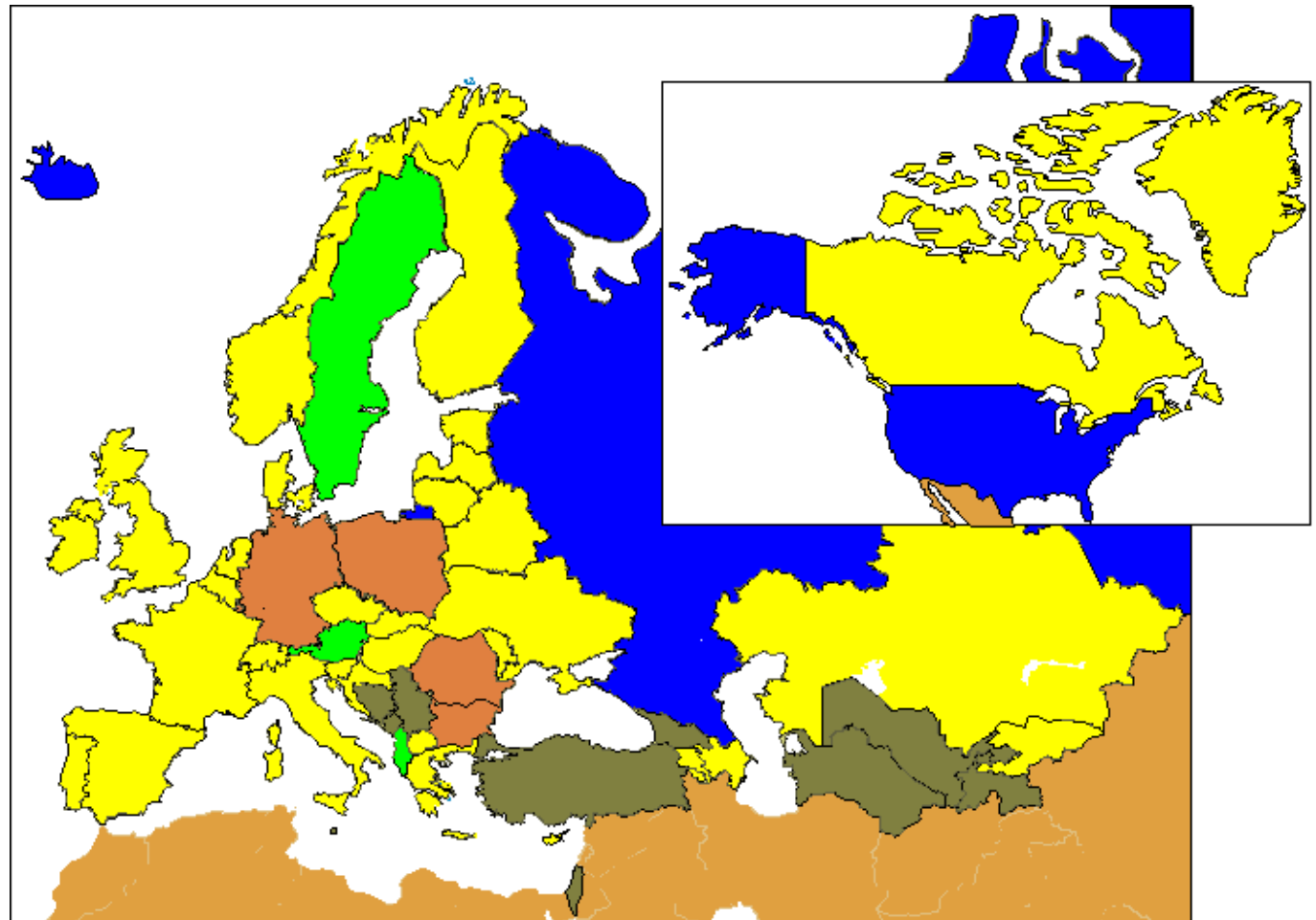


Regulatory Framework was needed in Europe



Espoo Convention by UNECE

(1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context)



-  Signed
-  Ratified, etc.
-  Ratified Convention & 1st Amendment
-  Ratified Convention & both amendments

Espoo Convention

- The Espoo (EIA) Convention sets out **the obligations of Parties to assess the environmental impact of certain activities** at an early stage of planning.
- It also lays down the general **obligation of States to notify and consult each other on all major projects under consideration** that are likely to have a significant adverse environmental impact across boundaries.
- The Convention was adopted in 1991 and entered into force on 10 September 1997.

Article 3: Notification

- For a proposed activity that is likely to cause a significant adverse transboundary impact, the Party of origin shall notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

Article 4: Preparation of the EIA Documentation

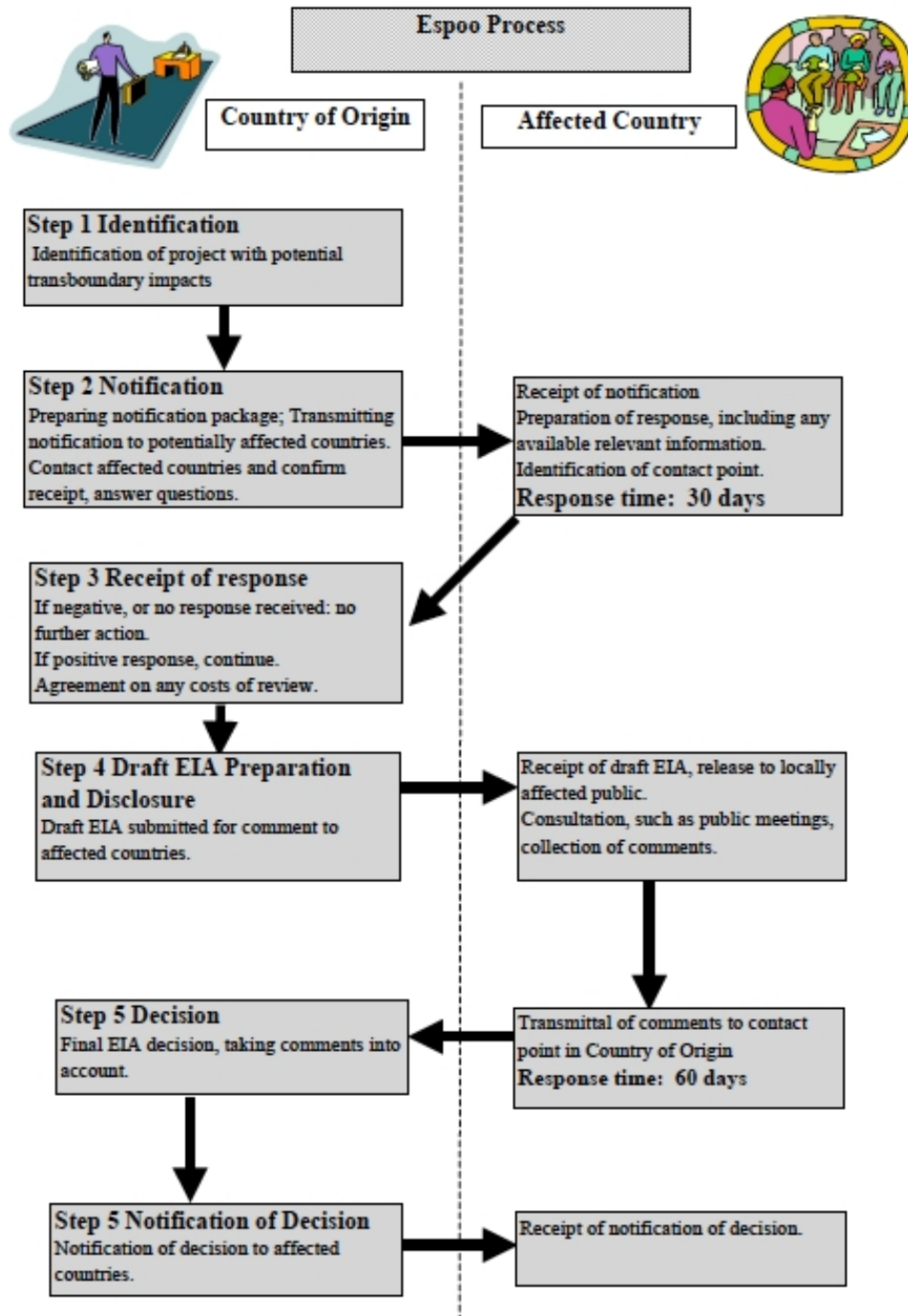
- The Party of origin shall furnish the affected Party with the EIA documentation.
- The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party within a reasonable time before the final decision is taken on the proposed activity.

Article 5: Consultations on the Basis of the EIA Documentation

- The Party of origin shall, after completion of the EIA documentation, enter into consultations with the affected Party concerning the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact.
- Consultations may relate to possible alternatives to the proposed activity.

Article 6: Final Decision

- The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the EIA, including the EIA documentation, as well as the comments thereon received.

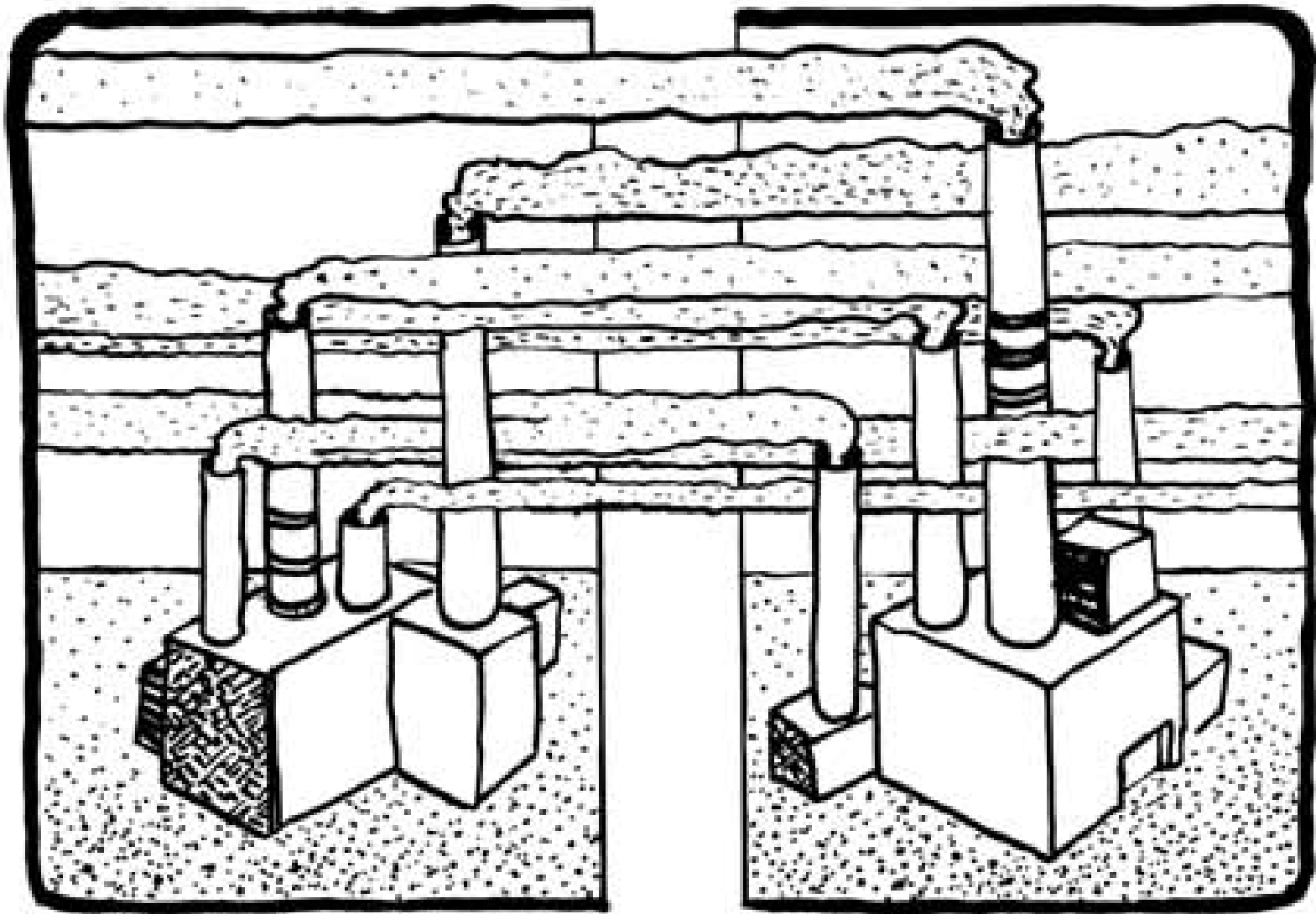


Only Notification and Consultation are required.

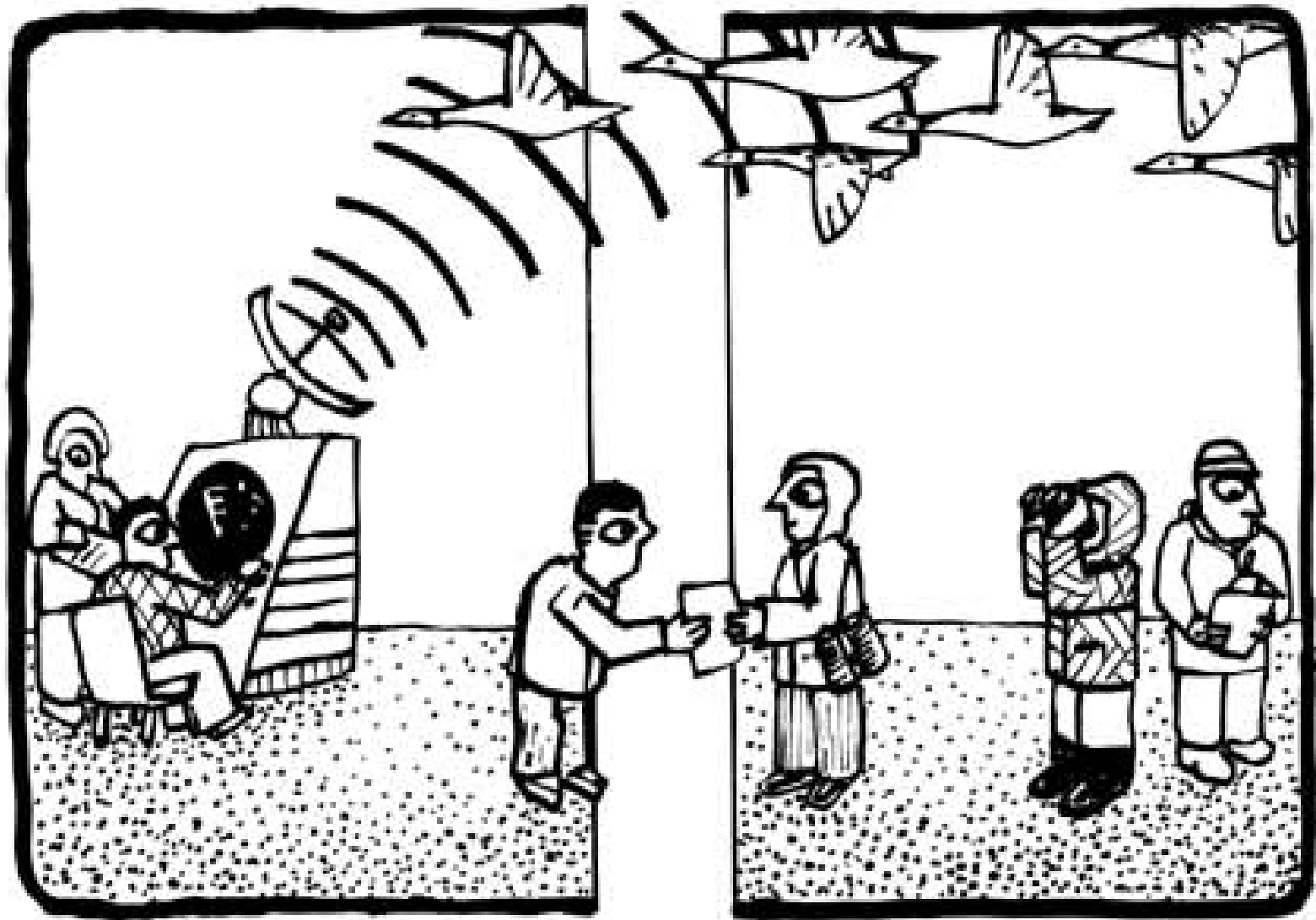
Downstream country has no “veto power.”

Still, dialogues between basin countries lead to solution or mitigation of the problem.

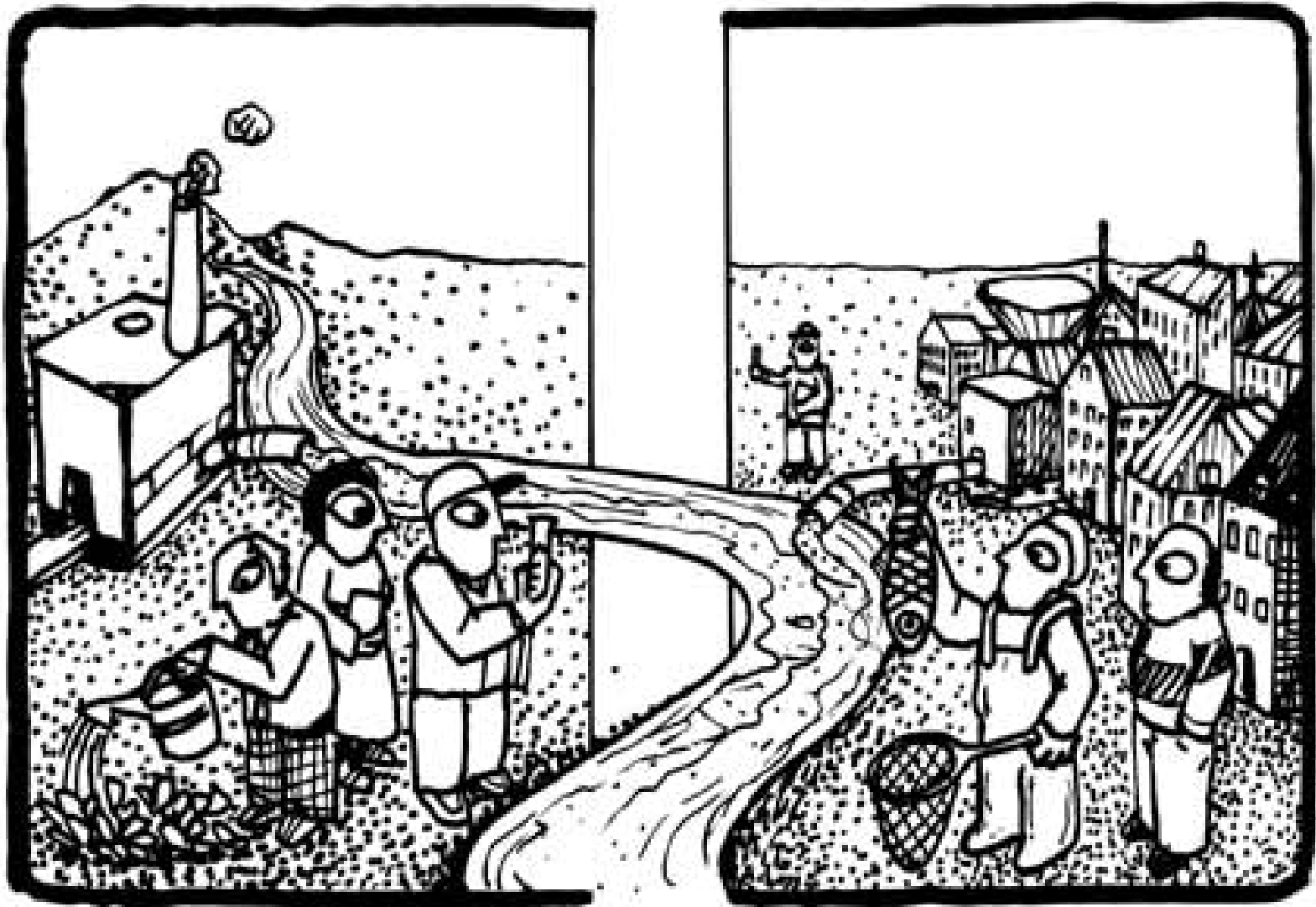
More stringent framework is under discussion in some regions.



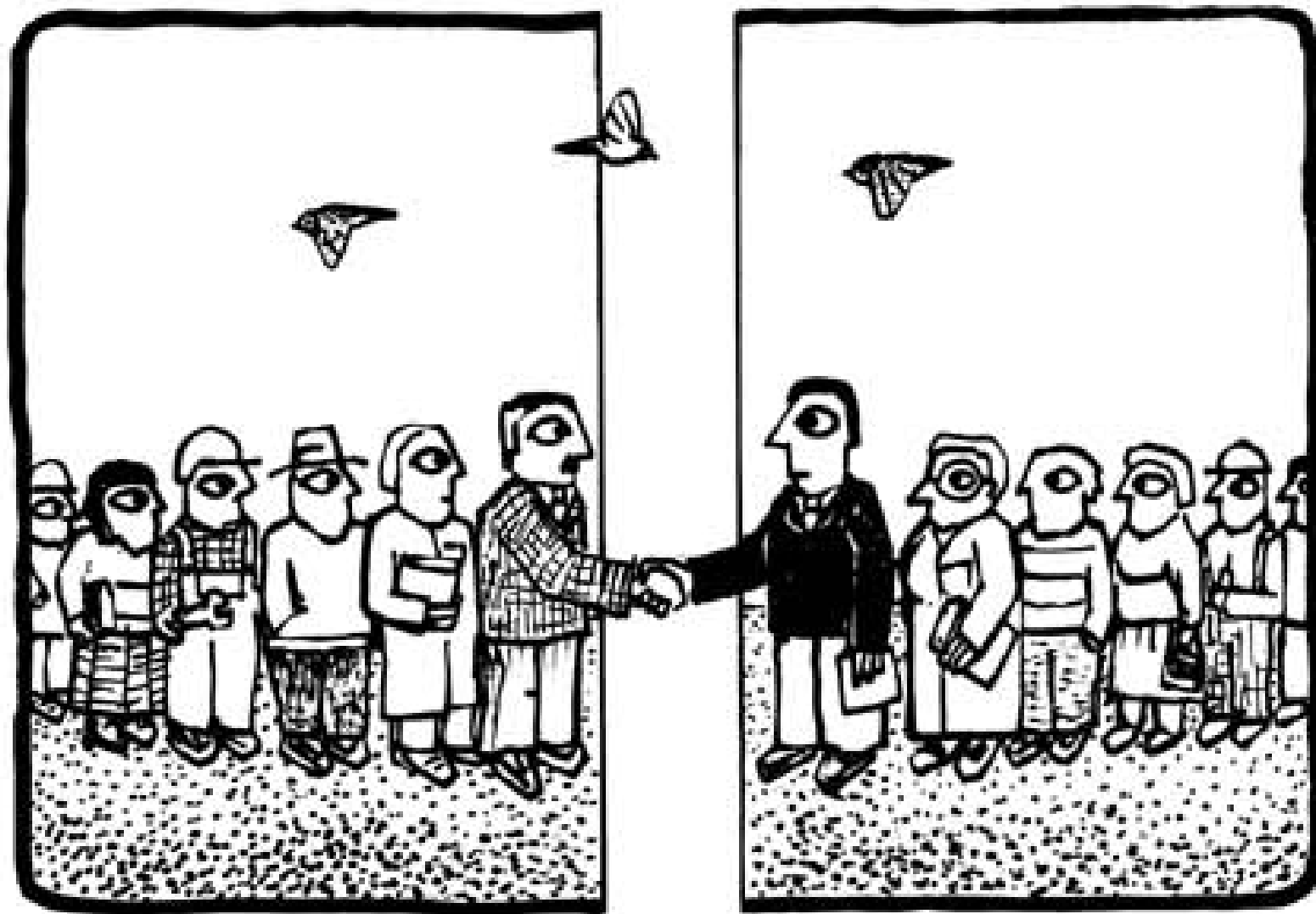
Transboundary Environmental Problem



Notification (i.e. Information Transparency)

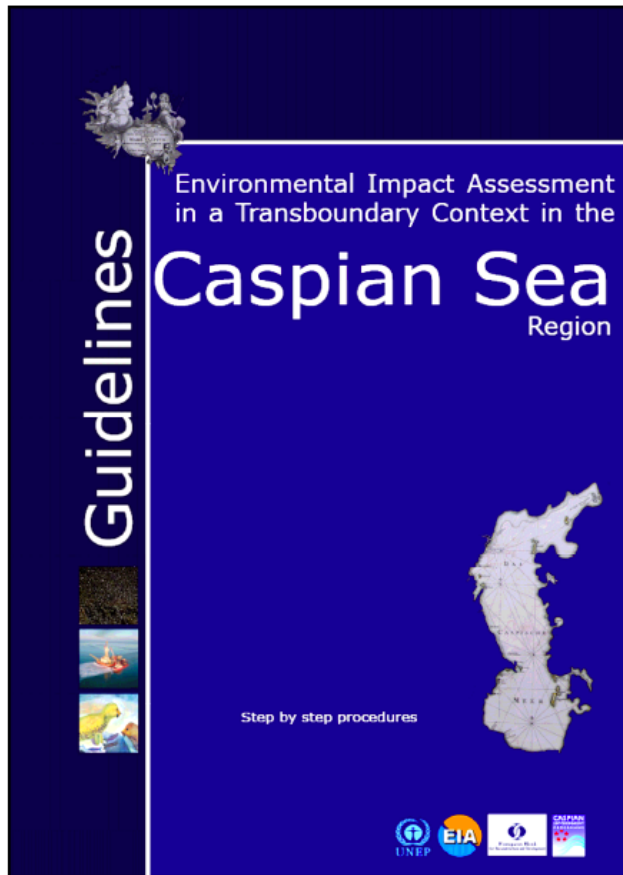


Monitoring with Information Transparency



Bi-lateral or Regional Agreement

Success in Caspian Sea



Many plans for off-shore oil wells required a regulatory framework, while not all basin countries belong to UN-ECE.

“Guidelines”, similar to ESPOO Convention, were developed and successfully applied.

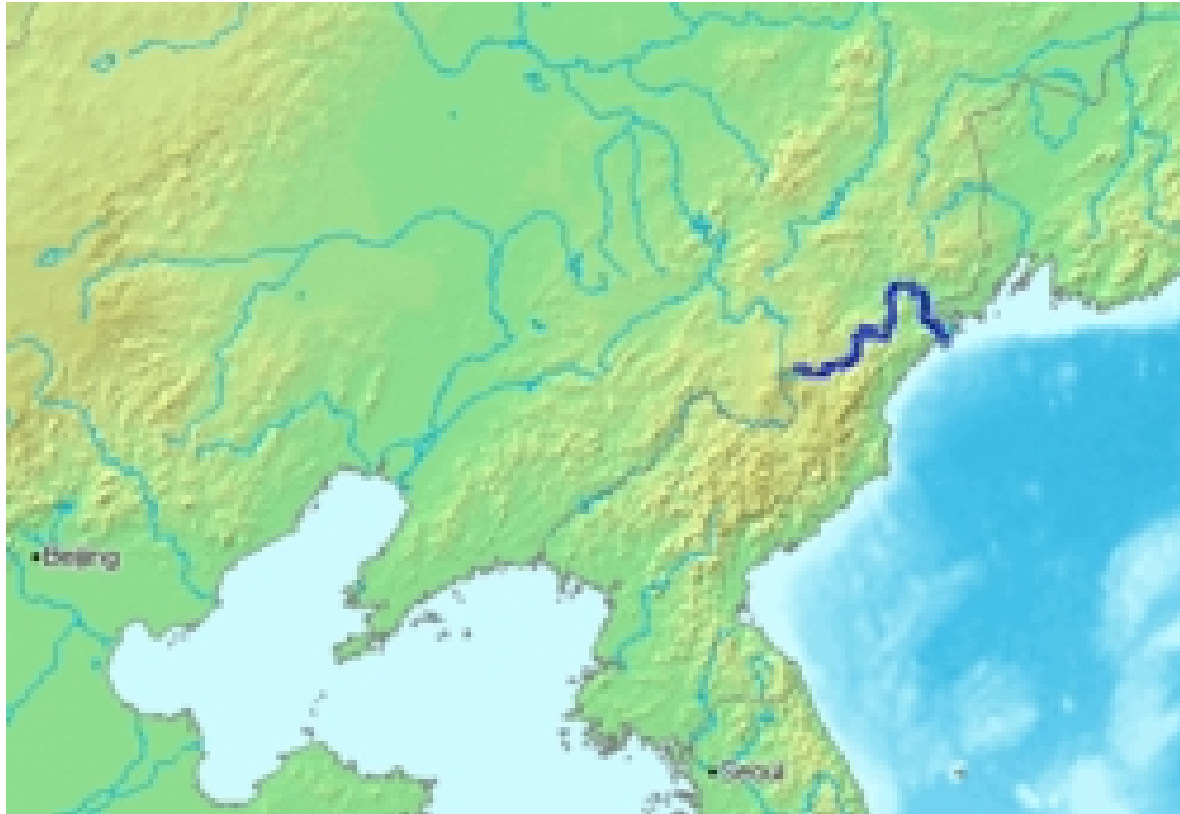
Success in the Caspian Sea has become a model, being followed by the Black Sea etc.

Black Sea Basin



Some similarities to the Caspian Sea

Transboundary EIA Framework for Tumen River Basin



Korea Environment Institute (KEI) has organized seminars for riparian states (China, [North] Korea, Mongolia and Russia) towards establishment of a framework.

Mekong: TbEIA Guidelines Development

Agreed at the meeting, September 2008, Chiang Rai

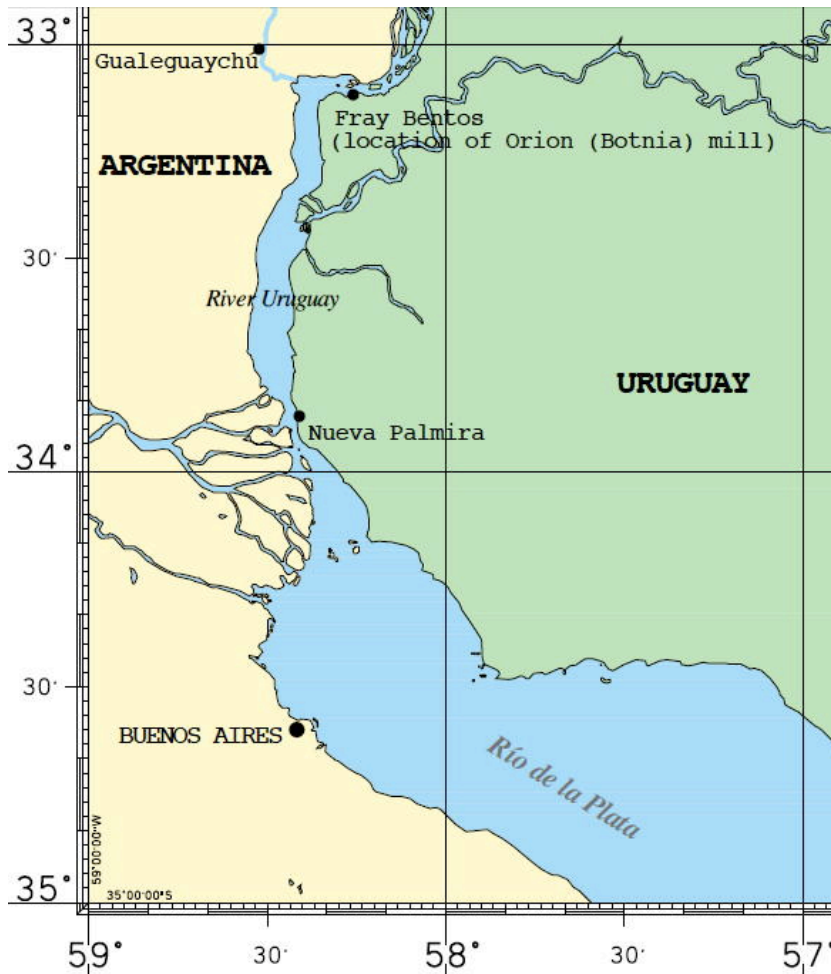


- **TbEIA Guidelines**
 - **Framework**
 - **Technical guidance**
 - **Institutional support**
- **Draft framework completed
(under pilot study and revision)
2008 - 2009**
- **Technical guidance and the
institutional support were
supposed to be drafted following
by pilot studies and revision.**

What should be Stipulated in TbEIA Guidelines?

- **TbEIA for Mekong Basin may have following two components (after ESPOO Convention):**
 - (1) Notification about the planned Project.**
 - (2) Results of Transboundary Environmental Impact Assessment**
- Member states may have less difficulty to agree to (1).**
- Recent judgment by ICJ may break the impasse of (2)?**

Pulp Mills Dispute on the River Uruguay (Argentina versus Uruguay)



Business as usual? Not quite!

ICJ gave the second judgement in its history on International Waters



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

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Website: www.icj-cij.org

Press Release
Unofficial

No. 2010/10
20 April 2010

Pulp Mills on the River Uruguay (Argentina v. Uruguay)

The Court finds that Uruguay has breached its procedural obligations to co-operate with Argentina and the Administrative Commission of the River Uruguay (CARU) during the development of plans for the CMB (ENCE) and Orion (Botnia) pulp mills

The Court declares that Uruguay has not breached its substantive obligations for the protection of the environment provided for by the Statute of the River Uruguay by authorizing the construction and commissioning of the Orion (Botnia) mill

Transboundary EIA must be carried out

Summary of the Judgment of 20 April 2010



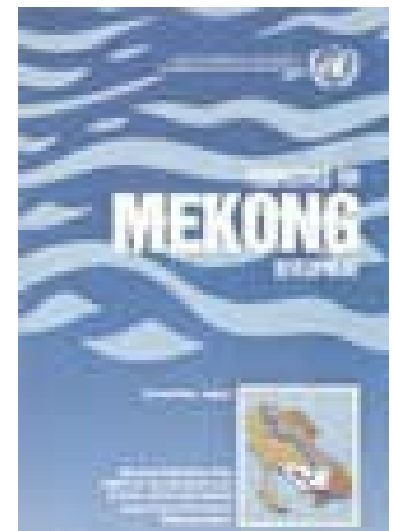
... a practice, which in recent years has gained so much acceptance among States that it may now be considered a **requirement under general international law to undertake an environmental impact assessment** where there is a risk that the proposed industrial activity may have a significant adverse impact **in a transboundary context, in particular, on a shared resource.**

Information Transparency Pays

Comparison between Mekong River and Ganges River

- **Mekong Committee (now Mekong River Commission) has been the focal point for disseminating information about the basin.**
- **It collects and makes available meteorological and hydrological data in the basin, various studies carried out in the past for development and management of the basin, and articles appeared in journals and news papers.**

- **Transparency by guidance of U.N.**
- **Anyone can obtain hydrological data at cost.**
- **Document center served as archives** of hydrological data, project documents, research papers, news clips, meeting minutes, etc.
- **Issues on Mekong are well covered by mass media.**



- This de-facto information transparency policy in the Mekong basin has successfully promoted the **supports from donor countries and organizations** for the sake of economic development of the basin countries.
- It has also resulted in **many academic research activities** in and for the basin by many researchers in the world.

Ganges River (vis-a-vis Mekong River)

- **Hydrological data are classified in India.**
- **No document archives.**
- **As many as 28 thesis on Mekong and only 3 on Ganges by the AIT graduates.**
- **"Information Transparency" made the big difference – It pays.**



What should be done by RBO?

- Carrying out transboundary EIA is not a luxury but a **“must” action** for basin countries.
- RBO should be instrumental to institutionalize **information transparency and symmetry** among member states, in particular for transboundary EIA.
- Espoo Convention could be a good model as regulatory framework for RBOs.
- Institutionalize **“notification by country of origin”** alone should avoid suspicions among members.

Integrated Water Resources Management (IWRM) and Inter-Sector Approach

Packaging Multiple Sector Issues

- **The concept of IWRM, namely taking a holistic (multiple-sector) approach in managing water resources, is now well understood and practiced.**
- **Some “water problems” may not be solved by only looking at Water, even with the IWRM approach.**
- **Trade-offs “between sectors” may lead to a solution.**
- **It is because “More regional (economic) integration, less conflict among riparian states” is the case.**

Regional Frameworks in the Mekong River Basin and its participants

	Sector												Participants						
	a	b	c	d	e	f	g	h	i	j	k	l	T	V	L	C	M	PRC	Others
MRC						○	○	○	○			○	○	○	○	○	□	□	
GMS	○	○	○	○	○	●	●	●	●	○	○	○	○	○	○	○	○	○	ADB
AM-BDC	○	○	○								○		○	○	○	○	○	○	ASEAN
IAI	○	○	○								○		○	○	○	○			ASEAN
AH	○											○	○	○	○	○	○	○	ESCAP
HI-FI				○	○								○	○	○	○			ESCAP
FCDI	○	○	○	○	○					○		○	○	○	○	○			JAPAN
AME-ICC			○	○						○		○	○	○	○	○			JAPAN & ASEAN

a=transportation, b=energy, c=telecommunication, d=trade, e=investment, f=irrigation & agriculture, g=fisheries, h=navigation, i=water resource management, j=environment, k=capacity-building, l=tourism
T=Thailand, V=Viet Nam, L=Lao PRD, C=Cambodia, M=Myanmar,
PRC=People's Republic of China.

“Water Alone” Mekong River Commission (MRC) is no longer the only regional framework for collaboration

ADB-GMS Economic Corridors



Regional integration exists!

Number of Events: From Articles in Bangkok Post (1996-2004).

	1996	1997	1998	1999	2000	2001	2002	2003	2004	
MRC	3	0	0	0	0	1	1	1	1	7
GMS	7	6	2	2	7	2	4	0	1	31
ASEAN	11	1	0	0	1	5	1	2	1	22
Others	1	2	1	2	1	2	0	0	1	10

**MRC is now just one of the (many) actors
in the regional collaboration.**

How “deal” may be reached?

- Upstream country may compromise with downstream country about use of water.
- In return, downstream country may provide upstream country with cheap electricity, free access to sea ports, access to market, etc.

RBO should keep it in mind that non-water sectors should be put into “calculation” of the “balance sheet” among member states towards agreement/solution.

Q and A

