



Environmental Impact Assessment in areas beyond national jurisdiction

国家管辖范围以外海域的 环境影响评估

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What is EIA?

EIA(环境影响报告)是什么？

“appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures”

“采取适当程序，要求就其可能对生物多样性产生不利影响的拟项目进行环境影响评估，以期避免或尽量减轻这种影响，并酌情允许公众参加此种程序。”

CBD (1992)

Process (simplified)

过程(简化版)

- **Screening:** Will the activity/project be subject to an EIA?
- 筛选: 活动/项目需要进行 EIA 吗?
- **Scoping:** Focus, depth and terms of reference
- 范围界定: 关注点、深度和职责范围
- **Assessment:** Evaluation of impacts
- 评估: 评估影响
- **Notification:** Stakeholders notified/consulted
- 通知: 通知利益相关人并为其提供咨询
- **Reporting:** Environmental Impact Statement (EIS)
- 报告: 环境影响报告 (EIS)
- **Decision making**
- 制定决策

Trends

趋势

- Use of EIA growing
- EIA 的使用增多
- Poor quality EIA common; many barriers to good EIA
- EIA 质量低下; 获得优质 EIA 障碍重重
- EIA threatened by “pro-growth” policies
- EIA 受“鼓励增长”政策的威胁
- Marine-specific processes
- 海洋专用流程
- Strategic Environmental Assessment (SEA)
- 战略环境评估 (SEA)

Outcomes

结果

Outcomes are mixed:

结果各不相同：

- Mainstreaming the environment



- 将环境主流化

- Awareness and dialogue



- 意识和对话

- Changing decisions?



- 改变决策？

Good practice

良好实践

- Focus on the environment, impacts, biodiversity
- 关注环境、影响和生物多样性
- Ensure transparency
- 确保透明度
- Involve stakeholders
- 利益相关人参与
- Ability to impose conditions or prohibit activity
- 有附加条款或禁止活动的的能力
- Review mechanism
- 审核机制

Challenges in ABNJ

ABNJ 的挑战

- EIA in the marine environment is complex
- 海洋环境的 EIA 很复杂
- Complicated by nature of ABNJ:
- 因 ABNJ 的性质而变复杂:
 - Geography
 - Practicality
 - Governance
 - 地理
 - 实践性
 - 治理

Existing provisions – UNCLOS Art. 192

现有规定 – UNCLOS 第 192 条

“States have the obligation to protect and preserve the marine environment.”

“各国具有保护和保全海洋环境的义务”

Existing provisions – UNCLOS Art. 204-5

现有规定 – UNCLOS 第 204-5 条

- “States shall... endeavour... to observe, measure, evaluate and analyse... the risks or effects of pollution of the marine environment.”
- “States shall publish reports of the results... or provide such reports at appropriate intervals to the competent international organizations...”
- “各国应在符合其他国家权利的情形下,在实际可行范围内,尽力直接或通过各主管国际组织,用公认的科学方法观察、测算、估计和分析海洋环境污染的危险或影响。”
- “各国应发表依据第二〇四条所取得的结果的报告,或每隔相当期间向主管国际组织提出这种报告,各该组织应将上述报告提供所有国家。”

Existing provisions – UNCLOS Art. 206

现有规定 – UNCLOS 第 206 条

- Reasonable grounds; substantial pollution of or significant and harmful changes; assess potential effects; communicate reports
- “各国如有合理根据认为在其管辖或控制下的计划中的活动可能对海洋环境造成重大污染或重大和有害的变化，应在实际可行范围内就这种活动对海洋环境的可能影响作出评价，并应依照第二〇五条规定的方式提送这些评价结果的报告”

Existing provisions – sectoral agreements

现有规定 – 部门协议

International Seabed Authority/Part XI Agreement (1994)

国际海底管理局/《第十一部分的协定》(1994 年)

- EIA & seabed management plans for seabed mining
- 海底采矿的 EIA 和海底管理计划

London Convention/Protocol (1972)

《伦敦公约/议定书》(1972 年)

- Dumping, ocean fertilization
- 倾倒, 海域施肥

Fish Stocks Agreement (1995), UNGA res.61/105, 64/72

《鱼类种群协定》(1995 年), UNGA res.61/105, 64/72

- Bottom fisheries (RFMOs)
- 底层捕捞 (RFMOs)

Sectors not covered

未涵盖部分

- Seabed activities other than mining
- 海底活动 (除采矿)
- High seas activities other than dumping and some fishing
- 公海活动 (除倾倒和一些捕鱼)

Existing provisions – regional/international

现有规定 – 地区/全球

- Regional seas agreements
- 地区海洋协议
- Suggestions/elements, not obligations/processes
- 建议/元素, 非义务/流程
- E.g. Barcelona Convention (1976) – Mediterranean
- 例如, 《巴塞罗那公约》(1976 年) – 地中海

Existing provisions – Antarctica

现有规定 – 南极洲

Madrid Protocol (1991) 《马德里议定书》（1991 年）

Three level screening process: • 三级筛选流程：

- Preliminary assessment
- Initial environmental evaluation
- Comprehensive environmental evaluation
- 预先评估
- 初步环境评估
- 综合环境评估

Existing provisions – Espoo Convention (1991)

现有规定 – 《埃斯波公约》(1991 年)

- Convention on EIA in a Transboundary Context
 - 跨境 EIA 公约
- Only specific international instrument on EIA
 - 唯一特定国际文书
- Parties required to implement EIA for listed activities likely to cause significant adverse transboundary impact
 - 当事人需对附录中列出的、可能导致重大负面跨境影响的活动进行 EIA
- Protocol on Strategic Environmental Assessment (Kiev Protocol)
 - 战略环境评估议定(《基辅议定书》)

Contribution of a new agreement

新协议的贡献

- Reaffirm obligation; renew focus & impetus
- 重申义务; 更新关注点和推动力
- Set out a clear & uniform process
- 设置清晰而一致的过程
- Cover activities outside sectoral regimes
- 覆盖部门制度之外的活动
- Cumulative assessment; Strategic Environmental Assessment
- 累积评估; 战略环境评估
- Technical support & capacity
- 技术支持和能力

Elements – definition/obligation

元素 – 定义/义务

- Adapt CBD definition
- 采用 CBD 定义
 - *“a process of evaluating the likely environmental impacts, including cumulative impacts, of a proposed project or development.” (IUCN)*
 - “评估提议的项目或开发可能造成的环境影响(包括累积影响)的流程。” (IUCN)
- Impose obligation on States to conduct EIA
- 为国家施加义务, 以进行 EIA

Elements – threshold

元素 – 阈值

- Significant adverse effects?
- 重大副作用?
- Substantial pollution or significant harmful changes?
- 重大污染或重大的有害变化?
- More than a minor or transitory effect?
- 不止是较小或暂时的影响?
- Different in marine protected areas? Always in VMEs/EBSAs?
- 在海洋保护区不同？ 始终存在于 VMEs/EBSAs？
- List of activities always subject to EIA?
- 始终需要 EIA 的活动清单?

Elements – content of EIS

元素 – EIS 内容

- Not defined
- 没有定义的
- Left to be defined
- 尚未定义
- Defined in annex to treaty
- 在 协定的附录中定义

Elements – responsibility

元素 – 责任

- Who?
- 谁？
 - Proponent
 - 提倡者
 - State
 - 国家
- Role of organisations
 - Regional
 - 组织的作用
 - International
 - 地区
- 国际

Elements – notification

元素 – 通知

- All Parties
- 所有当事人
- And/or
- 和/还是
- Special status for adjacent/affected States
- 附近/受影响国家的特殊状态

Elements – stakeholders

元素 – 利益相关人

- Notification
- 通知
- Access to information
- 获得信息
- Opportunity to comment
- 评论机会

Elements – final decision

元素 – 最终决策

- Who?
 - State
 - International organisation
- Effect?
 - Advisory
 - Prevention of activity
 - Conditions
- 谁？
 - 国家
 - 全球组织
- 影响？
 - 咨询
 - 活动预防
 - 状况

Elements – monitoring and reporting

元素 – 监控与报告

- Who?
- 谁？
 - State
 - 国家
 - Proponent
 - 提倡者
- Role of organisations
 - Regional
 - 组织的作用
 - International
 - 地区
 - 国际

Challenges

挑战

- Best practice vs. status quo
- 良好实践 对比 现状
- Pragmatism vs. Ambition
- 实用主义 对比 志向
- Technical challenges
- 技术挑战
- Negotiation challenges
- 谈判挑战

Thank you
谢谢



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