

“Capacity Building and Strengthening Institutional Arrangement”

Workshop: “Environmental Impact Assessment (EIA)  
(for Assessors)”

# **International Legislative framework and Comparative Analysis with National Situations**

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# A quick review on Environmental Impact Assessment EIA

The legal, methodological and procedural foundations of EIA were established in 1970 by the enactment of the National Environmental Policy Act (NEPA) in USA.

This statute recast the government's role: formerly the *conservator* of wilderness, it now became the *protector* of earth, air, land, and water.

The law declared Congressional intent to "create and maintain conditions under which man and nature can exist in productive harmony," and to "assure for all Americans safe, healthful, productive, esthetically and culturally pleasing surroundings."

Henceforth, all federal agencies planning projects bearing on the environment were compelled to submit reports accounting for the likely consequences--the now famous Environmental Impact Statements (EISs).

Specifically, the preparation of an Environmental Impact Statement (EIS) was intended to be an “action forcing mechanism” to implement the law, change the basis of decision-making and apply the methods of interdisciplinary science.

## World-wide adoption of assessment

Twenty years ago, only a handful of countries had introduced EIA.

At the international level, lending banks and bilateral aid agencies have EIA procedures that apply to borrowing and recipient countries.

In addition, within some federal countries, state or provincial jurisdictions have instituted EIA processes that operate separately from the national level.

EIA application start slowly in the world.

Canada (1973, 1995), Australia (1974, 1999), France (1976), Svizzera, World Banque (1984), Europe (UE) (1985), Italy (1986), New Zealand (1991), Egypt (1994).

New or revised EIA legislation enacted by many developing and transitional countries; e.g. Vietnam (1993), Uganda (1994), Ecuador (1997).

**Evolution of Environmental Assessment**

**Process Developments**

Pre 1970	<ul style="list-style-type: none"> <li>- project review based on technical/engineering and economic analysis</li> <li>- little or no consideration given to environmental consequences</li> </ul>
Early/mid-1970s	<ul style="list-style-type: none"> <li>- introduction of EIA principles, guidelines and procedures (NEPA 1970)</li> <li>- standard methodologies for impact analysis developed (e.g., matrix, checklists, networks)</li> <li>- other countries adopt EIA (e.g., Australia, New Zealand)</li> </ul>
Late 1970s to early 1980s	<ul style="list-style-type: none"> <li>- more formalized guidance (e.g., CEQ regulations)</li> <li>- use of EA by developing countries (e.g., Brazil, Philippines, China, Indonesia)</li> <li>- SIA, risk analysis included in EA processes</li> <li>- program EISs prepared in US</li> <li>- environmental inquiries in several countries encompass policy review aspects</li> </ul>
Mid-1980s to end of decade	<ul style="list-style-type: none"> <li>- EC Directive on EIA establishes basic requirements for member states</li> <li>- increasing efforts to address cumulative effects</li> <li>- development of follow-up mechanisms (e.g., compliance and effects monitoring)</li> <li>- ecosystem and landscape level approaches applied</li> <li>- World Bank and other international lending and aid agencies establish EA requirements</li> <li>- increasing number of developing countries carry out EIA (e.g., Asia)</li> </ul>
1990s	<ul style="list-style-type: none"> <li>- requirement to consider transboundary effects under Espoo Convention</li> <li>- EIA identified as implementing mechanism for UN conventions on climate change and biological diversity</li> <li>- SEA systems established in an increasing number of countries</li> <li>- sustainability principles and global issues receive increased attention (some EA guidance but still limited)</li> <li>- increasing use of GIS and other information technologies</li> <li>- greater corporate use of EA, including screening of investment and loan decisions and undertaking site and property assessment to establish liabilities</li> <li>- rapid growth in EIA training, networking and co-operation activities</li> <li>- enactment of EA legislation by many developing countries</li> </ul>

**Fonts- EIA for Industry - Status Report on UNEP TIE Initiative to Improve Industrial Project Planning** through an international workshop held in Paris, France - 30 November - 2 December, 1998  
 UNEP TIE - March 1999  
 The United Nations Environment Programme (UNEP) is the overall coordinating environmental organization of the United Nations system.

In 1987, the World Commission on Environment and Development (WCED), which had been set up in 1983, published a report entitled «Our common future».

We know like «Brundtland Report»

It developed guiding principles for sustainable development as it is generally understood today.

Sustainable development is defined as follows:

«Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.»

In 1989, the report was debated in the UN General Assembly, which decided to organize a UN Conference on Environment and Development.

EIA, if properly designed and coordinated, can be an effective tool for achieving sustainability.

Environmental Impact Assessment (EIA) is a powerful tool for informed decision-making.

It contributes to more environmentally sensitive decisions and the integration of environmental and social considerations in development planning.

It is a process that brings about enhanced coordination between the private sector, government ministries such as environment and planning, and the public.



It contributes to the transparency of the decision-making process during the development, implementation, monitoring and followup stages of a development project.

# International environmental law and policy of relevance to EIA

Significant developments have taken place in international environmental law and policy which are relevant to or applicable by the EIA systems of all countries.

These can be divided into:

- non-binding instruments, such as the Rio Declaration, that establish important principles for sustainable development, including those which need to be reflected in EIA arrangements (e.g. the application of the precautionary principle);
- legal conventions and treaties related to environmental protection at the global or regional level, which carry obligations for signatory countries that may be met through EIA arrangements;
- legal conventions and protocols that apply specifically to EIA arrangements – of which the Espoo Convention is the most notable example.

## International environmental agreements relevant to the application of EIA

Rio Declaration on Environment and Development calls for use of EIA as an instrument of national decision-making (Principle 17) (1992);

The UNECE (Espoo) *Convention on EIA in a Transboundary Context* (1991) entered into force in 1997, is the first multi-lateral EIA treaty. It stipulates the responsibilities of signatory countries with regard to proposals that have transboundary impacts, describes the principles, provisions and procedures to be followed, and lists the activities, content of documentation and criteria of significance that apply. It is the first EIA-specific international treaty.

**UNECE (or Aarhus) Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters** covers the decisions at the level of projects and plans, programmes and policies and, by extension, applies to EIA and SEA (Articles 6 and 7 respectively refer) and in force since 2001.

It was adopted on 25th June 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference in the 'Environment for Europe' process.

Convention's Protocol on Strategic Environmental Assessment, signed in Kiev in 2003

## Agreements related to the Conservation of Nature and Biological Diversity

- *Convention on Biological Diversity* (Rio de Janeiro 1992, entered into force in 1993) promotes conservation of biological diversity and sustainable use of its components. cite EIA as an implementing mechanism (Article 14 refer)
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (Washington 1973, entered into force in 1975) prohibits or regulates commercial trade of listed species.
- *Convention on Wetlands of International Importance Especially in Waterfowl Habitat* (Ramsar 1971, entered into force 1973) aims to prevent loss and encourage wise use of wetlands.

## Agreements related to the Control and Prevention of Pollution

- *Framework Convention on Climate Change* (New York 1992, entered into force 1994) aims to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent 'dangerous interference with climate'. cite EIA as an implementing mechanism (Articles 4 refer)
- *Convention for the Protection of the Ozone Layer* (Vienna 1985, entered into force 1988) including *the Protocol on Substances that Deplete the ozone layer* (Montreal 1995) aims to reduce and eliminate emissions of specified ozone-depleting substances and control other harmful activities.
- *Convention on Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (Basel 1989, entered into force in 1992) aims to control and reduce transboundary movements of hazardous wastes, and assist developing countries in environmentally sound management of the hazardous and other wastes they generate.

The Conventions on Climate Change and Biological diversity are flagship agreements because of their global scope, the importance of the issues that are addressed and their ratification by a large number of countries.

EIA is specified as a mechanism for implementing certain aspects of both agreements. More generally, it can ensure that the proposed actions of signatory countries are in compliance with these and other international environmental agreements, including those listed in Annex 1.

## Europe

**Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment**

***Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment;***

Following the signature of the Aarhus Convention by the Community on 25 June 1998, the Community adopted in May **2003 Directive 2003/35/EC**

**Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment;**



## EUROPE

- The EIA procedure ensures that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.
- The EIA Directive outlines which project categories shall be made subject to an EIA, which procedure shall be followed and the content of the assessment.
- The Directive 2003/35/EC intends to align the provisions on public participation in accordance with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

# Convention on Biological diversity (1)

The first World Summit on Environment and Development in Rio de Janeiro (1992) emphasized the importance of biodiversity as the basis of our very existence, to be used wisely and sustainably and conserved for current and future generations.

The main threats to global biodiversity are associated with human activities causing habitat loss or damage.

The Convention on Biological Diversity (CBD)  
the Ramsar Convention

The Convention on Migratory Species (CMS)  
recognize IA as an important decision-support tool to help plan and implement development with biodiversity “in mind.”

## Convention on Biological diversity (2)

- The Conventions require Signatories (“Parties”) to apply EIA and SEA to proposals with potential negative impacts on biodiversity to help meet their objectives, so that development proposals respect mechanisms for the **conservation** of biodiversity, result in **sustainable use** of biodiversity resources, and ensure **fair and equitable sharing** of the benefits arising from use of biodiversity.
- IA provides opportunities to ensure that biodiversity values are recognized and taken into account in decision-making. Importantly, this involves a participatory approach with people who might be affected by a proposal.

## Convention on Biological diversity

Signed by 150 government leaders at the 1992 Rio Earth Summit, the Convention on Biological Diversity is dedicated to promoting sustainable development.

Conceived as a practical tool for translating the principles of Agenda 21 into reality, the Convention recognizes that biological diversity is about more than plants, animals and micro organisms and their ecosystems – it is about people and our need for food security, medicines, fresh air and water, shelter, and a clean and healthy environment in which to live

Party to: Convention Since: 2 June 1994 (*by Ratification*)

Signature Date: 9 June 1992

## Documents and web site related (1)

- Convention on Biological Diversity. *Convention Text*.  
(<http://www.biodiv.org/convention/articles.asp>)
- Convention on Biological Diversity: *Decision V/6 Ecosystem Approach*  
(<http://www.biodiv.org/decisions/default.aspx?m=COP-05&id=7148&lg=0>) and *Decision VII/11 Ecosystem Approach*  
(<http://www.biodiv.org/decisions/default.aspx?m=COP-07&id=7748&lg=0>)
- CBD (2002). *CoP Decision VI/7A: Further development of guidelines for incorporating biodiversity related issues into environmental-impact-assessment legislation or processes and in strategic impact assessment*.  
(<http://www.biodiv.org/decisions/default.aspx?m=COP-06&id=7181&lg=0>)
- IAIA (2004) *Biodiversity & Impact Assessment Key Citations*.  
([http://www.iaia.org/Non\\_Members/Activity\\_Resources/key\\_re sources.htm](http://www.iaia.org/Non_Members/Activity_Resources/key_resources.htm))

## Documents and web site related (1)

- IUCN (2004) *Red List of Threatened Species*. (<http://www.redlist.org/>)
- Millennium Ecosystem Assessment (2003). *Ecosystems and Human Well-being: A Framework for Assessment*. Island Press. (<http://www.millenniumassessment.org/en/products.ehwb.aspx>)
- Ramsar Wetlands Convention (2002) Resolution VIII.9 *Guidelines for incorporating biodiversity related issues into EIA legislation and/or processes and in SEA' adopted by the CBD, and their relevance to the Ramsar Convention*. ([http://ramsar.org/res/key\\_res\\_viii\\_09\\_e.htm](http://ramsar.org/res/key_res_viii_09_e.htm))
- Ramsar Convention Secretariat (2004) *Ramsar handbooks for the wise use of wetlands, Volume 11*
- *Impact Assessment*. ([http://indaba.iucn.org/ramsarfilms/lib\\_handbooks\\_e11.pdf](http://indaba.iucn.org/ramsarfilms/lib_handbooks_e11.pdf))
- Precautionary Principle. (<http://www.pprinciple.net/index.html>)

# Protocol on Strategic Environmental Assessment (Kiev, 2003) - the 'SEA Protocol'

The Kiev (SEA) Protocol, once in force, will require its Parties to evaluate the environmental consequences of their official draft plans and programmes.

SEA is undertaken much earlier in the decision-making process than EIA -- it is therefore seen as a key tool for sustainable development.

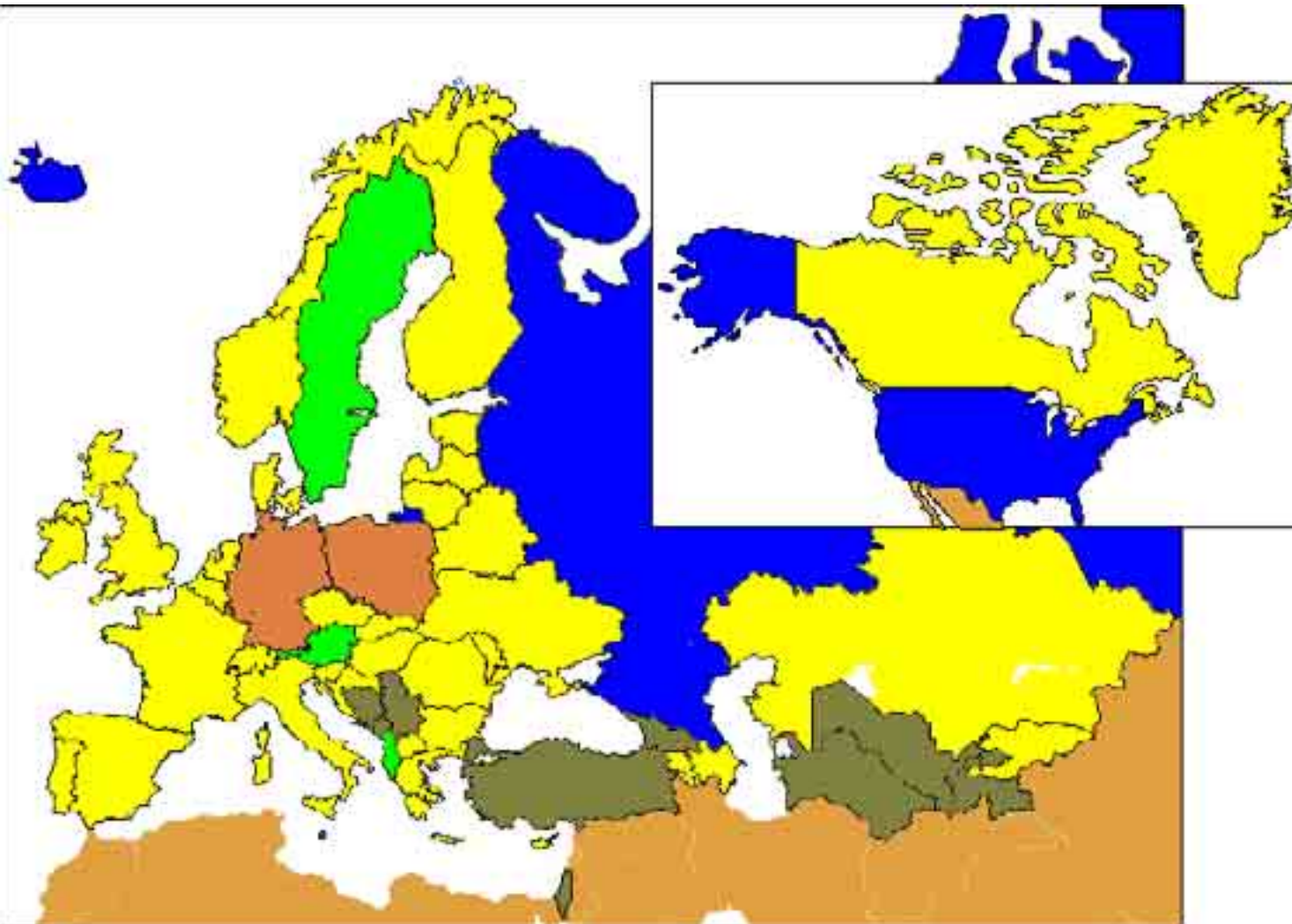
The Protocol also provides for extensive public participation in government decision-making in numerous development sectors

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

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 borders.



# ESPOO



Ratified Convention & first & second Amendments (green)

Ratified Convention & first Amendment (orange Dark)

Ratified Convention (Yellow)

Signed Convention (Blu)

Other UNECE member State (brown)

Non UNECE Member (orange)

# UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998)

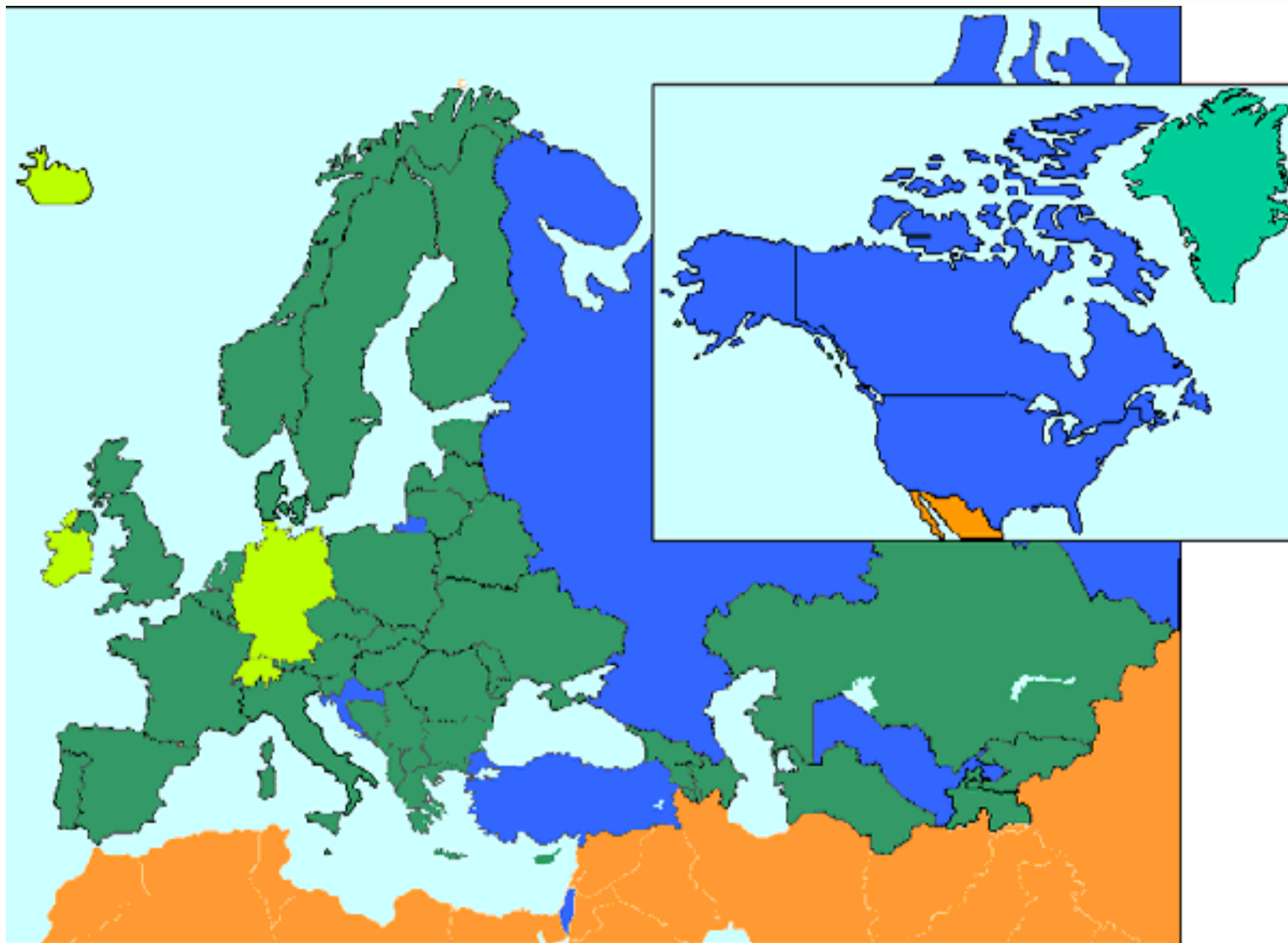
The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and human rights.

It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It links government accountability and environmental protection. It focuses on interactions between the public and public authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.

The Convention is not only an environmental agreement, it is also a Convention about government accountability, transparency and responsiveness.

The Aarhus Convention grants the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice.

The Convention entered into force on 30 October 2001 and progress of ratification is still relatively rapid.



**R**  
 Ratified  
 (green)

**a**  
 Signatories  
 (light green)

**l**  
 Non signatorie  
 Unece  
 members (blu)

**f**  
 Non Unece  
 Members  
 States (orange)

**e**

The second meeting of the Parties took place in Almaty, Kazakhstan, on 25-27 May 2005

The Meeting also adopted the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums and a number of decisions addressing both substantive and procedural issues.

It adopted the Almaty Declaration setting out the aspirations and priorities of the Parties and other stakeholders.

# Report of the Second Meeting of the Parties Addendum Almaty Declaration

With the adoption of the Protocol on Strategic Environmental Assessment to the Espoo Convention, a contribution has been made to the implementation of article 7 of the Aarhus Convention.

However, we recognize the need for further work to clarify how public participation in decision-making on plans, programmes and, to the extent appropriate, policies is to be organized in other contexts relating to the environment.

## Draft Decision II/2 – Promoting Effective Access to Justice

Also recommends that the Aarhus Convention and its implementation should receive full attention in the context of all activities designed to implement the Johannesburg Principles in the UNECE region and that the secretariat should explore possibilities for cooperating with the United Nations Environment Programme (UNEP) to this effect;



## Article 1 - OBJECTIVE

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

(Each Party Shall apply the provisions of article 6 – Public participation in decisions on specific activities- with respect to decisions on whether to permit proposed activities listed in annex I)



## Egypt (**Source Unep 2006** )

- National Plan of Action to Combat Desertification 2005
- National Environmental Action Plan 2002-2017
- National Biodiversity Strategy and Action Plan 1998
- National Water Policy 2005

### **The Convention (art. 1, Law 4/1994) (source Web site):**

The International Convention for the Prevention of Marine Pollution from Ships (1973-1978), and international conventions, to which the Arab Republic of Egypt adheres, in the area of the protection of the marine environment from pollution and compensation for pollution accidents.