

# **Transboundary Environmental Impact Assessment provisions in selected Regional Agreements**

## **Introduction**

The Background of this report provides a survey and critical review of existing EIA provisions in regional agreements.

The aim of this report on transboundary environmental impact assessment provisions in selected Regional Agreements is to develop and to promote EIA in a transboundary context in describing the different EIA process in order *“to attain the greatest similarity in standards and methods related to the implementation of environmental impact assessment”* (Appendix VI *Elements for Bilateral and Multilateral co-operation of Espoo Convention*).

After reviewing all regional and global environmental agreements dealing with environmental impact assessment in a transboundary context, two of those treaties have been retained according to their region scope.

First example will be the Barcelona Convention and its protocols. Second example will be the Cartagena Convention and its protocols.

# Example 1. Analysis of Transboundary Environmental impact assessment provisions under the Barcelona Convention and its protocols

The Convention for the protection of the Mediterranean Sea against pollution was adopted on 16 February 1976 in Barcelona and entered in force on 12 February 1978. By 1 February 2003, 22 countries including the European Community, were Parties to this Convention.

The Barcelona Convention has been modified by the Barcelona amendments on 10 June 1995 (not yet in force) and will be named Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention). Protocols related to the Barcelona Convention are:

- *Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Dumping Protocol)*, Barcelona, 16 February 1976 (entered into force on 12 February 1978). Amended in Barcelona the 10 June 1995, this Protocol will be *Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea* (not yet in force).
- *Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (Emergency Protocol)*, Barcelona, on 16 February 1976 (entered into force on 12 February 1978).
- *Protocol Concerning Co-operation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea*, Valletta, 25 January 2002 (entered into force on 17 March 2004).
- *Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (LBS Protocol)*, Athens, on 17 May 1980 (entered into force on 17 June 1983). Amended in Syracuse, 7 March 1996, this protocol will be named *Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities* (not yet in force).
- *Protocol Concerning Mediterranean Specially Protected Areas (SPA Protocol)*, Geneva, on 3 April 1982 (entered into force on 23 March 1986).
- *Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA and Biodiversity Protocol)*, Barcelona, on 10 June 1995 (entered into force on 12 December 1999).
- *Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (Offshore Protocol)*, Madrid, on 14 October 1994 (not yet in force).

- *Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Hazardous Wastes Protocol)*, Izmir, on 1 October 1996 (not yet in force).

The main objectives of the Barcelona Convention and its protocols are the assessment, control, cooperation and protection of the marine environment and coastal region of the Mediterranean Sea area. These objectives could be achieved through the application of environmental impact assessment -I- in a transboundary context - II - and public participation - III.

## I. Environmental Impact Assessment procedure

In order to protect the environment and to guarantee sustainable development, the *Article 4 on General Obligations*<sup>1</sup> of the *Convention for the Protection of the Mediterranean Sea against pollution*, adopted in Barcelona, 9 February 1976<sup>2</sup> provides the application of the transboundary EIA to activities that are likely to cause a significant adverse impact on Mediterranean Sea by all the Parties.

Although, this provision does not include a list of activities that could trigger environmental impact assessment, it offers more flexibility by covering all activities that are likely to cause a significant impact on marine environment. Nevertheless, the *Barcelona Convention* does not provide any guidance to assess when an activity is likely to cause a significant impact<sup>3</sup>. In this case, an activity with a non-negligible effect on Mediterranean environment can be considered to have a significant impact on Mediterranean environment.

According to the *Barcelona Convention*, the competent authority to authorize activities “that are likely to cause a significant adverse impact on the marine environment ”<sup>4</sup> can only

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<sup>1</sup> **Article 4 General Obligations**

3. *In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall: (...)*

(c) *undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment and are subject to an authorization by competent national authorities;*

(d) *promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation;*

<sup>2</sup> <http://eelink.net/~asilwildlife/barcelona.html>

<sup>3</sup> At the opposite, to define a significance of impact, the Espoo Convention considers size, location and effects of proposed activity (Appendix III)

<sup>4</sup> **Article 4 General Obligations**

3. *In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall: (...)*

be a national competent authority. This provision stipulates when, by whom and to whom<sup>5</sup> notification, exchange of information and consultation have to be given when the potential of a significant transboundary impact exists.

*Annex IV “Environmental Impact Assessment” to the Protocol concerning the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, Madrid, 14 October 1994*<sup>6</sup> concerns the general requirement to assess Environmental Impact of a projected activity. *Annex IV* provides at least the guidance on what must be included in an Environmental Impact Assessment process in Mediterranean Sea area. Environmental Impact Assessment documentation must include<sup>7</sup>:

- “A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable;
- A description of the initial state of the environment of the area;
- An indication of the nature, aims, scope and duration of the proposed activities;
- A description of the methods, installations and other means to be used, possible alternatives to such methods and means;
- A description of the foreseeable direct or indirect short and long-term effects of the proposed activities on the environment, including fauna, flora and the ecological balance;

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(c) undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment and are subject to an authorization by competent national authorities;

<sup>5</sup> **Article 4 General Obligations**

3. In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall: (...)

(d) Promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation;

<sup>6</sup> [http://www.unepmap.gr/Archivio/All\\_Languages/WebDocs/BC&Protocols/Offshore94\\_eng.pdf](http://www.unepmap.gr/Archivio/All_Languages/WebDocs/BC&Protocols/Offshore94_eng.pdf)

<sup>7</sup> **Annex IV Environmental Impact Assessment**

1. Each Party shall require that the environmental impact assessment contains at least the following:

(a) A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable;

(b) A description of the initial state of the environment of the area;

(c) An indication of the nature, aims, scope and duration of the proposed activities;

(d) A description of the methods, installations and other means to be used, possible alternatives to such methods and means;

(e) A description of the foreseeable direct or indirect short and long-term effects of the proposed activities on the environment, including fauna, flora and the ecological balance;

(f) A statement setting out the measures proposed for reducing to the minimum the risk of damage to the environment as a result of carrying out the proposed activities, including possible alternatives to such measures;

(g) An indication of the measures to be taken for the protection of the environment from pollution and other adverse effects during and after the proposed activities;

(h) A reference to the methodology used for the environmental impact assessment;

(i) An indication of whether the environment of any other State is likely to be affected by the proposed activities.

2. Each Party shall promulgate standards taking into account the international rules, standards and recommended practices and procedures, adopted in accordance with Article 23 of the Protocol, by which environmental impact assessments are to be evaluated.

- *A statement setting out the measures proposed for reducing to the minimum the risk of damage to the environment as a result of carrying out the proposed activities, including possible alternatives to such measures;*
- *An indication of the measures to be taken for the protection of the environment from pollution and other adverse effects during and after the proposed activities;*
- *A reference to the methodology used for the environmental impact assessment;*
- *An indication of whether the environment of any other State is likely to be affected by the proposed activities."*

Under the Annex IV, even if Parties referred to their own laws and procedures in the EIA process, they are required to promulgate standards in order to assess environmental impact in accordance with international rules, standards, recommend practices and procedures.

## II. Transboundary Context

The central purpose of *Article 4 General Obligations*<sup>8</sup> of the *Barcelona Convention*<sup>9</sup>, regarding transboundary context, is to promote cooperation between States and to ensure that a potentially affected state is aware of its potential significant transboundary impact of the planned activity.

Moreover, *Article 11 Pollution Resulting From The Transboundary Movements Of Hazardous Wastes And Their Disposal*<sup>10</sup> of the *Barcelona Convention* provides that Parties shall take appropriate measures to prevent, abate or eliminate transboundary pollution.

Besides, *Article 26 Transboundary Pollution of the Protocol concerning the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, Madrid, 14 October 1994 (Offshore Protocol)*<sup>11</sup> provides that each Party shall assess the environmental impact of any

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<sup>8</sup> **Article 4 General Obligations**

3. *In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall:*

(...)

(d) *promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation;*

<sup>9</sup> <http://eelink.net/~asilwildlife/barcelona.html>

<sup>10</sup> **Article 11 Pollution Resulting From The Transboundary Movements Of Hazardous Wastes And Their Disposal**

*The Contracting Parties shall take all appropriate measures to prevent, abate and to the fullest possible extent eliminate pollution of the environment, which can be caused by transboundary movements, and disposal of hazardous wastes, and to reduce to a minimum, and if possible eliminate, such transboundary movements.*

<sup>11</sup> **Article 26 Transboundary Pollution**

1. *Each Party shall take all measures necessary to ensure that activities under its jurisdiction are so conducted as not to cause pollution beyond the limits of its jurisdiction.*

planned activity in its territory, especially in transboundary area, in a way to prevent or minimize an impact on the Convention area.

Party aware of a potential significant transboundary impact of planned activity shall immediately notify other Parties and the coordination body established under Barcelona Convention, the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC). Furthermore, the aware Party shall inform all potentially affected States and the REMPEC, which will in turn inform other Parties.

*Article 26 Transboundary Pollution* also provides that even if a Contracting Party is affected by the activity of a neighbouring State, which is not a contracting party to the Protocol, it shall try to cooperate with the Origin State in the application of this protocol.

*Annex IV "Environmental Impact Assessment" to the Protocol concerning the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, Madrid, 14 October 1994*<sup>12</sup> also requires an "indication of whether the environment of any other State is likely to be affected by the proposed activities" to be involved in the EIA documentation.

### III. Public Participation

According to the *Article 15 Public Information And Participation* of the *Convention for the Protection of the Mediterranean Sea against pollution, Barcelona, 9 February 1976*<sup>13</sup>, each party is required to grant the appropriate information on the environmental state of the Barcelona Convention and its protocols area<sup>14</sup> to the public

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2.A Party within whose jurisdiction activities are being envisaged or carried out shall take into account any adverse environmental effects, without discrimination as to whether such effects are likely to occur within the limits of its jurisdiction or beyond such limits.

3.If a Party becomes aware of cases in which the marine environment is in imminent danger of being damaged, or has been damaged, by pollution, it shall immediately notify other Parties which in its opinion are likely to be affected by such damage, as well as the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), and provide them with timely information that would enable them, where necessary, to take appropriate measures. REMPEC shall distribute the information immediately to all relevant Parties.

4.The Parties shall endeavour, in accordance with their legal systems and, where appropriate, on the basis of an agreement, to grant equal access to and treatment in administrative proceedings to persons in other States who may be affected by pollution or other adverse effects resulting from proposed or existing operations.

5.Where pollution originates in the territory of a State, which is not a Contracting Party to this Protocol, any Contracting Party affected shall endeavour to cooperate with the said State so as to make possible the application of the Protocol.

<sup>12</sup> [http://www.unepmap.gr/Archivio/All\\_Languages/WebDocs/BC&Protocols/Offshore94\\_eng.pdf](http://www.unepmap.gr/Archivio/All_Languages/WebDocs/BC&Protocols/Offshore94_eng.pdf)

<sup>13</sup> <http://eelink.net/~asilwildlife/barcelona.html>

<sup>14</sup> **Article 15 Public Information And Participation**

and to ensure the opportunity for the public to participate in decision-making processes.

Nevertheless, the *Article 15 Public Information And Participation* states some circumstances such as confidentiality, public security or investigation proceedings that exclude the provision of information to the public as well as participation in EIA process<sup>15</sup>.

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*1. The Contracting Parties shall ensure that their competent authorities shall give to the public appropriate access to information on the environmental state in the field of application of the Convention and the Protocols, on activities or measures adversely affecting or likely to affect it and on activities carried out or measures taken in accordance with the Convention and the Protocols.*

*2. The Contracting Parties shall ensure that the opportunity is given to the public to participate in decision-making processes relevant to the field of application of the Convention and the Protocols, as appropriate.*

*3. The provision of paragraph 1 of this Article shall not prejudice the right of Contracting Parties to refuse, in accordance with their legal systems and applicable international regulations, to provide access to such information on the ground of confidentiality, public security or investigation proceedings, stating the reasons for such a refusal.*

<sup>15</sup> **Article 15 Public Information And Participation**

(...)

*3. The provision of paragraph 1 of this Article shall not prejudice the right of Contracting Parties to refuse, in accordance with their legal systems and applicable international regulations, to provide access to such information on the ground of confidentiality, public security or investigation proceedings, stating the reasons for such a refusal.*

## **Example 2. Analysis of Transboundary Environmental impact assessment provisions under the Cartagena Convention and its protocols.**

The *Convention for the protection and development of the marine environment of the Wider Caribbean region* was adopted on 24 March 1983 in Cartagena de Indias, Colombia, and entered into force on 11 October 1986. By 1 May 2003, 21 countries, including the European Community, were Parties to this Convention.

Some Protocols are related to the Cartagena Convention as:

- *Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region (Oil Spills Protocol)*, Cartagena de Indias, on 24 March 1983 (entered into force on 11 October 1986).
- *Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (SPAW Protocol)*, Kingston, on 18 January 1990 (entered into force on 18 June 2000).
- *Protocol Concerning Pollution from Land-Based Sources and Activities in the Wider Caribbean Region (LBS Protocol)*, Oranjestad, on 6 October 1999 (not yet in force).

The objectives of Cartagena Convention and its protocols are to protect marine environment and coastal resources as well as to promote sustainable development in Wider Caribbean region.

Therefore the Parties are required to perform an environmental impact assessment - I - of important development projects in order to prevent or reduce harmful impacts on the area of application - II - and to promote information to the public as well as public participation in EIA process- III.

### **I. Environmental Impact Assessment procedure**

*Article 12 Environmental Impact Assessment of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean region, Cartagena de Indias, 24 march 1983*<sup>16</sup> provides that each Party shall develop guidelines to assist the planning of project in order for prevention or minimization of a harmful impact on Wider Caribbean region<sup>17</sup>.

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<sup>16</sup> [http://eelink.net/~asilwildlife/carri\\_marine.html](http://eelink.net/~asilwildlife/carri_marine.html)

<sup>17</sup> **Article 12 Environmental Impact Assessment**

*Article 12 Environmental Impact Assessment* requires that each Party assesses the potential effect of a planned project on Wider Caribbean marine environment, especially on coastal areas, in order to take appropriate measures to prevent any pollution in Wider Caribbean.

*Article 12 Environmental Impact Assessment* states that the Party of origin shall inform and consult the potential affected Parties. This article also provides an opportunity to the potential affected States to comment the proposed project.

In comparison to the *Cartagena Convention, the Protocol Concerning Pollution from Land-Based Sources and Activities to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean, Oranjestad (Aruba), 6 October 1999*<sup>18</sup> provides a more detailed description of the Environmental Impact Assessment process in the Wider Caribbean region.

*Article VII Environmental Impact Assessment*<sup>19</sup> clearly promotes the development and adoption of agreed guidelines on environmental impact assessment among the Contracting Parties.

Moreover, *Article VII Environmental Impact Assessment* requires an assessment of potential environmental impact of the planned activity, when this activity is subjected to regulatory control and when it is likely to cause a substantial pollution or harmful changes of the Wider Caribbean region.

In its decision-making process, the competent government authority<sup>20</sup> shall take in consideration this assessment.

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*As part of their environmental management policies the Contracting Parties undertake to develop technical and other guidelines to assist the planning of their major development projects in such a way as to prevent or minimize harmful impacts on the Convention area.*

*Each Contracting Party shall assess within its capabilities, or ensure the assessment of, the potential effects of such projects on the marine environment, particularly in coastal areas, so that appropriate measures may be taken to prevent any substantial pollution of, or significant and harmful changes to, the Convention area.*

*With respect to the assessments referred to in paragraph 2, each Contracting Party shall, with the assistance of the Organization when requested, develop procedures for the dissemination of information and may, where appropriate, invite other Contracting Parties which may be affected to consult with it and to submit comments.*

<sup>18</sup> [http://www.cep.unep.org/pubs/legislation/lbsmp/final\\_protocol/protocol\\_eng.doc](http://www.cep.unep.org/pubs/legislation/lbsmp/final_protocol/protocol_eng.doc)

<sup>19</sup> **Article VII Environmental Impact Assessment**

*1. The Contracting Parties shall develop and adopt guidelines concerning environmental impact assessments, and review and update those guidelines as appropriate.*

*2. When a Contracting Party has reasonable grounds to believe that a planned land-based activity on its territory, or a planned modification to such an activity, which is subject to its regulatory control in accordance with its laws, is likely to cause substantial pollution of, or significant and harmful changes to, the Convention area, that Contracting Party shall, as far as practicable, review the potential effects of such activity on the Convention area, through means such as an environmental impact assessment.*

*3. Decisions by the competent government authorities with respect to land-based activities, referred to in paragraph 2 above, should take into account any such review.*

*4. Each Contracting Party shall, subject to its domestic law and regulations, seek the participation of affected persons in any review process conducted pursuant to paragraph 2 above, and, where practicable, publish or make available relevant information obtained in this review.*

This article further refers to the national law of the Party of origin to conduct Environmental Impact Assessment, even if the impact is considered to be in a transboundary context, and to seek the participation of potential affected parties<sup>21</sup>.

## II. Transboundary Context

*Article 12 Environmental Impact Assessment of the Cartagena Convention*<sup>22</sup> states that when a contracting Party is affected by planned project, the Party of origin shall inform, consult and receive some comments from the potential affected party. *Article 12 Environmental Impact Assessment of the Cartagena Convention* also stipulates on the assistance of the Organization.

*Article IX Transboundary Pollution*<sup>23</sup> of the *Protocol Concerning Pollution from Land-Based Sources and Activities to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean, Oranjestad (Aruba), 6 October 1999*<sup>24</sup> stipulates that in case of environmental impact on coastal or marine environment of Contracting Part(y)ies, the Party of origin shall consult every affected countr(y)ies in order to minimize the effect on Wider Caribbean region.

## III. Public Participation

According to *Article 12 Environmental Impact Assessment of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean region, Cartagena de Indias, 24 march 1983*<sup>25</sup>, each party shall inform and consult any potential affected Parties<sup>26</sup>.

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<sup>20</sup> Which has a decision-making power regarding a project.

<sup>21</sup> **Article VII Environmental Impact Assessment**

(...)

*4. Each Contracting Party shall, subject to its domestic law and regulations, seek the participation of affected persons in any review process conducted pursuant to paragraph 2 above, and, where practicable, publish or make available relevant information obtained in this review.*

<sup>21</sup> Which has a decision-making power regarding a project.

<sup>22</sup> [http://eelink.net/~asilwildlife/carri\\_marine.html](http://eelink.net/~asilwildlife/carri_marine.html)

<sup>23</sup> **Article IX Transboundary Pollution**

*Where pollution from land-based sources and activities originating from any Contracting Party is likely to affect adversely the coastal or marine environment of one or more of the other Contracting Parties, the Contracting Parties concerned shall use their best efforts to consult at the request of any affected Contracting Party, with a view to resolving the issue.*

<sup>24</sup> [http://www.cep.unep.org/pubs/legislation/lbsmp/final\\_protocol/protocol\\_eng.doc](http://www.cep.unep.org/pubs/legislation/lbsmp/final_protocol/protocol_eng.doc)

<sup>25</sup> [http://eelink.net/~asilwildlife/carri\\_marine.html](http://eelink.net/~asilwildlife/carri_marine.html)

<sup>26</sup> **Article 12 Environmental Impact Assessment**

*With respect to the assessments referred to in paragraph 2, each Contracting Party shall, with the assistance of the Organization when requested, develop procedures for the dissemination of information and may, where appropriate, invite other Contracting Parties which may be affected to consult with it and to submit comments.*

*Article X Participation of the Protocol Concerning Pollution from Land-Based Sources and Activities to the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean, Oranjestad (Aruba), 6 October 1999<sup>27</sup>, in greater detail than the Cartagena Convention, provides that each party shall promote public access, information to the public as well as public participation in decision-making processes concerning pollution in Wider Caribbean area<sup>28</sup> according to their national laws.*

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<sup>27</sup> [http://www.cep.unep.org/pubs/legislation/lbsmp/final\\_protocol/protocol\\_eng.doc](http://www.cep.unep.org/pubs/legislation/lbsmp/final_protocol/protocol_eng.doc)

<sup>28</sup> Each Contracting Party shall, in accordance with its national laws and regulations, promote public access to relevant information and documentation concerning pollution of the Convention area from land-based sources and activities and the opportunity for public participation in decision-making processes concerning the implementation of this Protocol.