

THE ENVIRONMENTAL IMPACT ASSESSMENT OF THE INTERNATIONAL TREATIES ON ENVIRONMENT

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ABSTRACT: The aim of this paper is to propose the institutionalization of the Environmental Impact Assessment, under the form of the Strategic Environmental Assessment (SEA), by the international law, in order to define and monitor the implementation of the necessary strategic actions for compliance with the international treaties on environment. The goal of this proposal is to improve the international environmental norms efficiency. This is a twofold challenge because on one hand, the strategic planning will improve the quality of public actions to be implemented by the Parties in order to comply with the environmental treaties, and, on the other hand, it will contribute to improve control mechanisms of such treaties. A specific methodology for the application of SEA to implement the international environmental treaties is presented, as well as three possibilities of institutionalization at the international level of the proposed legal instrument: through a statement in a environmental declaration of the United Nations; through an international convention of strategic environmental assessment of the environmental treaties or by the modification of the Vienna Convention on the Law of Treaties.

KEY WORDS: International Law; Environment; Environmental Impact Assessment; Strategic Environmental Assessment; International Treaties on Environment.

STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) OF INTERNATIONAL ENVIRONMENTAL TREATIES

1. INTRODUCTION

Due to its own nature, international environmental law has the peculiarity of having to take into account time dimension, that is to say, short and long term developments. The nature inherent to environmental issues is such that very frequently it is impossible to define future actions, since they will be strongly influenced by scientific and technological evolution.

Thus, controlling the enforcement of conventional norms must be systematic and essentially preventive, since environmental damages are normally irreversible or very difficult to repair. It is also important to remember that it is extremely difficult to hold a State accountable for failing to comply with international law. Due to their preventive nature, control mechanisms are not implemented as a reaction to the infringement of an obligation and do not normally lead to the punishment of a State. Instead, they are used as an assistance to enforce conventional norms. This assistance can be financial, technical, juridical or of any other type. Cooperation substitutes sanction measures or reparation. An adequate control procedure must combine the reactive nature, encouraging and promoting the compliance with the obligations.

Because of the reasons explained above, the aim here is to propose the institutionalization of the environmental impact assessment by international law, under the

form of an strategic environmental assessment, to define and follow up the implementation of the required strategic actions by the Parties in order to comply with the environmental treaties. These Treaties have a universal or regional vocation and are completely dedicated to environmental defense.

What is the goal of implementing the strategic environmental assessment of the international treaties on environment?

The answer is EFFICIENCY, and must be understood as the combination of efficacy and effectiveness in the environmental conventional norms.

However, in order to have a really satisfactory control of efficiency in its two aspects, the instrumental and the material one, it is of paramount importance to know the natural environment of the State that receives the conventional norms, both its situation before the Treaty came into force and during its implementation. It is also necessary to know the strategic actions (public policies) that will be implemented by the Parties, and that are able to influence the environment within the sphere of activity of the signed Treaty, in order to verify if they are compatible.

Finally, it is necessary to follow up the implementation of public actions dedicated to respect the treaty in order to analyze if conventional goals are in fact being achieved. The environmental impact assessment, under the form of the strategic environmental assessment, is the adequate juridical instrument to obtain such knowledge. Thus, in order to satisfactorily achieve this goal, the SEA must have a specific methodology to analyze the implementation of international treaties on environment.

The juridical instrument that institutionalizes the Strategic Environmental Assessment of international treaties on environment must include the different procedural phases that should to be well defined.

The Strategic Environmental Assessment procedure must initially include a plan to carry out a study of the current environmental situation at the territory of the Party regarding the object of the Treaty. The goals of the conventional norm must be put forward and it has to be informed if there is any incompatibility between these goals and other planned or ongoing public actions by the Party. Public participation must be guaranteed at an early stage, and scoping has to be explicitly included.

Different strategic actions to achieve the proposed goals (alternative actions) must be assessed. The Strategic Environmental Assessment allows us to analyze the environmental effects of public actions in comparison to those different to what had been planned or programmed and it introduces corrective or compensatory measures that correct undesired environmental consequences.

Another extremely important aspect that cannot be ignored by the Strategic Environmental Assessment is the so called follow up or monitoring. The real effects produced in the environment as a consequence of implementing the chosen strategic actions must be observed in order to identify the unplanned effects and to adopt adequate correction measures. It is only at the follow up stage of the SEA that the efficiency of the implemented actions can be checked, making possible to contrast the environmental factual reality with the previous situation in the territories of the Parties and to carry out the modifications that may be necessary. Similarly, since communication is an inherent feature of the follow up stage, the entities that control the Treaty and according to the rules defined by it, may call upon the Parties to implement actions in order to achieve an appropriate compliance and to help them technically and with the material resources needed.

New obligations coming from the outcome of the environmental monitoring stage may be determined in an additional protocol on each treaty. Also, conventional arrangements subject to a simplified modification may be easily altered to meet the needs that may appear.

2. The juridical nature of the proposed juridical instrument

2.1 *The choice of Soft Law*

The SEA of environmental international treaties could be included in a statement of a new United Nations Declaration on Environment that would exhort the States to introduce in

each new international environmental treaty a norm making compulsory for the Parties a SEA procedure with the goal of defining and following up the implementation of strategic actions on their own territories, in order to comply with environmental treaties. Thus, all the knowledge obtained with the SEA will be passed on to the control entities of each treaty.

This option means an important innovation if we take into account the lack of anything similar in most universal declarations on environment. The statement proposed would stimulate the use of SEA by the Parties, encouraging public participation (which is inherent to the SEA procedure), in controlling the compliance with the conventional norms. We can then conclude that conventional norms would gain greater efficiency and that currently existing control mechanisms would be gradually improved and harmonized.

Yet, we cannot forget that the norm would only be facultative and Member States are free to decide whether they want to introduce it in the new environmental treaties they sign, reducing very much its normative efficacy. Similarly, the soft law is not a guarantee that Parties will carry out the SEA with the adequate methodology for a deep analysis of required strategic actions in order to comply with conventional obligations. (*"Deep SEA"*).

2.2 An International Convention of Strategic Environmental Assessment of Treaties on Environment

The juridical instrument being proposed here could also be institutionalized by an international convention that is both universal and compulsory and that would establish the use of the SEA procedure in order to define and follow up the implementation by the Parties of the required strategic actions to comply with treaties on environment. Thus, when ratifying or joining this new convention, Member States would accept to use its norms on the new treaties on environment they may sign. The functions of the Secretariat of the SEA Convention of the treaties on environment could be allocated to the UNEP, that could become a World International Organization on Environment.

The UNEP has been actively contributing towards the implementation of environmental treaties. A large part of its activities is dedicated to put into practice the EARTHWATCH, a world level environment monitoring and evaluation program. This program is based on monitoring, research and information exchange through the international coordination of national services. It is known that the UNEP, as the main UN agency in charge of environmental issues, is nowadays the best qualified international body to control the compliance with environmental treaties. Although this does not exclude the need to strengthen it even more, especially on the financial aspect.

After receiving information from the Parties on the results of the SEA procedures, the Secretariat of the different environmental conventions will send it to the UNEP that will then compile this information and will add it on to the world monitoring program (EARTHWATCH).

When technical and resource deficiencies that may hinder the compliance with conventional norms are identified, not only conventional control mechanisms, but also the UNEP will mobilize the necessary resources to help and encourage countries to comply with the environmental treaty. If, even after help has been given, the lack of compliance persists sanction measures included in the treaties can be implemented. Finally, at any time, traditional bilateral mechanisms may be called upon to ensure the compliance with international norms (international accountability of the State and judicial resolution of controversies through the International Court of Justice or arbitration).

2.3 The option for altering Viena Convention on the Law of Treaties

Viena Convention on the Law of Treaties was opened for signature on 23 May 1969 and came into force on 27 January 1980. This Convention instructs international treaties on aspects regarding its interpretation, validity, duration and formal and material requirements. An amendment to the above mentioned Convention could determine that a SEA procedure can be carried out to define and follow up the implementation by the Parties of the strategic actions required to comply with the treaties, in order to give more efficiency to conventional

norms. The difficulty to use such an option is largely due to its scope. The Strategic Environmental Assessment would include all international treaties and not only treaties on environment. A consensus on the topic would be very difficult to reach among the high number of Parties that signed the Vienna Convention.

3. CONCLUDING REMARKS

SEA is a valuable instrument that when used to put into practice international treaties on environment would make possible to add planning to public actions made to comply with those treaties. It increases the efficiency of international environmental norms in two aspects: 1) First of all, strategic planning would help improve the quality of public actions that should be implemented by the Parties to comply with environmental treaties. Thus, implementing adequate actions to achieve the goals proposed could improve environment at a global scale; 2) Secondly, SEA would also contribute to improve the control mechanisms of environmental treaties. With SEA, the quality and legitimacy of the information sent by the Parties to the control entities of the treaties could also be enhanced, since data acquisition would follow a previously defined methodology, ensuring wide public participation, an inherent requirement of SEA procedures. A model aiming at harmonizing the control procedures used at different conventional areas could be created, as a way of fighting against the inherent deficiencies of the current system of periodical reports.

For many States, mainly for the developing ones, the lack of technical and financial resources makes sending reports a hard to accomplish obligation. Also, carrying out a good quality SEA will not be an easy task. However, the environmental improvement that could be achieved using SEA is enough for its institutionalization at an international level. It is up to Member States, assisted mutually and/or by international and national environment protection organizations, to seek technical training and financial support to make the most out of the benefits the strategic planning can offer them.

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