



A Critical Legal Analysis on Transboundary Environmental Impact Assessment –A Way Forward

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Abstract

Territorial sovereignty which is an important doctrine found in Environmental law confers freedom to the States. Territorial sovereignty is not an absolute right as the right is curtailed by the customary international law which prohibits transboundary pollution and by Article 21 of the Stockholm Declaration which enshrines that states must ensure that activities within their territories or under their control do not harm the environment beyond their territory and to ensure activities within their jurisdiction will not cause transboundary harm and states must assess the potential transboundary effects of the activities. State responsibility for causing transboundary damages has formed a part of international law and customary international law as well. Transboundary Environmental Impact Assessment (TEIA) intends to promote environmentally sound projects and to uphold sustainable development while assessing the environmental impact via international corporation when a cross border impact arises from a large-scale development project. Convention on Environmental Impact Assessment in Transboundary Context (Espoo Convention), The Convention on Access to Information Public Participation in Decision Making to Justice in Environmental Matters (Aarhus Convention), Protocol on Strategic Environmental Assessment (the SEA Protocol) are the most three internationally recognized instruments relating to TEIA. Convention on Environmental Impact Assessment in a Trans Boundary Context (ESPOO Convention) obliges state parties either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities. The research problem includes, despite the fact that Sri Lanka neither a party to the Espoo Convention nor Aarhus Convention, how the government assess the environmental impact whenever a development project is carried out involving the cross-border affairs. The main objective of this paper is to analyse the international legal regime governing TEIA. The method followed in the paper is that of legal doctrinal analysis, that the author focuses on basic legal sources, international treaties, customary international law, general principles of civilised nations as well as judicial decisions and scholars' articles. Paper finally suggests it would be prudent to ratify the environmental conventions which provides effective implementation of TEIA procedure and passing legislation by enabling the provisions of the convention would be helpful for effective and successful regulation of any likely adverse impacts emanating from large scale operations.

Keywords: Territorial sovereignty, Transboundary Environmental Impact Assessment (TEIA), State responsibility, Sustainable development

