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STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS

Manila, 1st – 5th June , 2015

**SESSION FOUR: ENVIRONMENTAL (SPATIAL) PLANNING AND
EIA LAW**

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INTRODUCTION

- This is the first of five topics designed to outline the scope and content of environmental law:
 - Environmental (spatial) planning law;
 - Environmental protection law;
 - Natural and cultural heritage law
 - Natural resources management law
 - Climate change (and clean energy) law
- We will also examine the topic of environmental dispute resolution (though both litigation and alternative means)
- Finally, we will consider the influence on domestic environmental law of:
 - international environmental law; and
 - Other disciplines (science, economics, ethics, philosophy)

THE PURPOSE OF THE “SCOPE & CONTENT” SESSIONS

- In a TTT course for scholars with little or no prior knowledge of environmental law, these “scope and content” sessions serve to provide an initial insight into the full range of topics that may be covered in an environmental law course;
- The purpose of these sessions is not to teach the substantive elements of each aspect of environmental law, but simply to “introduce” TTT participants to them so to help them decide how they might design their own environmental law course
- In each session a different teaching format or methodology will also be demonstrated

LEARNING OUTCOMES OF THIS SESSION

(see Session Plan)

Session topic

- Understand the purpose of environmental (spatial) planning law, particularly the balancing of economic and environmental factors.
- Understand the purpose and scope of EIA law and underlying process

Learning methodology

- Appreciate function of definition exercise in assisting comprehension of the scope of environmental legislation
- Understand the role of the case-study as a learning tool.

INTRODUCTION TO ENVIRONMENTAL (SPATIAL) PLANNING LAW

- History of development
- Planning policy instruments
- Development control mechanisms
- Appeal mechanisms
- Related measures (e.g., coast protection laws)
- Development facilitation laws

HISTORY OF DEVELOPMENT OF PLANNING LAWS

- Origins of planning law can be traced back to the early 20th century in the United Kingdom, Europe and USA.
- In many developed countries, planning law is the foundation of environmental law and provides the basic mechanism for the regulation of development activity
- In developing countries, especially those experiencing rapid population and urban growth, “spatial” planning laws exist but may have less impact in regulating development activity

PLANNING POLICY INSTRUMENTS

- Planning laws provide for the development by planning authorities of policy instruments (“development plans”) that identify the types of land uses that may be possible (or not allowed) within specific locations;
- Historically, such plans were based on zoning via maps of regions for particular types of uses (residential, commercial, industrial, rural, recreational etc);
- But modern planning laws allow for more strategic approaches, e.g., to allow for redevelopment of land for different purposes (urban renewal) or to encourage higher density residential living in inner city areas

DEVELOPMENT CONTROL MECHANISMS

- Planning laws rely upon the regulatory mechanism of a **consent procedure** for proposed changes in the use of land (often called “development approval”);
- Development controls are often exercised by “local” government bodies, but may also involve regional authorities or even elected government officials (governors, ministers) for certain types of proposals;
- Generally, application of development controls involves the evaluation of a proposal against relevant planning policy

APPEAL MECHANISMS

- Planning laws often provide for decisions of planning authorities to be reviewed “on the merits” via an appeal process;
- This is a full reconsideration of the original decision, as distinct from a judicial review of its legality
- Appeals may be brought both by an applicant for consent and by “third parties” who object to the proposed development
- In some countries (e.g., Australia), **specialist courts** have been established to hear such appeals (and exercise other functions such as enforcement and judicial review) – see, for example, the Land and Environment Court in New south Wales

RELATED MEASURES

- Planning laws invariably are accompanied by separate legislative requirements with respect to **building standards**
- In some countries, other forms of specialised planning measures have been developed, e.g., in relation to coastal management
- The scope of planning laws may be constrained in terms of their capacity to apply to particular types of activities – for example, where natural resources management laws also apply (e.g., re farming, mining, oil and gas activities)
- Also, planning laws may be affected by the development facilitation laws that promote projects considered to be of political and/or economic significance

ENVIRONMENTAL IMPACT ASSESSMENT LAWS

- History
- Scope of EIA processes
- Procedural elements (EIS etc.)
- Public participation
- Substantive mandate
- Judicial oversight of EIA process
- Strategic EIA

HISTORY OF EIA LAWS

- Origin of EIA law is *National Environmental Policy Act 1970 (US)*
- EIA laws now adopted in many countries around the world and recognised in international law
- See UN Rio Declaration on Environment and Development (1992), Principle 17:
 - “Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority. “

SCOPE OF EIA LAWS

- NEPA applied to actions of US Federal **government**, including decisions to license or approve activities (e.g., nuclear reactors, highways etc)
- But has extended since to **privately-sponsored development** and hence overlaps with traditional spatial planning controls
- EIA provisions are often incorporated in spatial planning legislation, but can also operate as stand-alone laws

PROCEDURAL & SUBSTANTIVE ELEMENTS OF EIA LAWS

- EIA laws prescribe detailed **procedures** for preparation of EISs, review of the EIS documentation by a government authority and provision for public participation (comment and sometimes hearings)
- The ultimate purpose is to inform decision-makers, who must be guided by the statutory criteria laid down in the relevant legislation (the “**substantive mandate**”)
- Courts in many countries have been regularly involved in hearing actions alleging a failure to comply with EIA statutory procedural requirements (including failure to require an EIS)

STRATEGIC EIA

- Beyond the project level, EIA is steadily evolving as a tool for evaluation of **government strategies, policies and plans**, or for dealing with circumstances where the **cumulative impacts** of a series of connected projects needs to be examined;
 - E.g., where multiple port developments are proposed for a particular coastal region.
- EIA legislation varies considerably in its recognition of the possibility of “strategic” EIA