

Enhancing Transboundary Consultation in the Context of Nuclear Power Development in Southeast Asia

Written by Denise Cheong & Nivedita S

Presented by Denise Cheong

ILA-ASIL Research Forum, 5 – 6 August 2021

Background, Objectives & Context

Background - Developments in Southeast Asia



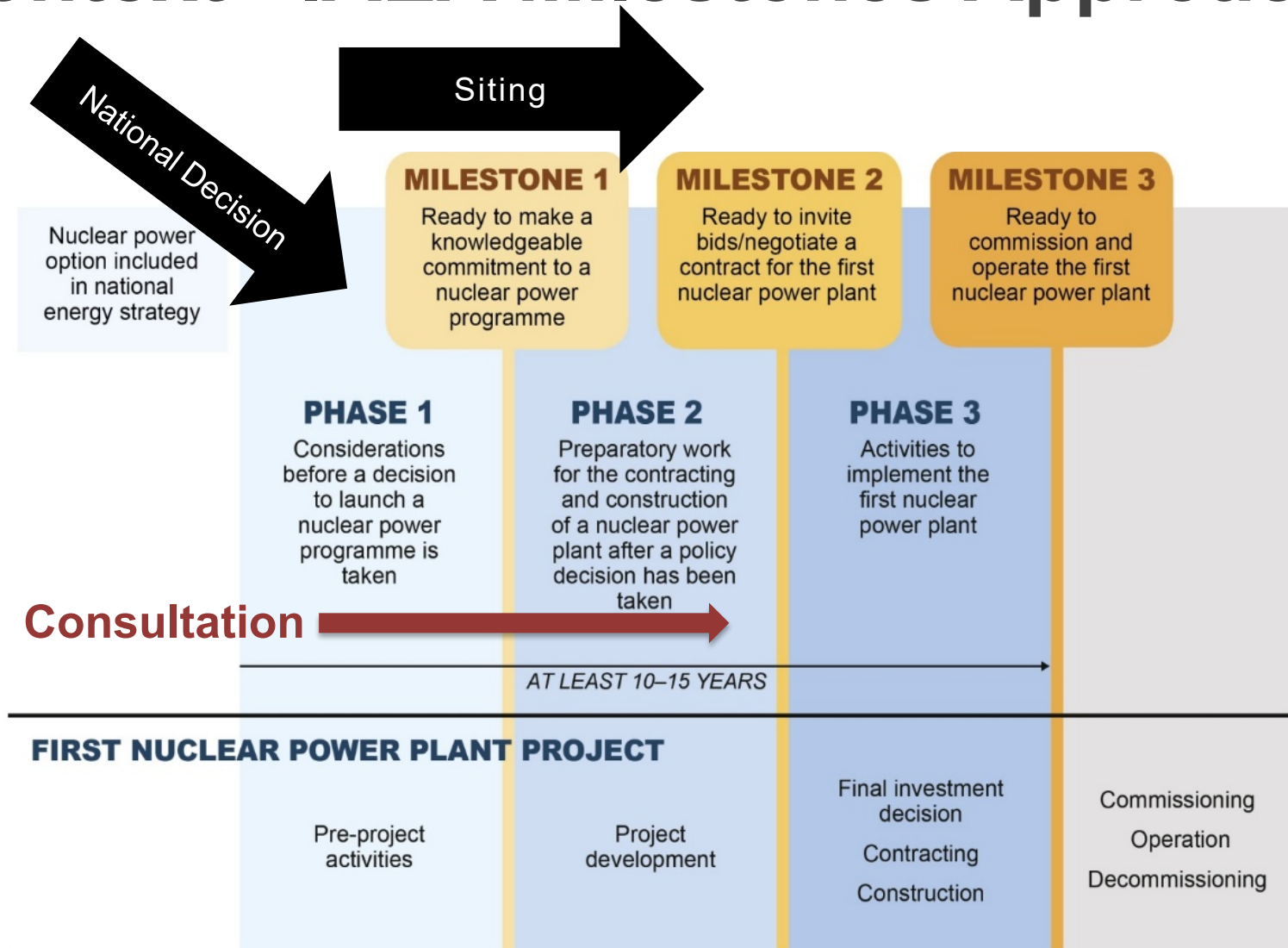
Source: MapChart.net

- Nuclear power could be a reality in Southeast Asia by 2040
- Environmental Impact Assessment (EIA) & Strategic Environmental Assessment (SEA) as mechanisms that facilitate transboundary consultation
- No ASEAN-wide framework on EIA nor SEA

Objectives

- At the international level, is there a normative basis for transboundary consultation related to:
 - (a) a State's national decision to embark on a nuclear power programme; &
 - (b) the siting of a nuclear power plant?
- Is there an independent normative basis at the ASEAN level?
- What can ASEAN do to strengthen the collective normative basis?

Context - IAEA Milestones Approach



Source: <https://www.iaea.org/topics/infrastructure-development/milestones-approach>

Normative Basis – International Level

National Decision to Embark on Nuclear Power Programme (Phase 1)

Customary International Law	UNECE Framework – Kyiv Protocol (on SEA)	IAEA Framework
<ul style="list-style-type: none">• No duty to conduct SEA• SEA is considered an “emerging norm”• Does not prescribe procedure for transboundary SEA	<ul style="list-style-type: none">• Applies to nuclear programmes• Sets out detailed procedure for conduct of transboundary SEA• SEA for Polish Nuclear Power Programme• Compliance mechanism• Open to non-UNECE members now• Good practice	<ul style="list-style-type: none">• Recommends conduct of SEA at this stage (SEA Guidelines)• Express recognition of transboundary SEA procedure in Kyiv Protocol (SEA Guidelines)• Strong support for stakeholder involvement throughout all phases (safety standards & guidelines)

Siting of a Nuclear Power Plant (Phase 1 -2)

Customary International Law (CIL)

- Due diligence nature of “prevention principle”
- Duty to conduct transboundary EIA as part of “prevention principle”
- Duty to notify & consult only arise where EIA confirms risk of significant transboundary harm
- Does not prescribe procedure for transboundary consultation

UNECE Framework – Espoo Convention (on EIA)

- Sets out detailed procedure for conduct of transboundary EIA
- Specific implementation guidance for nuclear-related activities (Good Practice Recommendations)
- Compliance mechanism
- Open to non-UNECE members - Pending
- Best/good practice

IAEA Framework

- Direct support for transboundary consultation during siting (Convention on Nuclear Safety, Art 17)
- Recommends conduct of EIA & safety assessments – mechanisms facilitating transboundary consultation (safety standards & guidelines)
- Strong support for stakeholder involvement throughout all phases (safety standards & guidelines)

Normative Basis – ASEAN Level

ASEAN Context

Normative Basis at International Level	Application to ASEAN Member States
Customary International Law	Applies to all States including ALL 10 ASEAN Member States
UNECE Normative Framework	None of ASEAN Member States are Parties to Espoo Convention nor Kyiv Protocol
IAEA Normative Framework	Convention on Nuclear Safety – 6 ASEAN Member States Safety Standards & Guidelines – as part of due diligence

ASEAN Normative Framework

(1) Commitment to following international rules, standards & practices

SEANWFZ (Southeast Asian Nuclear-Weapon-Free Zone) Treaty frames nuclear safety obligation in terms of compliance with “IAEA guidelines & standards” (Art 4)

SEANWFZ Plan of Action (2018-2022) calls on ASEAN States to:

- join international conventions e.g. CNS
- establish common positions

(2) Commitment to abide by fundamental principles of ASEAN engagement

Obligation to conduct enhanced consultation on matters seriously affecting the common interest of ASEAN (Art. 2, ASEAN Charter)

Other fundamental principles of ASEAN engagement (key ASEAN instruments):

- (i) support regular consultations to coordinate views & actions
- (ii) strengthen good neighbourliness & cooperation
- (iii) contribute to strength, solidarity & closer relationships
- (iv) uphold international law & adhere to good governance

Summary & Way Forward

Summary

- **International level:**

More normative support for siting than for the national decision - customary international law, UNECE & IAEA normative frameworks

- **ASEAN level:**

Provides an independent & additional normative basis that helps to strengthen & reinforce the international normative bases for both national decision & siting

Way Forward

- Focus on further strengthening normative basis in context of siting before national decision
- 4 suggested ways e.g. incorporation by reference of IAEA normative framework into SEANWFZ Treaty
- Meanwhile, build capacity on SEA & its benefits to lay groundwork for strengthening of normative basis within context of national decision

Thank You



Nuclear Matters at CIL, podcast series <https://bit.ly/NuclearMattersatCIL>



CIL_Nuclear