
DEVELOPMENT AND ENFORCEMENT OF NEW ARMENIAN ENVIRONMENTAL PROTECTION LEGISLATION: PROBLEMS AND SOLUTIONS

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SUMMARY

This paper provides a brief background on Armenia and the current situation with an overview of new Armenian environmental protection legislation. Analysis of the enforceable requirements in the new legislation and related reforms are presented. Enforcement institutions, their current capacities and necessity of improvement of existing institutions and capacity building are discussed.

1 BACKGROUND

Armenia is a landlocked, mountainous country located in the southern part of the Caucasus region. The smallest republic of the former USSR, Armenia covers an area of 29,800 square km and has a population of 3.7 million, over 96 percent of which is ethnic Armenians. Armenia shares a border with Turkey to the west, Georgia to the north, Azerbaijan to the east and southeast, and Iran to the south.

The following brief description of reasons for the current situation provides information on and clarifies reasons for the current design of environmental programs in Armenia.

The democratic process in Armenia began in February 1988 with environmental demands to stop operations of dangerous plants. After a few days, the movement turned into a political one that ultimately resulted in a declaration of independence and new parliamentary elections. In fact, the environmental movement's claim was so powerful that it resulted in shutting down very important components of the national economy without strong factual argumentation.

After closing four main constituents of the Armenian economy (the Nuclear Power Plant, Rubber (caoutchouc) producing chemical plant, and two other chemical plants), the economy collapsed. The situation became worse, even unbearable, after Azerbaijan and later Turkey imposed economic blockades, and there was political instability in Georgia. With only one undeveloped link to the outside world via Iran, even fuel had to be imported by air. Such arrangements could provide only basic, and sometimes less than that, needs of the population. For three years till the winter of 1995, Armenians had been living at the physiological level of survival, with no (sometimes one or two hours a day) electricity and no heating.

Those three winters caused:

- Extensive deforestation. The tree cutting was permitted by government but had gotten out of control.
- Release of water from Lake Sevan (the only pure water reservoir for the whole region both for the present and future generations) for energy production needs. Speedy eutrophication of the lake has become a real unmanageable environmental problem. One of the consequences of this problem is the impact on biodiversity of the region.

- Reopening of potentially hazardous Metzamor Nuclear Power plant due to the circumstances of the economy and energy crisis. Another concern is an intention of the Government to build a new Nuclear Power Plant on Armenian earthquake-sensitive territory.
- 90% of actual unemployment and, unusual for the one of the richest among former USSR countries, poverty.
- Decline of health and education levels of the nation.
- Informational isolation from the world due to lack of electricity, technical equipment and disruption of postal services.
- Lost public credibility of the environmental movement and Nongovernmental organizations.

With these circumstances in mind (in fact, feeling them on our skin) we realized nationwide that economic and energy crises became a real environmental disaster for Armenia. That is why, in the process of developing the new law, we carefully kept balance between environmental protection and socio-economic development.

Fortunately, we were able to overcome some problems. Even under the blockade situation, the economy has started to go up (up to 17%) and people overcame the old mentality of relying and depending on government to solve their problems. This is the most important achievement of our transition period. Now most Armenians rely on themselves and mutual assistance. Many governmental reforms, such as 98% privatization of agricultural land¹ and privatization of many sectors of economy, contributed to this phenomena. Now 85% of the trade, 45% of transportation, 25% of service are in private hands. Currently, Internet access in Armenia is in very good shape, and Armenia can exchange information more freely and fully than the other former USSR countries. Privatization of industry is underway. Ongoing formation of the free market economy in the country presents an opportunity for economic development and we could invest more resources to recover our environment. To prevent future deterioration of our environment, we accepted as our development path an integrated pollution prevention and control approach. The reflection of this approach is basing the national environmental protection legislation on uniform procedures and principles of environmental impact assessment.

2 LEGAL ENVIRONMENTAL FRAMEWORK

At the very beginning of legislative activity (independent from Moscow) the Parliament imitated the US legislative structure, i.e., developed media-specific and field-specific laws. The experience inherited from the past regime did not allow us to quickly turn them into a legal system with detailed procedural enforceable requirements. Firstly adopted acts remain mostly declarative with some enforceable provisions and “open room” for application of environmental impact assessment (EIA). At the same time, study of other countries’ experience helped us to realize in which way to move to reach environmental compliance and enforcement. Integrated pollution prevention and control approach was chosen as a preferable path². Armenia has taken steps toward integration by passing laws that authorize assessment and control of toxic substances across media, as well as laws that require environmental assessment of all projects. Ironically, the very declarativeness of the firstly adopted Acts helped to overcome this problem easily. Environmental Impact Assessment Act (EIAA) which was developed with the assistance and experience of the Environmental Law Institute (US)³, Center for International Environmental Law (US)^{4,5} and U.S. EPA became a curative tool for those mistakes. Experience of countries in

transition was taken into account as well. The logic of the Armenian environmental legislation will work in the following order: separate acts will regulate the current status-quo, whereas EIAA will ensure sustainable development and reform.

2.1 Principles of Environmental Protection Legislation of the Republic of Armenia

On July 9, 1991, the Parliament passed “The Principles of Environmental Protection Legislation of the Republic of Armenia” as a constitutional Act in the environmental protection field. The Act states the overall environmental protection policy and establishes a framework within which the Parliament will develop specific separate acts to protect the atmosphere (air), water, soil, natural (mining) resources, forest, flora, fauna, specially protected territories, endangered species, and manage waste, etc.

The Act also stipulates the following economic mechanisms for compliance with legislation to ensure nature protection:

- charges for using natural (mineral) resources, for pollution and other impact within the permissible limits;
- fines for violation of environmental legislation;
- higher taxes and other economic sanctions for failing to install new environmentally benign technologies;
- extra taxes for using environmentally hazardous technologies;
- tax, credit and other privileges for environmentally friendly manufacturing and conduct;
- licensing for unavoidable releases and discharges;
- compensation duties for damage caused by deterioration and destruction of natural subjects; and
- imposing obligations to restore destroyed environment and its separate components.

According to this Act, the state takes responsibility to provide safe, healthy and favorable natural conditions to satisfy the social, esthetic and cultural needs of the population. The law imposes obligations on the State Environmental Protection Bodies to timely and accurately inform the population about the condition of the environment.

By this Act the citizens have received:

- Rights to claim and to receive in a timely manner full trustworthy information about environmental conditions.
- Rights to receive full compensation for health damage caused by polluted environment, environmental accidents or disasters.
- Rights to live in the pure (no amendment yet!) environment, and in case it is destroyed, to receive the status of environmental refugees and to get equivalent compensation.
- Rights to participate in a process of developing environmental protection laws and enactment and to control their implementation.

The idea for the application of environmental impact assessments have expression in the “State Ecological Expertise” article, where all economic and social development programs, economic projects and plans, operating businesses and so on are considered the subjects of environmental impact assessment. In a required preliminary declaration, a list of binding protection activities to mitigate environmental impact according to standards should be submitted.

This part of the Act is relatively less declarative since it specifies (maybe even more than it will be possible to manage) subjects of assessment. For large economic programs, permissions may be given by the Parliament or by a referendum.

The Act has shaped an idea about creation of an environmental prosecution and eco-police institutions. This was supposed to stimulate changes in the legal system. A General Environmental Prosecutor of Armenia was appointed by the Parliament and is working with already formed eco-police. They have prepared many cases to start prosecutions.

I would like to mention that this Act was worked out and passed when Armenia was still a part of the USSR; less than one year later Armenia became independent and the Parliament started to function freely.

2.2 Act on Specially Protected Territories

The second “Act on Specially Protected Territories” was passed on December 17, 1991, just after the referendum and declaration of independence. The Law determines different levels of protection of different kinds of specially protected territories and puts the responsibility on the state.

2.3 Act on Natural Resources

The third Act, the “Act on Natural Resources” was passed on March 19, 1992.

This Act ensures, to a certain degree, sustainable use of natural (mining) resources. It requires that natural resources be extracted and used with implementation of advanced technologies. This requirement is especially important for Armenia, which has limited deposits of a wide variety of rare natural resources, that, if used prudently, could be enough to cover some raw material requirements of the economy (e.g. electronic industry).

- The Act leaves “open door” for future full application of Environmental Impact Assessment in this area.
- This Act dictates restructuring in the executive branch to improve exploration of natural resources and environmental protection. This restructuring is still going on. Lack of appropriate experience hinders development of effective regulations.
- The first advanced law passed by the Armenian Parliament was a law about agricultural land privatization. We have already privatized 98% of our agricultural land, but the Parliamentary Committee decided that natural resources cannot be privatized. So the Act declares that the natural resources are the exclusive property of the Republic but can also be made available for private utilization.
- Mining and processing of the natural resources is paid for and can take place by license and awarding of contracts. The natural resources are freely available for a geological study, scientific research and geology-mining proposals.
- A contract between the Republic and user is the basic legal document that determines relations of parties. Only a court can resolve a dispute between them.
- The geological and other information about natural resources can be subject of buying and selling.
- According to this Act, any information about natural resources can be the property of a funding organization (state or private) or private persons. The state can buy that information from private sellers, but has it free from state organizations if they used the state budget to get this information.

- The Act stipulates the right of authors of scientific discoveries in this area.
- The primary discoverer in this area receives privileges to be the first explorer of a discovered field.

The problem with developing regulations with enforceable mechanisms still exists.

2.4 “Act on Water”

The “Act on Water” was prepared by the government. Our Committee had just enough time to examine it and prepare recommendations. During the Parliamentary hearing of this act, the Committee’s environmental protection amendments were adopted and in this case we have acquired an opportunity to impose stronger environmental claims on water users with imposing EIA requirements. This act mainly regulates water-use relations and the Committee may draft new acts on safe drinking water and quality of water.

2.5 “Act on Protection of Air”

The Act entered into force on November 1, 1994. According to this Act the Parliament took responsibilities as the principal state body which will adopt all programs and policies related to air protection and oversee them for compliance.

The Act is mainly declarative and leaves “an open room” for Environmental Impact Assessment application. But there are some provisions which could be enforced immediately. Local authorities and inspectorates received authorization to prevent an entry of mobile sources to regions of their jurisdiction in case of violations of standards. Violations of standards by stationary sources could cause temporary closing until compliance is ensured or forever.

2.6 “Act on Forest”

The Act entered into force on November 1, 1994. According to the Act the forest is the exclusive property of the Republic until it grows up to industrial utilization volume. Currently the Armenian forest is the subject of protection, rehabilitation, recreation and sustainable utilization only. Only temporary utilization (up to 5-10 years) under supervision of a state authorized body and local authorities is allowed.

The forests are divided into three groups:

- protected forests;
- recreative forests; and
- forests for specially protected natural territories.

There is the “open room” for environmental impact assessment application.

The Act stipulates fees for forest utilization. All detailed procedures have to be developed in regulations. There is a need to develop guidelines for pricing for different kind of utilization (recreation, hunting, scientific research, tourism etc.).

2.7 “Environmental Impact Assessment Act”

Armenian Environmental Impact Assessment Act (EIAA) was adopted by the National Assembly (the Parliament) on November 20, 1995 and was signed into law by President on December 12, 1995.

The Act implants uniform principles and procedures of environmental assessment into all passed and proposed acts.

The Act aims to ensure joint professional and public assessment of economic, social and other kinds of activities (including new construction, reconstruction, modification, enlargement, technical re-equipment, and demolition). In the conditions of a changing economy, most activities could be covered by this Act. Other aims are to evaluate the proposals on important development concepts, proposals, policies, complex projects and programs (strategic concepts) — in relation to assumed impact on the environment and socio-economic development. The assessment acts as a basis for eventual approval or disapproval of an activity or concept.

The Act is harmonized with environmental impact assessment approaches of International Conventions and development assistance agencies standards (the World Bank, EBRD, etc.), and includes:

- detailed procedure of environmental impact assessment (EIA) of proposed activities;
- environmental impact assessment procedure in the case of an activity of a transboundary context;
- brief procedure for assessment of proposals of concepts;
- detailed provisions to serve as workable tools for implementation and enforcement;
- detailed binding provisions on ensuring public participation and involvement in decision-making;
- a specific activity list based on the specifics of the country to be covered by and incorporated into the Act;
- binding provisions with time frames to be met both by promoter and authorities to avoid violations;
- certain provisions on extent of assessment;
- provisions which give rights to interested parties to appeal procedural violations through the court;
- provisions to ensure comprehensibility and intelligibility both for the promoter of an activity and the public;
- provisions incorporating mechanisms enabling bottom-up initiatives (regional and local authorities, public and nongovernmental organizations) to conduct environmental impact assessments for activities under the threshold values;
- requirements to submit an intention in at least two variants (alternative solutions); and
- requirements for post-project monitoring and analysis, which has to be articulated in the permit to start activity.

The Armenian legislation continues to be more declarative, and detailed procedures on enforcement and implementation are developed by various ministries in administrative rules and regulations. These shortcomings were overcome with this Act. The National Assembly was persuaded to include detailed enforceable procedures and requirements in this Act.

Another shortcoming we could not yet overcome is very little experience with laws containing precise numerical values. To avoid ambiguity in the law's application, a list of planned activities that require environmental impact assessment should be incorporated in the law. It should also specify criteria (threshold values) for the majority of activities, according to degree of impact. The legislative structure in Armenia does not allow appendixes to the Act with such a list. At the same time, scientifically developed and adopted threshold figures for different kinds of activities are also not developed for Armenian circumstances. The solution was to include in the Act a list of activities without threshold values as transitional provisions. The Parliament

agrees that once these are developed they will be incorporated into the Act. In other words, solution was: without destroying the structure of the entire legislation, include the contents of annexes into the Act. The Act is still enforceable for those listed activities which need full EIA without any threshold values.

2.7.1 Parties involved in environmental impact assessments (EIA)

- Promoter — a legal entity intending to realize an activity subject to the EIA. The promoter of the assessed activity bears the major part of the cost and responsibility associated with the assessment process.
- Submitter — a government entity who is the promoter of a concept.
- Authorized body — the body of the state administration which is responsible for managing the entire process. It issues the final approval or disapproval to start realization of an activity and submits a recommendation to the Approving body for decision on implementation of a concept.
- Approving body — the National Assembly, the Government and other authorized state bodies which are responsible for final decision on implementation of a concept.
- Affected authorities — regional state administration authorities and community self-administration authorities of an area or territory, that are likely to be affected by the environmental impact of a planned activity.
- Interested state body — a body of state administration which has concerns on a planned activity.
- Public — the population of an area or territory, which is likely to be affected by the environmental impact of planned activity or implementation of a concept.
- Experts — specialists who could be hired by proponent or submitter to prepare EIA.
- Authorized persons — organizations, groups, individual specialists who are granted license of professional competence by authorized body, and are eligible to perform and prepare relevant expert opinion on EIA documentation.

2.7.2 Procedures of EIA process

The Act contains all standard steps of the EIA process and determines the duration of each step.

- NOTIFICATION AND SCREENING — The EIA is initiated as soon as a notification on intention is submitted to the authorized body. The EIA procedures involve a promoter, experts, regional and communities leadership, the public, Nongovernmental organizations and the interested state body. A promoter has to submit notification with an already processed and categorized information. The notification must contain at least two alternatives of the activity together with a provision for a situation which might arise were the plan not to be implemented (zero alternative).
- SCREENING — In the case of activities under threshold values the authorized body shall conduct screening on the basis of notification and decide whether or not the activity in question is to be assessed under the Act. In this part of the Act we managed to persuade the Parliament and later the President to include bottom-up initiatives for conducting EIA. The interested state body, regional state authorities, community

leadership and public receive the rights to require EIA for projects below threshold values. The authorized body, based on the received opinion, will decide whether to conduct a full EIA.

- **QUALITY CONTROL** starts at the beginning of public involvement when public can bring in any experts for advice. A more thorough control is carried during the elaboration of expert opinion on EIA documentation.
- **SCOPING** — The current Armenian legislation does not allow for stating content of EIA in the Act, but we have a minimal scope of requirements and philosophy for this in the Act. More detailed scope is developed in regulations which are currently tailored to meet the specific conditions of Armenia. The wider scope for EIA documentation shall be decided by the authorized body based on public opinion.
- **EIA DOCUMENTATION** — The promoter shall conduct an evaluation of its own activity from the assumed environmental impact and socio-economic points of view. The promoter can hire experts to perform this task. She/he has to submit documentation to the authorized body. The Act does not make reference to any strict time frames to conduct EIA for promoter.
- **IMPACTS** — EIA should evaluate four types of impacts: direct, indirect, cumulative and synergetic.
- **PUBLIC HEARINGS** — The Act contains three articles with detailed guidelines for public participation. The public starts to be involved in EIA process at the very beginning, immediately after notification of the authorized body by the promoter. The second round of participation is at the stage of discussing of prepared documentation on EIA. The third one is at the stage of expert opinion discussion with the authorized body. At all stages of public participation, the authorized body is responsible and has an obligation to organize it together with the promoter and regional and community leaderships. All public comments have to be taken into account during expert opinion preparation and decision making. However, the Act does not contain any precise criteria on how to do that. This part of the Act and regulations needs improvements.
- **EXPERT OPINION ON EIA DOCUMENTATION** — Authorized body has to arrange expert opinion on EIA documentation before making decision. There is a possibility for voluntary preparation of documentation on EIA, but the assessment has to be exercised by licensed authorized persons designated by the authorized body. These authorized persons have to meet specific requirements to earn certificates and become authorized persons for assessing EIA documentation (a university degree, successfully passed authorized body's exam, 5 years experience in the field).
- **FINAL DECISION (APPROVAL OR DISAPPROVAL)** — The final decision is the responsibility of the authorized body. Without approval, no activity can start. The Approving body may not approve any concept for implementation without positive decision on by authorized body. These are very important requirements in the Act. They provide a single final operating permit for any activity by a single national body. The authorized body, after receiving prepared EIA documentation, should give a final decision to promoter during a specific time. If not, promoter can start activity without any decision taken prior to that. We understand that this is a very dangerous provision in the Act from environmental protection point of view because more

complex projects will take more time for consideration. On the other hand, however, this provision enables us to try to protect the promoter from abusing of the Act by bureaucrats and corruption.

- **POST-PROJECT PROCEDURES** — There is no precise articulation of post-monitoring/auditing requirements in the Act, but the permission to start activity implies introduction of these requirements and monitoring of their implementation. The authorized body is responsible for carrying them out. The authorized body is also responsible for designating consultants for post- monitoring.
- **RESPONSIBILITIES** — Any kind of violation of procedures of the Act can be appealed by involved parties through the court. The Parliament Committees are currently developing detailed provisions to include them in civil and criminal laws.

Inadequate quality of EIA documentation can be appealed by any involved party to authorized body.

2.7.3 Importance of the adoption of EIAA for further reforms and development

Adoption of EIAA is a very revolutionary Act, not only for the Armenian Environmental Protection legislation but for the whole Armenian legislation as well.

The Act eventually unifies Armenian Environmental protection legislation into one logical framework. More declarative media specific acts will regulate the current status-quo, whereas EIAA will ensure sustainable development.

The Act introduces detailed enforceable provisions, which is the first experience in Armenian legislation.

The Act introduces precise figures in the legislation. This is unusual for Armenian legislation's mostly declarative context and might become a starting point for future development. The importance of having precise numerical values in the law prevents the executive bodies from manipulating threshold values. Only the National Assembly can make amendments.

The act introduces three detailed articles on public participation, obliging the authorized body to involve and earn public opinion. Before that, our legislation contained some declarative provisions on taking the public opinion into account, but no procedures and obligations were articulated to enforce them and earn public opinion.

2.7.4 Problems to be addressed

Adoption of EIAA is a really advanced step in the reform of environmental protection field in Armenia. However, there is still a long way to go in establishing the EIA system by creating more institutions and capacity building.

We have to continue the development of the regulations emanating from the Act, prepare academic and Nongovernmental communities for EIA documentation preparation, prepare officials for implementation and enforcement of the Act, ensure higher public awareness in this field, get public credibility and eventually establish the whole system for EIA.

Currently, there is no annually published statistics on EIA performance in Armenia. All documentation on EIA is in the Department of Ecological State Expertise of the Ministry on Environmental Protection and Mineral Resources.

There are no guidelines for EIA pricing yet.

There is no information on quality of EIAs performed available for the public. All these problems should be addressed through development of appropriate regulations.

2.8 Prepared drafts

The National Assembly's Committee on Health Protection, Social Issues and Environmental Protection has worked out the following drafts: "Act on Flora;" "Act on Fauna;" "Act on Waste;" "Act on Sevan National Park;" and is developing an "Act on Biodiversity."

An Act on Environmental Rights is under development and discussion. A draft that was already prepared needs improvement. The idea behind drafting this Act is to stimulate public involvement and influence decision making in the environmental protection area and to start the public participation and pressure process. We suppose that the direct act will focus people's attention on their rights - something we have experienced at the beginning of our independence. With the new act on free election⁶ and with comprehensive articulated procedures on right to be elected we could change the composition of the Parliament and start building a democratic society.

The principles of this Act are supposed to be the following:

- The right to access information about environmental quality, proposed decisions, etc..
- The right to live in a favorable environment.
- The right on sustainable utilization of natural resources by any state or private producers.

The Committee intends to work out this Act in a comprehensive way to encourage people to know, understand and struggle for their own rights even though receiving compensations for physical and moral damage. The latter point is important for our country where the people in economic survival situations cannot think globally and abstractly even about the nearest future.

There is an intention in the future to streamline the whole relevant legislation into one single universal Act on Environmental Protection.

3 CURRENT ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT INSTITUTIONS

After the new parliamentary elections and referendum on New Constitution held on July 5, 1995 the whole Executive Branch has been undergoing reform. The Ministry on Environmental Protection and Mineral Resources now oversees almost all pertaining environmental fields. Assembling all institutions under one umbrella this a taking step toward institution integrated pollution prevention and control. This structure will facilitate integration pollution control across environmental media and fields. But reforms at the legislative and administrative levels without parallel capacity building are not enough to ensure proper functioning of institutions in changed circumstances. Regulations which should follow each new environmental acts are not developed in their whole scope yet. Lack of experience and, more importantly, lack of enough information to develop them present another obstacle to accelerating this process.

Eco-prosecutor institution and eco-police cannot operate effectively until judicial and court-system reform is completed. Adoption of the new Constitution has accelerated these reforms but there is not enough attention to the environmental aspects of the development process. Capacity building in this sphere is extremely important.

None of above mentioned institutions have any register or any kind of publication to keep public aware on ongoing events.

The painful issue is interest groups and nongovernmental organizations. Indifference and frustration of people are real problems that need to be solved. There is no doubt that interest groups and Nongovernmental organizations are there, but they have not been too visible during

this past four years. As I mentioned above, hopefully along with economic growth, legally provided right could be a basis for stimulation of public activity. This could be a proper way to foster the voluntary compliance attitude as well.

4 OPPORTUNITIES AND PROBLEMS IN FURTHER DEVELOPMENT OF ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

Development of Armenian Environmental laws and some programs illustrated that in spite of an extremely difficult transition situation Armenia could come up with innovative approaches and create opportunities for future reforms and development. For example;

- A basic environmental legal framework exists based on uniform principles and procedures of EIA. The path of further development and improvement is chosen.
- An authorization to issue a single operating permit covering discharges to all media is given to a single national body which is responsible for enforcement as well. It means that Armenia took a commendable step of linking the EIA process to final permitting decision, so that the proposed activities may not go forward until it has been demonstrated that they will not have unfavorable impact on the environment.
- The Ministry on Environmental Protection and Mineral Resources is developing National Plan for Action.
- Basic state enforcement environmental institutions are established.
- Legally provided opportunity for development of interest group and nongovernmental institutions exists.
- Information flow capacities exist.

Problems to be addressed are the following:

- further development of regulations, guidelines, rules, instructions;
- provisions of sufficient information flow to the state and public institutions;
- organization and provision of education and training for officials and academic and Nongovernmental communities;
- development of capacities for information exchange inside Armenia; and
- establishment of newspapers, magazines, and registers to ensure public awareness.

After independence and before the economic crisis came through, many international organizations offered their assistance to Armenia. During the four years of blockade these offers have been gradually decreasing. With no effective support from the international community, we could not prevent reopening of the Metzamor Nuclear Power Plant. The most we could do was just require some assessment. But no national consensus was earned by government for the reopening. Our government is intending to build another Nuclear Power Plant in a seismically active zone.

Now Armenia has its basic legal framework and our economy is going up. There is an opportunity to build effective system of ensuring wise decision-making through sustainable development. Assistance of international community could contribute to this process.

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