



Essential Readings in Environmental Law
IUCN Academy of Environmental Law (www.iucnael.org)

TRANSBOUNDARY PROTECTED AREAS AND ENVIRONMENTAL LAW

Elaine C. Hsiao, Ph.D. candidate, University of British Columbia, Canada

OVERVIEW OF KEY SCHOLARSHIPS

Defining TBPAs

1. Thorsell, J. and J. Harrison (eds.), *Parks on the Borderline: Experience in Transfrontier Conservation* (IUCN, 1990).
2. IUCN, Parks for Peace: International Conference on Transboundary Protected Areas as a Vehicle for International Co-operation, 16-18 September 1997 Somerset West, near Cape Town South Africa, Conference Report (1997).
3. Sandwith, T., C. Shine, L. Hamilton and D. Sheppard, *Transboundary Protected Areas for Peace and Co-operation 2001* (Best Practice Protected Area Guidelines Series No. 7, IUCN WCPA, 2001).

TBPA Case Studies

4. Zbicz, D.C., (1999), Transfrontier Ecosystems and Internationally Adjoining Protected Areas. A paper extracted from Zbicz, D.C. (1999) *Transboundary Cooperation in Conservation: A Global Survey of Factors Influencing Cooperation between Internationally Adjoining Protected Areas*. Ph.D. Dissertation, Duke University.
5. Mittermeier, R. A. *et al*, Transboundary Conservation: A New Vision for Protected Areas 27-28 (CEMEX-Agrupación Sierra Madre-Conservation International 2005).
6. Ali, S., (ed.), *Peace Parks: Conservation and Conflict Resolution* (Cambridge: MIT Press, 2007).

Social Critique of TBPAs

7. Goodale, U. M. *et al*. (eds.), *Transboundary Protected Areas: The Viability of Regional Conservation Strategies* (New York: Food Product Press, 2003).
8. Ramutsindela, M., *Transfrontier Conservation in Africa: At the Confluence of Capital, Politics and Nature* (Cambridge: Cabi Publishing, 2007).
9. King, B., and S. Wilcox, "Peace Parks and jaguar trails: transboundary conservation in a globalizing world," (2008) 71Geo Journal 221-231.
10. Noe, C., "Spatiality and 'Borderlessness' in Transfrontier Conservation Areas" South African Geographical Journal (2010) 92:2 144-159.

Law and Policy of TBPAs

11. Lausche, B., and F. Burhenne, *Guidelines for Protected Areas Legislation* (IUCN, 2012).
12. Hsiao, E., *Peace Parks for Mountain Forests: The Law and Policy of Transforming Conflict to Stewardship* (NY: LLM Thesis, Pace Law School, 2010), available online at: <http://digitalcommons.pace.edu/lawdissertations/7/>.

Background

For some time now humans have been endowing certain land and waterscapes with special legal status in order to protect certain attributes they consider to be important, typically aesthetic values, recreation and tourism, or for the preservation of biocultural diversity. Where biocultural diversity comes into consideration there has been an increasing desire to expand the coverage of these protected areas. Scientists repeatedly recognize that habitat protection is essential to species preservation. In many cases, particularly with large mammals and migratory species, the habitats need to be large enough to ensure species viability and to be interconnected, to allow for the movement of species and genetic diversity. Where international boundaries divide natural habitats and ecosystems or even ecoregions, transboundary protected areas (TBPAs) have been promoted. Transboundary protected areas, according to the IUCN, are defined as: “a clearly defined geographical space that includes protected areas that are ecologically connected across one or more international boundaries and are cooperatively managed.” They are founded on the principle of international cooperation between States working together to share management of adjoining protected areas. Over the years the number of TBPAs has increased dramatically. Similarly, support for establishing TBPAs in international environmental law has grown. Multilateral environmental agreements (MEAs) repeatedly recognize the importance of international cooperation for the protection of biological diversity, the environment, and sustainable development and promote the establishment of TBPAs. The legal framework for establishing TBPAs has varied widely from formal treaties to informal verbal agreements between participants. Yet the legal issues that they trigger abound with complexities and politics. Thus the need for legal attention and expertise is vital.

Defining TBPAs

1. **J. Thorsell and J. Harrison's, *Parks on the Borderline: Experience in Transfrontier Conservation*** is one the earlier attempts by the IUCN to synthesize the experiences of TBPAs around the world. It was published as conference proceedings from a 1988 international workshop on TBPAs for tourism and peace. This publication provides an initial definition and typology for TBPAs, an estimate of how many there are, suggestions of proposed TBPAs, case studies, and some recommended best practice guidelines.
2. The next conference publication on the topic, **by the IUCN, *Parks for Peace: International Conference on Transboundary Protected Areas as a Vehicle for International Co-operation***, was a special issue of the WCPA's PARKS Journal. The

Cape Town conference highlighted the call for TBPAs to transcend not only international borders, but also Western approaches to PAs based on strict protection and exclusion. This appeal was captured in the conference's "*Declaration of Principles*". *Parks for Peace* also provides an updated status on the number of TBPAs globally, as well as case studies emerging from developing economies with a much more direct or recent experience with violent conflict.

3. The book by **T. Sandwith, C. Shine, L. Hamilton and D. Sheppard**, titled *Transboundary Protected Areas for Peace and Co-operation*, is the culmination of work from the previous conferences mentioned above. In this *Best Practice Guideline* (BPG) the IUCN offers its official definition of a TBPA, with peace parks appearing as a unique subset of TBPA typologies. Recognizing the unique contribution of TBPAs to peace, the BPG provides a synthesis of peace park benefits, processes, specific case studies, lessons learned and recommendations. Notably it provides a *Draft Code on TBPAs in Times of Peace and Armed Conflict*. The Draft Code promotes certain principles, such as sovereignty (rights and duties), cooperation, prevention and precaution, as well as rules specific to mitigating transboundary environmental impacts and military or hostile activities. It suggests a number of legal instruments or mechanisms by which TBPAs can be established, ranging in formality (treaty between States, administrative agreements, customary resource arrangements, etc.), stakeholder participation (private sector, NGOs, etc.) and degrees of harmonized management and planning. The volume also includes a number of TBPA legal agreements in its appendices. Despite its focus on peace parks, this publication has served as the definitive primer on TBPAs.

In October 2013 members of the IUCN WCPA Transboundary Conservation Specialist Group convened in Thayatal National Park, Austria to discuss a revised definition for TBPAs. This definition is currently under review, but is anticipated to be finalized and published in the *2014 Best Practice Guidelines on Transboundary Conservation*.

TBPA Case Studies

4. Although **D. Zbicz's** inventory of TBPAs in *Transfrontier Ecosystems and Internationally Adjoining Protected Areas* is not the first global compilation of TBPAs, it has proven to be the most methodologically rigorous. It subsequently formed the foundation for TBPAs recognized in the UNEP-WCMC World Database on Protected Areas, which produced an updated list in 2007, the *UNEP-WCMC Global List of TBPAs*. These inventories provide a table of identified transfrontier or internationally adjoining PAs, the countries involved and constituent PAs, management categories and size.
5. **R. Mittermeier et al.'s** photographic delight, *Transboundary Conservation: A New Vision for Protected Areas* showcases 28 different TBPA case studies from around the world. This book provides a general overview of TBPAs, building largely off of the

IUCN's previous publications, but also highlights the role of some of the major international NGOs involved in promoting cross-border conservation areas, successes thus far (e.g., Waterton-Glacier International Peace Park) and further frontiers of transboundary conservation.

6. The book by **S. Ali** entitled *Peace Parks: Conservation and Conflict Resolution* is a collection of essays on the theory and practice of peace parks. It focuses on TBPAs as a mechanism of environmental peacebuilding, with less of the process and management focus that the previous IUCN publications have. This book reflects some of the critiques of peace parks in practice, e.g., **Rosaleen Duffy's** chapter on the politics of peace parks, but ends with an observation that peace parks are at a crossroads between dead-end cynicism and real-life potential. If they are to prevail as a concept then they must take into more consideration human livelihoods and security so as to be a viable pathway for peace.

Social Critique of TBPAs

7. The conference papers compiled in *Transboundary Protected Areas: The Viability of Regional Conservation Strategies* are a critical contribution to case studies and essays exemplifying the realities and challenges of TBPAs. These conference papers include perspectives on the imposition of transboundary conservation on local communities and the need for broad stakeholder support, as well as experiences in transboundary conservation in places of violent conflict (Virunga-Bwindi) or post-conflict (Southern Africa). From the interdisciplinary perspectives contributed, the editors glean a handful of characteristics identifying when and where transboundary conservation is or might be appropriate: (1) when there has been a cost-benefit analysis, (2) it is in the common vision of people from all sides of the border(s) to cooperate towards their best interests, (3) a majority of the actors involved are committed to a long-term strategy, (4) strong leadership exists within the communities, and (5) TBPA managers protect the rights of local people with an awareness for the multiscale tensions that exist.
8. **M. Ramutsindela** provides a southern African perspective on TBPAs in his publication entitled *Transfrontier Conservation in Africa: At the Confluence of Capital, Politics and Nature*. In southern Africa where the challenge for conservation lies in harmonizing biodiversity needs with sustainable development and livelihoods, **M. Ramutsindela** takes us beyond the rhetoric of ecological integrity and into the socio-economic and political context that southern African TBPAs have been emerging from and are a result of. He argues that while TBPAs are ideologically about ecology, they also represent the ways in which protected areas can be expanded by merging conservation and development ideals (with financial backing), even at the expense of local peoples. He points out that the deification of African TBPA pioneers and TBPA ideals makes it harder for close critical examination of the growing phenomena.

9. **B. King** and **S. Wilcox** warn in their article entitled *Peace Parks and jaguar trails: transboundary conservation in a globalizing world* that de-politicization of TBPAs contributes to the hegemony of neoliberal international conservation. In focusing on the biodiversity and needs for ecological connectivity, rather than giving voice to the social and political contexts and impacts of transfrontier conservation, **B. King** and **S. Wilcox** argue that this erroneously supports the assertion that international borders are political and ecological boundaries are not. Rather, protected areas boundaries are often contested or raise particular socio-political tensions and this can be exacerbated in TBPAs. This is especially alerting, considering the significant role that third-party NGOs play in developing TBPAs globally, as compared to the role of local people residing in proximity.

10. **C. Noe** in the article entitled *Spatiality and 'Borderlessness' in Transfrontier Conservation Areas* helps us understand the complexities of bordering dynamics in TBPAs. Generally we promote TBPAs as cooperation between parties to overcome the fragmentation of international boundaries. However, this overlooks the complex processes of new bordering that accompany a TBPA, for example, in creating buffer zones, core zones and cooperation zones. Like **B. King** and **S. Wilcox**, **C. Noe** reminds us that these processes are not socio-politically neutral and bordermaking (including in the so-called tearing down of fences within TBPAs) is in fact an act of power. In the African context where many colonial borders were originally designed to follow natural features (e.g., rivers), the promotion of bioregional TBPAs may not bring us closer to decolonized boundaries, or as disenfranchisement and restriction of resource rights indicates, no nearer to equity and environmental justice either.

Law and Policy of TBPAs

11. **B. Lausche** and **F. Burhenne's** *Guidelines for Protected Areas Legislation* includes a specific section on TBPAs. This includes an overview of supportive international environmental agreements, e.g., *Convention on Biological Diversity*, and the range of legal sources of relevance (e.g., international law to local customary law). It suggests the development of domestic enabling laws to support TBPAs and some considerations for drafters of TBPA agreements. However, these guidelines generally underplay the role of already-existing domestic legislation that requires or enables transboundary cooperation (e.g., management of forest fires or other natural disasters/emergencies) and the basis of customary cooperation that exists prior to negotiations, including cooperation for purposes other than nature conservation, and focus heavily on international environmental law.

12. In *Peace Parks for Mountain Forests: The Law and Policy of Transforming Conflict to Stewardship*, **E. Hsiao** offers an elaboration upon **T. Sandwith et al.**'s Draft Code and

some alternative suggestions. She encourages drafters of TBPA agreements to begin with national legislative frameworks and, where insufficient, to then draw upon regional and international agreements to which the States are Party. **E. Hsiao** proposes that TBPA agreements seek to capture the: (1) objectives and justifications for a TBPA, (2) legal basis for establishment, (3) scope of agreement, (4) guiding principles and vision, (5) decision-making bodies and processes, and (6) dispute resolution processes. Although designed for peace parks more specifically, these suggestions are also applicable to TBPAs more broadly.

Discussion Topics and Questions

1. **Definitions and Objectives:** A proposed definition for TBPAs is, “A transboundary protected area is a clearly defined geographical space that includes protected areas that are ecologically connected across one or more international boundaries and are cooperatively managed.” How does this revised definition assist in the design of TBPAs or their ability to meet the numerous objectives that the IUCN and other proponents outline for TBPAs?
2. **Stakeholders:** Who have been the major players or drivers behind the establishment and management of TBPAs? How have TBPAs broadened (or not) multistakeholder participation in conservation and PA governance? At the very least, who should be involved in a TBPA and why?
3. **Assessment:** Are TBPAs effective? According to what metrics or standards? How do we incorporate for the social critiques of TBPAs? Are TBPAs an ecological win and a sociological failure? How can we improve TBPAs?
4. **Role of Law:** In what ways do TBPA legal agreements capture or reflect socio-political and ecological contexts at various scales (local, regional, international)? Are the guidelines on TBPA legal arrangements sufficient – what are they missing or in what ways are they misleading? Why is the legal framework for a TBPA important? Does it matter what type of legal mechanism is used – are certain arrangements more conducive to certain contexts?

Further Recommended Literature and Research Sources

Recommended Scholarly Literature:

1. Ali, S., *Transboundary Conservation and Peace-building: Lessons from Forest Projects*, (Yokohama, Japan: United Nations University, 2010).
2. Barquet, K., P. Lujala & J. K. Rod, *Transboundary Conservation and Militarized Interstate Disputes* (2010).
3. Budowski, G., *Peace Through Parks*, 14 *Our Planet* 30.
4. Büscher, B., “Seeking ‘telos’ in the ‘transfrontier’? Neoliberalism and the transcending of community conservation in Southern Africa” (2009), *Environment and Planning A* 42: 644-660.

5. de Jong, W., D. Snelder & N. Ishikawa, *Transborder Governance of Forests, Rivers and Seas* (Taylor & Francis, 2010).
6. Fall, J.J., “Beyond handshakes: rethinking cooperation in transboundary protected areas as a process of individual and collective identity construction” (2009), 2 *Journal of Alpine Research* 73-84.
7. Flores Velasquez, P. , P, Martinez de Anguita, E. Hsiao, *La Conservación en las Fronteras: El Ciclo de Proyectos Aplicado a la Creación del Parque Binacional “Padre Fabretto”* (Fundacion Fabretto, May 2008).
8. Grandia, L., “Between Bolivar and Bureaucracy: The Mesoamerican Biological Corridor” (2007), 5(4) *Conservation and Society* 478-503.
9. Hammill, A. and C. Besançon, *Promoting Conflict Sensitivity in Transboundary Protected Areas: A Role for Peace and Conflict Impact Assessments* (Winnipeg, Canada: IISD, 2010).
10. Kemkar, N., “Environmental Peacemaking: Ending Conflict between India and Pakistan on the Siachen Glacier through the Creation of a Transboundary Peace Park” (2006), 25 *Stanford Env't L.J.* 1-53.
11. Lanjouw, A. *et al.*, *Beyond Boundaries: Transboundary Natural Resource Management for Mountain Gorillas in the Virunga-Bwindi Region 1*, 6 (Biodiversity Support Program, 2001).
12. Ovido, G., “Human Communities and Transboundary Conservation Areas” (2003), ITTO/IUCN International Workshop on Increasing the Effectiveness of Transboundary Conservation Areas in Tropical Forests.
13. Rainer, H. *et al.*, “Regional Conservation in the Virunga-Bwindi Region: The Impact of Transfrontier Collaboration Through the Experiences of the International Gorilla Conservation Programme,” in 17 *Journal of Sustainable Forestry, Transboundary Protected Areas: The Viability of Regional Conservation Strategies* 189, 192 (Goodale *et al.* eds., 2003).
14. Smith, G. and A. Rosenbaum, *The Case for an Ecotourism Peace Park and Cultural Heritage Corridor in the Korean Demilitarized Zone*, in *Ecotourism: Management and Assessment* 164, 165 (Dimitrios Diamantis ed., 2004).
15. van Amerom, M. and B.Büscher. “Peace Parks in Southern Africa: Bringers of an African Renaissance?” (2005), *Journal of Modern African Studies* 43(2): 159-182.
16. van de Giessen, E., Institute for Environmental Security, *Peace Park Amid Violence?: A Report on Environmental Security in the Virunga-Bwindi Region 15* (July 2005).
17. Westing, A., *Transfrontier Reserves for Peace and Nature: A Contribution to Human Security* (Nairobi: UNEP, 1993).

Websites:

1. Europarc Federation: <http://www.europarc.org/what-we-do/transboundary-parks>
2. Global Transboundary Conservation Network: <http://www.tbpa.net/page.php?ndx=77>

3. The Peace Parks Foundation: <http://www.peaceparks.org/story.php?pid=100&mid=19>
4. United Nations Environment Programme: http://www.unep-wcmc.org/transboundary-protected-areas_469.html