



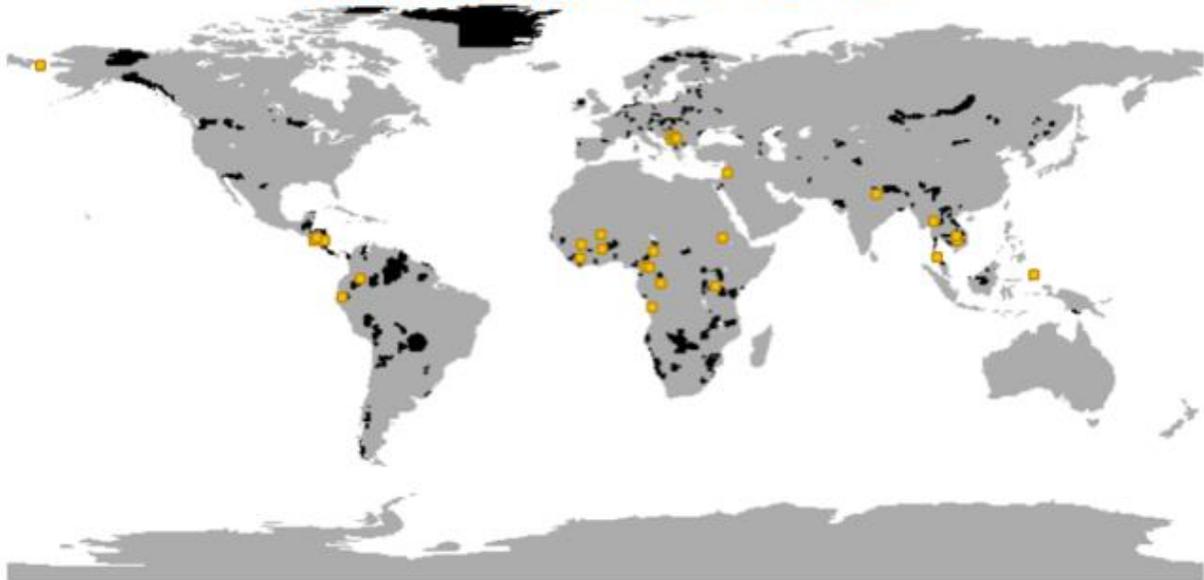
World Commission  
on Environmental Law

Commission Mondiale de  
Droit de l'Environnement | Comisión Mundial  
de Derecho Ambiental

## IUCN International, Regional and National Reports

### Transforming Law to Transform Conflict: Designing Transboundary Conservation Area Agreements for Peace

#### DEVELOPMENT OF TBCAs



#### Protected Areas

■ Transboundary Protected Areas

● = TBCA identified in dissertation

IUCN and UNEP-WCMC (2007) The World Database  
on Protected Areas (WDPA) April 2007. Cambridge, UK:  
UNEP-WCMC

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## THE BACKGROUND

According to Hanson et al., between 1950 and 2000, 81% of 146 major armed conflicts took place entirely or partly within a biodiversity hotspot.<sup>1</sup> Despite efforts to delineate protected areas (PAs) as safe havens for nature, they are not immune to the violent conflict of humans, let alone the less visible cultural and structural violence related to separation and exploitation of nature.<sup>2</sup> In this context, Transboundary Conservation Areas (TBCAs), such as Parks for Peace, have been championed for their potential to contribute towards biodiversity *and* peace.<sup>3</sup>

The dissertation looks at peace through three categories: (1) international peace or peace between States, (2) social peace or peace between people(s) and (3) ecological peace or peace between humans and the rest of nature. When it comes to international peace between states, Conca, Dabelko and other environmental peacebuilding scholars theorize that TBCAs can create “habits of cooperation” in areas of mutual interest that could potentially spill over into other areas of potential conflict.<sup>4</sup> The ability to bring people together in cooperation to produce greater understanding and cohesion can also apply to social conflicts. Additionally, conservationists have long championed numerous social benefits of PAs, including their contribution to human security, which supports social peace.<sup>5</sup> As for ecological peace, TBCAs are one way to establish a zone of peace with nature, at the very least an attempt to protect them from direct physical violence and provide venue for nature appreciation. Ideally, TBCAs address all three categories of peace in an integrated manner.

Unfortunately, the potential for peace through TBCAs has been overshadowed by criticism of conservation-induced social injustices perpetrated through structural and cultural violence.<sup>6</sup> TBCAs based on fortress-model conservation or conservation by exclusion have been criticized for their colonial origins (especially in Africa) and are plagued with stories of forced displacement of indigenous and marginalized communities; the denial of rights and access to resources to

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<sup>1</sup> Thor Hanson et al., *Warfare in Biodiversity Hotspots*, 23 CONSERV. BIOL. 578–587, 1–3 (2009).

<sup>2</sup> E.g., Cheryl Fimbel & Robert Fimbel, *Conservation and Civil Strife: Two Perspectives from Central Africa*, 11 INT. CONSERV. NEWS 308–310 (1997); Bram Büscher et al., *Half-Earth or Whole Earth? Radical ideas for conservation, and their implications*, 51 ORYX 1–4 (2016); Michael B. Mascia et al., *Protected area downgrading, downsizing, and degazettement (PADDD) in Africa, Asia, and Latin America and the Caribbean, 1900–2010*, 169 BIOL. CONSERV. 355–361 (2013).

<sup>3</sup> PEACE PARKS: A CONSERVATION AND CONFLICT RESOLUTION, (Saleem Ali ed., 2007); TREVOR SANDWITH ET AL., TRANSBOUNDARY PROTECTED AREAS FOR PEACE AND CO-OPERATION (2001), [https://cmsdata.iucn.org/downloads/pag\\_007.pdf](https://cmsdata.iucn.org/downloads/pag_007.pdf) (last visited Mar 5, 2016); ARTHUR H. WESTING, TRANSFRONTIER RESERVES FOR PEACE AND NATURE: A CONTRIBUTION TO HUMAN SECURITY (1993); MAANO RAMUTSINDELA, TRANSFRONTIER CONSERVATION IN AFRICA: AT THE CONFLUENCE OF CAPITAL, POLITICS AND NATURE 6 (2007).

<sup>4</sup> ENVIRONMENTAL PEACEMAKING, (Ken Conca & Geoffrey D. Dabelko eds., 2002).

<sup>5</sup> Sue Stolton et al., *Values and benefits of protected areas*, in PROTECTED AREA GOVERNANCE AND MANAGEMENT 145–168 (Graeme L. Worboys et al. eds., 2015).

<sup>6</sup> Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. PEACE RES. 167–191 (1969).

promote neoliberal capitalist agendas that commodify nature and communities; and for using militant and violent tactics to defend threatened charismatic species.<sup>7</sup>

If the impact on social peace is dismal, the impact on international peace is unremarkable. In the only quantitative study to evaluate TBCAs and peace by Barquet et al., they were unable to conclude that TBCAs have significant impact on reducing *future* MIDs.<sup>8</sup> The literature seems to depict TBCAs as the pursuit of ecological peace at the cost of social peace and with insignificant impact on international peace. Reports on the state of biodiversity and the looming doom of environmental change, including climate change, indicate that even negative ecological peace is elusive.<sup>9</sup>

The challenge of peace through TBCAs is a challenge to fundamental theories of environmental peacebuilding. If the theory were straightforward, there should be little to no difference between a TBCA and a Park for Peace. If a difference in peace outcomes exists, it could be said that peace is therefore an external process that needs to be made explicit in order to be achieved. In other words, we need to design TBCAs for peace and conflict resolution, with peace referring to all three categories and *design* referring to the legal and governance framework which stipulates why a TBCA is being created, how it shall be constituted and governed, as well as who is responsible for what activities within the territory in order to achieve its goals or principles, and any other matter of its constitution.

## THE RESEARCH

In total, 56 *transboundary legal agreements* were reviewed for 32 TBCAs (about ½ of TBCAs identified). These were primarily Memorandums of Understanding (MoUs) (42.86%), with the rest in treaties (23.21%), declarations (21.43%), or other modality (12.5%), such as diplomatic notes. Although many of the agreements do explicitly include peace and conflict resolution, they are not very meaningful. Direct uses of the term peace (and similar analogues) appeared in approximately one-third of the agreements and one-third of the TBCAs, but half of those are found in the name of a TBCA, NGO or initiative, not in reference to a peace process, principles or directives. Conflict resolution appears more often, in three-quarters of the TBCAs, but just over

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<sup>7</sup> W. M. ADAMS & MARTIN MULLIGAN, *DECOLONIZING NATURE: STRATEGIES FOR CONSERVATION IN A POSTCOLONIAL ERA* (2003), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10128877> (last visited Mar 6, 2016); DAN BROCKINGTON, *FORTRESS CONSERVATION: THE PRESERVATION OF THE MKOMAZI GAME RESERVE, TANZANIA* (2002); Mac Chapin, *A Challenge to Conservationists*, *WORLD WATCH MAGAZINE*, 2004, at 17–31; MARK DOWIE, *CONSERVATION REFUGEES: THE HUNDRED-YEAR CONFLICT BETWEEN GLOBAL CONSERVATION AND NATIVE PEOPLES* (2009); RODERICK P. NEUMANN, *IMPOSING WILDERNESS: STRUGGLES OVER LIVELIHOOD AND NATURE PRESERVATION IN AFRICA* (1998).

<sup>8</sup> Karina Barquet, Päivi Lujala & Jan Ketil Rød, *Transboundary Conservation and Militarized Interstate Disputes*, 42 *POLIT. GEOGR.* 1–11 (2014).

<sup>9</sup> Norman Myers et al., *Biodiversity hotspots for conservation priorities*, 403 *NATURE* 853–858 (2000); RAJENDRA K. PACHAURI & LEO MEYER, *CLIMATE CHANGE 2014: SYNTHESIS REPORT 151* (2014), [http://ipcc.ch/pdf/assessment-report/ar5/syr/SYR\\_AR5\\_FINAL\\_full\\_wcover.pdf](http://ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf) (last visited Feb 8, 2018); UNEP, *GLOBAL ENVIRONMENT OUTLOOK 5: SUMMARY FOR POLICY MAKERS 20* (2012).

half of these are a standard legal clause addressing resolution of disputes pertaining to interpretation of the agreement. Only two TBCAs mention both natural resource conflicts and ecological peacebuilding – the Greater Virunga Landscape (DRC, Rwanda, Uganda) and Landscapes for Peace (South Sudan, Uganda).

Mechanisms for international, social or ecological peace are not typically linked to peace or conflict resolution objectives and raise questions of whether they are appropriate for positive peace. The table below is telling of the preferences for specific sub-categories or mechanisms of each category of peace and why TBCAs may not be contributing to positive peace as desired.

*TABLE 1: International, Social and Ecological Peace (# of Mentions / TBCAs)*

<b>International Peace (32.2%)</b>	<b>Social Peace (25.6%)</b>	<b>Ecological Peace (42.2%)</b>
Regional Harmonization (133/28)	Cultural Identity (15/7)	Sustainable Development (47/19)
Peace/Good Relations (54/23)	Benefits, Equitable Sharing (78/21)	Sustainable Resource Use/Management (63/19)
Security Cooperation (54/12)	Intergenerational Justice (16/12)	Climate Change Mitigation (17/9)
Benefits, Common Interests (25/18)	Human Rights, Rights Based Approach (18/7)	Prevention of Harm (73/21)
Existing Cooperation (15/14)	Participation, Transparency, Accountability (90/21)	Environmental Awareness (13/11)
	Protection of Marginalized, Vulnerable Groups (7/3)	Habitat Conservation, Restoration (156/29)

For example, under social peace, benefits-sharing and participation/consultation are most frequently mentioned (65.63% of agreements). In practice, benefits-sharing is commonly applied as a neoliberal approach to “participatory conservation,” wherein the relationship between parks and people is seen as a cost-benefit analysis and the hope is that park-adjacent communities will forget their grievances if better compensated. Consultation (mentioned in 21.88% of the agreements) does not even mandate free, prior and informed consent as a bare minimum for indigenous peoples, while rights and protection of marginalized or vulnerable peoples feature rarely (9.38%). All of the agreements fail completely to mention any reconciliation or redress for historical and on-going PA-related injustices.

As another example: given these are TBCAs, there is naturally an overwhelming focus on habitat conservation (90.63% of agreements), but the establishment of nature reserves or PAs does not resolve the culture of violence against nature or human-wildlife apartheid created by zoning divides between humans and the rest of nature. Clauses listing anthropogenic threats and harms to be prevented indicate that humans are seen primarily as a threat to nature, not as a regenerative force with a responsibility to nurture nature, which goes far beyond merely

sustainably using nature's resources.<sup>10</sup> Throughout the agreements, there is no mention of respect for rights of nature – not even recognition of nature as its own entity (e.g., legal personhood for rivers or sacred mountains).<sup>11</sup> In an attempt to provide negative ecological peace (protection from direct physical violence), TBCA agreements are falling short of positive ecological peace.

In a survey completed by 88 TBCA practitioners from around the world, representing experience in 77 different TBCAs, ecological peace was the primary motivation for transboundary cooperation. The focus was directed specifically at species protection and transboundary planning or strategy development. Practitioners did not always feel that the TBCA agreements provided sufficient guidance, mechanisms or legal authority to intervene for peace. Either legal authority was limited or not appropriately situated; peace and conflict resolution were only indirectly accommodated or merely aspirational and not operational; or peace and/or conflict resolution was not an issue of interest. When asked to rank the importance of different elements of a TBCA agreement, mechanisms for peace and dispute resolution were considered amongst the least important.

What the survey and legal review also indicated is that the elements of an agreement that the practitioners felt were most important for effective implementation were generally most frequently present in the agreements. In other words, practitioners' priorities are being reflected in transboundary agreements. As peace is not one of their priorities, its absence and lack of meaningful integration is no surprise. Additional capacity building or awareness raising for practitioners could help emphasize the importance and value of peace and conflict resolution for transboundary conservation and improve their inclusion in TBCA agreements.

It is imperative that TBCA practitioners are equipped to integrate peace and conflict resolution if they are to address direct (physical) and indirect (structural, cultural) violence against nature in their territories. While almost all of the practitioners surveyed agreed that environmental cooperation can support peacebuilding, some felt that there was little to no scaling up of cooperation to address broader or underlying dynamics, so the overall impact of transboundary conservation was neutral towards peacebuilding. The lack of impact on broader conflicts is important because when asked whether the TBCAs they were/are working in have experienced violent conflict, over 40% responded YES and almost all of these were broader regional conflicts, very few were directly related to the TBCA.

### *THE WAYS FORWARD*

In the full dissertation, a number of recommendations are provided regarding legal design of TBCA agreements for peace and conflict resolution, as well as for transboundary conservation in

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<sup>10</sup> See e.g., GVTC, GREATER VIRUNGA LANDSCAPE: ANNUAL CONSERVATION STATUS REPORT 2015 (2017).

<sup>11</sup> Elaine C. Hsiao, *Whanganui River Agreement: Indigenous Rights and Rights of Nature*, 42 ENVIRON. POLICY LAW 371–375 (2012).

the context of armed or violent conflicts. Some of the recommendations specific to designing TBCA agreements for peace include:

- (1) Make peace operational, not just aspirational.
  - a. Peace should be explicit (not just in a name) and conflict resolution should be a practice, not just a standard legal clause
  - b. All stakeholders should feel a responsibility to protect peace and have sufficient authority to intervene in conflicts affecting the land/sea-scape. Inclusion means no loop-holes for peace spoilers.
  - c. Mechanisms of meaningful participation are important for just social peace and need to incorporate minimum human rights standards.
  
- (2) Address all conflicts in the territory, especially underlying dynamics or root issues (not just band-aid effects on TBCA)
  - a. As all 3 categories of international, social and ecological peace are integrated and interdependent, so should their solutions.
  - b. Peace by peaceful means: Activities need to be careful to “do no harm” and to “do better”; i.e., conflict-sensitive. Interventions towards each category of peace need to evolve beyond neoliberal or securitized approaches towards rights-based, positive peace-building mechanisms.
  - c. Address historic injustices lacking truth and reconciliation, as well as historic influences on current injustices, so as to create a more just peace for generations to come.

It is important to remember that the goal is not a silver bullet legal agreement that addresses peace and conflict in all its nuances, but to engage consistently in the process of nomoscaping peace or legally shaping peace and conflict transformation through land/sea-scapes.<sup>12</sup>

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<sup>12</sup> DAVID DELANEY, NOMOSPHERIC INVESTIGATIONS: THE SPATIAL, THE LEGAL AND THE PRAGMATICS OF WORLD-MAKING (2010).