

## **-MODULE 12-**

# **TRANSBOUNDARY PROTECTED AREAS**

## **-SPECIAL CONSIDERATIONS-**

### **CONTEXT OF MODULE WITHIN BROADER COURSE**

- This is the twelfth Module in the Course.
- Transboundary Protected Areas (TBPAs) are an important tool for promoting and strengthening biodiversity conservation in inter-jurisdictional settings, including on an international scale.
- The core feature of TBPAs is that these protected areas straddle one or more borders between jurisdictions and countries.
- Apart from this common feature, the approaches to securing TBPAs and the types of TBPAs are varied.
- These approaches may range from formal agreements to more informal working/cooperative arrangements between states.
- Over the past years a number of general principles that assist in the process of identifying suitable areas for transboundary protection, and guidance on key factors for successfully establishing TBPAs, have emerged.
- Arrangements for TBPAs must also take into account obligations of countries arising in terms of applicable international law, as well as constraints, requirements and obligations in terms of the domestic legislation of the countries involved.
- There are also various options for designing institutional arrangements and achieving cooperation and coordination between the states involved in TBPAs.
- Thorough knowledge of the special legal considerations applicable to TBPAs is essential to anyone tasked with understanding, implementing, reviewing or drafting protected areas law catering for TBPAs.
- This Module therefore seeks to introduce Learners to the concept of TBPAs and the special legal considerations that are relevant to the establishment and management of effective TBPA agreements and legislation.

### **OVERVIEW OF KEY CONTENT**

In this Module the Educator will introduce the Learners to:

- **The Nature of TBPAs**
  - Context
  - Growth of Global TBPA Network
  - Definition
  - Form
  - Governance Type

- **Importance of TBPAs**

- [It is noteworthy that one significant contribution of TBPAs is in relation to connectivity. Thus cross-referencing to Modules 8 and 9 may be appropriate depending on the nature of the Learner group and the overall content of the course.]

- **Key Management Principles and Governance Arrangements**

- **TBPAs and the Law**

- Determining Applicable Law
- International Legal Framework
  - International Guidelines
  - International Designations
- Domestic Legal Framework
  - Negotiations
  - Institutional Mechanisms
  - Management
  - Coordination Arrangements
  - Dispute Resolution

- **TBPA operations in practice**

- W Biosphere Reserve
- Nyungwe-Kibira Landscape
- Kgalagadi Transfrontier park

## **MODULE OBJECTIVES & OUTCOMES**

- **Objectives**

- Explain the concept of TBPAs and the important role played by TBPAs in strengthening conservation efforts.
- Explore the different forms and typologies of TBPAs and the general principles that may guide site selection and the establishment of effective transboundary conservation efforts.
- Provide an overview of the international and domestic legal instruments relevant to transboundary conservation efforts.
- Explore and examine the special legal considerations and other factors which must be taken into consideration and/or which may influence the TBPA arrangements between states.
- Introduce Learners to the institutional mechanisms that are available for promoting cooperation.
- Explore the issues on which coordination and cooperation is required for TBPAs to operate in practice

- **Desired Outcomes**

- Understanding of the meaning of TBPAs and the various types of transboundary conservation arrangements that are emerging.
- Awareness and knowledge of the general principles that guide management of TBPAs.
- Understanding of the various obligations in terms of relevant international conventions that may be applicable to states negotiating the establishment of a TBPA.

- Understanding of the role and influence of domestic legal systems, sub-national and/or traditional law as well as non-legal factors (such as politics) in negotiating the establishment of TBPA.
- Knowledge of the two primary approaches for developing cooperation on transboundary conservation between states and a deep understanding of the advantages and disadvantages of these two approaches.
- Awareness of the institutional mechanisms for TBPA cooperation and the issues that require cooperation and coordination among the states involved.

## READINGS & RESOURCES

- *PA Law Guidelines* (Pgs 265-292)
- Schoon, Michael, and Matt McKinney, "Definitions and Governance of Transboundary Conservation" (International workshop on defining transboundary conservation principles, delivered at Thaytal National Park, 16 October, 2013), online: Global Transboundary Conservation Network [http://www.tbpa.net/docs/events/17Oct/Definitions%20and%20governance\\_Michael%20Schoon%20and%20Matthew%20McKinney.pdf](http://www.tbpa.net/docs/events/17Oct/Definitions%20and%20governance_Michael%20Schoon%20and%20Matthew%20McKinney.pdf)
- Vasiljević, Maja, and Boris Erg, "Global Transboundary Conservation Network" online: Global Transboundary Conservation Network <http://www.tbpa.net/page.php?ndx=51>
- Vasiljević, Maja, "Transboundary Conservation and WCPA Best Practice Guidelines Series" (International workshop on defining transboundary conservation principles, Thayatal National Park, 16 October, 2013) online: Global Transboundary Conservation Network [http://www.tbpa.net/docs/events/16Oct/TBC%20and%20Best%20Practice%20Guideline\\_Maja%20Vasiljevic.pdf](http://www.tbpa.net/docs/events/16Oct/TBC%20and%20Best%20Practice%20Guideline_Maja%20Vasiljevic.pdf)
- Slocombe, D.S. & R.K. Danby, "Transboundary protected areas, connections, and conservation" in J.G. Nelson & B. Dempster, eds., *Transboundary Protected Areas, Research and Planning: Parks and Protected Areas Research in Ontario*. (Parks Research Forum of Ontario, Univ. of Waterloo, Waterloo, ON 2007)
- Sandwith, Trevor, et al., *Transboundary Protected Areas for Peace and Cooperation: IUCN Best Practice Protected Area Guidelines Series No. 7* (IUCN, 2001) at 34. online: Global Transboundary Conservation Network [http://www.tbpa.net/docs/pdfs/IUCN\\_TBPA\\_guidelines1.pdf](http://www.tbpa.net/docs/pdfs/IUCN_TBPA_guidelines1.pdf)
- Agnes Michelot with Boubacar Ouedraogo, *Transboundary Protected Areas: Legal Framework for the W Transboundary Biosphere Reserve (Benin, Burkino Faso, Niger)* (IUCN-EPLP No. 81) available on-line at: [http://cmsdata.iucn.org/downloads/w\\_biosphere\\_en.pdf](http://cmsdata.iucn.org/downloads/w_biosphere_en.pdf)
- Ntare, Nicholas, "Nyungwe-Kibira landscape transboundary collaboration," *TBeNEWS* 7 (June 2013) 13, online: Global Transboundary Conservation Network [http://www.tbpa.net/newsletters/9\\_TBeNEWS-no7.pdf](http://www.tbpa.net/newsletters/9_TBeNEWS-no7.pdf)
- "Kgalagadi Transfrontier Park" online: SANParks <http://www.sanparks.org/conservation/transfrontier/kgalagadi.php>

## **STRUCTURE & DURATION OF MODULE**

- This Module is structured into **two main components**:
  - **Seminar Presentation**
  - **Exercises**
- The approximate **duration** of the Modules is 4 hours comprising :
  - Seminar Presentation (2 hours)
  - Exercise (2 hours)

Depending upon the audience and available time, the exercises may be adapted, cut down or simplified.

## REFLECTIVE EXERCISES

In this Module the Educator has the choice of **two exercises**:

- **Exercise 1 - *TBPA Governance Challenges***
  - **Nature of the Exercise**
    - Small Group Exercise.
    - Case Study.
    - Legal Problem Solving; institutional design.
    - Small Group Presentation.
  - **Purpose of the Exercise**
    - This exercise is intended to provide opportunities to build awareness of the kinds of issues on which trans-boundary coordination and cooperation is required and the governance challenges that may present themselves in this regard, both from a legal and practical perspective.
    - The exercise should also provide Learners with an opportunity to practically use their knowledge.
    - By engaging in the exercise, participants should build/improve analytical skills for problem-solving.
  - **Methodology/Procedure**
    - Divide Learners into small discussion groups of two to four participants.
    - Based on Annex A, the Educator will describe a factual scenario centred on an area which straddles two neighbouring states, the parts of the area falling within each country being recognised as a protected area in terms of that country's protected areas legislation. The case study will highlight considerations affecting the potential for conflict or co-operation between the two neighbouring jurisdictions (10 minutes). Such matters typically include:
      - Ongoing and proposed activities within each of the protected areas, such as commercial activities and tourism.
      - Threats to the protected areas, such as poaching and alien invasive species.
      - Involvement of local communities within each of the protected areas.
    - The Educator will also provide the groups with excerpts from the applicable protected areas laws of the two states involved. Annex C includes a summary of selected provisions from the two neighbouring states. As an alternative, the Educator may wish to draw upon existing legislation from jurisdictions that are more immediately relevant to the participants.
    - Each group is required to consider, and make recommendations regarding the following (80 minutes total):
      - The specific issues that require coordination and co-operation. (10 minutes)
      - The proposed manner and timing of such cooperation and coordination. (10 minutes)

- Whether there are any impediments to coordinated action due to conflicting legal requirements in the protected areas laws of the two countries. (10 minutes)
- How such obstacles could be overcome. (10 minutes)
- Whether the cooperation and coordination should best take place through informal arrangement or a formal agreement, or a combination, and whether the countries are advised to proceed on a comprehensive basis in which they endeavour to address a full range of issues, or on a sequential basis where only selected issues would be addressed at the initial stage with other matters indefinitely deferred. (30 minutes)
  - Any future steps that might be anticipated. (10 minutes)
- All Learners will then come back together and the Educator will select two groups to present their recommendations (2 x 15 = 30 minutes).
- Other Learners in the group should be encouraged to raise questions or provide input as a means of enhancing overall understanding of the analysis and recommendations being advanced.
- A supplementary or alternative form of the exercise is based on Annex D, a document containing excerpts from the text of an existing MOU between two neighbouring jurisdictions concerning their shared interest in an area described as “The Crown of the Continent.” Using this document as a template or model, participants would be asked to adapt its language to the requirements of the situation described in Annex A.

○ **Resources for Exercise 1**

- “Your Tasks” – Instructions for Learners
- Annex A – Case Study
- Annex B – Map of the case study
- Annex C – Selected Legislative Provisions
- Annex D – Crown of the Continent MOU [Supplementary or Alternative Exercise]

• **Exercise 2 - *TBPA Negotiations***

○ **Nature of the Exercise**

- Large Group Exercise.
- Legal Role Play.
- Mock Negotiation.

○ **Purpose of the Exercise**

- This exercise is intended to provide Learners with an opportunity to apply their knowledge in a role-play situation.
- Participation should help to enhance understanding of the challenges posed by negotiating a TBPA Agreement.

- In addition, participants should build awareness and understanding of the types of issues that require consideration in establishing a cooperative and harmonious framework for the management of a TBPA and how obstacles in this regard might be overcome.

## ○ **Methodology and Procedure**

- Divide Learners into three groups. Two groups will represent the governments of two neighbouring jurisdictions, Aurora and Borealis, in negotiations. The third group represents an environmental NGO whose interests and objectives are described below.
- Aurora is a comparatively well-resourced state with a well-developed protected areas law. General support of the local communities for establishing protected areas is high, and the country has a wealth of experience regarding the establishment and management of protected areas. Borealis, on the other hand, is characterised by the opposite circumstances. Protected areas law is largely undeveloped and there is limited evidence of support for protected areas in the jurisdiction. As a result, management and operational experience are limited, despite the availability and suitability of areas that would be the subject of various forms of protected area initiatives in many other countries.
- The Educator will outline the Scenario (10 minutes):
  - The parties (whose distinctive circumstances are described above) are embarking on the process of negotiating the formation of a new TBPA.
  - Further information concerning the circumstances and history of the relationship is provided in Annex A.
- The Educator will hand out to each group their national negotiating mandate including information on the current state of the relevant protected areas law.
- The two government groups are tasked with completing negotiations for a draft TBPA Agreement. It is understood that the text must specifically address the following issues:
  - Management principles and administration;
  - Institutions and Governance;
  - Access, use and benefits sharing;
  - Compliance and enforcement.
- Each government group will be assigned the tasks of (50 minutes):
  - Considering the legal requirements for concluding the Agreement.
  - Preparing their negotiation strategy for their first engagement with the other party.
  - Appoint a lead and assistant chief negotiator to lead their delegation at the impending negotiations.
- During the same time period, participants representing the NGO will develop their own preferred version of the negotiation text.
- The Educator will then call the two government groups together and run a mock negotiations (50 minutes):

- The Educator will use the generic mandatory content to be included in the TBPA Agreement to structure the negotiations.
- Following conclusion of the government to government negotiations, NGO representatives will critique the official text on the basis of their own preferred outcomes.

- **Resources**

- “Your Tasks” – Instructions for Learners: **Note that there are three sets of negotiation instructions, one for each of the three groups** – the Aurora Government; the Borealis Government; and the NGO Bigger Landscapes are Better Landscapes.
- Annex A – Case Study accompanied by a draft MOU
- Annex B – Draft Memorandum of Understanding
- Annex C – Map of the case study

## NOTES FOR THE EDUCATOR

- **General Preparations for Presenting the Module**

- Read the main texts and the additional readings and resources.
- Work through the relevant Seminar Presentation and supporting Notes for the Educator.
- Tailor the Presentations to suit your purpose and audience, ideally adapting it to the domestic or local context of the participants.
- Many slides contain links to sources of additional information or supplementary background reading.
- Read through the relevant Exercises and adapt these as required.

- **Facilitation of the Module**

- As previously mentioned, the TBPA Module seeks to introduce Learners to the nature and importance of TBPAs alongside discussion of applicable management principles and presentation of relevant international and legal framework considerations. A number of examples are noted for illustrative purposes, while various slides engage learners in practical considerations related, for example, to invasive species, or emergency response measures, or scientific collaboration
- It will be helpful, depending upon the background of the participating Learners, to tailor aspects of the presentation to the audience. Those with field background, for example, may have rich experience to exchange with each other in terms of dealing with on the ground situations where some form of institutional co-operation or co-ordination was required. Or, participants with scientific and research backgrounds may have experience to share in connection with the management of technical information, data bases and so on.
- The TBPA Module offers opportunities to re-visit materials from other modules in the course. Notable examples include management principles, governance arrangements, connectivity, and the international legal context. The extent to which this is done will vary depending upon circumstances in which the course is presented.
- There are several locations in the Module, particularly where TBPA examples are briefly explained, where it may be beneficial to substitute local illustrations where these exist and materials are available.
- Several substantive highlights in the Module are worth noting
  - TBPAs offer scale potential to achieve key protected area objectives such as ecosystem protection and management.
  - TBPAs may be pursued in a variety of forms or configurations and may be established and operated on the basis of informal or more formal arrangements.
  - Legal considerations arise in connection with a wide range of issues where divergent legal frameworks of participating jurisdictions may have to be reconciled.
  - Institutional mechanisms and procedures to promote co-ordination or co-operation are central elements of the TBPA framework.

## ASSESSMENT EXERCISES

- **Nature and Guidance on Use of Exercises**

- The Educator is provided with a series of essay-style assessment questions that are designed so as to broadly cover the content the Module.
- The questions may be utilised for assessment purposes or as an opportunity for Learners to consolidate their knowledge.
- The questions cover both theoretical and practical issues. ○ No mark allocation for the questions has been provided.
- All of the questions are of equal weighting.
- It is recommended that in an exam-type setting, Learners should have 1 hour to answer each question.
- The answers for the questions can be drawn directly from the Seminar Presentation and the accompanying Seminar Notes.

- **Assessment Questions**

- *Question 1*

Transboundary protected areas may take a variety of forms. Describe a number of these for the benefit of an observer who is unfamiliar with the possible forms and configurations of TBPAs.

- *Question 2*

TBPAs are sometimes categorized in relation to their governance type, a reflection of the degree of integration or co-operation that may exist between participating jurisdictions. Describe your understanding of the variations along a governance spectrum from a situation involving no co-operation to one that is characterized by full co-operation.

- *Question 3*

TBPAs are considered to be important in relation to their potential contribution to environmental protection and conservation. Explain the importance of TBPAs with reference to these and other objectives or contributions.

- *Question 4*

Review management principles applicable to TBPAs and explain what each might be expected to contribute or accomplish.

- *Question 5*

Some TBPAs are considered to be formal in nature with carefully documented and elaborated provisions whereas others exist on the basis of highly informal arrangements with limited documentary foundations. Explain these differences more fully and describe the potential advantages and disadvantages of the alternative approaches to establishing TBPAs.