

# **Legal and Institutional Implications of Systemic Planning and Management of Transboundary Protected Areas**

## **- a comparative analysis of case studies from the Italian Development Cooperation**

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### **1. Introduction**

A concise review of some milestones in the evolution of international environmental law related to Transboundary Protected Areas will enable us to define the TBPAs current international legal framework, in terms of principles, treaties and other soft law acts.

The above review will be followed by a comparative analysis of some case studies selected from Italian cooperation bilateral projects and partnership initiatives on TBPAs, aiming at assessing the extent to which the legal component need to be taken into consideration and/or to be strengthened.

Building upon results of such analysis, proposals will be brought forward on how to boost the TBPA governance-related evolutionary process.

#### **1.1 The background to Johannesburg WSSD (World Summit on Sustainable Development) and major issues concerning systemic planning of Transboundary Protected Areas (TBPAs)**

With regard to principles such as sustainable development, integration and precaution as defined by the UNCED (Earth Summit, Rio 1992) and, more specifically, the Convention on Biological Diversity, Protected Areas are increasingly considered laboratories for testing sustainable development models for achieving conservation of habitat and biodiversity.

In turn, at the soft law level, we can find examples such as the European Federation of Natural Parks (EUROPARC)<sup>3</sup> proposal on “Basic Standards for Transfrontier Co-operation between European Protected Areas” (2000)<sup>4</sup> where specific mention is made of factors such as culture, regional development, promotion of peace and understanding, etc.<sup>5</sup> rather than referring merely to sustainable development aims in general.

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<sup>3</sup> EUROPARC is a pan-European NGO, whose purpose is to support and promote the whole range of PAs in Europe. It features some 354 member organisations and more than 500 PAs in 37 European countries (nature and national parks, state organisations such as environment ministries, nature conservation agencies, regional and local authorities, as well as academic institutions).

<sup>4</sup> They were approved unanimously by participants of the EUROPARC Seminar on *Transfrontier Co-operation between European PAs* (Retz, Thayatal National Park, Austria, 18 – 21 June 2000).

<sup>5</sup> “Cooperation between PAs that cross or lie adjacent to international borders makes a significant contribution to the conservation of both natural and cultural heritage and the achievement of sustainable regional

Furthermore, the Draft International Covenant on Environment and Sustainable Development, 1995, prepared by IUCN Commission on Environmental Law (CEL), provides for two basic principles: *a)* States sharing the same natural habitat must manage it as one ecological system, regardless of national borders; and *b)* States need to co-operate “in order to develop harmonised policies and strategies covering the entire system and the ecosystems it contains” (art. 34)

More specifically, the World Commission on Protected Areas (WCPA) Draft Code for Transboundary Protected Areas in Times of Peace and Armed Conflict addresses the legal perspective in details.<sup>6</sup> Its aim is that of contributing to the progressive development of a legal and institutional framework for the establishment and management of TBPA. Moreover, it is aware of the importance of taking into account the evolution of relevant international law.<sup>7</sup>

Immediately after that, the Millennium Declaration and the outcomes of the Johannesburg World Summit on Sustainable Development stand out. In particular, the Millennium Declaration states “prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development”. The Declaration on Sustainable Development and the Plan of Implementation adopted by the WSSD included the primary objectives of, and essential requirements for, sustainable development: poverty eradication, changing consumption and production patterns, and the protection and management of the natural resource base for economic and social development. These two documents represent an attempt to set in motion the systemic approach, fundamental to the management of complex and interdependent issues such as environmental conservation, economic growth and social protection.<sup>8</sup> Further, these issues themselves are cross-sectoral when compared to others in the field of international cooperation. Such a broad span raises new legal issues and, with them, the need for innovative juridical approaches, analyses and solutions.

Relevant to TBPA, the WSSD call for an holistic approach to conservation and development, the application of the principle of good governance, the launch of a number of Type 2 Partnership Initiatives, and the specific recognition that TBPA will increase their role in testing new opportunities for economic and social development while respecting the environment and local knowledge and traditions.

A vivid example of a programme specifically-designed as to embody such principles is provided by one of our case studies - a Partnership Initiative linking three southern Africa states in the Limpopo Valley. In such initiative, the TBPA concept is designed to eliminate the “value-sapping” effect of international boundaries and replace it with the “value-adding” synergy resulting from coordinated joint planning and management of the wild lands and natural resources.

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development. Such co-operation also promotes international peace and understanding” (Basic Standards, *Preamble*).

<sup>6</sup> Sandwith, T., Shine, C., Hamilton, L., Sheppard, D., *Transboundary Protected Areas for Peace and Co-operation* (based on the proceedings of workshops held in Bormio, 1998, and Gland, 2000), Best Practice PAs Guidelines, Series no. 7, A. Phillips ed., IUCN WCPA, Cardiff, 2001.

<sup>7</sup> The Draft Code is a dynamic instrument conceived as to be updated at intervals, so as to take account of legal developments, constraints and other aspects. The aim is to ensure both its relevance and effectiveness (art. 30).

<sup>8</sup> The principle of sustainable development was extended as to comprise the social dimension by the 19<sup>th</sup> United Nations General Assembly Special Session (UNGASS; New York, 1997).

But the very concept is shared also by other case studies: one linking eight countries in the Himalaya-K2-Everest mountain complex and another across the boundary of three Amazonian countries. These initiatives were specifically selected as case studies because of their suitability for testing the relevance to governance of different environmental, cultural, institutional characteristics.<sup>9</sup>

## 2. International legal framework of systemic planning and management of TBPAs.

Some of the major problems facing the management of TBPAs spring from the fact that principles of sustainable development are neither explicitly nor directly stated in the legal systems concerned.<sup>10</sup> Other problems refer to the inadequate implementation of relevant international treaties,<sup>11</sup> not only in terms of compliance with the obligations they set, but also with respect to the development opportunities they indicate (transfer of new and additional financial resources, and of environmentally sound technologies).

Assessing WSSD implementation is neither about verifying whether the principle of sustainable development and the closely linked principles of integration and precaution are recognised,<sup>12</sup> nor about evaluating the recognition of a series of other principles; rather it is about verifying their effectiveness.

At the Treaty level, a fully-fledged system of norms is already in place to protect the various habitats and biological diversity (47 multilateral treaties, conventions, protocols with obligations vis-a-vis area protection). This regime has its roots in the Convention on Biological Diversity (CBD, Rio de Janeiro, 1992) and comprises both 'universal' and regional treaties:<sup>13</sup> also other treaties both global and regional are relevant, such as the UN Convention to Combat Desertification (UNCCD, Paris, 1994), and those related to the use of international rivers.

The non-generalized ratification of international treaties may prevent their being used for transboundary cooperation. In the agreement among Mozambique, South Africa and Zimbabwe that established the *Great Limpopo Transfrontier Park* specific references are made to the CBD, the CITES, the UNCCD, and the Treaty of the Southern African Development Community,<sup>14</sup> that were signed and ratified by these countries.<sup>15</sup> The Parties

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<sup>9</sup> In addition to the above-mentioned three case studies, we have analysed – albeit not in any comparable detail – the *Siachen Peace Park* (SPP) Proposal (across the Indo–Pakistan border) and the Partnership Initiative on *Poverty Alleviation and Biodiversity Conservation in Islands with High Biodiversity Value: Sustainable Development Planning and Management in the Galapagos (Ecuador) and Socotra (Yemen) Archipelagos*. The SPP Proposal intends to contribute to resolving 50 years of international disputes by facilitating the preservation of a unique mountainous environment. Cf. Tallone, *Siachen Peace Park: a case study for the valorisation of high mountain ecosystems*, Durban, 2003.

<sup>10</sup> For example in Italy only in 1998 Law no. 426 (*Latest interventions in environment*) introduced explicitly in the Framework Law on PAs the principle of sustainable development (see art. 1-bis, *National programmes and systemic policies*).

<sup>11</sup> An interesting example is offered by art. 1 of the Italian Law no. 394 of 6 December 1991 (*Framework Law on PAs*) which states the general principle of "respecting international agreements".

<sup>12</sup> The importance of the latter principle is emphasized in the WPCA Draft Code, stating that "in decision-making affecting TBPAs and their immediate surroundings, lack of scientific certainty shall not be used as a reason to postpone action to avoid potentially serious or irreversible harm to the TBPA" (art. 7, *Precaution*).

<sup>13</sup> There are five global biodiversity-related Conventions: the CBD, the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES, Washington, 1973), the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS, Bonn, 1979), the *Convention on Wetlands* (Ramsar, Iran, 1971), and the *Convention Concerning the Protection of the World Cultural and Natural Heritage* (World Heritage Convention, UNESCO, Paris, 1972).

<sup>14</sup> SADC, Windhoek, 1992.

also undertake to follow relevant regional and international treaties and protocols in the development and management of the Transfrontier Park (art. 5, Principles, 3).<sup>16</sup> Noteworthy here is that reference was made not only to fully ratified treaties, but also to once which were only signed.

At the soft-law level we find plans of action, recommendations, guidelines, which are either directly or indirectly relevant determining the content of PA regulations. Among them it is worth mentioning the *Guidelines for the Sustainable Development and Management of Tourism in National Parks and PAs* (WTO, jointly with UNEP and IUCN), or the *Quebec Declaration on Ecotourism* adopted by the participants at the World Ecotourism Summit (UN International Year of Ecotourism, 2002)<sup>17</sup> as well as the already quoted Europarc *Basic Standards*.

The latter explicitly require the managing bodies of the TBPA to share 'a common vision' to be implemented in collaboration with their respective partner(s).<sup>18</sup> Hints of such a vision may be already found in relevant international legal principles and norms.

## **2.1 National laws and institutions for systemic planning and management of TBPA.**

Bilateral projects – to be implemented within a given TBPA – may have to face the legal-institutional problems proper of each national legal system involved. It is likely that competent bodies and institutions' capacities at the local and national level are not adequate to cope with the objectives of a transnational project; besides, also several of the existing legal regimes can be inadequate, incomplete or ineffective.<sup>19</sup>

Consequently it is important when identifying the norms affecting the fulfilment of planned activities, to pay attention to the specificities of the project and to both, its general and specific aims. Problems such as those related to the adequacy of the institutions, coordination of the competencies, and planning<sup>20</sup> are among the most common, particularly in terms of non-existence of competent bodies; non attribution of functions/powers; limits of jurisdiction of the relevant authorities; vagueness of procedures.

Cooperation activities among PAs that are subject to different national jurisdictions, as it is generally the case with partnership initiatives, is often promoted through bilateral projects. The bilateral cooperation track tends to be the most viable solution for the achievement of shared aims, especially in preliminary phases. This particularly applies when the framework to develop a transfrontier dialogue is not yet consolidated or has still to be established. In this context acting through a set of separate but coherent and converging bilateral initiatives emerges as the only viable approach to canalise the necessary interaction across the

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<sup>15</sup> The three States are also Parties to the World Heritage Convention; South Africa, alone, is party to the Ramsar Convention and to the Bonn Convention.

<sup>16</sup> The Treaty aims to promote ecosystem integrity, biodiversity conservation and sustainable socio-economic development across political boundaries.

<sup>17</sup> The Quebec Declaration reiterates, *inter alia*, "that funding for the conservation and management of biodiverse and culturally rich PAs has been documented to be inadequate worldwide" and affirms "that different forms of tourism, especially ecotourism, if managed in a sustainable manner can represent a valuable economic opportunity for local and indigenous populations and their cultures and for the conservation and sustainable use of nature for future generations, and can be a leading source of revenue for PAs".

<sup>18</sup> The first criteria to take into account when tackling an objective evaluation of the quality of co-operation between parks is the existence of a common vision for sustainable development in the region (*Primary Criteria: 1.1. Vision*, in Europarc *Basic Standards*).

<sup>19</sup> Because of the environmental cross sectorality, relevant competencies have to be distributed at various levels and between different organisations.

<sup>20</sup> Even in Developed Countries the various components of sustainable development – environmental, economic and social – are still poorly integrated in territorial management plans and policies.

border. However, since differences among national legal regimes may reduce the effectiveness of transfrontier co-operation among PAs, the need to pursue the harmonisation of norms and rules emerges. Capacity-building for achieving such harmonisation appears to be a recurring problem from the very first stages. Further problems **relate** to the identification and choice of the most suitable instruments for legal co-operation (including very simple ones like the “Charter for Twinship” among the interested **areas**).<sup>21</sup> The EUROPARC proposal suggests that a positive indicator of the quality of cooperation between PAs should be the existence of an agreement, signed either at parks authority level or at political decision-making level, ensuring the continuity of such cooperation.<sup>22</sup>

However, local realities, situations and aspirations can sometimes be very different, if not totally contradictory, therefore it is not possible to predetermine which of the various levels (and legal instruments) of cooperation are to be considered appropriate in each case. This is particularly true when considering socio-economic conditions and differences in availability of financial resources. Thus, Parks’ managing bodies should select the legal instruments for co-operation specifically focusing on the very factors characterising such cooperation.<sup>23</sup>

To sum up, the emerging recommendations for both, bilateral projects and partnership initiatives, is that of considering as fundamental for the early phases of the project cycle to conduct a preliminary analysis and evaluation of national and local laws relevant to the management of the area, including the existing juridical instruments for cooperation and harmonisation.<sup>24</sup>

This exercise should find its autonomous recognition within the project logical framework. The latter should therefore include a group of activities specifically aimed at strengthening the legal-institutional framework and the set of cooperation instruments. This approach has been acquired by proposals such as the SPP’s where it is emphasised how “legislation and

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<sup>21</sup> Co-operation among parks across borders is often based on mere understanding between parks’ managing bodies, including through joint declarations released by the competent national authorities. In other instances it relies on international agreements. Whereas in a number of cases a fair degree of similarity has made remarkable forms of collaboration among managing bodies possible (even when based on informal agreements), in other cases significant differences in aims, regulations, structures, human and financial resources have made the use of additional legal instruments non deferrable. In fact, informal agreements do not remove those obstacles to cooperation deriving from differences in statutory objectives of bordering PAs. Additional obstacles may be linked to the legal basis of relevant institution as well as to different degree of autonomy of managing bodies.

<sup>22</sup> The EUROPARC Federation has already developed a certification system “Transboundary Parks – Following Nature’s Design” for exemplary transboundary co-operation between PAs in Europe. The system was launched on 10 May 2003 with the first certificate being awarded to the Neusiedler See–Seewinkel and Fertő–Hanság Nemzeti National Parks on the Austrian–Hungarian border.

<sup>23</sup> Both the experiences of the Maritime Alps Natural Park and of the Parc National du Mercantour provide encouraging lesson learned. The two parks and their respective supervisor authorities (the Piemonte Region and the Ministère de l’Environnement) are embedded in two national administrative and judicial systems, with different characteristics. However, those same differences (autonomy of the Italian regions and centralisation of French public administration) make the regional Italian parks similar to small French national parks. In this context the two parks adopted a Twinning Chart and created a “Committee for reflecting on the common future of the two parks”, through which ways and instruments for harmonising the policies undertaken on both sides of the border were progressively defined, on the basis of a comparative legal analysis.

<sup>24</sup> Differences in power and authority of park managers or directors may result in difficulties in transboundary cooperation (the directors, who are usually responsible for ensuring that the norms embedded in the park’s statutes are respected, may or may not be holders of police powers). Besides, there may be differences between those stakeholders responsible for planning processes related to the PA and those responsible for those related to adjacent areas, as well as differences in regulations (hunting, fishing, vehicles circulation, publicity) and methods of involvement of local communities in decision-making processes.

its implementation are central to ecosystem protection and socio-economic development in the area".<sup>25</sup>

### **3. Good governance and public participation to environmental decision – making.**

Good governance remains one of the pillars of the international agenda, consistently with the Johannesburg *Plan of Implementation's* statement that: "good governance within each country and at the international level is essential for sustainable development". Governance means also partnership among governments, intergovernmental organisations, civil society, professional associations and business. It is therefore about States improving governance at all levels. Towards this end, Johannesburg Summit put forward a series of initiatives to reinforce links and guarantee synergy between government and *major groups*.

Certain elements of good governance are universal, among them transparency and accountability. Towards the achievement of these two goals tend also the Italian initiatives considered here: either those promoting the e-government to reduce the digital gap with developing countries, and those tackling the processes of decision-making, particularly in terms of access to these processes and adequate information. Whereas certain guidelines and international standards already exist, good governance in TBPA management could effectively be promoted through partnerships between relevant administrative bodies and the international secretariats of global and regional environmental treaties, as well as regional organisations active in the field of environmental protection. Certainly, to effectively implement the principle of participation further steps are required, including the creation of new organisations and the introduction of new procedures specifically designed for involving the public.<sup>26</sup> In this regard, it has been correctly emphasised that "community involvement is particularly important in transboundary situations".<sup>27</sup>

As was also emphasised by WCPA, there is a functional relationship between good governance and civil society involvement that must be enhanced in two ways: firstly, by raising the awareness of decision-makers about the returns of such involvement, and secondly by motivating the communities with regard to the role they might play in sustaining the consolidation of TBPA management.

It is not possible to conduct a complex transformation, such as that required to achieve sustainable development in TBPA, without mobilising the asset of local knowledge embedded in civil society.

TBPAs governance emerges as being of special interest and topicality. For example, returning to the treaty level, the South African case-study explicitly refers to the need to obtain the participation of all stakeholders. Similarly, the Treaty establishing the Great Limpopo Transfrontier Park, Mozambique, South Africa and Zimbabwe recognize the important role of the private sector and local communities in the promotion and sustainable use of natural resources. Promoting alliances in the management of biological resources by encouraging social, economic and other partnerships among the Parties (including the

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<sup>25</sup> The implementation of a management plan for the Central Karakorum National Park (CKNP) may, in fact, be a crucial step towards the declaration of the SPP.

<sup>26</sup> The principle of participation has become one of the cardinal principles of environmental law.

<sup>27</sup> "For all PAs, community involvement in PA planning, policy formulation and management is essential", see IUCN WCPA, *Transboundary Protected Areas for Peace and Co-operation*.

private sector, local communities and NGOs) is even placed among the objectives of the Treaty (art. 4, b).<sup>28</sup>

Toward the aim of community involvement in TBPAs, the WCPA also calls for “the identification of the NGOs operating in the territory, their involvement and the creation of a network”.<sup>29</sup> Nowadays the role of partnership between governmental bodies and international, national and local NGOs is fully recognized by the international community as an essential aspect for environmental law development and enforcement.<sup>30</sup>

It is worth noting that the involvement of local populations tends to be closely linked to the potential advantages and disadvantages related to the use of lands bordering PAs; this aspect was in fact at the core of the Annual EUROPARC Conference held in Stryn (Norway) from 27 - 31 August 2003.

In line with these considerations is the Treaty establishing the Great Limpopo Transfrontier Park, where “local communities” are defined as “groups of people living in and adjacent to the area of the GLTP, bound together by social and economic relations based on shared interest”.

#### **4. Methodology adopted in the analysis of case studies.**

Our comparative analysis of TBPAs case studies considers two initiatives that are linking bilateral projects in three countries, plus one initiative that is linking eight countries under a single partnership umbrella. Such programmes range different geographical context (Africa, Latin America and Asia) and tackle a wide variety of environmental, legal/institutional, social, cultural and economic realities. Priorities such as biodiversity conservation, poverty alleviation, capacity building of local institutions and communities, systemic management of major river basins, are shared by all of the analysed case studies. However some significant elements distinguish their key terms of reference. In the context of the present analysis we briefly illustrate only such qualifying features without entering into details.

The three bilateral projects with Mozambique, South Africa and Zimbabwe comprised in the African case study regard complex eco-systems in semi-arid zones. Common target of these projects is the conservation of biological diversity to preserve ecosystem services and natural resources productivity. The battle against invasive species which deplete water and impact on biodiversity, the management of an international river, and the focus on economies based on agriculture (but in which eco-tourism may play a major role towards sustainable development) stand out as the most distinctive issues.

The three bilateral projects with Bolivia, Brazil and Peru comprised in the Latin America case study, concern tropical rain forests and river basins. Here, the common target of protecting biological diversity is quite a sensitive issue as a result of the high concentration of pharmaceutical companies' activities in the area and the inadequate regulations of patents governing the use of biodiversity resources. Besides, there are specific economic, social, environmental, peace and stability problems related to coca-cultivation-based economies

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<sup>28</sup> Consistently the Siachen Peace Park Proposal recommends to follow a temporal path that allows public opinion in India and Pakistan to “adapt” to an idea of a common ground of co-operation on the Siachen Glacier.

<sup>29</sup> Another suggested activity is “the analysis of means of communication in the region and their role in promoting public awareness”.

<sup>30</sup> Such participation is assured in Italy within the structural framework of parks' managing bodies. Besides, thanks to the NGOs there have been a number of important participatory experiences. For example, the APE/Appennino Parco d'Europa was designed for increasing the value of natural resources across a large number of regions from the north to the south of Italy.

and drug trafficking, as well as problems related to wild gold mining and local migration patterns.

The initiatives in the eight countries included in the Asian case study (the Partnership Initiative) foresee transboundary regional cooperation on the achievement of sustainable development in fragile ecosystems, characterized by deforestation and land degradation, by the presence of major international water basins, by the impact of global climatic trends (e.g. melting of glaciers), and by **boundary disputes**.

Consistently with the general approach adopted by the Environmental Programme of the Italian Development Cooperation, when identifying the areas for intervention, priority consideration was given to those that are both geographically and environmentally strategic at the regional level (e.g. the African Projects were individually developed as part of a larger transnational conservation policy and, similarly to all the other analysed projects, are linked to DGCS supported Regional Programmes such as at SADC, UNDCP, and ICIMOD levels). Therefore, each of these selected areas emerges as representative of wider-scope problems in their respective continental context. Furthermore, as indicated above, several partnership initiatives originate from distinct bilateral projects. Such considerations suggest that the ensemble of the selected experiences may be considered sufficiently representative of the issues characterising transfrontier co-operation between PAs in developing countries.

Subsequently, for each case study we assessed how adequately the legal-institutional factor element was taken into account when: a) formulating the project; and b) designing Decision Support Systems (DSS). In addition, we examined also the tools provided for ensuring cooperation among major groups, particularly with NGOs.

The main questions we tackled include: Is the legal and institutional framework sufficiently known at the initial stage of the project cycle? Which activities have been planned in relation to legal and institutional aspects? How the legal aspect has been perceived and ranked within the capacity-building component? Are the improvement/revision/ integration of existing laws placed among the expected results? Are these aspects taken systematically into account during the implementation phase?

It is worth noting that legal-institutional issues relevant for 'Partnership type 2 initiatives' at the regional level may not coincide with those affecting standard bilateral projects. This is due not only to the overriding regional objectives of the initiative, but also to the "open" nature of such partnership, ideally involving new stakeholders, both governmental and non-governmental. Therefore, the partnership initiatives require a more careful analysis of comparative law, including the following additional questions to address: was the relevant legal-institutional analysis carried out at the project design phase or at least during its implementation? Does the programme contain an evaluation of the adequacy of legal instruments for co-operation or were analysis and evaluations scheduled for subsequent phases? Is there any agreement among interested States on environmental-related issues? Are there provisions regarding environmental cooperation comprised in some broader scope agreements?

Before moving to the exam of individual case studies, there are two characteristics that deserve special attention as they stem from the approach generally adopted by the DGCS Environmental Sector:

- all analysed projects foresee the development of systemic Decision Support Systems (DSS) tailored to the local social, economic and environmental realities. These DSSs aim to provide their users with the relevant information on ecological and socio-

economic issues they need to assess and to cope with in the transboundary context. By means of predictive models based on dynamic GIS, the DSS supports *ex ante* estimates of the economic and environmental consequences of different planning and management options.

- all examined projects pay specific attention to transparency and openness of decision-making processes, also through activities aimed at filling the digital gap and at boosting the role of the NGOs.

## 5. Africa: Bilateral projects.

The three Bilateral Projects in the Limpopo focus on:

- Poverty reduction through transboundary community ecosystem management in Massangena and Chicualacuala Districts, Gaza Province, Mozambique;
- Sustainable development and natural resources management in southern Zimbabwe;
- Management of transboundary ecosystems and PAs for the long-term benefit of local communities and for conservation of biodiversity and water resources in South Africa.

Key issues of the “Mozambique” Project are the inadequacy of the institutional framework face to the current process of regional territorial integration (the creation of the Transfrontier Park Gaza - Kruger - Gonarezhou),<sup>31</sup> and the lack of environmental management plans. Consistently, the project includes an early evaluation of the legal–institutional context, but unfortunately it does not foresee any activity specifically aimed at the formulation of proposals for institutional strengthening and/or elaboration of appropriate sectoral disciplines. Considering the general aim of the Project, which is that of improving the living conditions of the population (particularly disadvantaged communities in rural areas), we believe that sectoral norms regarding rural areas as well as agriculture should be revisited.

Similarly, the “Zimbabwe” Project aims at safeguarding local natural resource assets while improving the living standards of the people settled in communal lands in the Limpopo river basin. The project includes an environmental conservation component, providing for wildlife management zones as well as corridors, linking different parts of the ecosystem, and PAs which are currently separated by administrative borders (i.e., different legal disciplines for communal lands, commercial farms, and PAs).

In terms of institutional issues, the Project singles out both the lack of an appropriate framework within which to co-ordinate and integrate environmental and land-use planning, and the low planning capacity of local authorities. Consistently, the project includes among the expected results that of strengthening the rural district jurisdiction over natural resources management, and foresees the creation of “management development units” in the target areas to co-ordinate and promote wildlife management activities. This is to be done on “communal lands” adjacent to biodiversity significant areas (national parks, hunting and tourism areas) and ruled by specific norms. It is worth noting on this subject that the lack of harmonisation among different areas in terms of land-use regimes prevented from taking an integrated approach toward optimal use of the ecological and economic potentials of the very areas.

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<sup>31</sup> The original Gaza Kruger Gonarezhou TBPA more recently evolved into the GLTP process.

Whereas the project contains a section devoted to “socio-economic and environmental problems” and it explicitly pursues “socio-economic objectives”, it does not, however, provide for “legal” activities. Such a gap stands out particularly in its research component, within which a critical analysis of the legal regime governing property and land use would have been very useful.<sup>32</sup>

The general objective of the “South Africa” Project is that of optimising environmental and developmental opportunities opened by the establishment of the Transfrontier Park GKG, and guaranteeing an effective benefit to rural communities and to the populations residing in areas adjacent to the Park. The Project thus proposes to define schemes for the sustainable use of natural resources and the removal of juridical-administrative barriers, which currently hinder the pursuit of optimal ecosystem management. With regard to the legal aspects, the Project foresees: the evaluation of needs in terms of institutional capacity; the organisation of a logistic service; the promotion inter-institutional relations controlling access to and use of information at the level of rural districts and local communities; the creation of stable communication systems between active subjects (public and private), at local, provincial and national levels.

### **5.1 Partnership Initiative on Livelihood enhancement, conservation of biological diversity and stability through systemic trans-boundary resource management in the Limpopo corridor.**

Each of the examined southern Africa case studies raises a series of legal issues related to governance in concerned areas. From a regional perspective, both direct and indirect links to legislation and governance stand out. The Partnership Initiative on *Livelihood enhancement, conservation of biological diversity and stability through systemic transboundary resource management in the Limpopo corridor* links the three examined Bilateral Projects<sup>33</sup> in Mozambique, South Africa and Zimbabwe, through the Treaty on the establishment of the Great Limpopo Transfrontier Park (Xai-Xai, Mozambique, 9 December 2002).<sup>34</sup>

The Partnership Initiative is directly connected to the intergovernmental process leading to the establishment of the GL TFP: in fact, the target areas are specifically meant to build bridges among the TFP components;<sup>35</sup> the program supports the participation of communities living in areas adjacent to GL TFP in the decision-making process concerning the TFP.

In this regard it is worth noting the structure established by the Treaty in order to manage the TFP: the Ministerial Committee, the Joint Management Board, and the Coordinating Party. The Coordinating Party shall apply processes and procedures which are in accordance with the relevant regional and international treaties and protocols (art. 12, *d*) while the Parties shall use their endeavours to harmonise legislation (and policies) to facilitate integrated and complementary conservation and socio-economic development activities (art. 6, *c*). Furthermore, the Coordinating Party (art. 12, *c*) is responsible for the implementation and

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<sup>32</sup> Such analytical contribution could have been functional also to the establishment of strategies for new forms of sustainable development (through rational utilisation of renewable resources, eco-tourism, etc.).

<sup>33</sup> Such countries have different approaches to problems of environmental protection and sustainable development: within its consolidated institutional set-up, South Africa has a strong economy, and the relevant areas are already tourist attractions; the same does not apply to Mozambique and Zimbabwe

<sup>34</sup> The Ministers for the Environment of Mozambique, South Africa and Zimbabwe had already signed a Memorandum of Understanding for the establishment of the Great Limpopo Transfrontier Park (GLTP) on 10 November 2000

<sup>35</sup> In this regard, it is important to establish specific management systems for the *buffer zones* (more often run by local authorities), whereby activities with the potential to affect negatively the PAs are prohibited.

periodic revision of an effective Joint Management Plan for the TFP, with full participation of all relevant stakeholders.

The governance problems emerging in the implementation phase of this Partnership Initiative should be tackled not only through direct and indirect links with the TFP but also with other regional processes. Among these, possible synergies emerge particularly with regard to the two SADC-level initiatives (SADC Wildlife Policy, 1997 - SADC Protocol on Wildlife Conservation and Law Enforcement, 1999).<sup>36</sup> The Programme is strongly focused on capacity-building at various levels: central and local administrations; grassroots and community organisations, and NGOs.

## **6. Latin America: Bilateral projects.**

The three Bilateral Projects in Latin America pursue:

- in Brazil, the Promotion and sustainable use of natural resources in the south-western Brazilian Amazon;
- in Bolivia, the Creation of a regional system composed of PAs, indigenous territory and forestlands, to create a sustainable management system for the Bolivian Amazon;
- in Peru, the Management, environmental protection and sustainable development of the Tambopata and Inambari basins, Selva Alta and Tambopata – Candamo Reserve (Peruvian Amazon).

The “Brazil” Project focuses on the State of Acre (the Water Valleys of the River Acre). The Project was conceived with regional ambitions and is working towards the neighbouring areas in Peru and Bolivia, all of which are of strategic importance in terms of biodiversity. Illegal extraction and trafficking of natural resources (wood and others) is a common issue. In this context, the Amazonian Cooperation Treaty (Brasilia, 3 July 1978) together with other agreements between Brazil and Peru and Peru and Bolivia (at the level of the prefectures) are considered.

The Project starting point is that the non-implementation of these treaties together with the three countries different standards in terms of ruling on resource uses, are the main reasons hampering the definition of an effective common strategy against illegal trade. The Project also identifies an inadequate knowledge of relevant national laws as responsible for the inefficient management and for the lack of co-ordination between the organisations responsible for monitoring the utilisation of transboundary natural resources.

Consistently, among the project’s main objectives we note that of facilitating the harmonisation of the different environmental norms and their application in the countries involved. However, among the planned activities relevant for a possible harmonisation process we find only the stipulation of agreements between public and private entities in Peru, Brazil and Bolivia aiming at natural resources management and at valuing and commercialising non-timber products on a regional scale. Agreements of this kind, rather than constituting an ‘activity’, are possibly the result of a complex of actions.

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<sup>36</sup> DGCS ensures that coordination and synergy are achieved with other relevant Italian-funded programs, such as the SADC Herbaria Programme for the Establishment of Plant Resources Regional Network and the SADC Regional Programme on Rhino Conservation.

The idea behind the “Bolivia” Project is that increasing of natural resources productivity at sustainable rates can also allow the local population to acquire a role of more active participation (and a clear understanding of such a role).<sup>37</sup> The project’s pursuits include the start of a process to create a transnational connection with the neighbouring territories of Peru and Brazil<sup>38</sup> and, towards this end, it takes particular care in providing for relevant coordination meetings. Other planned activities include the identification of institutional weaknesses (particularly as to provide for with capacity-building in relation to decision-making processes); and research on various regulations and territorial ordinances. Among the expected results is that of reinforcing a joint and coordinated process of environmental politics at transnational level.

The general objective of the “Peru” Project is that of promoting a sustainable management of the ecosystem while supporting the start-up of a development process based on natural resources, other than coca plant.<sup>39</sup> Environmental problems are worsened by the presence of weak institutions (unable to enforcing existing laws in the area); by the lack of guidance and coordination in the activities undertaken; and by the scanty level of communication between national institutions, local administration, and the community. The inadequacy of the current land tenure regimes represents a major difficulty towards the promotion of alternatives to unsettled slash/burn approaches and coca cultivation.

Given due consideration to the limited capacity of local institutions in providing an integrated approach to natural resources management, the Project’s specific objectives include that of strengthening institutional capacity in systemic planning and management towards the sustainable use of these resources. Towards this end, the activity foreseen includes meetings to improve co-ordination between public institutions, private companies, NGOs, and basic organisations (indigenous populations, women’s groups etc.). The Project’s beneficiaries will be the institutions in charge of the management and control of the use of the territory’s natural resources - principally INRENA,<sup>40</sup> which will acquire, in the long-term, the capacity to fully honour its mandate to administer natural resources. The State strong commitment is reflected by the existence of a large number of public bodies dealing with the management of natural resources at both, national and regional level (the Ministry of Agriculture, Contradrogas - DEVIDA, INRENA, the Ministry of Education, and the Ministry of Health). Nevertheless, questions concerning “institutional sustainability” have not been adequately addressed.

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<sup>37</sup> Included among the objectives of the Project is that of increasing the ability to use environmental resources in a sustainable way, ensuring a better future for youth, women and future generations, contrasting population movements especially towards urban areas. This Project reflects a strategy which is common to other DGCS projects in the area, such as that on *Sustainable Management of Natural Resources and Territorial Management in the Community of Monte Verde*. Its objective is to contribute to the autonomous management of the indigenous communities of Oriente Boliviano in the Tierra Comunitaria de Origen (TOC). “This will be accomplished through the consolidation of rights of access, occupation and the use of land”. It aims to strengthen existing administrative structures, favouring the optimisation of human resources and greater participation by women and youth.

<sup>38</sup> The three countries are involved in the SIA (Sistema de Información Ambiental).

<sup>39</sup> The poor economy in the area is mainly based on coffee production for the export market and coca leaves for local consumption and trade. The Project was presented in Brussels in November 1998, on the occasion of a Consultative Group meeting to support the fight against drugs in Peru.

<sup>40</sup> This is a decentralised body of the Ministry of Agriculture, which has, among other functions, that of proposing norms regarding the management of natural basins; the General Directorate of the PAs and of the forest fauna is charged with the task of proposing policies, plans and norms for the adequate management of the units comprised in the National System of the State’s PAs - SINANPE - and proposes legislation relative to PAs as well as the setting-up of new areas.

### **6.1 Partnership Initiative on System planning and management of transboundary ecosystem resources in the south-western Amazon toward the sustainable development of local communities and regional stability.**

In the Amazonian case studies, in addition to the social aspects of sustainable development and biodiversity conservation, characterizing feature is the aim at reducing drug production e.g. through supporting alternative use of forest products. The Partnership Initiative on *System planning and management of transboundary ecosystem resources in the south-western Amazon toward the sustainable development of local communities and regional stability*, links the three bilateral projects examined in Bolivia, Brazil and Peru.<sup>41</sup> The Partnership, building upon the experience acquired by the Italian Development Co-operation in the region, aims at promoting a process of transboundary systemic planning and management. The scenario is that of an area which cannot guarantee the minimum living standards, hygiene, food, health and education to local people. The span of these very complex issues is clearly calling for the holistic vision of sustainable development affirmed at Johannesburg.

The idea behind this Initiative is that scattered legal management schemes in the region and the adoption by the three countries of various sets of incoherent norms and ecologically incorrect incentives, emerge among the causes of the significant social sensitivity which characterises the area. Furthermore, all these problems are generated and/or worsened by the technical and operational weakness of both, the institutions and the organisations having general administrative mandates in the area, and those specifically in charge of the sustainable management of renewable resources.

The Initiative will contribute to the legislative and procedural harmonisation at regional level, toward environment conservation and sustainable use of resources, and increased community involvement.<sup>42</sup> It entails the formulation of joint proposals addressed to the local and national decision-makers, aiming at integrating policies with sustainable development tools, within a framework of legislative and planning harmonisation of the three countries systems. Furthermore, being the establishment and consolidation of transnational co-ordination mechanisms among its specific targets specific actions will focus on supporting administrative institutions and civil society of the three countries, towards coherence among respective management plans and regulations.

### **7. Asia: Regional Programme. Partnership Initiative on Institutional consolidation for systemic planning and management toward poverty alleviation and environmental conservation in the framework of sustainable regional development in the Hindu Kush – Karakorum – Himalaya mountain complex.**

The UN General Assembly, at the end of the 2002 International Year of the Mountains, approved a Resolution in favour of sustainable and long-term development of the mountain regions<sup>43</sup> and, towards this end, collaboration and dialogue between nations. The

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<sup>41</sup> In this context, it is worth to note that a Wildlife Corridor has been created in the Vilcabamba-Amborò area (it runs from the Department of Apurimac in Peru to the Department of Santa Cruz in Bolivia, also touching the State of Acre in Brazil).

<sup>42</sup> The targeted geographical span of the Partnership Initiative comprises the south western Amazon, including the departments of Madre de Dios and the eastern administrative sector of Puno, in Peru; the State of Acre in Brazil; and the departments of Pando, the Iturralde province of La Paz, and the western sector of Beni, in Bolivia.

<sup>43</sup> The greater part of Italy's PAs is situated in mountain areas. The idea at the root of the APE was that of utilising the PA system of the Apennines as the basis for a project on a generalized improvement in the relevant land planning and management framework, centred on the sustainable use of natural and cultural resources.

Partnership Initiative on *Institutional consolidation for systemic planning and management toward poverty alleviation and environmental conservation in the framework of the sustainable regional development in the Hindu Kush–Karakorum– Himalaya mountain complex* (Afghanistan, Bangladesh, Bhutan, China, India, Myanmar, Nepal, Pakistan)<sup>44</sup> has to be considered in this context.

The Partnership aims at facilitating links between existing networks at the local, regional and global levels.<sup>45</sup> Following the completion of an initial institutional consolidation and community involvement phase, sets of two or more countries will tackle shared problems, sustainable development potentials and stability perspectives within the implementation of pilot projects which will involve joint efforts across the borders.

Three countries were identified for the first project pilot: Nepal, China (Tibet) and Pakistan, with specific reference to the K2 area. However, primary beneficiaries of the cooperation activities are going to be the institutions assigned to the management and control of natural resources (which will gain in terms of acquired monitoring, planning and territorial management capacity in a national and transboundary context).

It should be noted that in south Asia regional policies do not exist;<sup>46</sup> there is a little capacity to adopt a systemic approach towards environmental protection and management of natural resources – both at local and transboundary levels. Therefore, the various components of sustainable development – environmental, social and economic – are poorly integrated in the programmes and policies related to land management.

The Project highlights the inadequacy of juridical instruments, the lack of procedures supporting the sustainable management of resources, as well as the inadequate competency among administrators. Consequently, it foresees a series of activities dealing with legal and institutional issues towards regional governance. Particularly, it entails analyses and evaluation of: 1) relevant legal and institutional framework at regional level; 2) relevant national legislation concerning mountain areas; 3) discipline concerning transboundary cooperation; 4) formative iter for local administrators; 5) training of decision-makers on environmental principles and norms at international and regional level, towards acquiring a comparative approach to contents, aims, constraints and normative procedures.

Furthermore, the Project envisages, among its expected results, a knowledge of the legal and institutional framework at regional level and the monitoring of processes (of legislative reform) in pipeline; the achievement of a shared understanding of the multilateral environmental agreements (MEAs) as well as of the mechanisms and policies for their implementation, the creation of a system of analysis and monitoring of relevant environmental legislation.<sup>47</sup>

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<sup>44</sup> The programme central to the Asian case study is being implemented multilaterally through the partnership initiative alone (i.e. without projects on the bilateral tracks).

<sup>45</sup> This Initiative was conceived within the framework of the *International Partnership for Sustainable Development in Mountain Regions* supported by Italy-Switzerland –FAO-UNEP.

<sup>46</sup> There are, however, bilateral treaties in specific environmental sectors (water flows, sharing of information).

<sup>47</sup> IUCN, which is the executive partner, will ensure the involvement of given stakeholders at a level most suited to them.

## **8. Design and implementation of bilateral projects and partnership initiatives: the need to strengthen the legal component.**

The results of the analysis underscores the importance given by the Italian Development Co-operation to TBPA in the context of international process aiming at the definition and adoption of a global strategy for the management of transboundary ecosystems and shared national resources. All projects and initiatives are consistent with the above illustrated international legal-institutional framework of the TBPA management. More precisely, they all infer a holistic vision of sustainable development as affirmed at Johannesburg. Besides, they outline priorities, and take into account the various dimensions of the principle of sustainable development (environmental, social, and economic) as well as the related need to integrate several sectoral policies. They also appear to be in conformity with relevant international treaties and with the guidelines defined through act of soft law.

Even though, the project document gives little importance to the state of implementation of these international norms; it just highlight the lack of conformity of national regimes with the international ones. Furthermore, the analysis of the legal and institutional framework at national and local levels is, in general, performed only within more advanced stages of the project cycle. Finally, the assessment of mechanisms ensuring cooperation was also insufficient.

It commonly occurs in cooperation procedures that proposal formulations are based on the contribution of specialists such as engineers, ecologists and, maybe, economists but in very few cases we find legal experts involved. This might well represent a weakness in current projects and initiatives design.

In some cases, these projects and initiatives include, at certain stages, the collection of data on institutional capacity and laws. However, they give no special consideration to environmental laws albeit this represents a core element of the context in which a TBPA project or initiative is born. Consequently, even during the early phases of feasibility analyses, it is important to pay attention to global, regional and national principles and norms affecting the use of resources and the conservation of biological diversity.<sup>48</sup> Therefore, taking a methodological perspective the initial examination of the legal-institutional context in which one intends to act constitutes an essential pre-requisite.

Nevertheless, the aforementioned inadequacies in assessing *ex ante* the legal framework reflect certain procedural constraints of the Official Development Aid. In fact, the provision of detailed and relevant legal information requires a project itself, both in terms of technical and financial resources and time demands. Unfortunately this is more often not viable. Therefore, where the inclusion in the project team of legal experts is out of reach, the collection of juridical data should be ensured at least by the employed experts of other disciplines by providing them with the necessary guidance.<sup>49</sup> The same can be said about the need for strengthening the legal component at all stages of the project cycle: all projects

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<sup>48</sup> One of the objectives pursued through the adoption of these treaties is, in fact, that of defining the methodologies, procedures and aims of such cooperation initiatives.

<sup>49</sup> To strengthen laws and regulatory frameworks, it may be useful to hold international workshops for environmental lawyers and experts (e.g. workshops to review existing legislation and draft sectoral policies with implications for TBPA management and biodiversity conservation; to review and compare nature protection regulations; to review and assess legislation on the use of land and natural resources in the region (broad range of sectors: water, agriculture, tourism, farming); etc. In this context, the Seminar on "The Development of Collaborative Management for the Sengwe Corridor" was organised in the course of the implementation phase of the "Zimbabwe" Project, which dealt, *inter alia*, with the issue of enabling legislation for establishing a wildlife area or corridor in a communal land (Chiredzi, 20-21 March 2003).

should include an analysis and evaluation of the relevant legal and institutional context and of the specific discipline concerning the transboundary cooperation. Certainly, knowledge of the legal and institutional framework should figure among the expected outputs (at least in those cases where such a knowledge does not emanate from other previous completed projects).

In reality, the present analysis underscores how, while legal and institutional strengthening have been included as relevant components by several projects and initiatives, very few activities were specifically devoted to obtaining these results.<sup>50</sup>

Further consideration should be given to capacity-building activities at local and regional level. These activities should be designed so as to take into account the specificity of the context in which they are undertaken. In particular, they must allow decision-makers to adopt a comparative approach in terms of content, goals, juridical restrictions and procedures.

Consistently, environmental law is placed among the “four basic areas” of training and capacity-building activities by the study on *Enhancing the Role of TBPAs as a Vehicle for International Co-operation and the Promotion of Peace* contained in the “Global Partnership for Peace Parks”.<sup>51</sup>

An analogue trend is taken by the Programme of the *Galapagos-Socotra* Partnership Initiative which, emphasising the need to strengthen the capacity of institutions and civil society alike to manage resources systemically, includes “legislation” among the main areas of collaboration and joint capacity-building.

### **8.1. Systemic Decision Support Systems (DSS) for sustainable management: the need for juridical data.**

As already indicated, the majority of DGCS environmental projects and initiatives provide for the creation of a DSS, to assist in the design, planning and implementation of sustainable development activities ecologically and socially appropriate for the area. The implementation of DSSs may also contribute to filling the digital gap, as they include the development of a computer service system of environmental information and promote know how and technology transfer. For example, the South African Partnership Initiative will strengthen the preliminary results of the pilot project implemented in southeast Zimbabwe, extending the GIS resource management information and DSS to the shared, transboundary ecosystem.

However, since programming and management options can encounter both limitations and opportunities in the existing legal framework, and since development plans themselves need an appropriate legal formulation, there is a risk for a DSS to remain a theoretical instrument if what is offered to the decision-maker does not include the relevant legal and institutional framework. Similar contentions also apply to the programming and implementation of sustainable activities since it is the juridical-institutional context that determines eligibility, rules of procedure and prospects of effectiveness.

The above considerations emerge clearly from a comparative review of the Partnership Initiatives to be implemented in Latin America and Asia. The Latin America Partnership

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<sup>50</sup> However, at least in some cases, more effort has been put into the implementation phase, although generally not at the initial one, in which systematic gathering, updating, integration and classification of “ecological” data takes place.

<sup>51</sup> IUCN Initiative on *Environmental Law Capacity-Building Programme for Sustainable Development*, Johannesburg  
(see <http://www.un.org/esa/sustdev/partnerships/partnerships.htm>).

Initiative intends to set up a DSS for improving governance performances related to conservation and sustainable development process. Among the aims of such Partnership Initiative emerges that of progressively harmonize the different sectors' regimes within the countries of the south western Amazonian region. In this context, the very rational of having a DSS installed and running is going to be tested.

The Asian Partnership Initiative includes the creation of a DSS to assist in policy development and program implementation throughout the region. What is interesting is that this DSS will not only entail the collection (involving local actors), organisation and consolidation of socio-economic, physical and environmental data in the region,<sup>52</sup> but it will also comprise the legal and institutional framework at the regional level as well as the main environmental laws of each country involved particularly in terms of a) transfrontier co-operation, b) sustainable development of mountains, and c) water resources management. This DSS will, therefore, make information to emerge on the constraints set by all the different laws that are, in one way or the other, relevant to the utilisation of the natural resources and to the use of the territory.

Whereas the above review supports the main point that any DSS designed for consolidating institutions towards sustainable development must be expanded as to comprise legal data, with regard to TBPA it underscores the need for the DSS to provide access to and use of international, regional and local norms related to PA management (also utilising existing juridical data banks). Consequently, when dealing with TBPAs, the DSS dynamic database framework must comprise at least a) environmental legislation; and b) legislation regarding transfrontier cooperation.

## **9. The role of NGOs in ensuring coherence of TBPA cooperation activities with local needs.**

The analysis of the various case studies indicates that DGCS policies attribute adequate importance to communications, education and public awareness activities during the implementing and the monitoring phases. In this context it is particularly worth mentioning the Siachen Peace Park proposal. Such a proposal, rather than merely focusing on the government's needs related to the establishment of cross-border administrative links, emphasises the relevance of appropriate changes in local opinion and awareness.

With regard to public involvement, the projects and initiatives analysed confirm the central role that NGOs have to play from the earliest stages of the projects cycle, in order to effectively pursue a systemic approach to TBPA sustainable management.<sup>53</sup> Frequently, NGOs<sup>54</sup> act as implementing agency or as important partner in TBPA processes. In some cases, TBPAs also originated from their initiative. Furthermore, some cooperation initiatives place "participation" at the heart of their strategy (approach-expected results-beneficiaries).

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<sup>52</sup> It will include geo-referenced and dynamic databases, predictive models, trained staff, a general regional plan for system management and some detailed operational plans. The latter will focus on specific/sectoral development problems shared across boundaries and/or regionally.

<sup>53</sup> Attention should be also directed to the generalised absence of 'appropriate public awareness strategies' (such could for example be the development of a website on the TBPAs).

<sup>54</sup> In Italy, 'Legambiente', a national NGO, was among the promoters of the previously mentioned APE Programme (Appennino Parco d'Europa), with the aim of promoting a sound ecosystem equilibrium, allowing the full development of areas affected by human presence and activities. 'Legambiente' had also undertaken the function of assisting the program by organising several initiatives and involving many institutional and social actors. Today, the APE's importance is well established at both, European and international level and it comprises PAs which have become the focal point of new and innovative conservation and sustainable development policies. See Legambiente, *APE - Appennino Parco d'Europa. Un Progetto per le montagne del Mediterraneo*.

Moving to our case studies, NGO proposals were at the root of the Bilateral Projects in Brazil<sup>55</sup> and Bolivia<sup>56</sup> while NGOs play as implementing agency within the Zimbabwe Project (CESVI),<sup>57</sup> South Africa Project and Asian Partnership Initiative (IUCN).<sup>58</sup> Particularly relevant from the public involvement point of view are the Bilateral Projects with Zimbabwe, Bolivia and Peru. The Zimbabwe Project's approach is based upon participatory planning, with the involvement of relevant stakeholders at all levels. It includes the setting up of local forums for community-based natural resource management and indicate, as one of the expected results, the establishment of legally- recognised community institutions for resource management.

Beneficiaries of the Bolivia Project - in addition to the local institutions – will be the indigenous group and the caboclos (non-indigenous residents who have lived in the forest for numerous generations). Among the planned activities, there is that of setting up a permanent space where to hold meetings among local institutions, indigenous communities, caboclos and other social and economic groups. Among the expected results, there is that of strengthening the relationship with local authorities, thus promoting a more participatory decision-making process.<sup>59</sup>

When dealing with environmental issues the level of organised communities participation is very low.<sup>60</sup> The Peru Project therefore has elected among its specific objectives **those** of involving and/or strengthening community participation in sustainable management and promoting a deeper understanding of the environment. The final outcome pursued by the project is a change in attitude of the population towards the adoption of sustainable practices in natural resources' use.

With regard to the partnership initiatives, that of the southern African countries (with the three bilateral projects it comprises), supports the participation of people living in the buffer zones adjacent to PAs to the management of resources, particularly in terms of livelihood

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<sup>55</sup> The Project was promoted by the Italian NGO 'CESVI', in collaboration with MAP (Madre de Dios, Acre and Pando), which is an organisation (shared by public and private sectors of the three bordering regions) that promotes the exchange of ideas regarding processes to improve the living standards of local populations, protection of the ecosystems and effective collaboration among interested nations.

<sup>56</sup> The Project was promoted by CESVI. Among the activities planned as part of this project, is that of setting up "participatory planning" regarding the commercialisation of non-timber forest resources.

<sup>57</sup> Zimbabwe has an important track record in the implementation of community-based natural resources management, particularly through the leading experience of CAMPFIRE (Communal Areas Management Programme for Indigenous Resources). However, such initiatives were significantly limited in the Southern region that is characterized by more arid environment and erratic climatic fluctuations, leading to wildlife utilisation perspectives less reliable. The Zimbabwe Project gives therefore additional consideration at boosting the involvement of local communities leaders and authorities in the planning processes for sustainable use of land and of renewable resources.

<sup>58</sup> The IUCN represents a conspicuous resource for technical and scientific expertise, as well as for databases and a network through which to access regional and global environmental and socio-economic data.

<sup>59</sup> The "Bolivia" Project (local partner is Apoyo Para el Campesino - Indígena del Oriente Boliviano, APCOB) also has as its direct beneficiaries the indigenous Chiquitanos of the 27 communities located in the interior of the TCO Monte Verde. The project includes, among its activities, capacity-building for community and inter-community organisations; and support for the increased participation of women and youth in decision-making processes. Among the expected results are the strengthening of organisations' social, political and administrative capacities.

<sup>60</sup> The greater part of the inhabitants of the area comes from the Puno plateau and from the surrounding Andean areas, very poor in natural resources. Following brief periods of irrational exploitation, the available resources become insufficient to satisfy the needs of the people who are then forced to seek new areas – and this gives rise to a vicious circle: extreme poverty, leading to migration and the colonisation of new areas; environmental degradation of these areas follows, and loss of productivity, which, again, gives rise to migration.

enhancement opportunities.<sup>61</sup> The inhabitants of the target areas have been up to now only marginally involved in the TBPA process. No local institutional mechanisms exists at present to ensure an equitable sharing of resources and a meaningful participation of communities in resource management. The Partnership Initiative has, among its specific targets, the active participation of these communities in the ecosystem management and economic development processes to be established with the TFP.

The Partnership Initiative in the South-western Amazon appears to adequately take into account the international trends towards a participatory evolution of environmental law: it pursues its objectives by improving the relationships among different administrative, scientific, conservation and social groups present in the area. The strategy of the initiative will be defined and carried out with the contributions of public and private organisations. In addition, its DSS will be based on participatory collection, organisation and consolidation of socio-economic, physical and environmental data.

The Asian Partnership Initiative builds upon the consideration that interactions between relevant stakeholders are currently hindered by both their inadequate knowledge of existent databases as well as the lack of mechanisms for accessing to them, given also the inadequate communications among decision-makers and between them and the civil society. The initiative aims to build the capacity of decision-makers and stakeholders in accessing, gathering, managing and making proper use of key data on natural resources, climate change and biodiversity. In addition to the institutions responsible for the management of natural resource, the Partnership Initiative will benefit also the local communities of pilot areas. These are to be involved in the sustainable management of their ecosystem and made aware of its mechanisms and needs. The initiative also aims at strengthening the participation of all stakeholders -including women and the local and indigenous communities- as well as at promoting the use of indigenous knowledge and traditional practices (in agriculture, in forest management, etc). This means that researchers, experts, stakeholders and appropriate organisations/local partners will be identified and involved in the project's activities while a network of NGOs already working in sustainable management of mountains, will be created.

The same approach is shared by Galapagos–Socotra Partnership Initiative, which first draft was developed on the basis of direct consultation with stakeholders in Galapagos, continental Ecuador and Socotra.<sup>62</sup> A challenge for each of the archipelagos will be to set up mechanisms that allow for participation of inhabitants in the definition of priorities and through this contributing at their respective island development.

Therefore, it seems that the bilateral projects analysed as well as the partnership initiatives were inspired by the sound principle of site management recommending to work with local communities and other stakeholders. However, when a role is given to NGOs to play this is often limited to certain activities which can gain in effectiveness because of their involvement. As a matter of fact the role NGOs can play in ensuring that cooperation activities reflects local needs is not fully recognized.

Moreover, the legal aspects associated with governance have not been considered in depth, and there are no innovative proposals to ensure the organised participation of the community and of NGOs in decision-making processes.

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<sup>61</sup> A case of appropriate assistance to local communities toward sustainable management of natural resources is provided by two Italian NGOs - Legambiente and Cospe - within a project implemented in the *Lubombo Transfrontier Conservation Area between Swaziland and Mozambique*.

<sup>62</sup> The IUCN will be specifically in charge of developing the DSS hardware-software complex (modelling), together with selected experts from Rome University "La Sapienza".

## 10. Final considerations.

The present analysis on legal and institutional implications of planning systemically TBPA's, basing on lessons learned from the selected case studies, supports the contention that an in-depth assessment of regional and international legal regimes together with that of national and local regimes are necessary in order to pursue effectiveness and efficiency in TBPA management.

In terms of project design and methodology, the present analysis underscores the merits of strengthening the relevant administrative institutions, which in some occasions happen to be the main beneficiaries of the cooperation activities.

In some case studies, particular consideration has been given to the need for new legislative policies (framework disciplines, sectoral disciplines, technical standards, and the possible creation of new competent authorities). Lessons learned from such initiatives indicate that, to pursue both general and specific aims related to sustainable natural resources management and biodiversity conservation, appropriate legal and institutional instruments are urgently needed. They also suggest that in relevant transboundary context such instruments can be set up effectively through coherent, albeit separate, bilateral projects, provided these last are integrated within the programmatic framework of systemic visions and strategies (i.e. preferably but not necessarily within partnership initiatives). Results also underscore the relevance of appropriate legal and institutional mechanisms toward encouraging an integrated and systemic approach which, in turn, provides inputs for strengthening programming capacity, promoting cooperation, consolidating institutional capacity in legislative drafting, and making current legislation more organic and more efficient. The present analysis also offers specific inputs on how to improve and consolidate the very structure of the DSSs and toward boosting the role of NGOs.

When moving to the very DSSs, results allow a number of considerations on the protection of the environment, on the limits and opportunities emerging from the legal-institutional context, and on the inadequate experience of decision makers together with the cultural and procedural difficulties they meet when pursuing the integration of the legal component.

Regarding the NGOs, while their fundamental role in running the TBPA's could meet a fairly generalised recognition by now, the case studies suggest that their actual involvement tends to merely depend on the sensitivity and orientation of specific governing authorities, as well as on the evolving priorities of national policies<sup>63</sup>, rather than to be ensured through standardized procedures. Decision-makers should therefore capitalise on the increasingly generalised call for establishing fixed procedures towards co-ordination among administrative bodies, social groups and NGOs. This will also allow for the environmental mainstreaming toward the integration of a sustainable approach to resources' use in all aspects of social and economic development.<sup>64</sup>

Of course, the present analysis can only be considered as a preliminary act of brainstorming as it is based upon the comparative assessment of performances of initiatives still in progress. Further investigations which the Italian Cooperation intends to promote, will build upon these findings, aiming at contributing to programme design methodology and at

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<sup>63</sup> For example, the Treaty on the establishment of the Great Limpopo Transfrontier Park does not entail any form of involvement / representation of the major groups or of the local NGOs.

<sup>64</sup> In Italy, as a result of the framework law on PAs, representatives of NGOs are part of steering committees of parks. This has proved to be a positive experience and has favoured the establishment of an increasingly broadening consensus on the reality of the parks and their policy vis-à-vis sustainable development.

integrating development conservation initiatives consistently with the evolution of environmental law.

To sum up, the present brief review gives a feeling of the importance of what is behind the shield of the legal framework we have analysed, in terms of (i) need for its consolidation and (ii) difficulties met by any given TBPA stakeholder (be they a donor, a national decision-maker and/or manager, a community or entrepreneurial representative, or a scientific consultant) to pursue effective resource management within the constraints of their mandate, functions, capacities and resources.

As it was reiterated during V<sup>th</sup> Park Congress both, at technical and at senior institutional levels, the TBPA process has created an impressive momentum. We need prompt and concrete action to boost and maintain such a momentum. To this end, the analysis calls for the establishment of a mechanism providing legal services as an integral component of the budding global TBPA Network concept.

The proposed mechanism could develop as a Transboundary Legal Resource Observatory, with the aim of ensuring the integration of legal elements (public and private), especially environmental law (at international, regional, comparative, national and local levels), in the development of all other sectoral components of the Network. In particular, its objective could include:

- facilitating continuous monitoring of the state of implementation of international principles and rules relevant to TBPAs;
- promoting the comparative analysis of legal instruments, procedures and institutional mechanisms for across the border co-operation in TBPA management;
- formulating proposals for strengthening and updating the legal and institutional framework and its standardisation across borders and/or in the relevant regions;
- promoting the effective integration of legal elements, especially environmental law, in the design and implementation of institutional consolidation and capacity-building initiatives.

In other words, the contribution of the mechanism would be two fold:

- to make existing information and technical insights accessible -through the TBPA Global Network and in collaboration with reference bodies such as ELC- and to provide guidance for assessing appropriately feasibility, cost efficiency and effectiveness of new research and analytical efforts.
- provide for high level technical support on given priorities identified through the Global Network – e.g. elaborate innovative proposals for the full and organised participation of communities and NGOs in decision-making processes in the TBPAs.

The establishment of an *ad hoc* working group in charge of delivering guidelines/recommendations on legal mechanisms and procedures to promote the effective participation of NGOs in system planning and management of TBPAs would transform into practice the WSSD partnership open stand, calling for the actual involvement of all strata of governmental, non governmental, scientific, entrepreneurial and community TBPS stakeholders.

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