

Possible Elements of a GMS Transboundary Protocol to Manage and Maintain Shared Natural Resources and Biodiversity Corridors

(BCI - SEM 15-16 September 2008)

Presented by

Hasan Moinuddin, BCI Task Leader, GMS
Environment Operations Center (EOC)

Disclaimer: The analyses and recommendations in this presentation are those of the author and do not reflect the views of the Asian Development Bank (ADB), or its Board of Governors or the governments they represent.

Outline



1. Obligations under current LoAs
2. Delivery of current BCI targets: regulatory instruments at national, provincial and sub-provincial levels
3. Vision 2015 and beyond
4. BCI Process
5. Regulatory Framework: Anchoring a transboundary BC instrument in the GMS: Options & Hurdles
6. Step by Step Approach
7. Possible elements of a Technical Protocol / Reference Guideline

1. LoA Obligations (state)



- GMS state organizations (WGE members) implementing CEP/BCI have entered into Letters of Agreement (LoA) with the Asian Development Bank, which obligates the BCI partner to deliver a *“regulatory framework for establishing and maintaining biodiversity corridors with fiscal incentives”* to be *proposed and approved at national and provincial levels.*

[LoAs with MoE-CAM, MEP-PRC, WREA-Lao PDR, DNP-THA, MONRE-VIE]

1. LoA Obligations (non-state)



- GMS non-state partners (NGOs) supporting implementation of CEP/BCI have also entered into LoAs with ADB, which obligates the non-state BCI partners to deliver:
 - a *“provincial corridor strategy”* (Mondulkiri, WWF-CAM)
 - *“demarcation land use policy signed”* (Koh Kong, WildLife Alliance and Consortium-CAM)
 - *“demarcated and delineated as corridor and multiple use areas”* (Xishuangbanna, XTBG-Yunnan, PRC)
 - *“biodiversity corridor establishment reviewed...and a major high-level event..held”* (Xe Pian - Dong Hua Sao, WWF-Lao PDR)
 - *“Inputs into regulatory and policy framework for establishing biodiversity corridors”* (Ngoc Linh - Xe Sap, WWF-VIE)

2. Delivery of BCI targets



- The delivery of BCI targets on national and provincial regulatory frameworks are at various stages of implementation and completion (2008):
 - In VIE, national biodiversity law is in its final draft stage, while the draft biodiversity corridor decree is now undergoing the 4th / 5th version with discussions still on-going;
 - In PRC, proposals for delineation of corridors are complete, awaiting official approval at Prefecture level;
 - In CAM (Koh Kong) some demarcation has been undertaken and in Mondulkiri review is ongoing;
 - In Lao PDR mapping has been done but awaiting landuse planning; review of regulatory framework underway
 - In Thailand work is in progress and Cabinet has instructed agencies to collaborate on implementing BC

3. Vision 2015 and Beyond



- The BCI Vision as stated in the BCI Strategic Framework and Technical Assessment, 2005-2014, endorsed by the First EMM in Shanghai, May 2005 and the 2nd GMS Summit in Kunming, July, 2005 is:

“By 2015, GMS countries will have established priority biodiversity conservation and landscapes and corridors for maintaining the quality of ecosystems, ensuring sustainable use of shared natural resources, and improving the livelihoods of people”.

(Page 37, para 126)

3. Vision 2015 and Beyond



- While the BCI Vision does not explicitly call for the establishment of a transboundary regulatory framework by 2015 as an indicator of success, the BCI approach laid out in the Strategic Framework and Technical Assessment, 2005-2014, calls for fostering a process that:

“generates a degree of standardization in the regulatory framework establishing corridors, landscapes, and transboundary projects... following examples...in transboundary traffic and movement of goods and persons.” The BCI seeks to “lay the groundwork for...GMS transboundary protocols or regional agreements”. (Page 43, para 152)

4. BCI Process



Top Down Process

1. Convention / Treaty /
Umbrella Agreement



2. Protocol / Technical Annex



3. Ratification and National
level enabling law and
regulation



4. Provincial / Prefecture level
discussion on regulatory
framework and approval

Bottom Up Process (BCI)

4. Transboundary Biodiversity
Corridor Regulatory Framework



3. National Level Biodiversity
Corridor Regulatory
Framework (Decree)



2. Provincial / Prefecture
level discussion on regulatory
framework and approval



1. Site level discussions,
mapping, demarcation

5. Regulatory Framework



- Existing enabling multilateral legal (formal) framework (e.g. CBD, CITES) and non-formal declarations of intent (e.g. GMS Summit Resolutions, EMM Resolutions, ASEAN declarations/resolutions, IUCN resolutions etc.)

- Choice of **international legal instruments** requiring further discussion in the context of transboundary initiative in the GMS:

(a) Treaty

(b) Agreement

(c) Charter

(d) Protocol

(e) Memorandum of Understanding

5. Regulatory Framework



Definitions (UN Treaty Reference Guide)

a) Treaty: The term "treaty" has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation. (1969 Vienna Convention and the 1986 Vienna Convention)

Criteria: Firstly, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. Treaties require ratification.

5. Regulatory Framework



Definitions

b) Agreements: There is a general tendency to apply the term "agreement" to bilateral or restricted multilateral treaties. Typical agreements deal with matters of economic, cultural, scientific and technical co-operation. Agreements also frequently deal with financial matters, such as avoidance of double taxation, investment guarantees or financial assistance. Especially in international economic law, the term "agreement" is also used as a title for broad multilateral agreements (e.g. the commodity agreements). Regional integration schemes are based on general framework treaties with constitutional character. All GMS countries have signed /acceded to the Cross-Border Transport Agreement (CBTA 1999, amended 2004).

5. Regulatory Framework



Definitions

c) Charter: The term "charter" is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. Well-known examples are the Charter of the United Nations of 1945 and the Charter of the Organization of American States of 1952. ASEAN Charter is a most recent development (2008) and relevant in the context of the GMS as five out of six GMS countries are members of ASEAN

5. Regulatory Framework



Definitions

d) Protocol: A Protocol is an instrument subsidiary to a treaty, and deals with ancillary matters such as the interpretation of particular clauses of the treaty or the regulation of technical matters. It may establish additional rights and obligations to a treaty. It is usually of independent character and subject to independent ratification. A Protocol based on a Framework Treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. (e.g. UNFCCC and the Kyoto Protocol). GMS countries have signed 3 Protocols under the CBTA.

5. Regulatory Framework



Definitions

e) Memorandum of Understanding: A

memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification. They are entered into either by States or International Organizations.

5. Regulatory Framework



Possible Options for consideration of GMS countries intending to establish a transboundary regulatory framework

- A) Anchoring in the CBTA with a separate Protocol
- B) Charter and/or Stand alone agreement
- C) A Memorandum of Understanding

5. Regulatory Framework



A: GMS Cross-Border Transport Agreement

Agreement Between and Among the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for Facilitation of Cross-border Transport of Goods and People, 26 November 1999, acceded to by the Kingdom of Cambodia at Yangon on 29 November 2001, acceded to by PRC at Phnom Penh on 3 Nov 2002, and acceded to by the Union of Myanmar at Dali City on 19 September 2003, and amended 30 April 2004

Contains: 3 Protocols and 17 Annexes

Hurdles

- Will require an amendment of the Agreement to include biodiversity corridors in the text/provisions of the main agreement as well as reference to maintaining and managing shared natural resources
- Separate Protocol will require ratification

5. Regulatory Framework



B: GMS Charter and/or Standalone Agreement on Transboundary Biodiversity Corridors and Managing Shared Natural Resources

Hurdles

- GMS is an informal entity with shared common interest
- 5 out of six countries are already members of a regional framework (ASEAN); why create a new Charter?
- negotiating a standalone agreement will be protracted and tedious
- GMS countries will require common understanding and consensus on corridor concepts while standards and regulations in the transport sector and cross-border trade are abundantly available in international practice
- Separate Agreement will require ratification

5. Regulatory Framework



C: GMS Memorandum of Understanding on Transboundary Biodiversity Corridors and Managing Shared Natural Resources followed by a Protocol or Standalone Agreement

Hurdles

- Technical guideline/ reference document and standards must be available that define and elaborate upon biodiversity corridors and transboundary management and maintenance activities
- GMS Environment Ministers need to endorse such a technical reference document/guideline
- GMS Summit needs to endorse the recommendation of the EMM and sign the MoU, which is more than a Resolution but not a binding international instrument unless the Contracting Parties wish to declare it as such (e.g. by registering the MoU with the UN)

5. Regulatory Framework



Preferred (recommended) Option:

- GMS Memorandum of Understanding on Transboundary Biodiversity Corridors and Managing Shared Natural Resources by 2011 followed by a
- Protocol or Standalone Agreement to be negotiated after 2015

6. Step by Step Approach



Step 1: Preparation of a GMS Technical Protocol or Reference Guideline on Transboundary Biodiversity Corridors

Step 2: Drafting of a GMS Memorandum of Understanding incorporating provisions of the technical BC protocol/reference guideline

Step 3: Securing endorsement of the BC-MoU from a GMS EMM and Summit

Step 4: Implementation of the BC-MoU and documentation of GMS-BC cross-border practice

Step 5: Moving towards a GMS-BC Agreement

7. Technical Protocol elements



1. Joint Planning of transboundary site activities and differentiating joint ones from country based activities
2. Collaborative scientific surveys and assessments (fauna and flora)
3. Technical guidelines / standards on land use planning, corridor zoning and mapping
4. Recommended framework of livelihood interventions
5. Recommended catalogue of incentives and prohibitive measures
6. Exchange visits and sharing of experience and information
7. Joint Training
8. Collaborative Patrolling along the transboundary corridor
9. Cross-border control of trade in and trafficking of illegally attained natural resource products and wildlife
10. Joint Corridor investment program
11. Annual Corridor Status Reports



ADB

Thank you
h.moinuddin@gmx.net