

Legal Measures for Forest Conservation in Transboundary Protected Areas in the ASEAN Community

Patrawan Rattanakaset*

This research attempts to identify the issues which make it more difficult to safeguard transboundary protected areas in the ASEAN countries. The research has found that national forest law, which relates only to the territory of each country, is not sufficient to safeguard the transboundary protected areas that spread across the boundaries of two or more countries. There is no national law, regional convention, or bilateral agreement among the ASEAN countries which directly provides for the conservation of transboundary protected areas. This author has adopted a legal approach to the protection of transboundary protected areas in Europe and has proposed that a regional convention or agreement should be used as an instrument to promote cooperation and sustainable management for the conservation of transboundary protected areas and to deal with problems that do not stop at national borders. The relevant domestic laws should be consistent with such a prospective regional convention or agreement.

Keywords

Transboundary Protected Area in ASEAN Countries, Cross-Border Forest Conservation, Law on Forest Protection, Cross-Border Cooperation

* Assistant Professor of Law at University of Phayao, Thailand. Docteur en Droit (Aix-Marseille III). The author may be contacted at: patrawan.ra@up.ac.th or airpatrapp@gmail.com / Address: School of Law, University of Phayao, 19 Moo 2, Phahonyothin Road, Mae-Ka Sub-district, Mueang District, Phayao Province, 56000 Thailand. This study forms part of my research project entitled "Legal measures for promoting cross-border forest protection in Thailand and ASEAN countries" which is supported by research grants from Thailand Science Research and Innovation (TSRI). The opinions expressed in this article are those of the author and do not necessarily represent the views of Thailand Science Research and Innovation (TSRI). I extend my thanks to the Institute for Global Law and Policy (IGLP) of Harvard Law School and the Thailand Institute of Justice (TIJ) for organising the 2019 IGLP Scholars Workshop that provided helpful comments for this research.

All the websites cited in this article were last visited on May 2, 2023.

1. Introduction

Southeast Asia is known for its vast rainforests which constitute almost 20 percent of forest with the richest biodiversity in the world. However, the region is now also known for having the highest rate of deforestation,¹ which is due to the increase in the human population and development projects. It finally brings demands for space for human habitation and agricultural activities. Although governments have attempted to meet this growing demand for lands, their efforts are not enough yet.² This situation has led to the illegal clearance of land for commercial agriculture, which accounts for half of all tropical deforestation.³ Even though several member States of the Association of Southeast Asian Nations (ASEAN) have laws or regulations to control the production and trade of timber products, these laws are still violated by people carrying out illegal logging operations or harvesting timber from the protected forest areas.⁴ For example, most of the forests in the northern part of Thailand have been felled by Thai farmers in order to secure more space for planting crops.⁵ Illegal logging is also a major problem in both Myanmar and Lao PDR because of the demand for timber from neighbouring countries.⁶

In this research, the term “transboundary protected areas” refers to those protected for forest conservation extending across the boundaries of more than one country, where some countries may hold a larger part of the forest area than others.⁷ There are several examples of transboundary protected areas, such as the Northern Thailand and Lao PDR Transboundary Landscape which covers Doi Phu Kha

¹ Prajwal Baral et al., *Does Money Grow on Trees?: Restoration Financing in Southeast Asia*, Atlantic Council (2019), at 9-12, <https://www.atlanticcouncil.org/in-depth-research-reports/report/does-money-grow-on-trees-restoring-financing-in-southeast-asia>.

² Martin Russell, *Forest in south-east Asia Can they be saved*, European Parliamentary Research Service Briefing (2020), at 1-2, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652068/EPRS_BRI\(2020\)652068_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652068/EPRS_BRI(2020)652068_EN.pdf).

³ The National Legislative Assembly, *Report of Solving the Problem of National Forest Lands* [รายงานการศึกษาเรื่อง การแก้ไขปัญหาที่ดินป่าไม้ของชาติ], Royal Forest Department of Thailand, at 6 (2015), https://www.senate.go.th/document/mSubject/Ext44/44426_0001.PDF.

⁴ *Id.* at 2.

⁵ Somsak Samukkethum, *The Crisis of Deforestation and Public Governance of Community Forests in Thailand*, 18(1) THAMMASAT REV. 27-45 (2015). See also Food and Agriculture Organization, *Global Forest Resources Assessment 2015: Country Report, Thailand*, at 7 (2015), <https://www.fao.org/3/az350e/az350e.pdf>.

⁶ John Costenbader et al., *Drivers Affecting Forest Change in the Greater Mekong Subregion (GMS): An Overview*, FAO POL'Y BRIEF 4-6 (2015), https://www.fao.org/fileadmin/templates/rap/files/NRE/Forestry_Group/Policy_brief_FPG_July_2015.pdf.

⁷ Clara Bocchino, *Transforming the Frontier: Peace Parks and the Politics of Neoliberal Conservation in Southern Africa* by Bram Buscher, 50(7) J. DEV. STUD. 109 (2014).

National Park in Thailand and Nam Pouy National Protected Area in Lao PDR,⁸ and the Dawna Tenasserim Transboundary Landscape which covers Tanintharyi Nature Reserve in Myanmar and the Western Forest Complex in Thailand.⁹

Because transboundary protected areas extend across the boundaries of more than one country, their forest ecosystems are connected. As a result, deforestation in one country can affect the ecosystems of the forest in another country and ultimately in the transboundary protected area as a whole. For instance, the forest in the Northern part of Thailand spreads across the border to Myanmar, which means that the forest ecosystems are connected and therefore deforestation in Myanmar may damage the ecosystems of the forest in the Northern Part of Thailand. Forests help to ensure a regular flow of clean water; protect communities from flooding and drought by soaking up rainfall brought by storms; and further anchor soils before releasing water. This can prevent the destructive flood and drought cycles which would occur when forests are cleared. The flooding and drought that regularly occur in the ASEAN countries can be regarded as a consequence of deforestation, that is, they are human-induced disasters. For this reason, the ASEAN countries need to identify a solution to the problem of deforestation in the transboundary protected areas which spread across some ASEAN countries.

At present, the ASEAN Statement on Strengthening Forest Law Enforcement and Governance (FLEG) attempts to strengthen forest law implementation, compliance, and governance in the ASEAN countries to prevent and combat illegal logging and its associated trade, consistent with national laws, rules, and regulations, as well as to enhance collaborative activities and programs such as regional customs and trade cooperation, forestry sector transparency, and joint approaches in timber certification.¹⁰ However, FLEG makes no mention to the conservation of transboundary protected areas. Similarly, the Kuala Lumpur Declaration on Combating Transnational Crime issued in September 2015 by the ASEAN Ministerial Meeting on Transnational Crime not only considers the trafficking of illegal timber as a new area of transnational crime, but also recognizes the need to consider the formulation of regional legal instruments and harmonization of relevant national policies and laws among the ASEAN member countries to further strengthen

⁸ Centre for People and Forests, *Voices for Mekong forests (V4MF) 2017-2021*, RECOFTC, at 4 (2017), <https://archive.recoftc.org/project/voices-mekong-forests>.

⁹ *Id.*

¹⁰ ASEAN, *Work plan for Forest Law Enforcement and Governance (FLEG) in ASEAN 2016-2025*, ASEAN Ministers on Agriculture and Forest (AMAF) (2016), at 3-4, <https://asean.org/wp-content/uploads/2012/05/Work-Plan-for-FLEG-in-ASEAN-2016-2025.pdf>.

regional efforts to combat such crimes.¹¹ This was also recognized in the ASEAN Political-Security Community Blueprint 2025 which identifies the need to combat the trafficking of wildlife and timber and addresses the challenges of transboundary trafficking of wildlife and timber at the Senior Officials level.¹² Nevertheless, neither the Kuala Lumpur Declaration on Combating Transnational Crime nor the ASEAN Political-Security Community Blueprint 2025 mention the conservation of transboundary protected areas or the need for a regional convention on conservation and management of transboundary protected areas between the ASEAN countries.

Currently, the various ASEAN countries manage their forests in different ways, with each country having its own independent forest law and management system. As an inter-governmental organization, the ASEAN cannot interfere with such domestic affairs as forest management systems. Importantly, the Association has no regional convention or agreement of its own on the conservation of natural resources. Nonetheless, all ASEAN countries have ratified the Convention on Biological Diversity (CBD) and established systems for protecting forest areas.¹³ However, the domestic forest laws of these ASEAN countries do not reference the safeguarding of transboundary protected areas. No countries take into account the nature of forests that extend across national borders and there is no relevant regional organization to monitor and prevent illegal logging in the transboundary protected areas, either.

Hence, it is difficult for the ASEAN countries to cooperate with each other in the enforcement of their forest laws to protect the transboundary protected areas that extend across several countries. In order to preserve the ecosystems and natural resources in the Southeast Asian transboundary protected area, cooperation and participation are required from all ASEAN countries especially which hold a part of the transboundary protected areas. Such cooperation among the ASEAN countries must be implemented through effective forest management, conservation, and legal methods to promote the sharing of responsibility between those countries.¹⁴ Without such cooperative mechanisms, it is difficult to solve the transboundary problems in ASEAN countries. For example, the lack of cooperative mechanisms for solving the transboundary haze problem is one of the factors which makes the ASEAN

¹¹ *Id.*

¹² The ASEAN Secretariat, ASEAN Political-Security Community Blueprint 2025, (Mar. 1, 2016), ¶¶ B.3.1 (v) & B.3.9, <https://www.asean.org/wp-content/uploads/2012/05/ASEAN-APSC-Blueprint-2025.pdf>.

¹³ Baral et al., *supra* note 1, at 2.

¹⁴ Alfons Ullenberg et al., Evaluating Cross-Border Natural Resource Management Projects: Community-Based Tourism Development and Fire Management in Conservation Areas of the SADC Region, Centre for Rural Development (2015), at 9-13, <https://edoc.hu-berlin.de/bitstream/handle/18452/3858/259.pdf?sequence=1>.

Agreement on Transboundary Haze Pollution ineffective.¹⁵

The primary purpose of this research is to identify the issues which make it difficult to safeguard transboundary protected areas in the ASEAN region and suggest legal and policy measures with special references to the European approach. This paper is composed of five parts including Introduction and Conclusion. Part two will discuss the EU approach. Part three will examine the approach of Thailand and other ASEAN countries.

2. The EU Approach

In general, the European Union (EU) recognizes the importance of sustainable development, biodiversity conservation, and the protection of ecosystems and natural resources. In 2015, the European Parliament adopted a new EU resolution regarding the strategy for forests and the forest-based sector, which emphasizes the sustainable management of forests and their multifunctional role from the economic, social, and environmental perspectives.¹⁶ The resolution also ensures better coordination of and communication with local communities directly or indirectly linked to the forests. In addition, the EU aims to ensure and demonstrate that all forests in the EU are managed according to sustainable forest management principles for sustainable forest management and reduce deforestation at the global level. Importantly, the EU attaches great importance to the conservation of transboundary protected areas, for the purpose of preserving the biodiversity and ecosystems in these areas and creating related employment opportunities to stimulate the economy of the local communities.

Although the EU does not have any law or regulation on safeguarding the transboundary protected areas, it relies on the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) to enable its members who have ratified the convention to cooperate in the conservation of transboundary protected areas.¹⁷ The Bern Convention is a binding international legal instrument

¹⁵ Noppachai Fongissara & Watcharabon Buddharaksa, *The State of Knowledge of Transboundary Haze Pollution: Problems and Challenges with ASEAN Work Culture*, 22(3) J. LIBERAL ARTS THAMMASAT U. 564 (2022), <https://so03.tci-thaijo.org/index.php/liberalarts/article/view/253419/175436>.

¹⁶ European Commission, *New EU Forest Strategy for 2030* (2021), at 3-6, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0572>.

¹⁷ Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention: open for signature in 1979 and came into force in 1982), art. 7. For details, The Emerald Network, The Bern Convention, <https://era.org.mt/topic/emerald-network>; Council Decision of 3 December 1981 Concerning the Conclusion of the Convention on the

in the field of nature conservation which covers most of the natural heritage of the European continent as well as the only regional convention that aims to promote cross-border cooperation in nature conservation.¹⁸ It takes account of the impact that other policies may have on natural heritage and recognizes the value of preserving wild flora and fauna for future generations.¹⁹ The contracting countries should thus take all appropriate measures to ensure the conservation of the wild flora and fauna and natural habitats, including cross-border cooperation.²⁰

As regard the safeguarding of transboundary protected areas, the Bern Convention is implemented by the Federation of Nature and National Parks of Europe (hereinafter EUROPARC Federation) and the Council of Europe. The EUROPARC Federation is a politically independent and non-profit organization that works closely with the Council of Europe to contribute to developing and implementing relevant policies and strategies in order to support and promote protected areas throughout Europe.²¹ The EUROPARC Federation represents hundreds of responsible authorities and thousands of protected areas in around 40 European countries, and unites national and regional parks, nature and biosphere reserves, marine and landscape protected areas, together with a large number of Natura 2000 sites for the purpose of protecting Europe's unique variety of wildlife, habitats, and landscapes.²² In addition, the EUROPARC Federation has a direct connection with the Council of Europe, which plays an important role in the conservation of transboundary protected areas in Europe because its purpose is to protect the rule of law, including the implementation of the Bern Convention in Europe.²³ The EUROPARC Federation and the Council of Europe not only work in close partnership with the EU adhering to the implementation of the Bern Convention, but also promote cross-border cooperation in nature conservation as their main activity.²⁴

Although many international organizations also recommend cross-border

Conservation of European Wildlife and Natural Habitats, at 1-2, <https://eur-lex.europa.eu/legal-content/SV/ALL/?uri=OJ%3AL%3A1982%3A038%3ATOC>.

¹⁸ EUROPARC Federation, *Following Nature's Design: Promoting Cross-Border Cooperation in Nature Conservation*, at 7 (2010), https://www.europarc.org/wp-content/uploads/2009/01/brochure_TransParcNet_final_low_resolution.pdf.

¹⁹ *Id.* at 11.

²⁰ *Id.*

²¹ Recommendation No.206 (2019) of the Standing Committee on Nature-Based Solutions and Management of Protected Areas in the Face of Climate Change, <https://rm.coe.int/2019-rec-206e-climate-change-and-biodiversity/1680993e0d>.

²² European Commission, *supra* note 16, at 7.

²³ EUROPARC Federation, *The European Transboundary Protected Areas Are Ready to Collaborate with the European Institutions for a Green Future of Europe* (2021), at 1, <http://www.europarc.org/wp-content/uploads/2022/01/TB-Conference-on-Future-of-Europe-FIN.pdf>.

²⁴ *Id.* at 9.

cooperation in nature conservation, collaboration between neighbouring European countries is very difficult to achieve in practice because the task of managing even a single protected area is already challenging. Therefore, the EUROPARC Federation has developed a unique system of basic standards for the protection of a transboundary protected area which places emphasis on cross-border cooperation between two or more European protected areas.²⁵ The European system for cooperation with regard to transboundary protected areas is viewed as an effective means to promote common conservation, and the quality of the cooperation is based on the EUROPARC Federation's criteria, which are divided into primary and secondary ones.

The primary criteria emphasize the development of a common vision and joint workplan for transboundary protected areas, the creation of official cooperation agreements between the parks or the transboundary protected areas, and cooperation between staff from each area at different levels. The secondary criteria focus on the establishment of guiding principles for cooperation, exchange of data, foreign language communication, development of joint projects, and the basis of joint financing and funding arrangements for transboundary work.²⁶ Other criteria take the ecosystem perspective into account by both promoting the establishment of green corridors between habitats, cross-cultural interaction, and supporting the social and economic well-being of local communities.²⁷

If these criteria are achieved, long-term and effective cross-border cooperation can be secured between the protected areas in two or more countries. This approach also promotes better understanding of the importance of cross-border cooperation by politicians, policy makers, and the general public.²⁸ It provides a framework for cooperation in many areas such as conservation activities, research, exchange of data and knowledge, and planning for ecotourism in boundary forests.

One example of successful transboundary protected area cooperation between European countries is the cooperation between Austria and the Czech Republic.²⁹ The cooperation between Thayatal National Park and Podyji National Park is based on a joint declaration by Austria and the Czech Republic in 1999, following which a bilateral National Park Commission was established to determine which cross-border measures should be implemented. The procedural rules for the bilateral National

²⁵ European Commission, *supra* note 16, at 8.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

Park Commission outlined the composition of the Commission, the preparation and conduct of meetings, and the drafting and approval of the minutes. These are to allow nature to develop freely without any human interference and to develop both national parks in close cooperation with local populations and visitors.³⁰ The implementation of any agreement has to take place within the respective national legislative framework. If different opinion arises, the two park administrations are required to seek mutually acceptable solutions. Under the EU approach, the Bern Convention stands out with its strong emphasis on cross-border cooperation.

However, the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora (Habitats Directive) also contributes to the Europe's success in the forest protection.³¹ For example, Article 6(1) of Habitats Directive requires member countries to establish the necessary conservation measures involving appropriate management plans specifically designed for the sites, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types.³² In addition, soft law which is the quasi-legal instruments that have no legal binding force such as guidance documents or guidelines, contributes to the Europe's success in the forest protection since it helps member countries to implement the hard law such as directives, convention or international agreement.³³

Although ASEAN relies on the notion of the ASEAN way which emphasizes on the principle of non-interference,³⁴ it does not affect the application of the EU approach to solve the problem in transboundary protected areas of the ASEAN countries. This is why the EU does not have any regulation or directive on the protection of the transboundary protected areas, but it relies on the Bern Convention to protect the transboundary protected areas. This is consistent with the ASEAN's legal framework which relies on the international convention or agreements to create

³⁰ *Id.*

³¹ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, at 7-8, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>. For details, see Floor Fleurke & Arie Trouwborst, *European Regional Approaches to the Transboundary Conservation of Biodiversity: The Bern Convention and the EU Birds and Habitats Directives*, in *TRANSBOUNDARY GOVERNANCE OF BOUNDARY 3-5* (Louis Kotzé & Thilo Marauhn eds., 2014).

³² Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, art. 6(1).

³³ Arif Ahmed & Md. Jahid Mustofa, *Role of Soft Law in Environmental Protection: An Overview*, 4(2) *GLOB. J. POL. L. RES.* 1-18 (2016). See also Guidance Document on the Strict Protection of Animal Species of Community Interest under the Habitats Directive, <https://op.europa.eu/en/publication-detail/-/publication/a17dbc76-2b51-11ec-bd8e-01aa75cd71a1/language-en/format-PDF/source-search>.

³⁴ Hiro Katsumata, *Reconstruction of Diplomatic Norms in Southeast Asia: The Case for Strict Adherence to the "ASEAN Way"*, 25(1) *CONTEMP. SE. ASIA* 104-21 (2003).

the rights and obligations upon member countries.³⁵

3. The Appropriate Approach for Thailand and other ASEAN countries

The ASEAN countries created the ASEAN Economic Community not only to establish a single market within the Southeast Asia region,³⁶ but also to focus on the problem of climate change which partly results from deforestation. The ASEAN countries attach importance to the sustainable management of forests in Southeast Asia, but there is a lack of regional cooperation for the conservation of transboundary protected areas. Absent the protection these areas can be detrimental to human livelihoods, biodiversity, and ecosystem stability in Southeast Asia. Hence, the goal of the forestry sectors in the ASEAN countries is to enhance sustainable forest management for the continuous production of forest goods in a balanced way by ensuring that not only forests are protected to conserve biodiversity, but also their utilization is compatible with social and ecological sustainability.³⁷ With regard to safeguarding transboundary protected areas, the ASEAN countries are still lacking in almost every aspect.

A. The Need for a Regional Convention for Conserving Transboundary Protected Areas

The ASEAN Senior Officials on Forestry (ASOF) developed a Strategic Plan of Action for ASEAN Cooperation in Forestry (2016-25) which was agreed in June 2016. This Action Plan attempts to enhance sustainable forest management by involving communities living within and around the forests in the interests of the sustainability of the forest and the prosperity of the people. In particular, it attempts to implement a social forest program that effectively contributes to sustainable forest management,

³⁵ Hoang Thi Ha et al., *Diverging Regionalisms: ASEAN and the EU*, ASEAN Studies Centre at ISEAS-Yusof Ishak Institute (2016), at 16, <https://www.iseas.edu.sg/images/pdf/ASEANEUAUGISSUE.pdf>.

³⁶ Noppanun Supasiripongchai, *Parallel Importation of Patented Products in Thailand: The Need for the New Patent Exhaustion Regime in the Light of the ASEAN Economic Community (AEC)*, 7(4) *QUEEN MARY J. INT'L INTELL. PROP. L.* 366-7 (2017); *The Legal Protection of Breeder's Rights for New Plant Varieties in Thailand: The Need for Law Reform Considering the International Convention for the Protection of New Varieties of Plant 1991*, 23(3-4) *J. WORLD INTELL. PROP.* 202-31 (2020).

³⁷ ASEAN Secretariat, *Strategic Plan of Action for ASEAN Cooperation on Forestry (2016-2025)*, at 6, <https://asean.org/wp-content/uploads/2021/09/Strategic-Plan-of-Action-for-ASEAN-Cooperation-on-Forestry-2016-2025.pdf>.

which also involves a review of customary and statutory instruments regarding forest protection at national level.³⁸ Although the conservation of transboundary protected areas in the ASEAN countries is taken into consideration, the main emphasis is to protect forests and sustainable forest management in general. Furthermore, the lack of appropriate regional conventions or agreements which can support cross-border cooperation and sustainable forest management for transboundary protected areas in the ASEAN countries would make it more difficult to provide protection. Regional conventions or agreements can not only create opportunities for cross-border cooperation between two protected areas, but also ensure better cross-border control of problems such as fire and deforestation, thereby ultimately enhancing environmental protection across ecosystems.³⁹ They can reduce tension in border regions and facilitate effective research relating to biodiversity and ecosystems.⁴⁰

The legal basis for a regional convention or agreement on conservation and cooperative management of transboundary protected areas should include the following conditions. First, it should clearly declare common interests in transboundary protected areas and state the objectives, guiding principles, and management plan for their conservation.⁴¹ It should also ensure that the governments of ASEAN member States have a common position and policy on the conservation of transboundary protected areas and develop the capacity of the Southeast Asian region to prevent illegal logging or trade in illegal timber and timber products at the regional level.⁴² It should require member countries to establish the necessary conservation measures involving appropriate management plans specifically designed for the sites, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the transboundary protected areas.

Second, a regional convention or agreement should ensure that the contracting countries remove all legal obstacles to cooperation, harmonize relevant legal measures, and establish a framework for cooperative management of the transboundary protected areas.⁴³ In this regard, relevant domestic laws and

³⁸ *Id.* at 4.

³⁹ TREVOR SANDWITH ET AL., TRANSBOUNDARY PROTECTED AREAS FOR PEACE AND CO-OPERATE, IUCN-THE WORLD CONSERVATION UNION 7-8 (2001), http://www.tbpa.net/docs/pdfs/IUCN_TBPA_guidelines1.pdf.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² United Nations Office on Drugs and Crime, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019), at 125, https://www.unodc.org/roseap/uploads/archive/documents/Publications/2019/SEA_TOCTA_2019_web.pdf.

⁴³ ASEAN, *supra* note 37, at 16.

regulations of the ASEAN countries such as forest laws and wildlife regulations should be consistent with or harmonized under the prospective regional convention or agreement to support cooperation for preserving transboundary protected areas in two or more territories. Such a regional agreement should help to overcome legal disparities between the two countries in order to confirm that an overall management plan for the whole transboundary protected area can be effectively implemented. Also, this may involve examining the provisions of legislation in each ASEAN country in order to ensure that the prospective regional convention is properly implemented.⁴⁴

Third, a regional convention or agreement must ensure that the contracting countries can implement exchange of information, notification, consultation, and other forms of cooperation regarding transboundary protected areas. It should also provide flexibility for each transboundary protected area to reflect changes in circumstances and capacity.⁴⁵ For example, a regional convention or agreement between neighbouring countries should allow them to consult and cooperate with each other in order to formulate a joint declaration, memorandum of agreement, or letter of intention which can deal with changes in circumstances or capacity regarding the conservation of transboundary protected areas.⁴⁶ It should allow the designated or delegated authority of the relevant contracting countries to coordinate the management of the transboundary protected areas in order to implement the regional convention or agreement in accordance with its objectives. It is clear that cooperation between the relevant authorities of the two countries on both sides of the border is necessary for effective joint management of the conservation of the transboundary protected area. This may lead to the further agreements to strengthen cooperation between the two protected areas in the two contracting parties, such as administrative agreements, resource management agreements, and so on. This can be achieved in the form of partnerships between agencies of the two different countries. In this regard, the minimum requirement for a cross-border partnership is that two beneficiaries from at least two or more countries must participate in the partnership.⁴⁷

Fourth, a regional convention or agreement should establish a single joint management authority for the conservation of transboundary protected area between

⁴⁴ V MAJA VASILJEVIĆ & TOMASZ PEZOLD, CROSSING BORDERS FOR NATURE: EUROPEAN EXAMPLES OF TRANSBOUNDARY CONSERVATION 13 (IUCN ed., 2011), <http://www2.ecolex.org/server2neu.php/libcat/docs/LI/MON-085624.pdf>.

⁴⁵ ASEAN, *supra* note 37, at 16.

⁴⁶ *Id.*

⁴⁷ Victoria Primhak & Domagoj Troha, Guide to the EU Funds for the Forestry Sector, Croatian Chamber of Forestry and Wood Technology Engineers (2015), at 35-6, http://www.hkisdt.hr/podaci/2015/ostalo/HKISIDT_brosura_final_ENG_1.pdf.

the two countries. This is because illegal logging and trade in illegal timber are often conducted by organized groups with international networks. Therefore, it is necessary to move beyond seizures and ensure follow-up investigations and prosecutions of those controlling such illegal activities. To achieve this end, it is essential to increase cooperation between the governments of ASEAN countries. Furthermore, there needs to be a single effective authority to provide the administrative cooperation, public participation, and communication networks which can be useful in preventing illegal logging and trade in illegal timber. At present, although the Strategic Plan of Action for ASEAN Co-operation in Forestry addresses illegal forestry activities and attempts to strengthen regional efforts to combat trade in illegal timber and wildlife, it does not mention the conservation of transboundary protected areas or a single management authority for transboundary protected areas.⁴⁸ Without a single management authority, it would be more challenging to protect these areas and prevent the trade in illegal timber and wildlife. Hence, the single joint management authority would help to solve this problem, provided that the authority has the power to monitor and prevent illegal logging and other illegal activities in transboundary protected areas that lead to negative environment consequences such as the depletion of forests and loss of wildlife habitats and forest ecosystems.⁴⁹ At minimum, the single joint management authority should be able to cooperate with government officers in arrests and prosecutions when offences are committed in the transboundary protected area. It should also function as a hub for exchanging information on legal and illegal activities, including trade in forest products and the related experiences of government officers in the two countries.

Fifth, a regional convention or agreement should promote public participation by formulating the resource management or conservation agreements which provide a basis for establishing collaborative management processes with relevant stakeholders such as local people and community groups, local governing bodies, nongovernmental organizations, and so on.⁵⁰ In order to promote public participation, it should also provide a framework for creating the networks of volunteers and stakeholder organizations with special references to the conservation of transboundary protected areas. Such transboundary volunteer networks can help to strengthen cooperation between the protected areas of the two countries.

⁴⁸ ASEAN, *supra* note 37, at 16.

⁴⁹ *Supra* note 32, at 14.

⁵⁰ BORIS ERG ET AL., INITIATING EFFECTIVE TRANSBOUNDARY CONSERVATION: A PRACTITIONER'S GUIDELINE BASED ON THE EXPERIENCE FROM THE DINARIC ARC 24 (IUCN ed., 2012), https://www.iucn.org/sites/default/files/import/downloads/initiating_effective_transboundary_conservation.pdf.

The proposed regional convention or agreement could deal with the transboundary forestry problems such as illegal logging. Also, it is consistent with the thrust 1 of the Strategic Plan of Action for ASEAN Cooperation on Forestry 2016-2025 which aims at enhancing the sustainable forest.

B. Additional Measures Required for the Conservation of Transboundary Protected Areas

There are several tasks which should be carried out alongside the introduction of a regional convention or agreement. First, the ASEAN countries need to work together to formulate the guidelines which can be used to implement the regional convention. Such guidelines should promote sustainable management to the same legal standards in transboundary protected areas under the regional convention or agreement. When the regional convention or agreement is implemented, these guidelines should be amended based on experiences and lessons from implementation. Following the lessons, the guidelines will eventually navigate the member States to better practice of the regional convention or agreement for conservation of transboundary protected areas in Southeast Asia.

Second, in order to solve the problem of deforestation, it is necessary to eradicate poverty and create employment in and around the transboundary protected areas. This can be realized by promoting forest-based businesses relating to tourism or by enhancing the tourism infrastructure to support the local tourism industry and deliver benefits to the local economy.⁵¹ Conservation of transboundary protected areas and forest-based tourism businesses both require local labour and thus will in due course generate job opportunities in and around the transboundary protected areas in the two countries and generate income for local communities.

Third, education is necessary to help local people and communities recognize the importance of forest conservation in transboundary protected areas and increase awareness of the ecosystem stability and biodiversity. The EU approach clearly encourages the contracting countries of the Bern Convention to promote education and disseminate general information concerning the need to conserve species of wild flora and fauna and their habitats in transboundary protected areas.⁵² This approach seems to be consistent with the policy of the ASEAN countries which also promotes education and the dissemination of general information concerning environmental

⁵¹ ASEAN, *supra* note 37, at 16.

⁵² EUROPARC Federation, *supra* note 18, at 9.

conservation.⁵³ Such education should also aim to provide local farmers with land in or near transboundary protected areas, as well as information about sustainable forest management, agroforestry, and ecotourism.

Finally, the governments of ASEAN countries with transboundary protected areas should develop clear and systematic land-use planning and land allocation processes which can be applied to that around transboundary protected areas. For example, such plans should encourage farmers or local people who live in or around the transboundary protected areas in the two countries to create private or community forests which contribute environmental benefits to the ecosystem of transboundary protected areas. These types of plan should emphasize the role of the local community in the sustainable management of community forests and land-use decision making with the government support.

4. Recommendations

Forest protection regimes based on the territory of one country are not enough to the conservation of transboundary protected areas in the ASEAN countries such as Thailand, Myanmar, and Lao PDR. Effective approaches must be able to deal with the problems of deforestation and illegal logging, which do not stop at national borders. Therefore, a combination of legal and other measures is required to safeguard transboundary protected areas. In this regard, the following recommendations must be carried out.

A. Recommendation 1

There should be a regional convention or agreement for the ASEAN countries similar to Europe's Bern Convention of 1979. This regional convention or agreement should include: 1) a statement of common interests, objectives, guiding principles, and the necessary conservation measures involving appropriate management plans specifically designed for the transboundary protected areas, and the requirement for member countries to undertake surveillance of the conservation status of the natural habitats and species in the transboundary protected areas; and a management plan for conservation of transboundary protected areas; 2) the removal of all legal

⁵³ Noppanun Supasiripongchai, *Copyright Exceptions and Digital Technology in Educational Institutions in Thailand*, 44(7) IIC- INT'L REV. INTELL. PROP. & COMPETITION L. 765-72 (2013).

obstacles to cooperation, the harmonization of relevant laws, and the establishment of a framework of cooperative management for the preservation of transboundary protected areas; 3) flexibility for each transboundary protected area to reflect changes in circumstances and the exchange of information, notification, consultation, and other forms of cooperation regarding transboundary protected areas between two or more countries; 4) the establishment of a single joint management authority between two or more countries for the conservation of transboundary protected areas; and 5) the promotion of public participation through management agreements with provision for collaborative management processes involving local people and a framework for the creation of volunteer networks to look after the transboundary protected areas in the ASEAN countries.

B. Recommendation 2

The relevant domestic laws of the ASEAN countries should be consistent with the prospective regional convention or agreement by supporting cooperation for the preservation of the transboundary protected area in their territories. The domestic laws and regulations relating to the forest and wildlife in these ASEAN countries should also be harmonized under the prospective regional convention or agreement.

C. Recommendation 3

Additional measures should be implemented as follows: 1) The ASEAN countries should work together to formulate guidelines which can be used to implement the regional convention or agreement; 2) The ASEAN countries should promote the forest-based tourism businesses and enhance the infrastructure to support the local tourism industry and generate new jobs for local people; 3) The ASEAN countries should provide education and general information to local people concerning the importance of conserving transboundary protected areas to increase their awareness of the importance of maintaining ecosystem stability; and 4) The ASEAN countries should have clear land-use planning and land allocation processes which can be applied to land in and around transboundary protected areas.

5. Conclusion

The serious decline in transboundary protected areas in Southeast Asian countries

such as Thailand, Myanmar and Lao PDR can be seen clearly in the last decade. The illegal exploitation of forest areas and the expansion of cultivation areas without the appropriate legal control and management makes it more difficult to preserve transboundary protected areas. Some ASEAN countries such as Thailand and Lao PDR attempted to solve this problem by formulating the Memorandum of Understanding (MOU) on Natural Resources and Environment Cooperation which mentions about the preservation of transboundary protected area, but such MOU is still a non-binding instrument and is subject to the laws and regulations of both countries to facilitate cooperation and sustainable management. This article contends that a legal approach to the protection of transboundary protected areas in Europe should be used as a model for Thailand and other ASEAN countries to solve the problem relating to transboundary protected areas. It also proposed that a regional convention or agreement which has a legally binding effect on two or more countries should be used as an instrument to promote cooperation and sustainable management for the conservation of transboundary protected areas and to deal with problems that do not stop at national borders. The relevant domestic laws should be changed to be consistent with such a prospective regional convention or agreement.

For limitations of research such as lack of previous studies in the area of laws on transboundary protected areas in the ASEAN region and the limited access to information held by some governmental authorities, the author had difficulties to find the ultimate legal and policy measures in this topic. In the future, however, here research will continue to improve the cooperation and sustainable management for the conservation of transboundary protected areas. Such improvements must take into account of existing or future threats to the shared ecosystems in transboundary protected areas. Also, lack of resources would continue to be the problem for the conservation of transboundary protected areas since some government authorities in transboundary protected areas of the ASEAN countries do not have enough resources to handle such existing or future threats.

Received: February 1, 2023

Modified: April 15, 2023

Accepted: May 1, 2023