

Workshop Report: Experiences from Asia and the Asia Pacific regarding Governance and Good Practices in International Waters.	Report Date: January 2010
Date: 25 to 30 October 2009	By: Richard Paisley

The support and encouragement of the Canadian International Development Agency including in helping to fund this workshop is gratefully acknowledged. CIDA specifically also helped fund the participation of a significant number of participants from developing countries.

Also gratefully acknowledged is our ongoing support and encouragement from White & Case. A leading global law firm with lawyers in 36 offices in 25 countries, White & Case provides counsel and representation in virtually every area of law that affects cross-border business, including transactions, arbitration and litigation.

Introduction.

The inaugural workshop of the nascent South-South peer network for Asia and the Asia Pacific associated with the COLMEX UBC GEF International Waters Governance project took place in Cairns, Australia in conjunction with the GEF IWC5 meeting 25 to 29 October 2009.

This three-year multi donor GEF sponsored project is dedicated to facilitating good governance and more effective decision making in international waters through the identification, collection, adaptation and replication of beneficial practices and lessons learned from international experiences. The project facilitates dialogue among individuals and organizations engaged in governance within and between freshwater, groundwater, marine international waters with particular emphasis on “South-South” cooperation and learning.

Dialogue and learning experiences will be made sustainable including through South-South Peer Review Groups initiated in the project’s first stage and established to facilitate the on-going exchange of ideas and solutions after the project concludes. Innovative learning tools will be developed to assist in sharing governance experiences, and the Groups will help disseminate the tools and train local experts across regions.

The key measurable benefit of this project is ensuring that various lessons learned from multi-country experiences, including identification of areas where problems and delays are commonly experienced, are assimilated by various target audiences in a meaningful way. These target audiences include local water managers, governments, and civil society groups, primarily the portfolio of GEF projects. The project encourages local participation in the sharing of best practices by diverse stakeholders with a focus on women and youth. Climate change adaptation knowledge will be incorporated into the learning tools.

The project has three key components:

Component 1:

Identification, analysis and codification of successful approaches to international waters (IW) governance within and beyond the GEF portfolio and the determination of appropriate performance measures.

Component 2:

Creation and promotion of experiential learning tools specifically targeted for GEF IW practitioners, designed in collaboration with local experts and practitioners.

The output will be a series of demand driven specialized experiential learning tools for good governance focusing on understanding and promoting effective legal and institutional frameworks and decision-making. The experiential learning tools will include case studies, negotiations, role play simulation exercises, and interactive tools.

Component 3:

Targeted experiential training and adaptive learning, to build local capacity to replicate experiential learning programs that foster a culture of good governance in IW. The outcome will be enhanced capacity of GEF practitioners in good governance and effective decision-making, including experienced local experts to replicate learning programs. Activities will center on conducting regional targeted programs where local experts deliver tools to regional practitioners.

The project is particularly strongly committed to mentoring the next generation of water experts and very much believes increased involvement of women and youth will help to promote the sustainability and longevity of the project outcomes.

The specific objectives of the Cairns workshop were to:

- enhance awareness and appreciation of experiences and lessons learned from Asia and the Asia Pacific
- identify critical training needs
- identify initial net-works including to review finalized learning tools
- establish a nascent South-South peer implementation group

The Workshop

The workshop consisted of a number of formal and informal meetings between workshop participants over a five day period including a formal meeting on 29 October targeted specifically towards GEF project managers from Asia and the Asia Pacific.

Workshop participants who are listed at the end of these report included a combination of:

- GEF project managers throughout Asia and the Asia Pacific attending the GEF IWC5 event in Cairns
- Individuals, not GEF project managers, attending the GEF IWC5 event in Cairns
- Individuals, not directly GEF related, with particular background and expertise in international waters, governance and Asia and the Asia Pacific and funded by CIDA to attend

In his presentation at both the GEF IWC 5 plenary session and the 29 October 2009 meeting project director Richard Paisley noted that this was the second in a series of separate workshops which would be held in Asia, the Americas and Africa to solicit input from practitioners regarding lessons learned and experiences in relation to governance and international waters. Also presented was a synopsis of the progress to date in developing a data base for comparison and analysis of different international waters governance regimes including various key case studies have been analysed using a framework developed during the project inception meeting with key project advisors.

Lessons Learned and Experiences

The material which follows summarizes the highlights regarding various lessons learned and experiences which were discussed at the Cairns workshop:

Case studies

How best to facilitate full participation of countries in international waters commissions and other forums where there have been historically low levels of engagement?

How best to deal with disparate levels of human and financial resources?

How best to deal with “boundaries” issues including while trying to build trust and cooperation?

e.g. South China Sea, where the convention in place is deliberately silent on boundary issues. The status of Viet Nam is not settled.

e.g. The Philippines has abandoned the “Paris approach”. Now they are discussing baselines, EEZ boundaries etc.

e.g. The Mekong River Commission (MRC):

China’s selective attendance at Mekong River Commission meetings, where they had historically avoided any politically-tinged meetings, has gradually shifted to a more inclusive approach. China is sending more delegates to MRC meetings, and more of them are contributing to discussions.

One participant’s view of this was because China is now more involved in development in the region and may wish to play a leadership role. Involvement in technical activities (eg

development of technical guidelines for a dam, or data exchange arrangements) instead of activities at the political level may also encourage greater initial participation from which to build upon.

Myanmar currently contributes as a “dialogue partner” only.

What can we learn from efforts to integrate policies between different river basins where they flow into one marine environment?

eg Mediterranean, where the Nile, Po, Ebro and Rhone (among others) flow into it.

Learning from Central Asia

Good data development and sharing arrangements are in place (now over an online platform). This type of forum for the exchange of information is particularly useful. There is also a continued role for formal meetings, but the facts on a specific issue are needed first, and are provided through data-sharing.

Where formal negotiation is required, practice negotiations prior to the real meeting have been able to resolve some issues.

Study tours have proven very successful.

Skills training

Focus on hardest-hit countries first (i.e. those countries that suffer from “the lot”)

Capacity building among Pacific Island states is needed

“Implementation fatigue” is evident, whereby there is initial buy-in with a new convention / initiative but involvement fades rapidly because domestic institutions are not well resourced.

Participants noted that they were highly reliant on external advice in order to update their legislation to keep laws compliant with international obligations.

Problem-solving training needs a common vocabulary, clarity around goals, and clarity around why certain steps need to be undertaken (eg drafting of particular legislative or procedural provisions)

Training courses may also serve a role as “disguised negotiations” – this could be a primary or a secondary function. Example of using training courses to resolve groundwater conflicts in Mexico.

Use of appropriate communications pathways and technology

eg online training programs disseminating large amounts of information are not a realistic option for small island states with limited internet capacity.

Tool kits

An inventory of existing tools already available to GEF project managers is required.

Basic elements of a data-sharing protocol

But note that some countries are highly reluctant to share data with other countries, unless they face a common threat

For example, Bangladesh and India tend not to share data, but have done so when confronted with a common, external threat, such as a glacial lake outburst. However China now shares data with the MRC through the flooding season.

Is there a role for hypothetical scenarios (eg typhoon) to be used to encourage data sharing?

How to ensure data is used for the purposes for which it is provided?

Eg Thailand used to share data with other Mekong states from over 300 points. But under the MRC data sharing arrangements, Thailand now only shares data from around 50 points, because they are fearful that data will be used for other issues.

How to harmonise the understanding of linkages between marine and freshwater systems?

How to ensure / improve sustainability after a project concludes?

How to involve all stakeholders?

How is it possible to harmonise government priorities with the priorities of people and the communities reliant on the international waters?

Can these needs be met within a project?

Effects of climate change

What aspects of current international waters conventions and management practices are not compatible with climate change predictions?

How can incompatible conventions and practices adapt? What options are open? (ie, is it necessary to reopen conventions and renegotiate on climate change clauses, or can changes be made in an informal manner, which would be less costly in terms of time and financial resources)

Follow up actions

David McCauley (ADB) offered to provide an introduction to the Network of Asian River Basin Organisations, which promotes common understanding of water resource management principles.

Project managers from the GEF funded PEMSEA and ATSEF projects were also specifically asked later how they felt about:

- funding mechanisms
- dispute settlement
- data and information sharing and exchange

PEMSEA

Funding Mechanisms

- PEMSEA receives founding from 2 sources – GEF and member countries. China, South Korea, and Japan are the big funders – with co-financing based on capacity and interest. Funding has been a strictly voluntary mechanism and this has been sufficient as countries have been forthcoming in turning over money.
- To date, this funding arrangement has worked, but as PEMSEA moves out of the UN framework it will also look at alternative arrangements to become financially self-sustaining. Currently, PEMSEA is operating under a business plan that is in effect until 2011

Dispute Settlement

- PEMSEA is a partnership that operates on consensus – with no formal mechanisms for dispute resolution. Even though PEMSEA is moving towards establishing its own institutional framework, the member countries are not ready for any legally binding mechanism.
- On the more local level, more local institutions are in a better place to identify areas of conflict and to bring the parties together to work towards a solution. Some of the steps include stakeholder involvement, risk assessment, negotiations, mediation, and other non-binding participatory processes.

Data Information Sharing

- In November 2009, PEMSEA will host the East Asian Seas Congress – whose main purpose is to serve as a marketplace for information and to discuss progress and challenges facing projects. These conferences happen every three years.

- When more local issues are involved, those countries can get together and negotiate separate agreements with data information sharing provisions (an agreement within an agreement). For example, in the Gulf of Thailand, the riparian states negotiated an agreement concerning marine pollution. Local governments have also worked on land-sea zoning and in trying to reduce conflicting uses between parties.
- At the East Asian Seas Conference in 2003, the member states and other participating stakeholders, after much consultation, adopted the SDS-SEA – which promotes achieving the sustainable development of the seas of East Asia through stakeholder partnerships under the six major action programs of Sustain, Preserve, Protect, Develop, Implement, and Communicate.
- Member states have worked together in 8 major project areas: Regional Mechanisms for SDS-SEA Implementation, National Policies and Reforms for Sustainable Coastal and Ocean Governance, Scaling Up Integrated Coastal Management Programs, Twinning Arrangements for River Basin and Coastal Area Management, Intellectual Capital and Human Resources, Strategic Partnership Arrangements, Investment and Financing, and Corporate Social Responsibility.

PEMSEA focuses on the issues that are achievable and on which its member states are willing to cooperate. At the November 2009 East Asian Seas Congress, each country is expected to recognize PEMSEA as a mechanism to implement agreements and as an independent institution (outside of the UN framework) with international legal personality. This will allow PEMSEA to become a country-owned, self-sustaining regional mechanism. Asian countries have shown resistance to binding international agreements (especially since there is a huge socioeconomic disparity between the different member states and unresolved water conflicts). While eventually PEMSEA might become a legally binding agreement, it is currently functioning well as a framework partnership agreement that can bring countries together to work on agreed projects while also encompassing other subregional agreements.

Arafura and Timor Seas Expert Forum (ATSEF)

Funding

- The project was financed by a Project Preparatory Grant (PPG) provided by GEF.
- This grant was supported by co-financing at a rate of 2:1.
- This co-financing support for the preparation of the program was provided by Indonesia, Australia, and Timor Leste.
- For the implementation of the project, the co-financing level will rise to 4:1.
- The first phase of the project is expected to take 4 years and the second phase is expected to take 2-5 years.

- Funds have already been earmarked for the second phase of the project.
- Want to make sure that there is a sustainable source of funding in the future.

Data Sharing

- In terms of data sharing, the project will be conducting an oceanographic survey of the region using research crews on board an Indonesia vessel.
- Even though Australia will be doing its own monitoring in its own territory.
- The Australian Institute of Marine Science will analyze the resulting data and this research will result in a series of publications and technical reports.
- The oceanographic survey aims to provide a measure of the impact of climate change in the region. For some areas, previous Australian data can provide a reference point on which to compare the results of the oceanographic survey. But for many other parts of the region, the oceanographic survey will try to fill in the gaps where no data existed before and to provide this preliminary data.
- Over the course of the project, the Regional Secretariat wants to establish additional coordination mechanisms between the three countries.

Dispute Resolution

- There is no formal mechanism involving dispute resolution as there is no overlying treaty structure for the region. Going forward, the Regional Secretariat wants to capitalize on the current willingness and commitment of Australia, Indonesia, and Timor Leste to establish a more formal structure to govern the region.

Since the project is so new (launched in October 2009), it still remains to be seen how effective all these projects and mechanisms will be. ATSEF is working to develop a Transboundary Diagnostic Analysis (TDA) and a Strategic Action Programme (SAP) for the region. Then, ATSEF will move to implementing demonstration projects in each country (such as fisheries capacity building and projects that encourage sustainability). Although ATSEF is still getting started, there has already been a series of consultations among the three countries and the project has made it a point to respond to the needs of stakeholders and to incorporate local methods.

Experiential Tool Development

Workshop participants also directed their attention to the development of experiential learning tools.

The topics involved in these discussions included:

- Dispute resolution
- Funding mechanisms
- Data and information sharing and exchange mechanisms
- International law
- Active adaptive management

Participants also discussed various “adult learning” strategies including:

- Case studies
- Simulation exercises
- Short videos
- Skills training e.g. negotiation
- Web based tools
- Information packaging, such as “Tool Books”.

Conclusions

The workshop appeared to be well received by participants. Participants appeared to be keen to join the nascent Asia / Asia Pacific south-south peer group network which the project is striving to establish and maintain. Participants also appeared to be very much looking forward to receiving advice from the project regarding lesson learned and experiences and experiential learning tools. At least two universities in the Asia Pacific (Chulalongkorn and NUS) appeared to be very keen to further engage with the project. Participants also appeared to be keen on the idea of involving more women and youth in the challenges associated with the implementation of lessons learned and experiences regarding the governance of international waters.

ANNEX A
List of Participants
Project Workshop 25 October to 30 October 2009

Participant	Contact
Chandavanh Dethrasavong (proposed “champion” GEF International Waters Governance Project)	Laos PDR
Ampai Harakunarak	UNEP Asia Pacific
Flavia Loures	WWF USA
Chaiyuth Sukhsri (proposed academic partner)	Chulalongkorn University, Bangkok, Thailand
Kongngeun Choulamantry	Laos Department of Water Resources, Vientiane, Laos PDR
Iqbal (Lyttton) Kabir	Bangladesh Environmental Law Association
Barbara Hanshard	GEF Pacific Island Fisheries project
Anthony Lewis	GEF Pacific Island Fisheries project
Robert Jimmy	Vanatu Fisheries Department
Dr. Ir. Darmawan	GEF CTI Regional Secretariat, Indonesia
Sungwoh Soh	Western and Central Pacific Fisheries Commission
David McCauley	Asian Development Bank
Iain Watson	Bangkok, Thailand and Vientiane, Laos, PDR
Nawarat Chalernpao	FAO
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Jennifer Maul	White & Case, Washington, D.C.
Kate Stoeckel	Gilbert & Tobin, Sydney, Australia
L. Jiang (interviewed)	Project manager GEF Hai River Basin and Yellow Sea projects
Dr. Tony Waggee (interviewed)	Project manager GEF Arafura and Timor Seas project

(interviewed)	PEMSEA project
Christian Susan (interviewed)	UNIDO, Guinea Current LME