



the Practitioner's page

Bertus de Villiers of South Africa Peace Parks – A vehicle for regional integration of Southern Africa?

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Introduction

Regional integration of Southern Africa was recently taken a step further with the signing of the Kgalagadi Treaty between the governments of South Africa and Botswana. The treaty paves the way for the formal integration of two national parks that straddle international borders – the Kalahari-Gemsbok National Park on the side of South Africa and the Kalahari Park on the side of Botswana. The treaty to establish an international peace park is the first of its kind in Africa.

The establishment of the peace park is an interesting experiment for the ability of states in Southern Africa to cooperate and for the provinces of South Africa to be consulted in matters of regional affairs. Although it is too early to talk about a “union” of states along the same lines as the European Union (EU), the fact is that states within southern Africa are moving to closer regional integration in a number of areas. The South African provinces with their guaranteed constitutional powers and close relationship with neighbouring states, have a crucial role to fulfil in regional integration. Various non-binding “protocols” and “memoranda of understanding” have been concluded between provinces and neighbouring states in recent years. In short, within the context of southern Africa, the provinces have become important role players in foreign policy.

One area where the provinces have participated is in environmental matters in general and management of conservation areas such as parks and reserves in particular.

Proposals to establish an international peace park between South Africa and Botswana have been in circulation for many years. With conservation areas being scattered along many borders of African states, peace parks are seen as a very practical way to involve states, local communities, and local and provincial governments into a single-policy framework

dedicated to conservation issues. Peace parks are also seen as a basis upon which the regional economies could be re-built after many years of civil war and instability.

The role that tourism and wildlife experiences can play as “engines” for economic growth and empowerment in Southern Africa, is widely recognized. Hence the support that has come from various governments for the establishment of trans-frontier peace parks.

Kgalagadi - new peace park

The two Kalahari's situated in South Africa and Botswana together constitute one of the largest conservation areas in the world. The Gemsbok National Park in Botswana is 28,400 km² in size and the Kalahari Gemsbok National Park in South Africa is 9,591 km². Together the peace park will comprise three million hectares. They share a common border of approximately 300 km and since 1948 have been functioning as a *de facto* integrated ecological unit. There is no fence separating the two parks which means that it is one of the few places in Southern Africa where wildlife can move uninhibited as the seasons change and weather conditions change. The northern park of the Botswana part is also not fenced, which increases the total area available for game movements.

The conservation agencies of the two countries and the staff of the respective parks, have been cooperating on the basis of a “gentlemen's agreement” on a range of matters since 1948 when an informal agreement was reached between South Africa and Botswana to cooperate on matters of mutual concern. Cooperation was taken a step further in 1964 when the park warden and some senior staff became honorary rangers in Botswana - hence allowing them easy access into the park and facilitating joint activities such as anti-poaching programs and conducting an annual game census. A Trans-frontier Management Committee was formed in 1992 to investigate options for further cooperation between the parks with the aim of establishing a joint management plan for the peace park together with a monitoring institution, which could provide general guidance to the respective park authorities.

Legal arrangements

The establishment of the peace park took place against the background of a newly adopted constitution for South Africa, a provincial system with federal characteristics, and political antagonism that has characterised southern African relations

for many years. On the side of Botswana the process was relatively simple as Botswana is a unitary state and conservation matters are the responsibility of a government department. On the South African side a more complex picture arose due to the federal nature of its constitution.

The legal arrangements to provide for the establishment of the Kgalagadi therefore had to take account of a few complexities on the South Africa side, for example:

- South African national parks are managed and controlled by an autonomous statutory body, South African National Parks (SANP), and not by a government department. The national government therefore could not simply prescribe or direct SANP to undertake certain activities;
- The provinces of South Africa have constitutionally guaranteed powers in respect of tourism, conservation, roads and infrastructure, and therefore have a direct interest in the matters arising from any proposed peace park; and
- The South African Constitution reserves the right to conclude treaties to the national government and parliament. SANP could therefore not in its own right engage in the joint management arrangements with foreign states.

These issues were addressed in the following ways:

SANP as an "organ" of state

While the SANP had the managerial experience and expertise required for the co-management of the peace park, it did not have the legal basis to engage in activities outside of South Africa or to conclude a treaty with a neighbouring country. Recourse was taken to the South African Constitution, which provides in Section 238 as follows:

*An executive organ of state in any sphere of government may -
(b) exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.*

The SANP qualifies as an "organ of state" in that it is an "institution exercising a public power in terms of legislation..." As a result, the South African government could, through a national department such as the Department of Foreign Affairs, conclude the bilateral treaty and subsequently appoint the SANP as agent in terms of the constitution to fulfil the responsibilities on behalf of the government.

The treaty, which was signed by the two heads of State in 2000, sets out the legal basis on which the SANP and the Department of Conservation in Botswana could interact.

Agreement between conservation agencies

The treaty provides that the respective conservation agencies shall conclude a "record of understanding" as the primary agents responsible for the implementation of the treaty. The two agencies will therefore continue their operations in their respective parks in terms of their own national legislation although their actions are coordinated. A joint management agency is established to coordinate and integrate policy.

All management activities in the peace park are directed by a joint management plan for the entire area. The management plan deals with all aspects of conservation and tourism affecting the peace park. The agency meets on a regular basis and the park management on a weekly basis to discuss their activities.

Creating a "visa-free zone"

One of the most unique aspects of the peace park is that the area can be accessed by visitors from both the countries - South Africa and Botswana *without* any visa requirements when the

international border within the park is crossed. It is also envisaged that a third country, Namibia, would in time become part of the arrangement.

In essence, the park is therefore a "visa-free" zone provided that if a person wants to exit the park at another gate from which entrance was gained, a visa for that country will be required. This is one of the first, if *not the first*, arrangement in the world where a visa-free zone is created for the purposes of a national park.

Involvement of the province of Northern Cape

As national parks are a responsibility of the national government, the provinces do not have a direct role in the management and control of national parks. During the negotiations to establish the peace park, the province of the Northern Cape was consulted but did not play an active part in the negotiations. The province did however support the initiative at provincial and parliamentary levels.

In the daily management and implementation of the treaty the following are examples of close interaction with the province:

- Tourism is a provincial competency. SANP coordinates its tourism plan for the peace park with the activities of the Northern Cape to ensure maximum benefit is achieved.
- Roads and transport are provincial competencies. Although the infrastructure within the park is the responsibility of the conservation bodies, getting tourism to the park falls within the domain of the province. The upgrading and maintenance of the road leading to the park as well as other traffic concerns are the responsibility of the province.
- Environmental impact of new developments is a shared power between the national and provincial governments. All new developments within the park that may impact on the environment require an environmental impact analysis in accordance with national and provincial legislation. This includes the opening of rest camps for tourists, the establishment of a 4-wheel drive tour through the Kalahari dunes and the opening of new roads and tracks.

Other peace parks in Southern Africa

The second and third peace parks between South Africa and neighbouring counties are in the process of being developed. The Limpopo Park which includes the Kruger National Park and conservation areas in Mozambique, is creating the most interest as it could establish the world's largest wildlife park. In a similar vein as the Kgalagadi Park, the proposed Limpopo Park requires close co-operation with the Limpopo Province.

In summary

The establishment of peace parks in southern Africa provides an interesting example of provincial-federal interaction. On the side of South Africa, the legal arrangements in the constitution recognize the powers of the provinces in national matters including the conclusion of treaties, while they also guarantee provincial legislative powers. Within the domain of political interaction, some provinces have very close relationships with neighbouring states due to historical, ethnic and economic ties.

In the establishment of the Kgalagadi Peace Park, a fine balance had to be maintained between South African domestic legal arrangements, political relations between provinces and neighbouring states and the role of a statutory body (SANP) as the organ to implement an international treaty. 