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The Role of Impact Assessment in Transitioning to the Green Economy

Promoting Transboundary EIA in China: The Greater Tumen Initiative

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Abstract

The Law of the People's Republic of China on EIA has attracted significant attention for its procedures relating to projects and programs within mainland China. A missing element is procedures for transboundary environmental impact assessment (TEIA) concerning effects of proposals located within China or which physically cross China's borders. This paper considers the Greater Tumen Initiative (GTI) in Northeast Asia, a UNDP supported initiative involving China, Russia, Mongolia and both Korean states designed to contribute to social and economic prosperity and sustainable development. Trans-border projects are an important part of the GTI and TEIA was identified as an essential part of the environmental efforts further to a Memorandum of Understanding between the contracting parties, which identified the need for joint and regional assessments. The objective of this paper is to evaluate the application of TEIA in the GTI region with reference to recent projects planned and underway. As many of these would appear to have strategic dimensions, the potential for SEA to guide project level assessments is also examined. Interaction between the Tumen Secretariat and other international organizations and capacity building concerning TEIA is considered, to promote TEIA experience in Northeast Asia and encourage China to take a more active role with TEIA.

1. Introduction

The Tumen River is situated in the North East of the People's Republic of China (China); the first 16km from its mouth it forms the border between the Russian Federation (Russia) and the Democratic People's Republic of Korea (North Korea), and above that point, it is the border between China and North Korea (Economic Commission for Europe, 2007, pp 60-67). China defends its right of navigation to the sea; the river also provides water to these three riparian states for agriculture and industrial development, as well as helping preserve globally significant biodiversity in the Tumen Delta on the Pacific Ocean. The water quality of the river is poor as it has been seriously polluted by industrial sewage. A Report on the State of the Environment in Jilin Province in 2006 indicates water quality is Class V in 75% of the river, a category assigned to water which is unfit for natural reserves, drinking, and domestic, industrial and agricultural uses; pollution has mainly come from Chinese pulp and paper mills (Wang Shi-jun et. 2002).

The river flows through a region that is rich in oil, gas and minerals, with relatively easy access via rail and sea to the markets of the other states of the region, which also include the Republic of Korea (South Korea), Mongolia and Japan. The economic potential of the region was recognized early on and it was decided to establish an intergovernmental organization to assist with the sustainable development of the Greater Tumen Region. On 6 December 1995 in New York, North Korea, China and Russia signed Agreements on the Establishment of the Tumen River Area Development Coordination Committee and on the Establishment of the Consultative Commission for the Development of the Tumen River Economic Development Area and Northeast Asia, the latter including non-riparian states South Korea and Mongolia.

The Greater Tumen Initiative (GTI) is today the name given to the intergovernmental cooperation mechanism between China, North Korea, South Korea, Mongolia and Russia. It has throughout its short history been supported by the United Nations Development Program (UNDP), which has played an important role in its establishment and implementation (Blanchard, 2000, 2003). As indicated by the 1995 Agreements, it was originally known as the Tumen River Area Development Program (TRADP), initiated in 1992 as a response to experience of conflict and development of trade in the region (Pomfret, 1997-1998). The Consultative Commission is composed of government representatives of the five GTI member States and is the core decision making institution. It is supplemented by a Coordination Committee, focused on development activities and trade with representatives of China, Russia and North Korea whose territories are the focus of the Tumen River Economic Development Area (TREDA). The Secretariat supports and executes the decisions of the Consultative Commission and Coordination Committee.

The objective of this paper is to evaluate the application of TEIA in the GTI region with reference to recent projects planned and underway. As many of these would appear to have strategic dimensions, the potential for SEA to guide project level assessments is also examined. Interaction between the Tumen Secretariat and other international organizations and capacity building concerning TEIA is considered, to promote TEIA experience in Northeast Asia and encourage China to take a more active role with TEIA. The approach taken was a comprehensive literature review, followed by an analysis in the light of international best practice to TEIA.

2. The Environment in the GTI

The environment has been an area of concern to the GTI states since the start (Kim, 2004; Byun, 2008/09). Article 2.2 of the Coordination Committee Agreement states that: ‘The Committee shall consult about, and provide coordination for social, legal, environmental and economic issues raised by any Contracting Party related to its sovereign rights.’ Sustainable development is cited as an underlying principle in Article 1.1. The Consultative Commission Agreement is in similar terms with the environment cited in Articles 2.3 and 2.4, and sustainable development in Articles 1.1 and 2.4. Of far greater significance however, is the Memorandum of Understanding (MoU) on Environmental Principles Governing the Tumen River Economic Development Area and Northeast Asia, signed by all five contracting parties at the same time as the original two Agreements in New York, on 6 December 1995.

The 1995 MoU affirms the overall goal of the parties ‘to attain environmentally sound and sustainable development of Northeast Asia and the Tumen River Economic Development Area,’ in accordance with ‘(b) the international consensus reached at the United Nations Conference on Environment and Development; (c) the requirements of national laws and regulations and of bilateral and multilateral environmental agreements; and (d) the environmental requirements of the multilateral development banks of which the Contracting Parties are members.’ The Contracting Parties also ‘affirm their intention to cooperate and coordinate with each other to protect and enhance the environment of the Region and to conduct all development activities in the Region in a manner that does not damage the environment of any Contracting Party, of any other state or of areas beyond the limits of national jurisdiction.’ The environment continues to be emphasized as a cross-cutting theme, with the establishment of the Cooperation Framework on Environment (CFE) in the 2007 Vladivostok Declaration. This is designed to be ‘a formal trans-border mechanism aiming to synchronize efforts of environmental protection in the GTR.’

3. Procedures for TEIA and SEA in the GTI

Specific environmental responsibilities of the Contracting Parties are set out in the MoU, especially the first section, ‘Environmental Assessment, Mitigation and Management.’ Article 1.1

concerns collection and sharing of baseline data, to be undertaken nationally and jointly in a coordinated manner. Article 1.3 states that Contracting Parties will prepare and adopt national laws and policies and bilateral and multilateral environmental agreements where ‘required to attain environmentally sound and sustainable development of the Region.’ Article 1.2 deals with regional environmental assessments of plans, stating comprehensively that:

The Contracting Parties will conduct jointly (and periodically update) a regional environmental assessment (“EA”) evaluating the local, national, regional and global environmental implications of contemplated development plans for the Region as a whole, and will prepare jointly a regional environmental mitigation and management plan (“EMMP”) for preventing and mitigating harm to, and promoting enhancement of, the environment, based on the results of the regional EA and other relevant data.

In its reference to the joint conduct of regional environmental assessment, Article 1.2 above therefore provides for a form of transboundary SEA, and in specifying application to ‘contemplated development plans’ indicates an ex ante approach is to be taken while all options are still open. There is a general obligation to conduct this regardless of whether the implications are ‘significant’ or not, as the trigger for the procedure operates for all contemplated development plans and all ‘local, national, regional and global implications’, regardless of significance.

The reference to the EMMP preventing and enhancing the environment contrasts with much of the ‘mitigation and adaptation’ focus in dealing with current environmental issues. Another positive is the reference to the information informing decision-making with respect to the required EMMP, and to be ‘based on the results of the regional EA and other relevant data.’ This suggests irrelevant data such as economic and social factors must not be considered. Article 1.4 specifies the EMMP must include appropriate reference to eleven key matters in addition to general land use management planning: protection of wetlands, fragile coastal areas, forests and sensitive ecosystems; preservation of biodiversity, including threatened or endangered species and their habitats; and the establishment of protected areas.

Article 1.5 contains transboundary EIA (TEIA) requirements, although as with Article 1.2, details are lacking. Article 1.5 imposes an obligation on the Contracting Parties on whose territory the proposed project is located to prepare a project specific EIA and EMMP to deal with anticipated ‘significant environmental effects.’ In contrast to the assessment of plans, the screening requirement for project proposals is environmental significance, although this is not defined further. Article 1.5 (but not Article 1.2 on plan-SEA) further specifies that participation by experts in the affected state is required, although there is no mention of public and NGO input.

More general environmental obligations are set out in Articles 1.6-2.5 which affect the obligations for SEA and EIA. Access to environmental information and public participation (although not clearly the more controversial access to justice) is generally required by Article 2.4. However in contrast to the clearer nature of the non-discriminatory provision for experts from ‘affected’ states to participate in procedures led by ‘origin’ states, Article 2.4 merely refers to involvement ‘at appropriate stages of the development and environmental planning processes’, and requirements of domestic law may inhibit this.

Article 1.6 makes further reference to the effect of the SEA and EIA in decision-making, so Contracting Parties are obliged to coordinate and cooperate with each other so that the results of each ‘are taken into account in development planning activities for the Region, and to implement the regional and project-specific EMMPs’. Yet there is no indication of any weighting to attach to these results, and whether economic and social considerations may also have a role to play, in contrast to the wording in Article 1.2, in relation to which, it is argued, that this must be read.

Article 1.7 states that: ‘All EAs and EMMPs will be conducted in accordance with internationally accepted procedures and guidelines.’ This is supplemented by Article 2.1 which states: ‘The

Contracting Parties will strive, both individually and in cooperation with each other, to meet the objectives of international environmental agreements and norms with respect to their activities in the Region.’

Other environmental responsibilities set out in the MoU include an obligation in Article 2.2 to coordinate activities with respect to implementation of national laws and to consider ‘proposals for progressive harmonization of such laws’, which is designed to establish minimum standards for environmental planning and management, whether substantive or procedural. Art. 2.3 emphasize the importance of capacity building for sustainable development, with an obligation to cooperate through personnel exchanges and technology transfer. Finally, Article 2.5 commits Contracting Parties to provide or seek funding for the preparation of EIA and EMMP documentation and for the other environmental responsibilities.

4. Environmental Issues and Practice with TEIA in the GTI

Since the establishment of the GTI there have been ten meetings of the Consultative Commission. At the 8th Meeting held in Changchun, China in 2005, in addition to extending the original 1995 Agreements governments agreed on a Strategic Action Plan 2006-2015, focusing on GTI activities in four priority sectors: transport, energy, tourism and investment, with environment as a cross-cutting theme. The 9th Meeting in Vladivostok, Russia in 2007 reaffirmed commitment to sustainable development, with a special session on implementing joint GTI projects. Further institutional structures were agreed, including the CFE, which is designed to be ‘a formal trans-border mechanism aiming to synchronize efforts of environmental protection in the GTR.’

Within the framework of the Strategic Action Plan, the Secretariat has prepared biennial work plans for submission to the Commission, focusing on implementing concrete projects with practical value, with an emphasis on private sector funding. Prioritized projects include transport infrastructure to facilitate movement of goods through the seaports. The environment receives particular attention, and as of 2004 it had attracted 85% of total programme funding. A comprehensive Strategic Action Programme (also known as the ‘TumenNET’) aimed to establish policy priorities and national action commitments, especially in the areas of biodiversity loss and water issues, but has yet to be signed given reservations by some member States (Kim, 2004, 198-200; Byun, 2008-09).

One result of the Strategic Action Programme, as funded by the Global Environment Facility and UNDP, was an EIA strategy workshop held in April 2002. This recommended an SEA/EIA Training Course to standardize the content of the baseline data in relation to planned transborder projects, meet minimum requirements of affected countries, and enhance cooperation. Initiated by South Korea, annual workshops for the ‘Trans-boundary Environmental Impact Assessment in Northeast Asia Region’ have been held since 2004. It also recommended that an SEA/EIA Committee be established to consult on alternatives and mitigation methods, together with a Monitoring Commission to ensure activities comply with implementation conditions.

A number of GTI Projects were approved at the 9th Consultative Commission Meeting, and TEIA and SEA should apply to these. These were further discussed during the 10th Consultative Commission Meeting. They include the *Mongolia-China Railway Feasibility Study*, a proposal for a railway line linking Mongolia with the seaports in the region, and the *Road and Harbor Project on the China-DPRK border*, which includes reconstruction of a transborder road into a new road and bridge. Both are part of these GTI Environmental Cooperation efforts, focusing on TEIA and environmental standardization (Consultative Commission, Paper 1A, 2009, 16-17).

5. Concluding Comments

The GTI has great potential for developing regional cooperation through TEIA, and this should be applied to each of the approved projects. To enhance this, there is a need for guidance to be prepared on the MoU requirements, which could be prepared with reference to the international best practice of the Espoo Convention. At present, the opportunity to create synergies between the GTI efforts and this treaty are not apparent. Another area which would benefit from international best practice is public involvement, which as noted is also not well developed. SEA should also be applied where practicable, an example of a proposal being the *Northeast Asia Ferry Route Border Infrastructure Framework*, analogous to a transport program. Although an EIS was prepared of the Master Plan for the Hunchun Border Economic Cooperation Zone in 2000 (part of the region), it was not an ex ante assessment and failed to refer to the provisions of the MoU. Another approved project, *Capacity Building on GTI Energy and GTI Tourism* at regional level, has potential for SEA to be applied (Consultative Commission, 2009, 11-12 and 13-14). Above all, although China is only one of the states involved in the GTI, as the most significant, a positive experience with the GTI has great potential to promote TEIA more broadly in regard to the PRC and its external relations.

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