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Matching the Scales of Law to Social-Ecological Contexts: From Local to Planetary

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Thanks for inviting me to the Singapore Sustainability Symposium, to talk about the “Matching of the Scales of Law to Social-ecological Contexts: from Local to Planetary.”

The main issue of my presentation is to what extent the legal perceptions, concepts and structures – for instance of environmental laws, energy laws and trade laws – related to various social-ecological concerns match the scales and complexity of these concerns.¹ If they don’t, the legal arrangements are less effective, less legitimate, and less equitable than they should. In short, they are less sustainable.

To give you an example, it does not matter how strict laws on climate change a country, say Singapore, adopts unless other countries also take action to combat climate change. The future and well-being of Singapore depends on activities, but also on laws and policies, of and in other states. On the other hand, activities and laws in Singapore and under Singapore’s jurisdiction have social-ecological repercussions – good or bad – outside the country, be it through pollution, the imports of food, goods or energy, or through fishery on international waters.

¹ This presentation draws in parts from J. Ebbesson & C. Folke, “Matching Scales of Law with Social-Ecological Contexts to Promote Resilience”, in A.S. Garmestani & C.R. Allen (eds.), *Social-Ecological Resilience and Law* (Columbia University Press, New York, 2014), p 265-292.

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I will refer to these concerns as “social-ecological” rather than “environmental” to stress that the environment and ecological systems cannot be considered in isolation from the social world and the social systems, and vice-versa.

While the matching of laws to social-ecological contexts is of global relevance and not limited to cities, I will highlight some particular features of concern for Singapore. In some respects, the topic is particularly relevant in South-east Asia, where regional international law is still less developed than in some other parts of the world.

Linking my talk to the overall theme of the symposium, my question is to what extent opportunities are locked in or opened up by legal structures in transboundary contexts. And this matters for urban areas as well.

1. Social-ecological contexts are transboundary

As a general objective, all laws should be adopted and applied so as to be perceived as legitimate and just by those concerned. As far as the matter – say, taxation or water quality – is of national concern only, then national laws and policies may suffice. Those adopting and applying the laws can then be held accountable in one way or another, and the laws can be changed and developed accordingly. This would seem to foster sustainable laws and policies.

However, I just indicated that social-ecological systems know no borders; meaning that, for example, industrial activities, uses of natural resources (whether living or non-living), food supply, waste management and even land-use in one state often have adverse repercussions across political and legal borders, including state borders. Again, we have learned that the footprints of cities and urban areas reach far beyond the city limits. This is equally true with many countries. In some cases the transboundary impacts stay within a region or sub-region, in other cases they add to global concerns and problems relating to the environment and natural resources, such as climate change. This must be taken into account when laws on environment and health protection, and the use of natural resources and energy, are drafted, negotiated, adopted and applied.

To what extent, then, and in which ways – if at all – are the interests of other states, other members of the public and the environment outside that state duly taken into account when laws, policies and regulations are adopted and applied?



During the last half century, in most states national laws have been developed with the intention of reducing harm to the environment; one must say with varying degrees of success. There has also been a remarkable development of international law to better meet these situations of transboundary harm. This is shown not least in the hundreds of international environmental agreements – international legal frameworks – on pollution of the air, watercourses and marine areas, climate change, nature protection and biodiversity, shipment of hazardous wastes or chemicals, water management. Many of these agreements are bilateral, sub-regional or regional, whereas others are global in scope. The scope and scales of these arrangements should reflect – indeed match! – the social-ecological context.

Yet, the scales of these social-ecological contexts and interactions – including environmental degradation, ecological processes, societies, and societal development – are constantly changing. Increasing exploitation and trade, altered migration patterns, intensified harvesting, and new scientific breakthroughs transform issues that were previously seen as national or sub-regional to global or regional in scope. Social-ecological contexts expand from local to regional and from regional to global, and some leap from local to global.

This is apparent also for Singapore. I take it that 50-60 years ago, while Singapore was of course affected by activities in neighbouring countries, most environmental stress was caused in and by Singapore itself. Today, however, plenty of health and environmental problems in Singapore are, to a significant degree, caused by activities outside Singapore. The scales of the social-ecological contexts have expanded. And the activities and consumption in Singapore affect the environment, resources and peoples outside Singapore. Again, the footprints of Singapore are seen outside Singapore, and Singapore cannot deal with and solve matters such as environment protection, health, food supply and energy alone.

While the situation is special for a small city-state like Singapore, no state can manage all these issues alone.

Moreover, cross-scale interactions play out in new ways; new linkages and feedbacks are created that increasingly connect distant peoples, places and parts of the biosphere. Examples are emerging markets of urban lifestyles and demands that reshape whole landscapes and regions. This may, for example, tip countries and



regions from sinks to sources of greenhouse gases. An example of this was the explosion of demand for palm oil, which resulted in widespread deforestation.

So again, social-ecological processes are increasingly transboundary and play out in different ways and at different scales. It is even observed that an increasing number of environmentally related concerns are planetary in character; either because of the systemic global-scale processes (such as climate change and ozone layer depletion) or because at the aggregate levels they become global in scope (eg fresh water use, biodiversity loss and land-use changes).

All these changes and interactions of social-ecological processes and patterns challenge our thinking on the scales of law.

2. The matching of law and the impact of territorial borders, in particular state-borders

How, then, does law play in? What opportunities are locked in or opened up by legal structures in transboundary contexts? I will briefly refer to three challenges:

- The impact of state sovereignty for effective international cooperation and management of social-ecological systems
- The notion of who is entitled to participate in decision-making and management of social-ecological systems, and
- The prospect of legal structures and platforms for multilevel governance

State sovereignty and international cooperation and management:

The first issue is of fundamental concern in international and transboundary contexts is to what extent can states decide for themselves under international law.

- While acknowledging the principle of self-determination, state sovereignty must not be a “carte blanche” for doing whatever a state wants regardless of transboundary impact.
- This is clearly established in today’s international law: state sovereignty is curbed the “principle of no harm”, with its potentials and limitations. While the principle is essential in international law, for sure it is not always followed or enforced.



- State sovereignty is also fundamental when multilateral treaty regimes are approved;
in principle each state decides whether to approve a treaty.
- Accordingly the USA could stay out of the Kyoto Protocol, even if it was and is one of the main contributor to climate change, no matter how you calculate it.
- State sovereignty must not be an excuse for staying outside regimes for multilateral cooperation if the state contributes to the problem.
- Appropriate restrictions on state sovereignty in these respects would provide for more effective and legitimate international cooperation and action
- This would unlock important opportunities

As far as treaty building on environmental matters, huge parts of Asia stand out.

- While Asian state are parties to most MEAs of global scope, it is striking how little regional international law on social-ecological matters have developed in this regions (I am aware of some efforts in ASEAN), despite the regional scales of the problems:
 - Air pollution due to industrial activities as well as land-uses
 - Marine pollution
 - Use of natural resources
 - Even moisture recycling governance can have transboundary impacts of relevance for Singapore: I am engaged in a research project which concerns moisture recycling and “watersheds in the sky”. It has been established that the moisture cycles and the rain supply in Sao Paolo, Brazil, are adversely affected by deforestation and related activities in the Amazon region, thousands of kilometres away. Thus, land-use changes not only destroys the ecological treasure of the region, but also the distribution of water to the megacity of Sao Paolo.² In this case, the entire social-ecological process appears to be within one large country, Brazil. So theoretically, strong political measures could be taken by the federal government and legislature in order to stop this process. But this phenomena has been observed also in Southeast Asia in a transboundary context.³ This may lead to changed moisture cycles and water supply for Singapore in part because of land-use changes in the region, outside the

² This draws on a current research project by Patrick Keys at Stockholm Resilience Center, at Stockholm University.

³ Ibid.



state of Singapore. What then? To what extent can Singapore hold its neighbouring countries responsible for such effects under international law? How could we avoid that states are affected like this beyond their control?

- Apparently, we can identify a few opportunities to unlock here too.

The participation of non-state actors across state borders:

The second issue is that of public participation in decision-making on social-ecological matters.

- Scales of public participation: What when social-ecological contexts expand?
- Access to information
- Public participation in decision-making
- Access to justice
- Traditionally these matters have been seen as national only, but increasing internationalisation in the 1990's (in particular after 1992 Rio Summit)
- Expanded notions of who is concerned and who has a legal interest
- Transboundary participation in decision-making
- Non-discrimination

International legal developments on public participation:

- In globally applicable MEAs, yes, although in rather general ways, eg in UNFCCC & CBD
- Europe and Central Asia, yes, mainly through Aarhus Convention, which provides also for transboundary public participation in decision-making, and through ECHR
- Americas, yes, through env'l treaties, int'l human rights regimes and ECLAC
- Africa, yes, to a limited extent, through env'l treaty and human rights instruments
- Asia and Pacific, no! Despite increasing attention to PP in several Asian states, it is again striking how little attention is given to this matter in regional international law in Asia
- The legal challenges are not limited to unlocking urban or cities' opportunities, but also citizens' opportunities



Legal structures and platforms for multilevel governance of complex matters:

My third and last point refers to innovative legal thinking in terms of multilevel governance; I will just indicate some challenges:

- I mentioned the increasing focus on public participation, also in transboundary contexts, and the corporate sector is already there. However, it is also crucial to engage cities and regions in transboundary contexts, as in the climate change negotiations
- More city-to-city engagement is welcome to push for more sustainable cooperation and policies, and to resolve social-ecological matters; yet cities must understand that they would not survive without support from rural areas.
- A related issue is to better manage, in part through legal arrangements, complex matters, including food supply, energy, pandemics, trade and the environment. Governance of these different issues should be further integrated and coordinated.

Time does not permit entering into this further in this presentation.

3. Conclusions

In many respects, the scales of law and the legal structures have not sufficiently adapted to new understandings of the changed scales of social-ecological processes.

- Law, legal and political regimes should match social-ecological contexts
- This engages expanded notions of who can participate in decision-making even across state borders, based on who is perceived as concerned by decisions, and on non-discrimination
- It also engages the need for constrained sovereignty; thus sovereignty should not be an excuse for allowing external harm or staying outside international cooperation
- New actors and stakeholders should be engaged at the international arena
- The mental and formal divide of “national” and “international” should be reconsidered
- Multilevel governance should be further promoted and effectively developed

Again, there are some opportunities to lock up.

Thank you for your attention!