

# Theme session Q: Report

Making transboundary ocean and coastal governance work - state of the art, problems and enablers

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## Session overview

Transboundary ocean governance is a complex endeavour involving multiple actors, institutions, epistemologies, and spatial and temporal scales. There are various conceptions of ocean governance, as well as a growing range of practical experiences of what is and what isn't working. The aim of this session was to provide a forum to critically discuss the concept, practice, and outcomes of integrative coastal/marine governance in transboundary contexts. It sought to gain an overview of the state of the art, including the benefits, enablers, needs, and challenges relating to transboundary ocean governance, and identify future research needs. It also sought to stimulate future collaboration and interaction between different researchers and relevant topic areas.

22 papers were initially submitted in 2020, of which 16 were accepted. Out of those still willing to present online, 9 were selected for the 2021 ASC. 9 pre-recorded presentations were made available to all participants before the session. As the session was only short, the conveners asked each presenter to prepare a one-minute pitch presentation covering the following:

- What are the key lessons from your research for transboundary marine governance?
- Where do you see the biggest gains and progress over recent years?
- Where do you see the biggest gaps, needs and challenges?

Session participants (about 25) were also invited to answer these questions or comment on them in the chat. The one-minute presentations were grouped in three discussion blocks. The session concluded with a final discussion and summary.

## Content

Various meanings of transboundary exist, depending on the type of boundary – e.g. vertical, horizontal, natural and political. TB governance means coming together across boundaries to address common problems under a framework that enables this. TB governance can be about agreeing a common vision for the future, which is then implemented by states or parties in a manner of their choosing, or about “doing it together”, e.g. as part of a broader MSP process. In an international legal context, TB governance can mean an attempt to overcome the paradigm of inter-state relations, i.e. to create a framework where private actors can interact in a line of communication that is independent from their sovereign. Ultimately, TB governance is about dealing

with (conflicting) issues between jurisdictions, which means coming together across different values, cultures and traditions. In order to do this, TB governance requires that collaborating parties have both a mandate and an interest to enter into a discussion, e.g. when sovereign states negotiate a treaty with a neighbouring country. Clear mandates are also required for more informal collaborative initiatives; if mandates are lacking, forms of cooperation may be needed that rely more on persuasion and consensus.

Many area-based management tools currently coexist, leading to questions concerning TB coordination. The session discussed whether statutory coordination for TB governance is required, or whether it is more useful to exploit windows of opportunity that arise in everyday practices. Research shows that it is important to make the most of TB arrangements if and when they arise, e.g. when countries come together to solve a specific problem (e.g. in MSP projects). Adding more formal layers to a situation that is already very complex may not be helpful, especially since transboundary situations are very different. Although it is a statutory process, MSP can be thought of as a multiple integration approach that takes place each time countries need to deal with a management issue. Interestingly, adding new layers can lead to re-interpretation of old layers and re-negotiation of rules, as is the case at present with areas beyond national jurisdiction.

The point was made that transboundary ocean governance needs to consider geopolitical governance arrangements. This is especially important when countries are not on the best terms. The MSP Directive places an obligation on Member States to cooperate, but this is difficult if national borders are disputed. Transboundary governance therefore requires agreed boundaries for states to know where cooperation can begin.

Another important consideration is that international relations develop at their own pace, based on collaborative deliberations instead of conflictious bargaining. Treaty negotiations have their own rules which may not coincide with the timescales of stakeholders who often lack the strategic position of a nation states but require short term outcomes. This is particularly the case for fisheries who depend on the outcomes of negotiations for their livelihoods.

#### *Enablers of TB governance*

In the Baltic Sea, research finds both the EU MSP Directive (the stick) and projects (the carrot) instrumental in encouraging international and TB collaboration. Despite its limitations, the Espoo convention was highlighted as an enabler that has changed the panorama for ocean governance, as it allows private actors to intervene and influence how governance arrangements are restructured.

Equivalency of legislation (i.e. achieving similar outcomes across boundaries despite different instruments and planning traditions) is an important enabler, as is equivalency of regulations, guidelines and technical measures. Technical measures can be described as agreed ways of managing hazards. To this end, UN organisations (such as IMO) bring states to the table based on their mandate. A difference was noted at this point between international treaties and conventions on the one hand, and sister institutions that develop technical measures on the other. In the case of the

former, states come to a joint agreement without the involvement of stakeholders; in the case of the latter, it is technical bodies and stakeholders that agree on measures without the involvement of government.

Science diplomacy understood as more than scientific collaboration is another tool that could usefully be deployed. Scientific evidence is an important part of the political power play between countries as strong evidence can lend the ability to dominate a discussion. More attention needs to be given to the role of knowledge production, as there are multiple high stakes in the ocean. Structural inequalities exist, but also new opportunities for countries.

#### *Involving stakeholders across borders*

It was noted that transboundary involvement has in fact taken place in recent MSP processes although the main focus of MSP is still national. Learning from each other is essential to mastering TB issues, and there should be clarity on why we are involving stakeholders across borders, e.g. whether the purpose is largely instrumental or transformative. There is evidence that poorly arranged, insufficient or lack of participation in governance processes has contributed to governance misfits. Improving governance fit requires different forms of participation, so from this perspective too it is important to consider who should participate and why.

It was recognised that stakeholders are engaged in many processes, and that there is a need to be more critical in evaluating these processes. Stakeholders often expect quick results and may not see the benefit of remaining involved in a process over longer periods. Especially in TB contexts, capacity, the timing of participation, and expectation management are critical.

#### *Gaps*

International law, international relations and governance studies are not sufficiently related to address the topic of TBG in MSP. For example, governance issues framed as security issues – as often is the case in international relations theory – could explain some of the challenges of transboundary governance.

To date, TB governance or the involvement of stakeholders across borders has not been sufficiently evaluated, both from the perspective of planners and stakeholders. More understanding is also needed on the limits and opportunities of TB stakeholder involvement.

A more fundamental gap exists with respect to defining collaboration and coordination, both of which are mentioned in the MSP Directive. Collaboration might mean an obligation to do more than just informing a neighbouring state, requiring specific and additional procedural targets.

#### **Conclusions and recommendations**

Due to time constraints the session was only able to briefly consider a highly complex and under-researched issue. The following points are offered as a conclusion:

1. Transboundary governance means different things in different contexts and across different scales. It is connected to collaboration and cooperation

across international and national borders and boundaries, but even these requirements – which are mentioned in the MSP Directive – remain open to interpretation. Future research could be devoted to untangling these concepts theoretically and practically, possibly as part of evaluating the application and outcomes of the MSP Directive.

2. MSP and multi-level governance stand out as enablers capable of bringing together countries to work across borders and boundaries. As such it is an instrument that can support countries to move from the “international” perspective (in the sense of international relations) to a more “transnational” approach, bearing in mind regional differences and no one solution fits all.
3. Discussions surrounding TB governance are intimately linked to when, where and how stakeholders can and should be involved, and how they can be involved in a meaningful way. It is important to differentiate between political and technical negotiation and collaboration in this context. Political negotiations in particular tend to take a long time. Targeted expectation management for stakeholders should be highlighted more strongly as a requirement, as should training of stakeholders and planners with respect to the objectives, mandates, and capacities of different TB processes.
4. More critical evaluation of TB governance and stakeholder processes is essential to establish what is working and what is not. Research should focus on actual benefits of TB stakeholder processes, and the criteria that can be used to evaluate their success.
5. The equivalency of legislation and the implementation of regulations and technical measures requires further study, not only as a way of achieving management targets but also as a framework for achieving TB governance.
6. Other sciences need to be involved in assessing and progressing TB governance in MSP, going beyond the natural sciences and including political sciences. A common vocabulary needs to be developed between these fields of study. It is also important to consider the role that is played by science in TB governance processes, as science is a form of power.

WGMPCZM and ICES as a whole should be encouraged to pursue this topic further.