Through the Looking-Glass:
Capacity Building and a new BBNJ Agreement

International Conference on Legal, Scientific and Economic Aspects of Deep Seabed Mining

14-16 November 2019 / AC Hotel Marriott Kingston, Jamaica

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Director, World Maritime University - Sasakawa Global Ocean Institute, Nippon Foundation Professorial Chair of Ocean Governance & the Law of the Sea, World Maritime University, Malmö, Sweden
Overview

1. Has the scientific & policy context for capacity-building changed since the coming into force of the Convention?

2. Is the Law of the Sea framework for capacity-building continuing to evolve?

3. Does the draft BBNJ Agreement present an opportunity for a paradigm shift in relation to capacity-building?
PART 1

Has the scientific & policy context for capacity-building changed since the coming into force of the Convention?
Health of the ocean is at a ‘tipping point’ due to human pressures

‘Gaps in capacity-building hamper less developed countries in taking advantage of what the ocean can offer them, as well as reduce their capability to address the factors that degrade the ocean’ [13/60, A/70/112]

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES Report 2019):

* “Business as usual” will not work..
* Implementation of policy responses and actions has not progressed sufficiently...
* We need ‘transformative change’

The IPCC Special Report on the Ocean and Cryosphere in a changing Climate (SROCC) 25 September 2019

C1 ‘People with the highest exposure and vulnerability are often those with lowest capacity to respond (high confidence).

‘C4.4 Investments in education and capacity building at various levels and scales facilitates social learning and long-term capability for context-specific responses to reduce risk and enhance resilience (high confidence)’
What about the perceptions of decision-makers?

Global Risks Perception Survey 2019

Environmental risks account for 3 of the top 5 risks by likelihood and 4 by impact

- WEF, Global Risks Report 2019, p.6

‘The world is sleepwalking into an environmental crisis’
Developing Countries are most vulnerable

- Impacts are most severe
- Lower capacity to adapt
- Exacerbating inequalities
- Threatening food security
- Forced migration
- Urbanisation: *Two-thirds of the global population is expected to live in cities by 2050*

‘Global risks are intensifying but the collective who will to tackle them appears to be lacking. Instead, divisions are hardening.’
- WEF, Global Risks Report 2019, p.6
What is the policy Context for Capacity-Building?
2030 Agenda for Sustainable Development

2025: Reduce marine pollution

2020: Sustainably manage and protect marine and coastal ecosystems

2020:
• End overfishing, IUU & achieve MSY
• Conserve >10% of coastal and marine areas
• End fisheries subsidies

2030: > economic benefits to Small Island developing States

➔ Minimize impacts of ocean acidification

➔ Increase scientific knowledge, develop research capacity and transfer marine technology

➔ Provide access for small-scale artisanal fishers to marine resources and markets

➔ Enhance the conservation and sustainable use of oceans and their resources by implementing international law
<table>
<thead>
<tr>
<th>Decade Strategic Objectives</th>
<th>SDG 1</th>
<th>SDG 2</th>
<th>SDG 3</th>
<th>SDG 4</th>
<th>SDG 5</th>
<th>SDG 6</th>
<th>SDG 7</th>
<th>SDG 8</th>
<th>SDG 9</th>
<th>SDG 10</th>
<th>SDG 11</th>
<th>SDG 12</th>
<th>SDG 13</th>
<th>SDG 14</th>
<th>SDG 15</th>
<th>SDG 16</th>
<th>SDG 17</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Knowledge of the ocean system</td>
<td>2.4</td>
<td>4.7</td>
<td>6.5</td>
<td>8.4</td>
<td>12.2</td>
<td>14.1</td>
<td>14.2</td>
<td>14.3</td>
<td>14.5</td>
<td>14.7</td>
<td>14.9</td>
<td>15.5</td>
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<tr>
<td>2. Evidence for ecosystems-based management and blue economy</td>
<td>1.5</td>
<td>2.4</td>
<td>3.9</td>
<td>3.d</td>
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<td>11.b</td>
<td>13.1</td>
<td>13.3</td>
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<td>3. Ocean-related hazards</td>
<td>1.5</td>
<td>2.4</td>
<td>3.d</td>
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<td></td>
<td>11.b</td>
<td>13.1</td>
<td>13.2</td>
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<td>4. Cooperation in observation, data and other infrastructure</td>
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<tr>
<td>5. Scientific and technical capacity and education</td>
<td>1.5</td>
<td>3.9</td>
<td>3.d</td>
<td>4.b</td>
<td>5.5</td>
<td>6.5</td>
<td>8.4</td>
<td>9.5</td>
<td>11.b</td>
<td>12.2</td>
<td>12.8</td>
<td>12.a</td>
<td>13.1</td>
<td>13.2</td>
<td>13.3</td>
<td>13.b</td>
<td>14.1</td>
</tr>
</tbody>
</table>

IOC Revised Roadmap Appendix 2: PARIS 8 June 2018, p 35
Figure 1: How frequently does a global goal appear in leaders’ top priorities?

Percentage of respondents who identified a goal as one of their top six priorities.

<table>
<thead>
<tr>
<th>Sustainable Development Goal</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 04 - Quality Education</td>
<td>65.2%</td>
</tr>
<tr>
<td>Goal 16 - Peace and Justice</td>
<td>61.6%</td>
</tr>
<tr>
<td>Goal 08 - Decent Work and Economic Growth</td>
<td>60.0%</td>
</tr>
<tr>
<td>Goal 03 - Good Health and Well-Being</td>
<td>42.7%</td>
</tr>
<tr>
<td>Goal 09 - Industry Innovation and Infrastructure</td>
<td>42.0%</td>
</tr>
<tr>
<td>Goal 01 - No Poverty</td>
<td>31.9%</td>
</tr>
<tr>
<td>Goal 06 - Clean Water and Sanitation</td>
<td>30.7%</td>
</tr>
<tr>
<td>Goal 10 - Reduced Inequalities</td>
<td>20.0%</td>
</tr>
<tr>
<td>Goal 05 - Gender Equality</td>
<td>29.1%</td>
</tr>
<tr>
<td>Goal 07 - Affordable and Clean Energy</td>
<td>27.2%</td>
</tr>
<tr>
<td>Goal 11 - Sustainable Cities and Communities</td>
<td>26.7%</td>
</tr>
<tr>
<td>Goal 15 - Life on Land</td>
<td>22.0%</td>
</tr>
<tr>
<td>Goal 02 - Zero Hunger</td>
<td>21.8%</td>
</tr>
<tr>
<td>Goal 13 - Climate Action</td>
<td>21.5%</td>
</tr>
<tr>
<td>Goal 17 - Responsible Consumption and Production</td>
<td>15.0%</td>
</tr>
<tr>
<td>Goal 14 - Life Below Water</td>
<td>5.4%</td>
</tr>
</tbody>
</table>

Notes: This figure shows the percentage of respondents who selected a given sustainable development goal (SDG) as one of their top 6 priorities for advancing their country’s development (n = 2,435 respondents answered this question). Source: AidData’s 2017 Listening to Leaders Survey.

Figure 2: Important issues by occupation

Percentage of respondents who identified a goal as one of their top six priorities.

<table>
<thead>
<tr>
<th>Goal</th>
<th>Government</th>
<th>Development Partner</th>
<th>CSO/NGO</th>
<th>Private Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 04</td>
<td>63.9%</td>
<td>64.2%</td>
<td>64.7%</td>
<td>67.5%</td>
</tr>
<tr>
<td>Goal 08</td>
<td>58.4%</td>
<td>64.0%</td>
<td>64.8%</td>
<td>64.1%</td>
</tr>
<tr>
<td>Goal 16</td>
<td>58.2%</td>
<td>62.1%</td>
<td>63.9%</td>
<td>63.9%</td>
</tr>
<tr>
<td>Goal 09</td>
<td>45.6%</td>
<td>40.3%</td>
<td>42.9%</td>
<td>42.9%</td>
</tr>
<tr>
<td>Goal 03</td>
<td>43.9%</td>
<td>38.3%</td>
<td>36.3%</td>
<td>41.8%</td>
</tr>
<tr>
<td>Goal 06</td>
<td>32.2%</td>
<td>34.5%</td>
<td>33.8%</td>
<td>36.6%</td>
</tr>
<tr>
<td>Goal 01</td>
<td>31.2%</td>
<td>32.7%</td>
<td>31.1%</td>
<td>29.1%</td>
</tr>
<tr>
<td>Goal 11</td>
<td>27.7%</td>
<td>32.6%</td>
<td>21.8%</td>
<td>25.2%</td>
</tr>
<tr>
<td>Goal 07</td>
<td>27.3%</td>
<td>32.3%</td>
<td>24.3%</td>
<td>20.9%</td>
</tr>
<tr>
<td>Goal 10</td>
<td>27.5%</td>
<td>29.2%</td>
<td>24.2%</td>
<td>23.8%</td>
</tr>
<tr>
<td>Goal 05</td>
<td>25.4%</td>
<td>25.3%</td>
<td>23.2%</td>
<td>21.1%</td>
</tr>
<tr>
<td>Goal 02</td>
<td>22.1%</td>
<td>22.9%</td>
<td>21.6%</td>
<td>18.4%</td>
</tr>
<tr>
<td>Goal 13</td>
<td>21.8%</td>
<td>19.5%</td>
<td>21.8%</td>
<td>17.1%</td>
</tr>
<tr>
<td>Goal 15</td>
<td>21.2%</td>
<td>19.5%</td>
<td>21.4%</td>
<td>16.6%</td>
</tr>
<tr>
<td>Goal 12</td>
<td>16.4%</td>
<td>12.4%</td>
<td>13.0%</td>
<td>13.3%</td>
</tr>
<tr>
<td>Goal 14</td>
<td>6.3%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>13.4%</td>
</tr>
</tbody>
</table>

Notes: This figure shows the percentage of respondents, by occupation, who selected a given sustainable development goal (SDG) as one of their top 6 priorities for advancing their country’s development (n = 2,435 respondents answered this question). Source: AidData’s 2017 Listening to Leaders Survey.

PART 2

Is the Law of the Sea paradigm on capacity-building continuing to evolve?
UNITED NATION CONVENTION ON THE LAW OF THE SEA

Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues related to the law of the sea.
Paradigm for capacity-building

- UNCLOS
  - Part XI Agreement
  - Fish Stocks Agreement
- Customary International Law
- Jurisprudence of international courts and tribunals
- Biodiversity (CBD, CMS, CITES...)
- Fisheries (FAO)
- Pollution (IMO, UNEP)
- Regional (RSOs, RFMOs)
Three Normative Themes Underpinning Capacity-Building

- Cooperation
- Interdependence
- Sustainable Development
The obligation to cooperate ....is a *Grundnorm* of Part XII of the Convention...

The duty to cooperate denotes an important shift in the general orientation of the international legal order. It balances the principle of sovereignty of States and thus ensures that community interests are taken into account vis-à-vis individualistic State interests.
1. **Part XI** “the Area” programmes that benefit developing States
   a. Art 143(3)(b) (MSR); 144(2) Transfer of Technology;
   b. Annex III, Article 15 – Legal Obligations for Contractors to provide training;
   c. s. 5 , Annex, 1994 Agreement;
   d. Regulations & Recommendations on Prospecting & Exploration

2. **Part XII** Protection and Preservation of the Marine Environment

3. **Part XIII** Marine scientific research
   a. Arts 244 (2), 266, 269, 272, 273 and 276

4. **Part XIV** Development and transfer of marine technology

   • Capacity-building implicit in Articles: 62 (living resources); 69 (Land-locked States); 70 (geographically disadvantaged States).

   • Resolution on the development of national marine science, technology and ocean service infrastructures adopted by the Conference at the 182nd meeting on 30 April 1982 Annex IV, Resolution 4, Final Act
Articles 202
Scientific and technical assistance to developing States

...shall, **directly** or through **competent international organizations**:

(a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution.

Such assistance shall include, inter alia:

(i) training of their scientific and technical personnel;
(ii) facilitating their participation in relevant international programmes;
(iii) supplying them with necessary equipment and facilities;
(iv) enhancing their capacity to manufacture such equipment;
(v) advice on and developing facilities for research, monitoring, educational and other programmes;

(b) provide **appropriate assistance**, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;

(c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.
Commentary
Article 202

• “No definition of ‘developing State’.
  • Interpret in light of UN practice.
  • LDC, landlocked developing countries, geographically disadvantaged States, SIDS, coastal African States and developing middle-income countries;

• Directly or through international organisations;
• Language is ‘to promote’;
• All States including south-south cooperation
• Applies to protection & preservation of marine environment [Southern Bluefin Tuna Case...extends to living resources]
• Relevant international programmes
• ‘Appropriate assistance’ [Accidents/EIA]
• Financial assistance? Read in light of Article 203.
Article 203

**Preferential treatment for developing States**

Developing States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be **granted preference** by **international organizations** in:

(a) the allocation of appropriate funds and technical assistance; and
(b) the utilization of their specialized services.
Are the efforts on capacity-building fit for purpose?

- The needs of developing States are not being achieved by current arrangements
- Lack of **coordination** among different regimes on national, regional and international levels
- Lack of **financial resources** most common impediments to capacity-building
- Lack of monitoring and reviewing system (or a **needs assessment**) for the targeting of assistance
- Call for the establishment of a Clearing-House mechanism
PART 3

Does the draft BBNJ agreement present an opportunity for a paradigm shift?
<table>
<thead>
<tr>
<th>V. Capacity-Building &amp; Transfer of Marine Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>42. Objectives</td>
</tr>
<tr>
<td>43. Cooperation in capacity-building and transfer of marine technology</td>
</tr>
<tr>
<td>44. Modalities for capacity-building and transfer of marine technology</td>
</tr>
<tr>
<td>45. Additional modalities for the transfer of marine technology</td>
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<tr>
<td>46. Types of capacity-building and transfer of marine technology</td>
</tr>
<tr>
<td>47. Monitoring and Review</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VI. Institutional Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>48. Conference of the Parties</td>
</tr>
<tr>
<td>49. Scientific/Technical Body</td>
</tr>
<tr>
<td>50. Secretariat</td>
</tr>
<tr>
<td>51. Clearing-house Mechanism</td>
</tr>
<tr>
<td>52. Financial Resources</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Articles 42-47</th>
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Types of capacity-building and transfer of marine technology

<table>
<thead>
<tr>
<th>Articles 48 -51</th>
</tr>
</thead>
</table>

Annex
Oral reports of the facilitator of the informal working group on capacity building to the plenary on 30 August 2019 [ACONF.232/2019/5]

- Objectives of CB. Needs to be more linkages with other parts of the draft text including on implementation

- Clarification on imposition of obligations on industry and the private sector, as well as the various categories of States whose special requirements would be recognised

- Mandatory or voluntary basis?

- Convergence on types of CB. But questions regarding list [Annex]

- Different views on scope and reporting requirements under the monitoring and review provisions

- Desirability of a Clearing House Mechanism [Cross-cutting]
Arts 42-47
- Global, regional, sub-regional & sectoral
- Linkages with MGRs, ABMTs, & EIA
- Objectives: improve participation & derive benefits
- Cooperation: 'enhanced'
- Modalities & functions
- Types
- Monitoring and Review (voluntary/mandatory)

Clearing-house Mechanism
- Capacity Development
- Technology Transfer

Implementation & Benefits

Conference of the Parties

States Parties

NATIONAL LEVEL
- Capacity building initiatives (public and private; universities etc.)
- Needs Assessment

REGIONAL & SUB-REGIONAL LEVEL
- Support for regional organisations
- Regional Assessments
- Regional centres of excellence and other capacity development measures

Financial Resources & Mechanisms
Voluntary/mandatory?

Public & Private Sources
Access: Preferential treatment of developing States by international organisations
Voluntary Trust Fund
Alt: Special Fund - COP

Architecture and Linkages
Paradigm Shift?

1. Science and policy context for capacity-building has changed and is changing
2. Fragmentation -> Need for consolidation
3. CB provisions in ILBI are cross-cutting and a key enabler for the success of the instrument
4. Ultimate beneficiaries will hinge on a ‘needs assessment’
5. ILBI must address funding dilemma. There is scope for special fund to receive contributions from private entities, public-private partnerships, payment for access to MGRs. There is also reference to GEF and Green Climate Fund.
6. Capacity-building provisions in the Agreement have the potential to consolidate linkages between the LOSC, the 2030 Agenda for Sustainable Development, the Paris Agreement and the UN Decade of Ocean Science for Sustainable Development.
CAPACITY-BUILDING, GENDER EMPOWERMENT AND THE BBNJ AGREEMENT
WITH A PARTICULAR FOCUS ON THE SPECIAL NEEDS OF SMALL ISLAND DEVELOPING STATES

Date & time: Friday 30 August 2019, 13:15 - 14:30 hrs
Room: Conference room 4, UN Headquarters
Light lunch is served by the Vienna Cafe prior to the event

Programme
Moderator - Ronán Long, Director, World Maritime University - Sasakawa Global Ocean Institute

13:15 - 13:25 Side Event Opening - Welcoming remarks by Chairs:
- Ambassador Geraldine Byrne Nason, Permanent Representative of Ireland to the United Nations
- Kotaro Landisang, on behalf of Ambassador Olai Uludong, Permanent Representative of Palau to the United Nations

13:25 - 13:35 Keynote Address
- Dr. Cleopatra Doumbia-Henry, President, World Maritime University (WMU)

13:35 - 14:05 Presentations on 'Capacity-Building & Gender Mainstreaming for the BBNJ Agreement'
- ISA - Michael Lodge, Secretary-General
- IIOE-UNESCO - Francesca Santoro, Programme Specialist (via video-link)
- IMO - Frederick Kenney, Director Legal and External Affairs

14:05 - 14:15 Commentators:
- PISBS - Margo Deive, Counsellor Mission of Nauru to the UN, Nauru
- CARICOM - Diedre Mills, Minister/Deputy Permanent Representative, Jamaica

14:15 - 14:25 Discussion & Open Forum
- Lessons learned presented & discussed
- Question & Answers

14:25 - 14:30 Conclusion and Thanks
**GEF/FAO/GOF**

Project on *Strengthening Global Capacity to Effectively Manage ABNJ*

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**Funding:**
US $1.1 million (GEF)

**Co-funding:**
US $4.6 million

**Partners:**
Government of France (French Marine Protected Areas Agency); Government of Korea (Korea Institute of Science and Technology); Food and Agriculture Organization of the United Nations; Global Ocean Forum/International Ocean and Coastal Organization; UNESCO (Natural Sciences); UNESCO (Intergovernmental Oceanographic Commission); Institute for Sustainable Development and International Relations (IDDRI); Nausicaa: Centre National de la Mer, France/World Ocean Network; Vietnam National University; SeaOrbiter; Deep Sea Conservation Coalition; Partnerships in Environmental Management for the Seas of East Asia; Western Indian Ocean Marine Science Association; International Ocean Institute

Government of Netherlands; Government of Grenada

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**Assessing needs, gaps, regional and national perspectives on capacity development in ABNJ**
- Global survey
- Cross-sectoral workshops (Rome, Grenada)

**Communities of Practice**
- Capacity Development
- Fisheries, Biodiversity, and Climate Change
- Area-based Planning/Management

**Products:**
Two multi-institutional Policy Briefs

**ABNJ Training**
Training of national and regional leaders on all aspects of ABNJ (44 leaders from 34 countries)

**High-Level Policy Dialogues at the United Nations BBNJ negotiations**
**Examples:**
- Capacity development regional experiences
- Oceans, climate, and blue economy
- Capacity development, experiences, lessons, possible ways forward

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- Informal Meeting of Friends of BBNJ Capacity Development and Related Capacity Development Efforts (IGC 4)
Developing Ocean Governance Leaders & Building Transformative Partnerships
That Make a Difference Worldwide

Publications

CHAPTER 20
Negotiating a New Marine Biodiversity Instrument: Reflections on the Preparatory Phase from the Perspective of the European Union
Ronan Long and John Bruton

Abstract
Preparatory bodies play an important role in intergovernmental negotiation processes leading to the drafting of international treaties or the establishment of new institutions pertaining to the law of the sea. This paper offers some reflections on the evolution of the negotiations on an international legally binding instrument under the LUC Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The paper traces the genesis of the Preparatory Committee 2016–2017 and reviews its unique role in advancing the negotiation process towards the convening of an intergovernmental conference in 2018. Special mention is made of the role of European Union in the pre-conference phase towards a successful outcome. The paper also touches on how the preparatory phase of a new marine biodiversity instrument differs from significant respects from previous law of the sea negotiations.

Keywords
biological diversity of areas beyond national jurisdiction – Preparatory Committee 2016–2017 – European Union – Intergovernmental Conference

Introduction
The history of law of the sea negotiations tells us that the preparatory work of intergovernmental diplomatic conferences is far from easy as was evident.
Thank you!

Warm invitation to contact me at
rl@wmu.se

WMU-Sasakawa Global Ocean Institute