

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

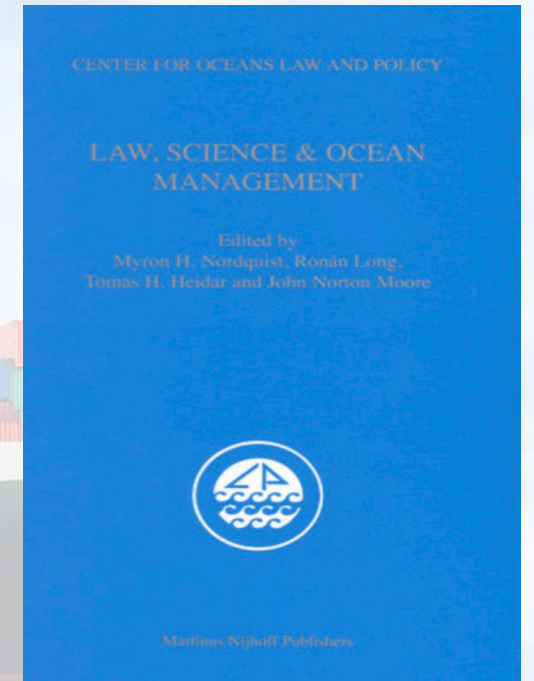
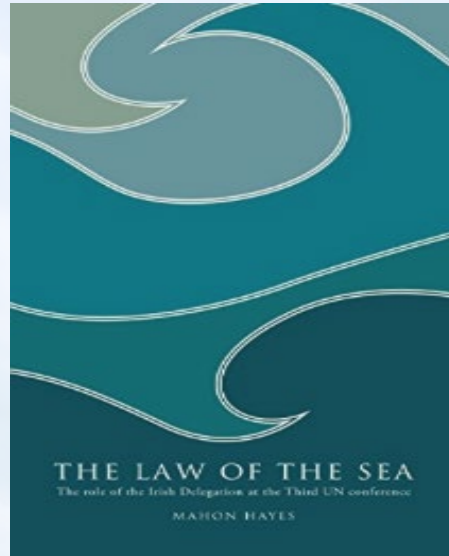
*International Conference on Legal, Scientific and Economic
Aspects of Deep Seabed Mining*

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

Professor Ronán Long

*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?



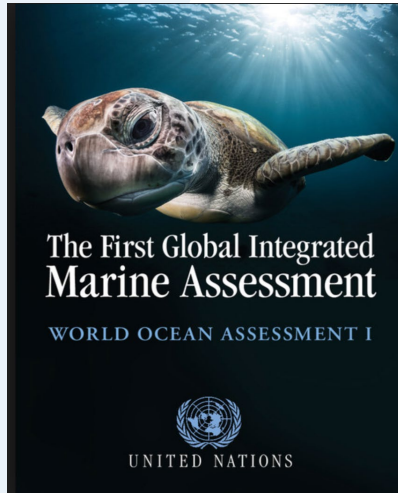


PART 1

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

Empirical Science Base

(2017)



- 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

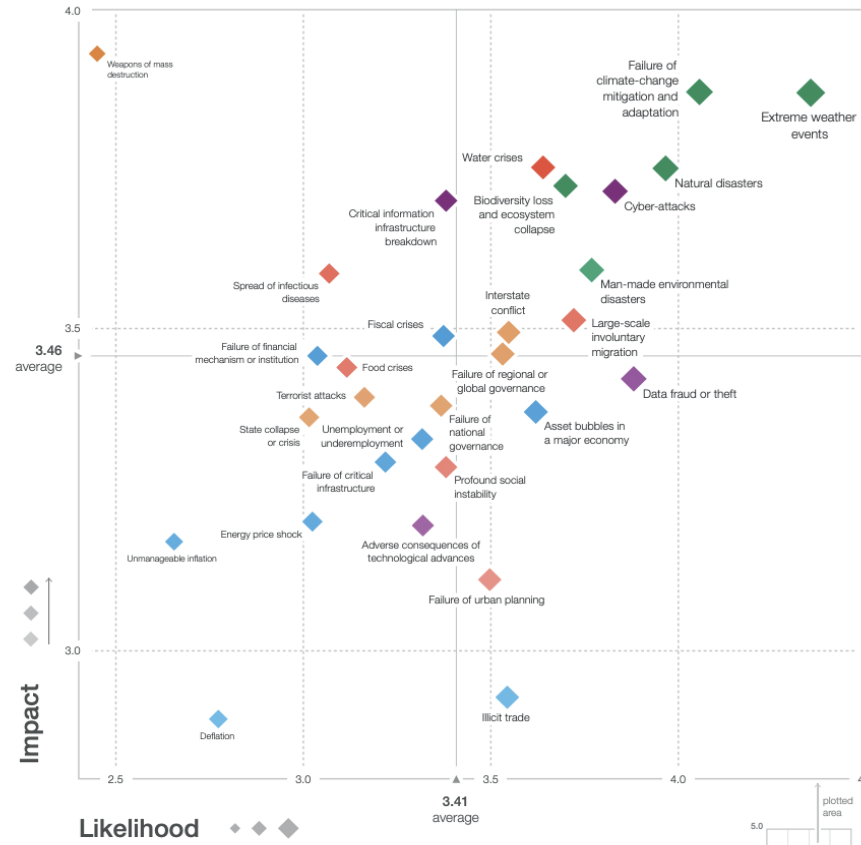
C1 ‘People with the highest exposure and vulnerability are often those with lowest capacity to respond (high confidence)’.

‘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

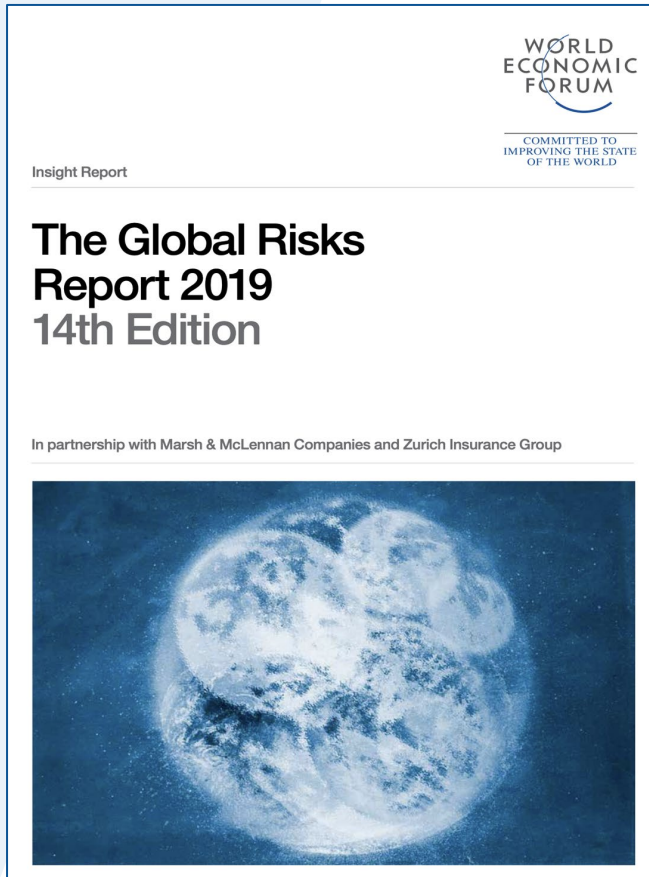
Figure I: The Global Risks Landscape 2019



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**



SDGs



Decade Strategic Objectives

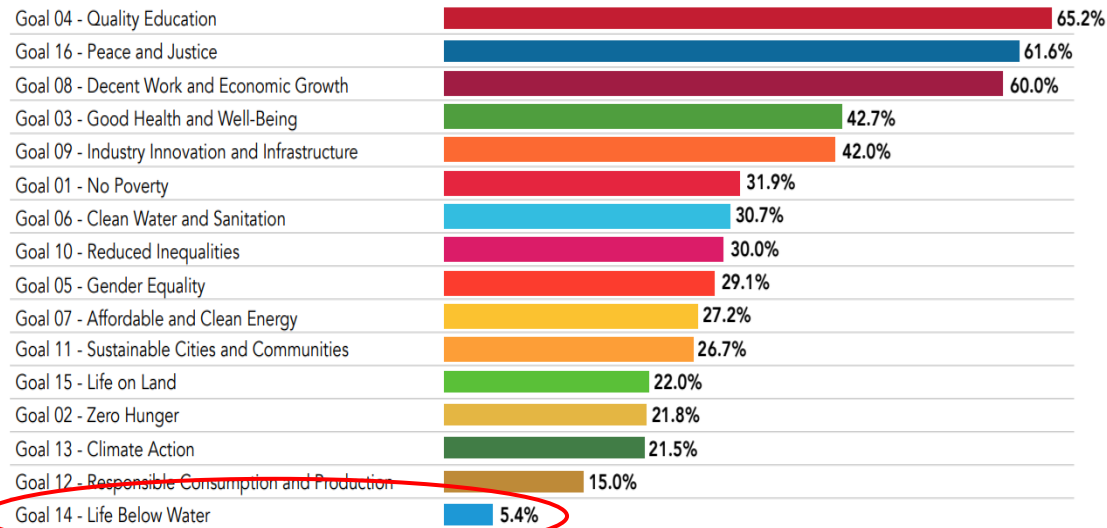
SDGs		SDG 1	SDG 2	SDG 3	SDG 4	SDG 5	SDG 6	SDG 7	SDG 8	SDG 9	SDG 10	SDG 11	SDG 12	SDG 13	SDG 14	SDG 15	SDG 16	SDG 17	
Decade Strategic Objectives	1. Knowledge of the ocean system		2.4		4.7		6.5		8.4				12.2		14.1 14.2 14.3 14.5 14.7 14.a 14.c	15.5			
	2. Evidence for ecosystems- based management and blue economy	1.5	2.4	3.9 3.d								11.b		13.1 13.3					
	3. Ocean-related hazards	1.5	2.4	3.d										13.1 13.2 13.3 13.b	14.2 14.3				
	4. Cooperation in observation, data and other infrastructure									9.5				13.3	14.3 14.5 14.a				
	5. Scientific and technical capacity and education	1.5		3.9 3.d	4.7 4.b	5.5	6.5			8.4	9.5		11.b	12.2 12.8 12.a	13.1 13.2 13.3 13.b	14.1 14.2 14.3 14.5 14.7 14.a 14.c	15.5		17.6 17.9 17.16
	6. Enhanced cooperation, coordination, and communication	1.5		3.d	4.7 4.b	5.b	6.5				9.b		11.b	12.8 12.A	13.1 13.2 13.3 13.b	14.1 14.2 14.3 14.5 14.7 14.a 14.c			17.6 17.7 17.16 17.18

What are the top priorities? Leaders in low-and middle income countries

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.

Sustainable Development Goal

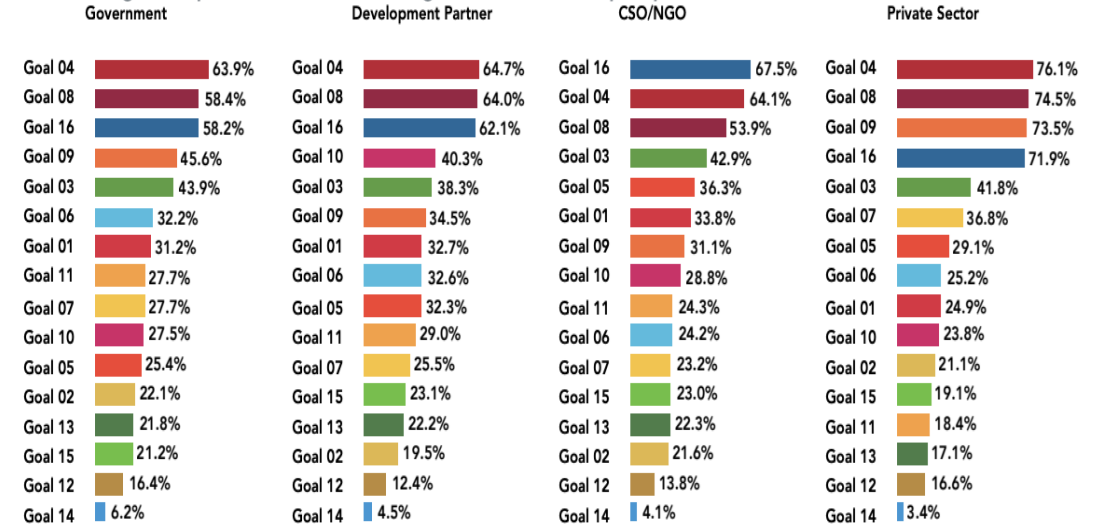


Notes: This figure shows the percentage of respondents who selected a given sustainable development goal (SDG) as one of their top 6 priorities for advancing their country's development [n = 2,435 respondents answered this question].

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.



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.

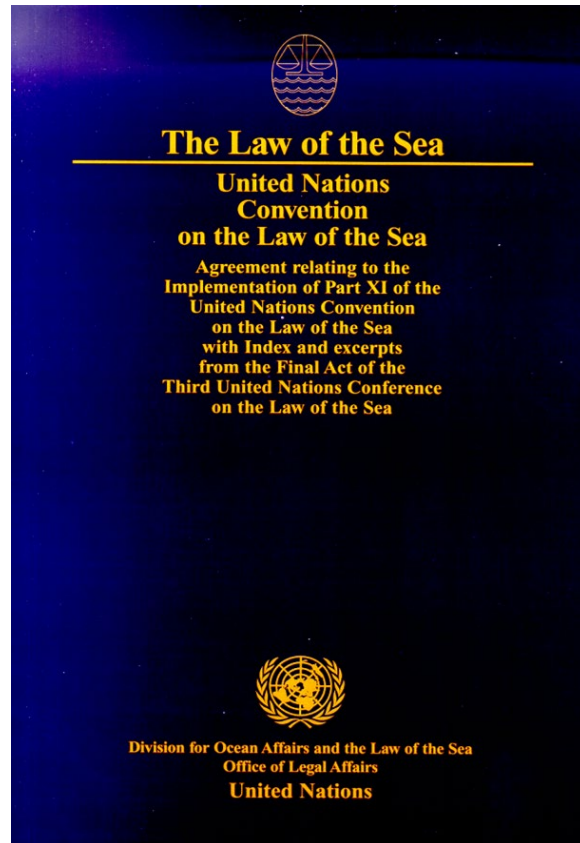


PART 2

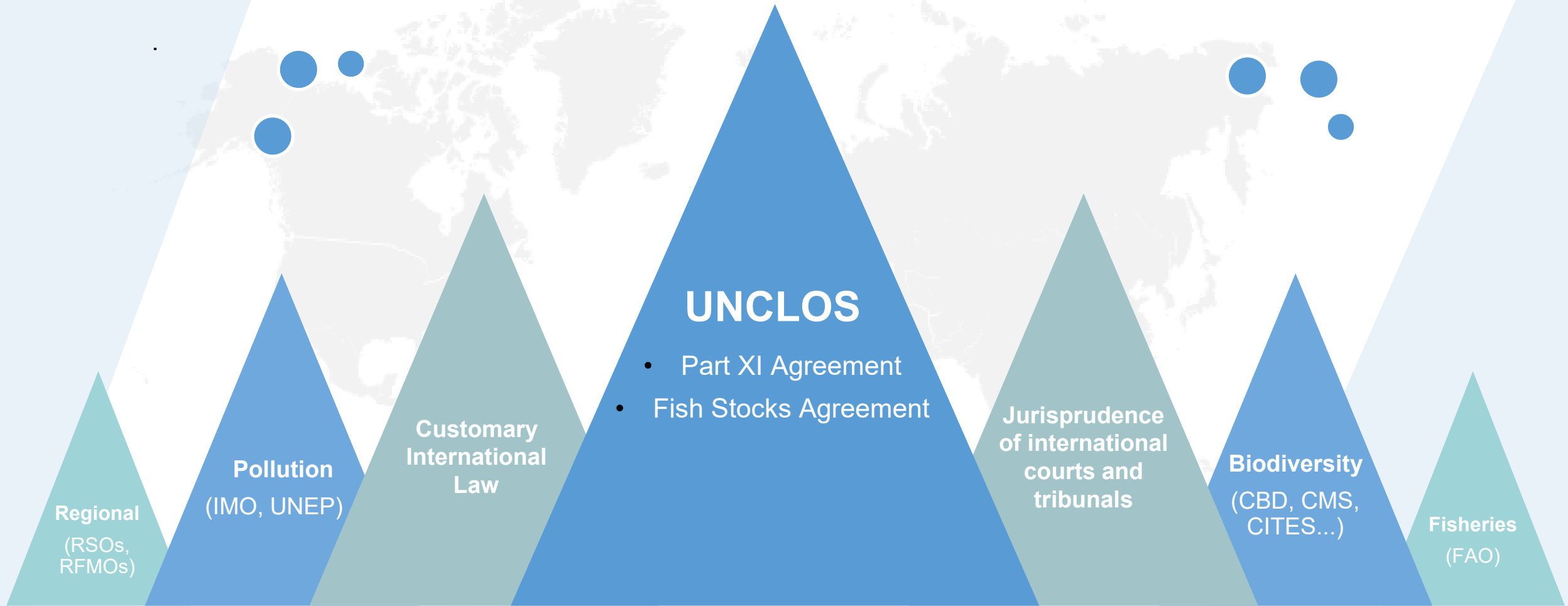
Is the Law of the Sea paradigm on capacity-building continuing to evolve?

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

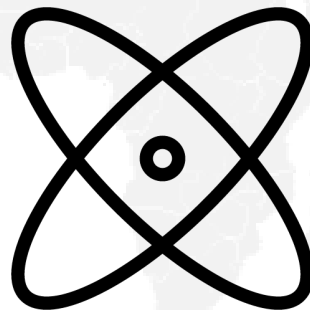


Three Normative Themes Underpinning Capacity-Building

Cooperation



Interdependence



Sustainable
Development



MOX Plant (*Ireland v. United Kingdom*), Order of 13 November 2001, ITLOS Reports 2001, p. 89

- The obligation to cooperateis 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**.



Separate Opinion Judge Rüdiger Wolfrum
Source: ITLOS

LOSC Provisions on Capacity Building

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.

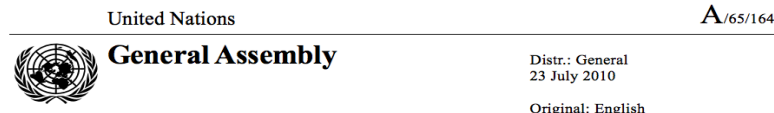
Article 203

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?



Sixty-fifth session
Item 75 (a) of the provisional agenda*
Oceans and the law of the sea

Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its eleventh meeting

Letter dated 22 July 2010 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly

Pursuant to General Assembly resolutions 54/33 of 24 November 1999, 57/141 of 12 December 2002, 60/30 of 29 November 2005, 63/111 of 5 December 2008 and 64/71 of 4 December 2009, we were appointed as the Co-Chairpersons of the eleventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

We have the honour to submit to you the attached report on the work of the Consultative Process at its eleventh meeting, which was held at United Nations Headquarters from 21 to 25 June 2010. The outcome of the meeting consists of our summary of issues and ideas discussed during the eleventh meeting.

We kindly request that the present letter and the report of the Consultative Process be circulated as a document of the sixty-fifth session of the General Assembly under the agenda item entitled "Oceans and the law of the sea".

(Signed) Paul Badji
Don MacKay
Co-Chairpersons

- 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

- Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its eleventh meeting A/65/164



PART 3

Does the draft BBNJ agreement present an opportunity for a paradigm shift?

Draft Text 3 - IGC 3 (A.CONF.232/2019/6) 17 May 2019

V. Capacity-Building & Transfer of Marine Technology

- 42. Objectives
- 43. Cooperation in capacity-building and transfer of marine technology
- 44. Modalities for capacity-building and transfer of marine technology
- 45. Additional modalities for the transfer of marine technology
- 46. Types of capacity-building and transfer of marine technology
- 47. Monitoring and Review

Articles 42-47

VI. Institutional Arrangements

- 48. Conference of the Parties
- 49. Scientific/Technical Body
- 50. Secretariat
- 51. Clearing-house Mechanism
- 52. Financial Resources

Articles 48 -51

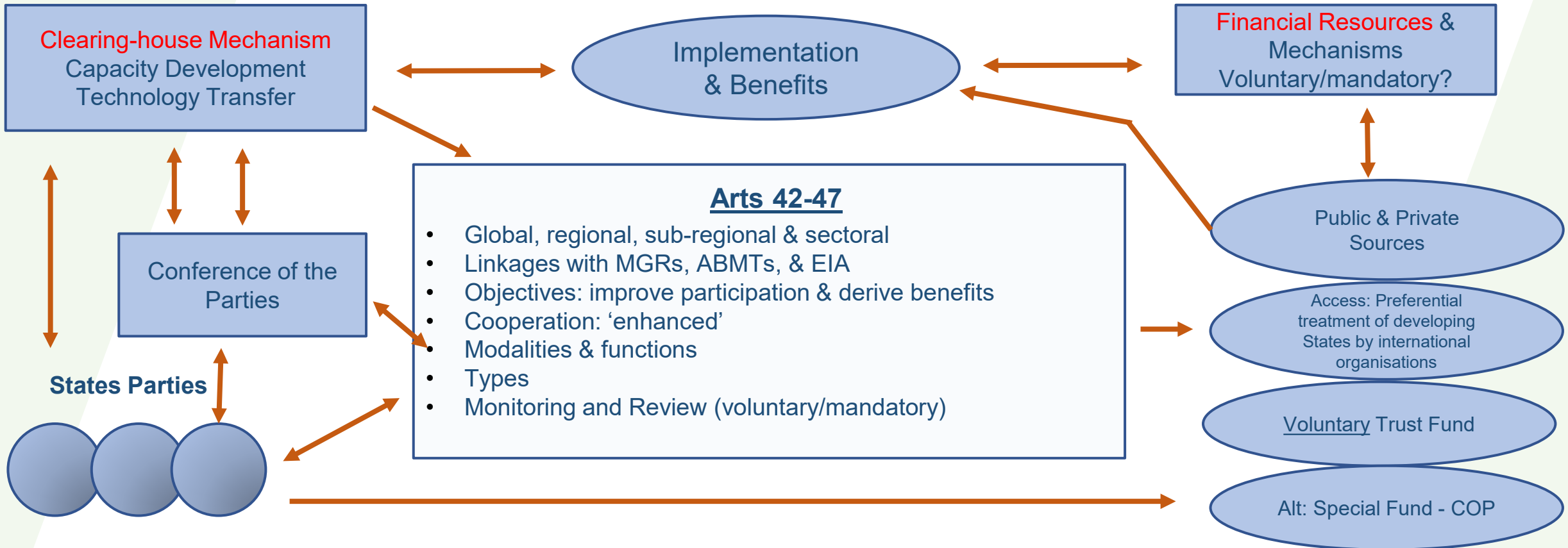
**Types of capacity-
building and transfer
of marine technology**

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]

Architecture and Linkages



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

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.

SIDE EVENT

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
- IOC-UNESCO - **Francesca Santoro**, Programme Specialist (via video-link)
- IMO - **Frederick Kenney**, Director Legal and External Affairs

14:05 - 14:15 **Commentators:**

- PSIDS - **Margo Debye**, Counsellor Mission of Nauru to the UN, Nauru
- CARICOM - **Diedre Mills**, Minister/Deputy Permanent Representative, Jamaica
- INDONESIA - **Sahadatun Donatirin**, Minister Counsellor of the Indonesia Mission to the United Nations in New York

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*

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



- Informal Meeting of Friends of BBNJ Capacity Development and Related Capacity Development Efforts (IGC 4)

Assessing needs, gaps, regional and national perspectives on capacity development in ABNJ

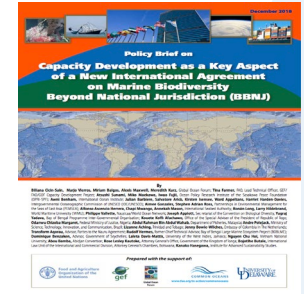
- Global survey
- Cross-sectoral workshops (Rome, Grenada)

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

Publications

Received 11 March 2019 | Revised 22 July 2019 | Accepted 1 August 2019
 DOI: 10.1111/mel.12307

SPECIAL ISSUE ARTICLE

Restoring marine environmental damage: Can the Costa Rica v Nicaragua compensation case influence the BBNJ negotiations?

Ronin Long 

Correspondence
 Email: rlong@wmu.edu

Abstract
 The negotiations of a new international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of biodiversity beyond national jurisdictions are at a crucial stage. This article reviews the first adjudication by the International Court of Justice of a compensation claim for environmental damage (Costa Rica v Nicaragua) to see if the case can influence the negotiation of provisions in the new instrument on liability and compensation, as well as on the obligation to restore damaged biodiversity and degraded ecosystems. By doing so, the instrument will close long-standing lacunae in the law of the sea and thereby engender greater marine environmental accountability.

1 | INTRODUCTION

Perhaps second only to human-induced climate change, the deplorable state of the ocean is the most urgent environmental challenge faced by humanity.¹ Moreover, the protection of the marine environment is a matter of common concern of humankind, including generations unborn.² With nearly universal acceptance and with many of its provisions reflecting customary international law, all States have the fundamental obligations set forth in the United Nations Convention on the Law of the Sea (LOS) to protect and preserve the marine environment.³ This extends to both pillars of the general duty, namely, the protection from future damage, along with 'preservation' in the sense of maintaining or improving its present condition.⁴ To this end, many national and intergovernmental bodies are contributing to the complex tasks associated with marine environmental stewardship by strengthening ocean governance arrangements worldwide.⁵ International courts and tribunals are also working towards the establishment of the stable public order of the ocean by fulfilling their long-standing and vital role in the peaceful settlement of law of the sea disputes, including disputes with an environmental dimension.⁶ The International Tribunal for the Law of the Sea (ITLOS) has ruled for instance that the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment.⁷ In addition, many of the tasks associated with environmental stewardship have received new political impetus with the adoption of Sustainable Development Goal (SDG) 14 of the United Nations (UN) 2030 Agenda for Sustainable Development,⁸ calling amongst other matters for the restoration of coastal and marine ecosystems by 2030.⁹ More recently, the UN General Assembly has declared 2021–2030 to be the UN Decade on Ecosystem Restoration as a means among other matters to promote the mainstreaming of restoration objectives into public policy plans and programmes.¹⁰ International cooperation remains the backbone of transnational efforts to protect and preserve the marine environment.

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

1 Introduction

The history of law of the sea negotiations tells us that the preparatory work of intergovernmental diplomatic conferences is far from easy,¹ as was evident

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CHAPTER 20

Negotiating a New Marine Biodiversity Instrument: Reflections on the Preparatory Phase from the Perspective of the European Union

Ronan Long and John Brincat

Abstract

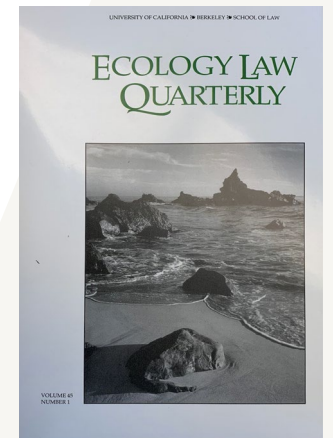
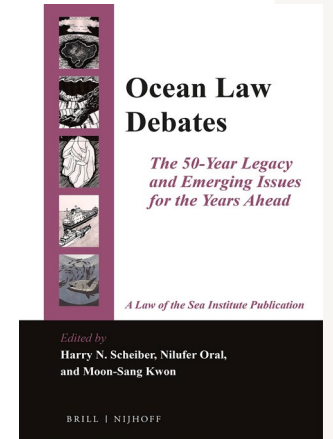
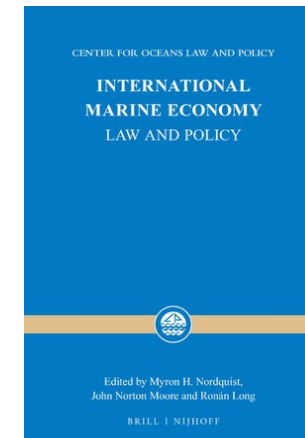
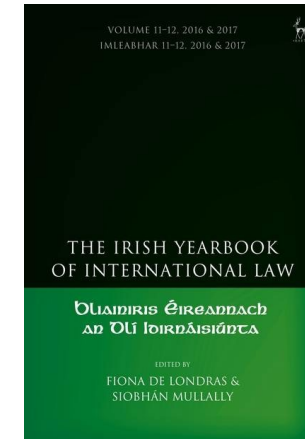
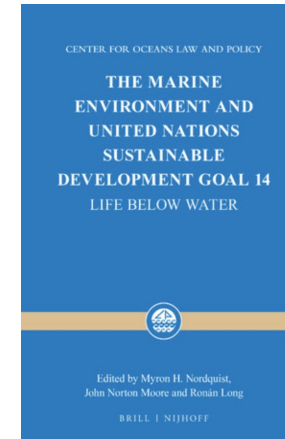
Preparatory bodies play an important role in intergovernmental negotiation processes leading to the drafting of international treaties or the establishment of new institutions pertaining to the law of the sea. The paper offers some reflections on the evolution of the negotiations on an international legally binding instrument under the LOS 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 edging the preparatory phase towards a successful outcome. The paper also touches on how the preparatory phase of a new marine biodiversity instrument differed in some 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

1 Introduction

The history of law of the sea negotiations tells us that the preparatory work of intergovernmental diplomatic conferences is far from easy,¹ as was evident

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Thank you!

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