









How can a new UN ocean treaty change the course of capacity building?

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Abstract

1. Few States are able to undertake scientific research in the half of the planet that lies in marine areas beyond national jurisdiction. Capacity building is therefore a key part of the development of a new international legally binding instrument for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, under the United Nations Convention on the Law of the Sea (BBNJ Agreement).
2. The final negotiations for the BBNJ Agreement are scheduled for early 2022, after almost two decades of development. There is an urgent need to address remaining questions relating to capacity building to secure an effective and equitable outcome from this process and safeguard the global ocean commons.
3. Persisting gaps in scientific capacity cast doubt on the adequacy of past and current approaches to implement long-standing international commitments. There is a need to build equitable partnerships for long-term outcomes.
4. As an international legally binding instrument, the BBNJ Agreement is a critical opportunity to change the course of capacity building by strengthening the international legal framework, including funding, information-sharing, monitoring and decision-making.
5. This rapidly closing window to develop international legal obligations, collaboration frameworks and funding mechanisms is relevant not only to the conservation of the global ocean commons, but also for ocean sustainability more generally as the UN Ocean Decade begins.

KEYWORDS

biodiversity beyond national jurisdiction (BBNJ), capacity building, marine biodiversity conservation, marine policy, marine technology transfer, ocean governance, sustainable development

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1 | INTRODUCTION

Marine scientific research in the half of the planet that lies in marine areas beyond national jurisdiction (ABNJ) is open to all States in principle, but few are able to undertake or harness the benefits of such research (Tolochko & Vadrot, 2021; UNESCO-IOC, 2021; Amon et al., *in press*). Building scientific and technological capacity is therefore at the forefront of negotiations for 'a new international legally binding instrument for the conservation and sustainable use of marine biological diversity of ABNJ under the United Nations Convention on the Law of the Sea' (hereafter the BBNJ Agreement). Ensuring that States have the scientific and technological capacity required to understand marine biodiversity in ABNJ, benefit from marine genetic resources, address environmental impacts and implement conservation tools such as protected areas will be crucial for the effective and equitable implementation of the BBNJ Agreement (Rabone et al., 2019; Hassanali & Mahon, 2022). The completion of negotiations in the coming months creates an urgent need to advance discussions on the obligations and mechanisms for capacity building to conserve the global ocean commons (UN, 2019).

Concerns over international divides in capacity to undertake and utilize ocean science and technology are not new (UNESCO-IOC, 2021). Few countries possess the research vessels, technology and equipment required to investigate deep and remote ocean areas (UNESCO-IOC, 2021; Amon et al., *in press*), and equitable participation in acquiring and benefiting from science in ABNJ is far from being realized (Tolochko & Vadrot, 2021). More broadly, there is growing scrutiny on issues of inequity in marine areas beyond national jurisdiction (Österblom et al., 2020; Claudet, Amon & Blasiak, 2021; Vadrot, Langlet & Tessnow-von Wysocki, 2021). The BBNJ Agreement follows previous international commitments to build ocean science capacity for conservation and sustainable use, including the commencement of the United Nations Decade of Ocean Science for Sustainable Development and its call to eradicate inequality in ocean science capacity and capabilities (IOC, 2020). Against this backdrop, there is a need to ensure that the BBNJ Agreement does not perpetuate global inequities in science, but rather helps to address them.

This Viewpoint article explores how the BBNJ Agreement can change the course of capacity building, with a focus on aspects of scientific and technological capacity. The challenges of capacity building are outlined, and recommendations to strengthen the BBNJ Agreement are provided.

2 | THE CHALLENGE OF CAPACITY BUILDING

2.1 | Framing capacity building

The framework for capacity building and the transfer of marine technology in Part V of the draft BBNJ Agreement includes human, technical, institutional, financial and technological forms of capacity

(UN, 2019). Yet the terminology 'capacity building' lacks a common definition. Capacity building is not defined in the draft BBNJ Agreement, nor was it defined in the UN Convention on the Law of the Sea (UNCLOS). The lack of definition is both a gap and an opportunity to innovate. In contrast, technology and technology transfer are defined in Article 1 of the draft BBNJ Agreement. However, these definitions focus on technology to undertake marine scientific research which, while consistent with existing definitions of marine technology and technology transfer (IOC, 2005), could be too narrow for the requirements of the BBNJ Agreement, for example by excluding technologies required for monitoring, control and surveillance (UN, 2020).

In practice, the term 'capacity building' might be used to describe an activity such as a training workshop or an outcome such as the development of a new institute. Alternative terminology, such as 'knowledge exchange programmes', is sometimes preferred; this reflects efforts to challenge notions that capacity building is one-way, highlighting the reciprocal nature of science collaboration (Polejack & Coelho, 2021; Woodall et al., 2021). This conversation is critical for the BBNJ negotiations and more broadly in the United Nations Ocean Decade to ensure that 'capacity building' activities do lead to lasting outcomes that benefit those in need – regardless of terminology used.

2.2 | Rights and obligations

The development of the capacity building and marine technology transfer part of the BBNJ Agreement builds upon UNCLOS, and requires consideration of the differences between the frameworks for ABNJ and areas within national jurisdiction. In marine areas within national jurisdiction, it is clear who is accountable to whom, and how capacity building and access to ocean science can occur. There are requirements under UNCLOS, other international legal instruments (e.g. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity) and domestic laws that compel foreign nations undertaking marine research to build capacity of scientists in the coastal State where the research is carried out. There may be practical incentives to collaborate in order to access local expertise, resources or infrastructure. Further, there are also general legal obligations to provide scientific and technical assistance to developing States in order to protect and preserve the marine environment (UNCLOS Article 202).

In ABNJ, it is less clear how States and competent international organizations are to deliver on capacity-building responsibilities. UNCLOS provides that marine scientific research on the international seabed area should be for the 'benefit of mankind as a whole' and strengthen research capabilities of developing States (UNCLOS Article 143). Additionally, the freedom to undertake research in the high seas has concomitant responsibilities relating to marine scientific research and technology transfer (UNCLOS Parts XIII and XIV). The UNCLOS framework for marine scientific research, for example, includes an obligation to make the outcomes of research available,

and to build capacity and transfer technology (UNCLOS Article 244). However, the UNCLOS provisions on capacity building and technology transfer are still poorly implemented overall (Long, 2007; Salpin et al., 2016; Minas, 2018). The BBNJ Agreement, as an implementing agreement under UNCLOS, provides an important opportunity to improve and innovate in the implementation of the crucial UNCLOS provisions for capacity building and the transfer of marine technology. For marine ABNJ, where there are fewer practical incentives and legal requirements for researching actors to engage in capacity building partnerships than in areas within national jurisdiction, it is important for the BBNJ Agreement to put in place mechanisms available to meet the needs of developing countries.

2.3 | Enabling long-term outcomes

Activities (such as training, workshops, cruise participation, data access, and technology transfer) are the current focus of capacity building in the negotiations for the BBNJ Agreement. Yet no single measure in isolation will achieve the stated goal of capacity building. A single training workshop without follow-up or real-world application may teach a specific skill but is not sufficient to build lasting capacity. An overseas PhD training opportunity will do little to build local capacity if the trainee has no facility to return home to or colleagues to collaborate with. A piece of equipment will be of little use if there are no resources to maintain and operate it. Some initiatives might even be detrimental – for example, if a person provided with an opportunity to go on a research cruise experiences harassment or discrimination (Carballo Piñeiro & Kitada, 2020; Amon et al., 2022), or if their time is wasted with no opportunity to carry out relevant research. For the BBNJ Agreement, there is a need to both enable and monitor capacity-building outcomes in the long-term.

2.4 | Partnerships

One-time activities are no substitute for long-term partnerships. Partnerships are a form of cooperation that can involve multiple stakeholders and there is an expectation that all partners bring something to, and benefit from, the arrangement through mutually agreed approaches to defining partnership purpose, timeline and goals. International research partnerships can provide equipment, expertise, funding or other resources to support and build the capacity of local research facilities and scientists who may not have previously had access to them. For example, the Pacific Natural Products Research Centre in Fiji, formed from a 10-year partnership between the University of the South Pacific and two US institutions, helped support the development of research facilities in Fiji and the training of local PhD students (Harden-Davies et al., 2020). Partnerships, such as this, are two-way – the international partners benefit from access to local expertise, resources and geographic areas of interest. Yet continuing concerns over ‘parachute’ (Stefanoudis et al., 2021) science practices where local researchers benefit little from international science

partners are a sobering reminder that not all partnerships are equitable or contribute to capacity-building outcomes in the long-term.

Meaningful engagement with partners starts early by supporting local scientists, collaboratively designing research questions to address local needs, ensuring access to data and tools for analysis and co-publishing research papers by and with local scientists (Woodall et al., 2021). Continued engagement between partners through networks and mentoring comprises important components of meaningful capacity-building partnerships, although even then it may not be enough to guarantee a successful outcome. There is, therefore, a need to promote equitable partnerships and avoid piecemeal approaches under the BBNJ Agreement.

2.5 | Capacity building in a connected ocean

Despite the different legal situations, the ecological, physical, socio-economic, cultural and strategic connections between ABNJ and coastal areas (Popova et al., 2019) require a holistic approach to thinking about capacity building in ocean science under the BBNJ Agreement. Capacity built to acquire and utilize ocean science knowledge of ABNJ will probably reside in areas within national jurisdiction. Skilled people and technological resources, such as the vessels and equipment required to explore the deep and remote marine ABNJ, also operate nearshore and require onshore laboratory infrastructure not specific to, or located in, ABNJ. Open access to data and knowledge make it possible to access the outcomes of science without participating in the acquisition of the data, or ever leaving land – if there is corresponding capacity to use data in a way that is meaningful to meet local and national needs. Synergies between the capacity-building needs for areas within national jurisdiction and ABNJ (Vierros & Harden-Davies, 2020) could be identified through needs assessments and leveraged through, for example, regional research agendas and ocean-basin-scale research expeditions designed by—and to meet the science needs of—ocean-dependent developing States.

Consideration of the interconnections between ABNJ and coastal areas and the related capacity needs will be essential to ensure that the BBNJ Agreement does not operate in isolation, but rather as a catalyst for integrated management of an interconnected ocean. This will benefit from traditional and local knowledge (Mulalap et al., 2020), in addition to ocean science. Gearing cooperation in capacity building towards effectively meeting the requirements of countries not only for ABNJ but also within their national Exclusive Economic Zones (Vierros & Harden-Davies, 2020) will enable States to build and apply scientific capacity to implement the BBNJ Agreement.

3 | THE OPPORTUNITY OF THE BBNJ AGREEMENT

The BBNJ Agreement is a critical opportunity to improve capacity building and the transfer of marine technology for the conservation and sustainable use of marine biodiversity. However, the current

modalities for capacity building and the transfer of marine technology, as detailed in Articles 43–46 of the draft BBNJ Agreement, do little to expand on the provisions of UNCLOS. There is a need to strengthen the framework for capacity building and the transfer of marine technology in the draft BBNJ Agreement, including the following items.

3.1 | Self-determination of capacity needs and priorities, leading to action

The identification of capacity needs and priorities is identified as a tool for capacity building in the BBNJ Agreement and is an important starting point for States to self-determine capacity-building partnerships (Articles 44 and 46). In addition, the development of strategies, shared research agendas or action plans to meet capacity needs will be equally important to ensure that needs assessments are translated into outcomes that benefit ocean-dependent people. Resources should be made available for the conduct of needs assessments. The inclusion of a provision relating to strengthening local/endogenous research capacity in Article 42 of the draft BBNJ agreement would signal the importance of building institutional capacity in-country.

3.2 | Monitoring

The effective implementation of the BBNJ Agreement requires the development of a monitoring framework to assess the effectiveness of long-term *outcomes* of capacity building, rather than individual outputs or activities alone. Developing such a framework under Article 47 of the BBNJ Agreement could help to incentivize and monitor capacity-building outcomes and could be facilitated by an advisory body, such as a Capacity Building Committee and/or Scientific and Technical Body, established by the BBNJ Agreement.

3.3 | Information sharing

A Clearinghouse Mechanism is envisaged as a primary mechanism of capacity building in the draft BBNJ Agreement (Article 51) but will probably take years to materialize and will only be successful if used actively and supported by adequate financial and human resources. Ultimately, people making connections with people will be key to creating, and sharing information about, opportunities to meet capacity needs. Since long-term partnerships are based on relationships between people, facilitating and maintaining interpersonal connections through networks or mentoring initiatives might also help maintain capacity-building progress.

3.4 | Financial resources

Short-term funding hinders long-term capacity building outcomes. The inclusion of a special fund, intended to finance capacity building

for developing States Parties and assist them in implementing the BBNJ Agreement, is an option proposed in the draft BBNJ Agreement (Article 52), but this potentially transformative variation to current practice may yet still be sidelined in favour of less ambitious alternatives. Ensuring adequate financial resources for developing States to meet their capacity needs will be important to ensure that provisions are more than empty platitudes tacked on to the BBNJ Agreement but are operational in practice.

3.5 | Ongoing implementation of the BBNJ agreement

In addition to strengthening the framework for capacity building and technology transfer prior to the finalization of the negotiations for the BBNJ Agreement, there will also be important opportunities to improve capacity building and technology transfer after the adoption of the BBNJ Agreement. For example, a body, such as a Capacity Building Committee, established under the BBNJ Agreement could support the Conference of the Parties in matters such as: reviewing the types of capacity building and transfer of marine technology listed in Article 46; developing detailed modalities and guidelines as per Article 44; promoting and facilitating needs assessments and strategies; and monitoring and reviewing capacity building and the transfer of marine technology as per Article 47. This type of ongoing international attention to capacity building and technology transfer would be important to ensure that these issues are not forgotten and to facilitate best practice approaches internationally.

4 | CONCLUSION

The provisions for capacity building and the transfer of marine technology will strongly influence the ability of individual States to implement the BBNJ Agreement. Since better management and protection of ABNJ, as the global ocean commons, will require the collective effort of all States, ensuring that no-one is left behind is instrumental for the future success of the BBNJ Agreement. Furthermore, the action of all countries, both within and beyond national jurisdictions, is required in an ocean that is ecologically, economically and culturally interconnected, and where piecemeal approaches have been shown to be inadequate. This will require leadership and transformation from governments, scientists and intergovernmental organizations.

As an international legally binding instrument, the BBNJ Agreement is a critical opportunity to change the course of capacity building and improve the implementation of UNCLOS. After 17 years in development, the coming months will be critical as the negotiations are finalized. Scientists, policymakers and ocean managers from ocean-dependent States are strongly positioned to lead this conversation. At the start of the UN Ocean Decade, these actions are crucial to avoid rewarding tokenistic initiatives that perpetuate inequities and move instead to meaningful and equitable partnerships that are driven from the start by those who need them most.

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CONFLICT OF INTEREST

KH is a negotiator for the Caribbean Community (CARICOM) in the BBNJ process. ST is a consultant on the conceptualization of a regional marine and governance project with the Seychelles government. TRC is on the technical advisory group for the Pacific Youth Council.

DATA AVAILABILITY STATEMENT

Data sharing not applicable to this article as no datasets were generated or analysed during the current study.

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