

# **WHO OWNS THE OCEAN?**

## ENSURING THE TRANSFER OF MARINE TECHNOLOGY TO ACHIEVE EQUITY AMONG STATES

Julia Schutz Veiga



## Outline

- (I) Transfer of marine technology in the Law of the Sea and Ocean Governance context
- (II) CBTT Committee as a tool to implement the BBNJ Treaty
- (III) BBNJ as an environmental agreement
- (IV) Key messages | concluding remarks



## **(I) Transfer of marine technology in the Law of the Sea and Ocean Governance context**

- ~ UNGA Resolutions (i) CB and TMT connected and (ii) equity among states
- ~ Part XIV of UNCLOS (i) creation - for developing countries, (ii) under implemented and (iii) BBNJ to fulfil the implementation's gap
- ~ Transfer of marine technology as a tool to achieve equity among States *versus* transfer of marine technology as a constraint to achieve equity among States

## Cooperation | Achieving Equity among States

“Reiterating the essential need for **cooperation, including through capacity-building and transfer of marine technology, to ensure that all States**, especially developing countries, in particular the least developed countries and small island developing States, as well as coastal African States, are able both to implement the Convention and to benefit from the sustainable development of the oceans and seas, as well as to **participate fully in global and regional forums and processes dealing with oceans and law of the sea issues** (UNGA, Res.60/30, 42:1, 2006, p.2)”

## Law, Policy and Science | Intertwining of TMT and capacity-building

“Recalls that in “The future we want”, **States recognised the importance of building the capacity of developing countries to be able to benefit from the conservation and sustainable use of the oceans and seas and their resources**, and in this regard emphasised the need for cooperation in marine scientific research to implement the provisions of the Convention and the outcomes of the major summits on sustainable development, as well as for the transfer of technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology (UNGA, Res. 67/79, 59:2, 2013, p.27)”

**Part XIV** was instead grounded on **three UN resolutions**: (i) 'Declaration on the Establishment of a New International Economic Order', 1974; (ii) 'Programme of Action on the Establishment of a New International Economic Order', 1974; and (iii) 'Charter of Economic Rights and Duties of States', 1974.



**Part XIV of UNCLOS** (1982) represents a significant milestone in international law, **enabling developing countries to control international technology transfer** (Marvasti, 1998).

However, the UNCLOS provisions on technology transfer have been criticised for their **poor record of implementation**, partly due to ambiguity in elaborating rights and obligations relating to technology transfer and the absence of a dedicated financial mechanism (Minas, 2020).



'Technology transfer' may include *transferring physical assets, know-how, and technical knowledge* (Bozeman, 2000).

Brooks and Kay's (1974) insights highlight the need for a comprehensive understanding of 'technology transfer' that *encompasses more than the mere transfer of scientific knowledge*. This broader perspective can inform efforts to promote technology transfer and *facilitate the adoption and diffusion of new technologies, thereby contributing to scientific knowledge advancement and social and economic development*.

'Technology transfer' can also refer to the direction of technology from the laboratory to industry, *developed to developing countries*, or from one application to another domain (Philips, 2002).

The **role of technology in economic progress** has been widely recognised, and the growing technological gap between advanced and developing countries has been a subject of concern (Marvasti, 1998).






However, the **unequal bargaining power between technology suppliers and recipients**, owing to factors such as the monopolistic position of the supplier and the lack of information of the recipient, has led to the establishment of control measures at the international level in favour of developing countries (Marvasti, 1998).

Mansfield (1975) noted that 'technology transfer' is a **fundamental process that influences the economic performance of nations and firms**.

Economists have long recognised that the 'transfer of technology' is essential to economic growth and that the **progress of both developed and developing countries depends on the extent and efficiency of such transfer** (Ramanathan, 1994).



## **(II) CBTT Committee as a tool to implement the BBNJ Treaty** | Analysed data

-  Informal papers
-  Textual proposals - Intersectional Work
-  States' submission (restricted to the CBTT Committee provision)
-  Compilation of outcomes of small group work
-  Final text

## Telling the story

 **What** | subject

 **Who** | originators

 **When** | first mentioned during the BBNJ process

 **Why** | rationale

### **(III) BBNJ as an environmental agreement**

- Article 2 of the BBNJ Treaty indicates its goal 'conservation and sustainable use of the marine biodiversity of ABNJ
- Public interested *versus* private sector-based approach
- Intellectual property rights and their flexibilities

- 🌀 **Article 66(2) of the TRIPS** Agreement requires developed countries to **offer incentives to enterprises** and institutions based in their territories **to promote and foster the transfer of technology** to the least developed countries' best efforts as a result of obligations
- 🌀 **Article 31 of the TRIPS** Agreement sets conditions for allowing **compulsory licensing**, a non-voluntary licence issued to a third party to perform acts covered by exclusive patent rights
- 🌀 **Eco-Patent Commons** programme of the World Business Council for Sustainable Development (WBCSD)
- 🌀 Co-production and co-development of technology | Elinor Ostrom's perspective

## **(IV) Key messages** | Concluding remarks


-  To assist the Global South in accessing, developing and assimilating new technologies, mainly green technologies, directly connected to ensuring the conservation and sustainable use of marine resources from international areas.
-  To serve as a valuable tool for law enforcers, particularly when assessing the proportionality between private (guaranteed by IPRs) and public interests (connected to the Anthropocene).
-  Do developing countries have experts to fill the seats?
-  Do developing countries have human resources to make the reports?



Thank you!

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Connecting tech transfer to mitigation of climate change **through IP Law**

 **Vision** | Article 45  
'Parties share a **long-term vision** of the importance of fully realising technology development and transfer for **inclusive, equitable and effective cooperation** and participation in the activities undertaken under this Agreement and in order to fully achieve its objectives'



☞ *Recognising* the need to address, in a coherent and cooperative manner, biological diversity loss and degradation of ecosystems of the ocean, due, in particular, to **climate change** impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use (BBNJ's Preamble)

☞ Stressors on the ocean that affect marine biological diversity of areas beyond national jurisdiction, including the adverse effects of **climate change**, such as warming and ocean deoxygenation, as well as ocean acidification (BBNJ, Annex II, Types of CBTT)

