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Capacity – Building in the Law of the Sea:
Evolution and Legal Context

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Introduction

- Inherent in the “bargain” of the Law of the Sea Convention (LOSC 1982)
- Justified on a number of grounds:
 - **Required to implement** the Convention effectively
 - **Common but differentiated** obligations
 - **Equitable** basis in the sharing of benefits of sustainable development –
 - To make it possible for developing states to **participate fully** in law-making and implementation



Evolution of the Concept

- LOSC 1982: no reference to “capacity-building” as such, **but** numerous references to development issues:
 - In particular – Part XIV: Development and Transfer of Marine Technology
 - Part XI – The Area (benefits, technology)
 - Part XII – MSR (implication)

- Focus at time of LOSC:
 - Technology transfer and scientific development
 - Benefits-sharing – in limited form
- Complexity of Convention required much broader approach
 - New and complex management obligations
 - Approaches geared to high-capacity states (eg. Art. 76, fisheries mngt. Methodology)
 - Increasing importance of regional (and global) organization (participation)

Post-LOSC

- Rio, Agenda 21 & Associated Conventions (CBD, Climate Change, Desertification), SIDS etc
 - More sophisticated understanding of the problem
 - In part product of LOS experience?
 - Much more explicit focus on “capacity-building”, broadly defined to include , eg, institutions, law, science, HRD
 - Substantive changes: IOM, local/indigenous knowledge, ecosystem approach



- Areas of Concern
 - Tech. transfer & Scientific Development
 - Access to Benefits
 - Capacity-building as internal process
 - Regional Level
 - Human resource development
 - Capacity-building at local levels



Financial Capacity

- Financial capacity as common issue
 - Endorsing “new and additional” funding
 - Creation of financial mechanisms (often in agreement)
 - eg. GEF, UN Trust Fund
 - Still serious problems of commitment (see CSD for repeated calls to realize)



UN Fish Stocks Agreement

- Highlights the advances in thinking post-LOSC
 - Calls for assistance in participating in, developing fisheries
 - Participation in regional organizations
 - Broad range of technical assistance (eg MSR, data collection)
- BUT – designed so as to be unenforceable

Observations and Ongoing Issues

- From LOSC forward:
 - Problems understood, identified, articulated
 - From legal perspective – difficulty in finding binding, enforceable obligations
 - Particularly in more restricted wording of LOSC
 - BUT – progress continues, as set out in Secty-Gen. Report: multi-faceted, multi-level, multi-sectoral

- Money not everything – but it is something
 - Problem with secure, dedicated financing arrangements (in face of other needs)
- How much law is enough?
 - Tendency to introduce new and more complex legal measures: all with capacity implications
 - Address implementation gap first?
 - Tailor legal approaches with view to implementation capacity



- Continuing importance of “soft” capacities (integrated management, local knowledge, HRD)
- Growing significance of regional level (including further capacity-building **within** regional orgs.)



Thank you.