Negotiating the BBNJ Agreement: exploring the Caribbean Community's engagement from a blue economy perspective with special focus on environmental impact assessment provisions

Kahlil Hassanali

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NEGOTIATING THE BBNJ AGREEMENT
Exploring the Caribbean Community’s engagement from a blue economy perspective with special focus on environmental impact assessment provisions

by

KAHLIL HASSANALI

WMU RESEARCH REPORT SERIES
No. 19, August 2022
NEGOTIATING THE BBNJ AGREEMENT

Exploring the Caribbean Community's engagement from a blue economy perspective with special focus on environmental impact assessment provisions
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Negotiating the BBNJ Agreement
Exploring the Caribbean Community's engagement from a blue economy perspective with special focus on environmental impact assessment provisions

Kahlil Hassanali
Trinidad and Tobago

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of Doctor of Philosophy in Maritime Affairs

WMU RESEARCH REPORT SERIES
No. 19, August 2022
WMU Publications
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Abstract

The countries of the world are engaged in negotiations to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (The BBNJ agreement). In the BBNJ process, the member States of the Caribbean Community (CARICOM) participate as a regional bloc and have been actively involved in the negotiations.

This thesis applies an action research methodology along with a mix of methods, including the reading of primary, secondary and grey literature; document content analysis; interviews and informal conversations; and meeting observation and participation, to examine negotiation of the BBNJ agreement. More specifically, it delves into CARICOM’s engagement in the process from the perspective of a group of small island developing States (SIDS) seeking to achieve sustainable development of and through the ocean.

Applying a blue economy lens, this thesis ascertains and outlines CARICOM’s interests in negotiation of the BBNJ agreement. Concomitantly, it highlights the need for and suggests means towards the group improving internal architecture for regional ocean governance and blue economy policy development. Drawing on the author’s position as a negotiator on environmental impact assessment (EIA) for CARICOM in the BBNJ agreement, the thesis also crafts and proposes ideas that reflect CARICOM’s interests but which, at the same time, may serve to innovatively resolve some of the issues on which there has been considerable divergence in the EIA part of the negotiations. Lastly, in light of the abiding importance of the ocean to the sustainable development of CARICOM member States, recommendations are made with a view to ensuring continued meaningful involvement of the regional group in the remainder of the BBNJ negotiations, as well as in future ocean related multilateral processes.

Keywords: Areas beyond national jurisdiction; CARICOM; Ocean governance; Small States in negotiations; Sustainable ocean economy; UNCLOS
Abbreviations

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<th>Description</th>
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<td>Area-based management tool</td>
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<td>ABNJ</td>
<td>Areas beyond national jurisdiction</td>
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<td>ABS</td>
<td>Access and benefit-sharing</td>
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<td>AG</td>
<td>The African Group</td>
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<td>AOSIS</td>
<td>The Alliance of Small Island States</td>
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<td>AR</td>
<td>Action research</td>
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<td>ATS</td>
<td>Antarctic Treaty System</td>
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<td>BBNJ</td>
<td>Biodiversity beyond national jurisdiction</td>
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<tr>
<td>CANARI</td>
<td>Caribbean Natural Resources Institute</td>
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<tr>
<td>CARICOM</td>
<td>The Caribbean Community</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CBTMT</td>
<td>Capacity building and transfer of marine technology</td>
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<td>CCCCC</td>
<td>Caribbean Community Climate Change Centre</td>
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<td>CCREEE</td>
<td>Caribbean Centre for Renewable Energy and Energy Efficiency</td>
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<tr>
<td>CHM</td>
<td>Common Heritage of Mankind</td>
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<td>CI</td>
<td>Conservation International</td>
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<td>CLAM</td>
<td>Group of Core Latin American Countries</td>
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<td>COFCOR</td>
<td>Council for Foreign and Community Relations</td>
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<tr>
<td>COP</td>
<td>Conference of Parties</td>
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<td>CRFM</td>
<td>Caribbean Regional Fisheries Mechanism</td>
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<td>CTO</td>
<td>Caribbean Tourism Organization</td>
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<tr>
<td>UN-DOALOS</td>
<td>United Nations Division of Ocean Affairs and Law of the Sea</td>
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<tr>
<td>DOSI</td>
<td>Deep Ocean Stewardship Initiative</td>
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<tr>
<td>EBSA</td>
<td>Ecologically or Biologically Significant Marine Area</td>
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<td>ECROP</td>
<td>Eastern Caribbean Ocean Governance Policy</td>
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<tr>
<td>EHS-CARPHA</td>
<td>Environmental Health and Safety Department of the Caribbean Public Health Agency</td>
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<tr>
<td>EIA</td>
<td>Environmental impact assessment</td>
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<td>ELI</td>
<td>Environmental Law Institute</td>
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<td>EU</td>
<td>The European Union</td>
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<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<td>FoC</td>
<td>Flag of Convenience</td>
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<td>GEF</td>
<td>Global Environment Facility</td>
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<td>G77+China</td>
<td>Group of 77 plus China</td>
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<td>HAS</td>
<td>The High Seas Alliance</td>
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<td>ICEL</td>
<td>International Council of Environmental Law</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>IPCP</td>
<td>International Cable Protection Committee</td>
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<td>ICS</td>
<td>International Chamber of Shipping</td>
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<td>IDB</td>
<td>Inter-American Development Bank</td>
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<tr>
<td>IFBs</td>
<td>Legal instruments and frameworks and global, regional, sub-regional and sectoral bodies</td>
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<td>IGC</td>
<td>Inter-governmental Conference</td>
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<td>IOC-UNESCO</td>
<td>International Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization</td>
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<tr>
<td>IPLCs</td>
<td>Indigenous peoples and local communities</td>
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<td>ISA</td>
<td>International Seabed Authority</td>
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<td>ITF</td>
<td>International Transport Workers’ Federation</td>
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<td>IUCN</td>
<td>International Union for Conservation of Nature</td>
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<td>IUU fishing</td>
<td>Illegal, unreported and unregulated fishing</td>
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<tr>
<td>MCS</td>
<td>Monitoring, control and surveillance</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<td>MGR</td>
<td>Marine genetic resource</td>
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<td>MPA</td>
<td>Marine protected area</td>
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<td>MSP</td>
<td>Marine spatial planning</td>
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<td>OECS</td>
<td>Organization of Eastern Caribbean States</td>
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<td>Prep Com</td>
<td>Preparatory Committee</td>
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<td>PSIDS</td>
<td>Group of Pacific Small-island Developing States</td>
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<td>Rio+20</td>
<td>2012 United Nations Conference on Sustainable Development</td>
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<td>SDG</td>
<td>Sustainable Development Goal</td>
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<tr>
<td>SEA</td>
<td>Strategic environmental assessment</td>
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<tr>
<td>SES</td>
<td>Social-ecological systems</td>
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<td>SIDS</td>
<td>Small island developing States</td>
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<tr>
<td>STB</td>
<td>Scientific and Technical Body</td>
</tr>
<tr>
<td>UN</td>
<td>The United Nations</td>
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<tr>
<td>UNCED</td>
<td>United Nations Convention on Environment and Development</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UWI</td>
<td>The University of the West Indies</td>
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<td>WCED</td>
<td>World Commission on Environment and Development</td>
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<td>WECF</td>
<td>Women Engage for a Common Future</td>
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<td>WMU</td>
<td>World Maritime University</td>
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<td>WWF</td>
<td>World Wide Fund for Nature</td>
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Paper 5:

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1 Introduction

1.1 Background and Rationale of Research

The Caribbean Community (CARICOM) is a longstanding integration movement in the developing world (O’Brien, 2011). Comprising 20 countries – 15 member States and 5 Associate members – the grouping rests on four main pillars of integration: economic; security; human and social development; and foreign policy coordination. In the international negotiations that are the focus of this research, the group speaks on behalf of 14 independent countries, that are all considered to be small island developing States (SIDS). These countries are Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname and Trinidad and Tobago (Figure 1). The 15th member State of CARICOM, Montserrat, is a British overseas territory and thus is spoken for by the United Kingdom. As SIDS, the marine environment is integral to CARICOM countries’ cultural, social and economic identity (Patil et al., 2016). In the CARICOM Strategic Plan 2015-2019, one of the eleven high priority areas for focused implementation was the deepening of foreign policy co-ordination (to support strategic repositioning of CARICOM and desired outcomes). The intention is to project one voice as a community including in matters related to global ocean governance and management.
The United Nations Convention on the Law of the Sea (UNCLOS) is a significant and sophisticated international treaty commonly referred to as the “constitution of the seas”. Through it, according to the preamble, the desirability of “a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment” has been recognized. CARICOM member countries are all party to UNCLOS and have used the treaty to claim sovereign marine space and to guide the conduct of activities both within and beyond areas of national jurisdiction. CARICOM countries have also been engaged in attempts to make UNCLOS more comprehensive through the negotiation of its most recent implementing agreement. This implementing agreement refers to the adoption of an international legally binding instrument under UNCLOS on the conservation and sustainable use of biodiversity in areas beyond national jurisdiction (The BBNJ agreement).

The BBNJ agreement has long been in the making with a number of formal and informal efforts culminating in UN resolution 69/292 (Long & Chaves, 2015). In this resolution the United Nations General Assembly (UNGA) decided to develop...
the BBNJ agreement. The resolution dictated the process for negotiations which included establishing a Preparatory Committee (Prep Com) to make substantive recommendations to the UNGA on the elements of a draft text and the subsequent convening of an intergovernmental conference (IGC) dependent on the recommendations emerging from the Prep Com.

Resolution 69/292 also outlined the scope of the negotiations which were to focus on topics identified in a package agreed to in 2011. The ‘2011 package deal’ earmarked, in particular, together and as a whole, the following topics to be addressed in crafting the BBNJ agreement: marine genetic resources (MGRs), including questions on the sharing of benefits; measures such as area-based management tools (ABMTs), including marine protected areas (MPAs); environmental impact assessments (EIAs); and capacity-building and the transfer of marine technology (CBTMT).

The Prep Com was completed in July 2017. In December 2017 the United Nations General Assembly (UNGA) decided to convene the IGC to elaborate the text of the BBNJ agreement. The first session took place from 4th to 17th September, 2018. The second and third sessions were held the following year from 25th March to 5th April, 2019 and from 19th to 30th August, 2019 respectively. The fourth session was supposed to have taken place in March 2020 but was postponed on several occasions because of the COVID-19 pandemic. It eventually occurred from 7th to 18th March, 2022. The fourth IGC session was supposed to have been the last one but consensus was not achieved, therefore the final text of the BBNJ agreement remained unelaborated.

Consequently, negotiations are continuing. At the end of the negotiations however, CARICOM countries, as independent sovereign States, will have to decide whether to sign and ratify the BBNJ agreement. Should they so decide, CARICOM as a regional grouping will need to coordinate and work collaboratively to encourage its member States to fulfil obligations to and derive the benefits that can redound from the agreement. This will be a challenge because the countries of the Caribbean region, both individually and collectively, have numerous capacity building needs and institutional gaps that will need to be addressed in order to do so (Hassanali, 2018).

This PhD research builds upon the work from Hassanali (2018) where favourable outcomes for CARICOM from the potential BBNJ agreement were preliminarily explored. It was acknowledged in that paper and others e.g. Leary (2019); Tiller et al. (2019); Mendenhall et al., (2019); De Santo et al., (2020), that much still remained to be resolved in order to arrive at consensus on how the global community should manage biodiversity in areas beyond national jurisdiction. At the end of the eventual final session of the IGC, the outcome document, which will represent the BBNJ Agreement, could be comprehensively analysed to determine how it may
potentially affect the blue economy of CARICOM and, on a whole, the pros and cons of CARICOM member States signing and subsequently implementing it.

In the interim, this research explores the negotiation of the BBNJ agreement and seeks to achieve a number of objectives. The objectives of this research include: understanding CARICOM’s interests in the negotiations and formulating positions that would be beneficial to securing those interests in the final BBNJ agreement; understanding and improving the processes through which positions on ocean issues are negotiated and arrived at within the region and on the global stage; and understanding and reflecting on CARICOM’s participation as an actor in the BBNJ negotiations.

1.2 Research Questions

This thesis, which examines negotiation of the BBNJ agreement, delves into CARICOM’s engagement in the process from the perspective of a group of SIDS seeking to achieve sustainable development of and through the ocean. It aims to answer the following research questions:

- How does CARICOM understand and interpret the blue economy?
- How are the regional interests of CARICOM in negotiating the BBNJ agreement influenced by the blue economy concept?
- From a regional group perspective, what approaches can CARICOM propose to encourage and achieve improved outcomes in the EIA part of the BBNJ agreement?
- How can CARICOM improve its impact as a negotiating group in the BBNJ agreement and future multilateral ocean processes with a view to deriving greater benefits and having its voice heard?

Chapter 2 of this thesis explores some of the concepts and theories that have grounded and informed this analysis. Following on from this, Chapter 3 provides insights into the research methodology and methods employed. Chapter 4, drawing on the research papers that have been written alongside this Kappa, provides answers to the research questions posed above. The thesis then closes with concluding remarks in Chapter 5.
2 Concepts and Theories

2.1 Sustainable Development and the Blue Economy

2.1.1 The Sustainable Development concept - origins and interpretations

Throughout the course of human civilization cautionary commentaries have been delivered against the unfettered exploitation of natural resources by humankind in the pursuit of advancement and progress (Du Pisani, 2006). Commentators raising these concerns, e.g. Plato, Thomas Malthus and Rachel Carson, were implicitly highlighting and addressing sustainable development problems without using this exact terminology. It was not until the 1970s that the words ‘sustainability’ and ‘sustainable development’ surfaced in the lexicon of the field of development and ideas around these terms discussed (Du Pisani, 2006).

Although not the first to propose a definition, the 1987 report from the World Commission on Environment and Development (WCED), entitled ‘Our Common Future’ and otherwise known as the Brundtland Report, defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987, p. 44). The Report is considered a seminal document on the topic and catalysed the mainstreaming of the concept in international, regional and national processes worldwide.

The Brundtland Report reasoned that economic growth was necessary to meet essential needs and improve living conditions, particularly of the world’s poor. In addition, it rightly recognized that widespread poverty and inequity, on both the local and global scales, jeopardized ecological integrity and the ability of ecosystems to provide the services upon which humanity depended. Alongside these observations however, the report acknowledged that the unbridled pursuit of economic growth could, and had been, both irreparably degrading the natural environment and widening the inequality gap that existed between rich and poor. The WCED, through the Brundtland Report, therefore affirmed:
“Environment and development are not separate challenges; they are inexorably linked. Development cannot subsist upon a deteriorating environmental resource base; the environment cannot be protected when growth leaves out of account the costs of environmental destruction. These problems cannot be treated separately by fragmented institutions and policies.” (WCED, 1987, p. 39)

Accordingly, to operationalize the concept of sustainable development, practitioners now had to ensure that social and environmental considerations were fully contemplated in the charting of economic development paths. In further examination of the concept, Holden et al. (2014) distilled four primary dimensions of sustainable development from the Brundtland Report:

1. Safeguarding long term ecological sustainability (respecting environmental limits)
2. Satisfying basic human needs
3. Promoting intragenerational equity
4. Promoting intergenerational equity

Alongside these primary dimensions, a number of secondary dimensions were also identified including preserving nature’s intrinsic value, promoting public participation, satisfying aspirations for a better quality of life and promoting protection of the environment. In adopting a broad-based view of sustainable development, no hierarchy exists among the primary dimensions but they do precede the secondary dimensions. Holden et al. (2014) concluded that development paths that do not take into consideration the primary dimensions of the sustainable development concept should be avoided. It is important to note that in this understanding of sustainable development, economic growth is not a primary goal. This interpretation therefore departs from the popular, but often criticised, three pillar or ‘triple bottom line’ model of sustainability which seeks to balance social, environmental and economic targets (Lélé, 1991; Holden et al., 2017; Purvis et al., 2019).

Accompanying the preceding deliberations, the field of environmental and resource economics has offered another, no less instructive debate to be cognizant of when examining and critiquing the concept of sustainable development, and in particular in this case, what is meant by sustainability (Ayers et al., 2001). In these discussions, distinction is made between weak sustainability and strong sustainability. Differences between the two arise because of alternative interpretations about the composition and purpose of the capital asset base in development. For simplicity, the capital asset base is divided into man-made capital and natural capital, but it is acknowledged that it is not necessarily limited to these two.
In weak sustainability the condition deemed appropriate to be met is non-diminishing capital over time as total capital represents the stock of human prosperity. Weak sustainability considers that man-made capital can act as a substitute for natural capital so, for example, trees making up a forest can be felled and converted into wooden houses of equal value and conditions of sustainability are still met. Indeed, attempts have been made for gross domestic product (GDP), as a popular measure of development status, to be ‘greened’ in order to better reflect weak sustainability ideologies (Dietz & Neumayer, 2007; Giannetti et al., 2015).

On the other hand, strong sustainability proponents see that what sustainability calls for is not non-decreasing capital over time but rather a capital asset base that allows for non-diminishing welfare returns over time (Ekins et al., 2003). In strong sustainability man-made capital is not seen as a potential substitute for natural capital. Instead, the forms of capital are considered complementary in sustainable development pursuits. Strong sustainability therefore sees the need for base amounts of the varying forms of capital to be maintained and that, in today’s world, it is imperative that natural capital is conserved. As one authoritative commentator, Herman Daly explains:

“Once the complementarity of natural and manmade capital is accepted then it becomes clear that development is limited by the one in shortest supply. In the past era of ‘empty-world economics’ manmade capital was limitative. We are now entering an era of ‘full-world economics’ in which natural capital will be increasingly limitative. Sustainable development requires that natural capital be maintained intact” – Daly (1990, p. 3)

2.1.2 The pursuit of sustainable development of and through the ocean

Subsequent to the Brundtland Report, the 1992 United Nations Conference on Environment and Development (UNCED) further catalysed the mainstreaming and institutionalization of the sustainable development concept. Commonly known as the Rio Summit, UNCED culminated with the adoption of the ‘Rio Declaration on Environment and Development’ and ‘Agenda 21’ among other soft law and legally binding documents. The Rio Declaration consisted of 27 principles intended to guide countries in future sustainable development.

Implicitly and explicitly embedded in the text of the Declaration one can identify some now ubiquitous and also emerging norms of international law including cooperation; participation; the no harm rule; intra- and inter-generational equity; common but differentiated responsibilities; science-based management; subsidiarity; the polluter-pays principle; the precautionary principle; duty to conduct environmental impact assessment and the need for free, prior and informed consent
as it pertains to indigenous peoples. Agenda 21 complemented the Declaration by articulating a non-binding action plan for putting the identified principles of sustainable development into practice.

Chapter 17 of Agenda 21 focused the discussion on marine and coastal areas and their resources. Titled “Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources”, this chapter reaffirmed the prominence of oceans and coasts as “an essential component of the global life support system and a positive asset that presents opportunities for sustainable development”. Further to this, the chapter elicited programme areas detailing approaches and activities to be implemented by States. The seven programme areas were:

a) Integrated management and sustainable development of coastal areas, including exclusive economic zones
b) Marine environmental protection
c) Sustainable use and conservation of marine living resources of the high seas
d) Sustainable use and conservation of marine living resources under national jurisdiction
e) Addressing critical uncertainties for the management of the marine environment and climate change
f) Strengthening international, including regional cooperation and coordination
g) Sustainable development of small islands

Agenda 21 underscored the fact that sustainable management of the ocean and its resources are integral to the development of SIDS and crucial to sustaining the livelihoods of their inhabitants (Bennett et al., 2019; Connell, 2013). Subsequent to this a number of United Nations soft law documents such as the Barbados Programme of Action, the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, the SIDS Accelerated Modalities of Action (Samoa) Pathway, several successive General Assembly resolutions on oceans and the law of the sea, and the UN Sustainable Development Goals (SDGs) have reiterated and reinforced this important realization.

Since 2015, the UN SDGs have represented the latest negotiated international strategy to support the pursuit of non-diminishing human and environmental well-being over time. As with Agenda 21, the UN SDGs continue to highlight that oceans hold prominent standing within the sustainable development framework with SDG 14 being dedicated to conservation and sustainable use of the oceans, seas and
marine resources for sustainable development. At the same time, the ‘blue economy’ concept, which originated in the 2012 United Nations Conference on Sustainable Development (Rio+20) (Silver et al., 2015), has emerged as a contemporary ideology framing sustainable development of, in and through ocean spaces. Linkages and interplays between the UN SDGs and blue economy concept are unsurprisingly apparent (Lee et al., 2020).

In the lead up to, during and in the immediate aftermath of the Rio+20 Conference, blue economy rhetoric was used in different ways, by sometimes disparate proponents, to further their specific agendas. Silver et al. (2015) explicitly teased apart the discourses to show how they differed in terms of the problems identified, preferred solutions and actors involved. They expanded on four conceptions: oceans as natural capital, oceans as good business, oceans as integral to Pacific SIDS and oceans as small-scale fisheries livelihoods. From then till now, instead of “one discourse about human-oceans relations […] (coming) to be seen as obvious or logical” as hopefully expressed by Silver et al. (p. 152), consensus is still yet to be forthcoming. For example, follow up analysis by Voyer et al. (2018) again revealed four lenses within which blue economy interpretations fell. Silver et al.’s (2015) conceptions were subsumed in these new categorizations which consisted of oceans as natural capital, oceans as livelihoods, oceans as good business and oceans as a driver of innovation.

Additionally, there is a burgeoning literature related to the blue economy concept’s seeming shortcomings in reconciling sustainability criteria in practice, and social justice and equity issues in particular e.g. Bennet (2018); Bennet et al. (2019); Bennet et al. (2021); Cisneros-Montemayor et al. (2019); Cisneros-Montemayor et al. (2021); Framery et al. (2021); Schutter et al. (2021). It is important to note that in viewing the BBNJ agreement through a blue economy lens, equity is a crucial consideration that cuts across all the elements (Campbell et al., 2022). This includes equity in accessing MGRs from ABNJ, distributional equity with respect to sharing of benefits arising from their utilization, recognitional and procedural equity in giving agency to stakeholders to participate in and influence decision-making in management of the global commons and the role CBTMT can play in encouraging increased equity in all these respects. These topics will be discussed in more detail later.

To conclude this particular section, the Caribbean countries of interest in this body of research are former colonial, SIDS which face distinct vulnerabilities to, for example, global economic shocks and climate change (Griffith, 1995). The convergence of these and other particularities must be considered in examining ocean governance in the English-speaking Caribbean for sustainable development and in light of a global treaty being negotiated on conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. The concept of
the blue economy, as the emerging sustainable development paradigm for small islands with large ocean spaces at their disposal, is one lens through which to reflect on the treaty being negotiated.

2.2 The BBNJ Process and Regime Theory

On issues relating to global governance, no body currently exists resembling a central government capable of exercising authority over States of the world (Young, 2021; Bull, 2012). However, despite the global governance system having this fundamentally anarchic base, the English School of International Relations observes that a fairly well-structured international society exists. Interactions between sovereign States are more orderly than would be expected primarily because they have largely agreed to shared standards of behaviour that make their actions more predictable (Buzan, 2014). For instance, the Charter of the United Nations provides a framework in which international society can operate, codifying major principles of international relations (Fassbender, 1998). Through such formal (and informal) institutions, behaviours are influenced and international coordination and cooperation facilitated.

Cooperation and coordination are needed because, in today’s globalized world, many recognize sovereign States as being increasingly interdependent (Weiss, 1999). Another theoretical school of international relations, Liberalism, explicitly acknowledges this interdependence (Walt, 1998). Liberalism further posits that formal arrangements are required in matters of international societal interest, including environmental ones, in order to generate effective cooperation among sovereign States (Moravcsik, 1992).

Stemming from this, international relations Liberals recommend the creation of governance regimes to find legitimate solutions to transnational and/or global problems in the anarchic setting of the international society. The often cited definition of a regime comes from Krasner (1982, p. 186) where it is seen as “[I]mplicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”.

This definition encompasses multilateral agreements among States which aim to regulate national actions within an issue area (Haggard & Simmons, 1987). The BBNJ agreement, currently being negotiated under UNCLOS, is seeking to establish a regime to address aspects of marine biodiversity governance in areas beyond national jurisdiction.
Debate is ongoing as to whether regimes matter, i.e. if, on the whole, the regime concept can withstand scrutiny when evaluated by its ability or role as an effective, enduring intervening factor to transform basic determining variables of States, e.g. their power and interests, into desired behaviour and outcomes (Haggard & Simmons, 1987; Young, 2011). Krasner (1982, p. 194) succinctly identifies the three camps in this regard, highlighting that:

“[C]onventional structural arguments do not take regimes seriously: if basic variables change, regimes will also change. Regimes have no independent impact on behaviour. Modified structural arguments [posited] by a number of adherents of a realist approach to international relations, see regimes as mattering only when independent decision making leads to undesired outcomes. Finally, Grotian perspectives accept regimes as a fundamental part of all patterned human interaction, including behaviour in the international system.”

This body of work adopts the position that regimes do indeed matter, be it from a modified structural or Grotian perspective. Consequently, negotiations to craft the BBNJ agreement are viewed as a worthwhile endeavour.

In examining regime formation, researchers often distinguish between three distinct stages of the process, each of which are characterized by their own associated political dynamic (Young, 1999). These are agenda setting, regime design and regime operationalization. For researchers and practitioners focused on the initial identified stage, that of agenda setting, part of the interests here lie in how and why particular problems are elevated to positions of importance and focus in congested and contested policy spaces.

The BBNJ process involved several years where an informal working group examined the relevant problems and shaped the ‘package deal’ of issues that were eventually placed on the negotiating agenda. However, even before this, BBNJ itself had to be prioritized among a host of other important ocean issues that would benefit from attention at the global level.

Some commentators have preliminarily examined how and why BBNJ rose to its position of prominence, e.g. Long & Brincat (2019). Further exploration of this may be the subject of useful future research with a view to contributing to understanding the agenda setting process at an international level. The agenda set for elaboration in the future BBNJ agreement does present the opportunity to alter the broader ocean governance regime established by the Law of the Sea Convention in a number of respects. These potential changes, after almost three decades since the last major alterations were made, are in-keeping with the punctuated equilibrium theory of public policy formation expressed at an international level. Under this theory policy
change in a given area may be incremental for decades interspersed by episodes of profound adjustments (Jones & Baumgartner, 2012).

Perhaps the stage of the regime formation process that garners the most attention in the academic literature is regime operationalization. Here attempts are made by researchers to evaluate the effectiveness of established regimes through examining the consequences of their implementation and observed outcomes (Breitmeier et al., 2011). The BBNJ agreement, still being negotiated, is yet to enter regime operationalization stage, but this no doubt would be of immense academic interest in the years to come.

In this body of work, it is the stage situated between agenda setting and regime operationalization that is of primary interest: regime design. This stage focuses on the intricacies of the negotiation process and the institutional bargaining that takes place in regime formation. Arriving at consensus on institutional arrangements is challenging in the highly uncertain realm of global environmental governance and often requires individual leadership in crafting pertinent solutions that are viewed as fair, equitable and legitimate in the eyes of participants (Zürn, 1998). The challenge is especially acute when there are potentially long time lags between human action and environmental effect; the systems of interest are highly complex and not well understood; and the issue involves global collective goods linked to a wide range of human activities (Underdal, 2010) – three inherent characteristics of BBNJ and any would be regime to govern it.

This thesis partly explores the institutional bargaining that is taking place, devising and advocating for particular innovative arrangements that may be established as elements of the future BBNJ governance regime. If viewed through the multiple streams analysis approach to public policy, the BBNJ negotiations represents a ‘window of opportunity’ (Kingdon, 1995). Multiple streams analysis posits that policy is adopted when problems, solutions and politics (in the form of ‘windows of opportunities’) converge. Institutional ideas presented in this thesis, which were crafted to reflect CARICOM’s interests but also achieve palatability with a broad constituency, may prove worthy solutions to addressing some of the governance issues facing biodiversity of areas beyond national jurisdiction (ABNJ).

However, the existence of ‘windows of opportunity’ and possible solutions to identified problems are not enough to ensure adoption (Cairney, 2019). In designing regimes through negotiation of multilateral agreements the role and relative importance of influential factors, i.e. power, interests and knowledge/ideas/discourses continues to draw the attention of scholars and practitioners of international relations and political science (Young, 1999; Krasner, 1982).
In this respect, this thesis adopts a Constructivist approach to international relations by considering CARICOM’s identity, interests, discourses and power alongside that of others in the negotiations (Hopf, 1998). The group’s SIDS identity and how this ties into and shapes its interests from a blue economy perspective are discussed. Augmentation of power through coalition building and the effect this may have on the traction any particular idea receives is reflected upon (Kim et al., 2005). The role of civil society as policy brokers and mediators within and among different coalitions is also examined (Betsill & Corell, 2001).
3 Methodology and Methods

3.1 Action Research as a Methodological Framework

Action research (AR) was conceptualized in the 1940s through models developed by Kurt Lewin when he sought to apply and evaluate the effectiveness of social theories in practical settings and, at the same time, to address social problems through public inquiry within democratic communities (Lewin, 1946; Carr, 2006). Gaining popularity in its application and maturing as a methodology for research over the ensuing decades, present day AR, at its broadest, is viewed as a process where reasoned strategic actions are taken in response to a problem or to achieve a desired state; the outcomes of those actions are critically analysed, evaluated and reflected upon; and these analyses feed into formulating new actions and approaches to be applied again (Dickens & Watkins, 1999).

It is an iterative and cyclical exercise (Figure 2). Through its application in defined settings, AR emphasises the attainment of specific solutions to complex practical problems. It has been usefully applied in investigating intricate and interconnected social-ecological systems (SES) (Boulton & Preiser, 2021) and is therefore apt for use in this research which has interests in the blue economy and the regime being established for conservation and sustainable use of marine biodiversity ABNJ.
AR is a process through which participants within a defined socio-cultural setting, when faced with an issue, negotiate, craft and implement solutions that would seek to derive meaning and values that the actors themselves determine to be important. In employing AR, novel solutions may be developed or solutions practised elsewhere could be imported and adapted to the specific circumstance and socio-cultural setting in which a problem is framed until a desired outcome is arrived at. The AR methodology may not necessarily lend itself to having an initial research hypothesis especially when focusing on dynamic and emergent situations. In addition, it is rarely value neutral. Features of the AR practice that are broadly shared have been identified by Reason & Bradbury (2008) and they include ‘human flourishing’ and ‘participation and democracy’ (Figure 3). In AR on SES there is often an intention to empower disadvantaged groups and create conditions that promote equity and resilience for people and the planet (Boulton & Preiser, 2021).
In this body of research AR constituted the overarching methodology or orientation of inquiry. However, at various points different categories of action research praxis were employed. Cassel & Johnson (2006) have usefully defined five categories of action research practice:

- **Experimental action research practice** where a particular intervention is made in a given setting based on a pre-specified theoretical framework.

- **Inductive action research practice** where efforts are made to understand how the given system operates. Subsequent interventions are guided by this understanding.

- **Participatory action research** where people in the community under investigation participate actively throughout the whole research process from problem diagnosis to creation and adoption of strategies to address the determined issues. In this classification however, only specific ‘higher
order’ participants are consulted with because they are deemed to possess the knowledge and understanding needed.

- **Participatory research practice**, which is similar to the above except here there is no barrier to participation. All people are engaged, including those traditionally marginalized and those possessing alternative forms of knowledge.

- **Deconstructive action research practice** where, again, all forms of knowledge and understanding are accessed. The goal here is not to advocate for any specific solution or strategic outcome but to encourage an open critique of the myriad of solutions that may come to the fore. It promotes diversity rather than discursive closure.

In the following paragraphs, the various ways action research has influenced and been applied in this current PhD research will be explained using these typologies.

My role and positioning as one of the thematic leads for CARICOM in the BBNJ negotiations (on EIA) has encouraged and facilitated the use of action research. In participating in the negotiations, I have employed a personal practice of action learning\(^1\) which helped to clarify what topics were important to explore as an academic researcher. This research direction has therefore been shaped by explicit and reflexive self-observation as the role of a CARICOM negotiator, with little prior experience, was adopted, managed and executed.

If permitted to detail a personal narrative\(^2\): I applied auto-action learning reflecting on and analysing my experience as a negotiator. When considering negotiating interests, the process led to the identification of the blue economy as an ideal and appropriate lens through which to view the negotiation of the BBNJ agreement and, in doing so, to understand and weigh desired outcomes.

Following on from this, and donning my academic hat, I sought to determine what the blue economy represents for CARICOM. The paper entitled “**CARICOM and the blue economy – Multiple understandings and their implications for global engagement**” (Paper 1) discusses findings in this regard. It determined that no clear,

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1. Action learning means “learning from action or concrete experience, as well as taking action as a result of this learning” (Zuber-Skerritt, 2001). Experience rather than theory is the starting point for learning and subsequent reflection is central to creating new knowledge (Anderson & Coleman, 2015; Raelin, 1997). The practice of action learning on an individual, personal level is also termed auto-action learning.

2. Personal narrative is considered by some commentators to be an autoethnographic approach where individuals seek to understand themselves or some aspect of their life as it intersects with a cultural context (Ellis *et al*., 2011). However, because personal narratives often do not include more traditional analysis and connections to scholarly literature other commentators such as Wall (2016) are hesitant to label it as autoethnographic.
agreed upon understanding existed within CARICOM of what is meant by blue economy and thus, by extension, what the regional grouping may collectively work towards from the outset. Following on from this therefore, I explored generating conditions and mechanisms through which this understanding could be debated and arrived at within the regional group. This is interrogated in the paper entitled “Examining institutional arrangements towards coordinated regional ocean governance and blue economy policy development in the Caribbean Community (CARICOM)” (Paper 2).

Generating the conditions that could lead to ocean governance best practice within CARICOM is action research in itself. In this research it fell into the combined categories of both experimental and inductive action research practice (Cassell & Johnson, 2006). After gaining a better understanding of what constitutes the CARICOM ocean governance system and how it works, increased integration in regional ocean governance was encouraged and advocated for among stakeholders within CARICOM. This was especially undertaken through a CARICOM-WMU Research Fellowship which allowed the author to work directly with the CARICOM Secretariat to explore, promote and apply ideas arising from this research.

It should be noted that the ideas and mechanisms being proposed in Paper 2, if adopted, could encourage further participatory action research and, more desirably, participatory action research practice to arrive at an agreed blue economy understanding and policy for CARICOM (Cassell & Johnson, 2006). If one were to look at this research in light of the stages of a typical AR cycle, Papers 1 and 2 emphasize the problem definition, fact finding and reconceptualization stages of the cycle (Dickens & Watkins, 1997). Work carried out through the CARICOM-WMU Research Fellowship also emphasized the fact finding and reconceptualization along with the planning and intervention stages of the cycle.

Shifting attention from within CARICOM itself to CARICOM as a bloc acting on the wider regional and international stage, the multilateral negotiation of international agreements may also be viewed through an action research paradigm of reflective rationality (Akdere, 2003). In a cyclical process, proposals of countries or groups of countries are brought to the fore, they are critiqued and deconstructed, and new proposals are subsequently made in the face of evolved knowledge, understanding and consideration of competing interests.
The UN is the forum for negotiating the BBNJ agreement. Here the negotiations are taking place under specific conditions, such as the fact that all countries theoretically have equal opportunity to be heard and decisions being reached by consensus. These conditions may allow participating States to adopt and practice critical theory approaches (Ledwith, 2007). Critical theory practitioners seek to engender “critique of the status quo and simultaneously emancipate people from asymmetrical power relations, thereby enfranchising the usually marginalized, and promoting alternative forms of organization” (Cassell & Johnson, 2006, p. 798). Critical theory approach is a defining feature of participatory research practices.

The papers entitled “Internationalization of EIA in a new marine biodiversity agreement under the Law of the Sea Convention: A proposal for a tiered approach to review and decision-making” and “Encouraging proactive governance of marine biological diversity of areas beyond national jurisdiction through strategic environmental assessment (SEA)” (Papers 3 and 4 respectively), are outcomes of action research in practice. They illustrate the application of critical theory, the emancipatory potential of action research (Boog, 2003) and the ability of action research to change how things are done (Kemmis, 2010). They discuss ideas that may lead to a more equitable BBNJ agreement.

If these ideas are adopted CARICOM and other SIDS may be better enabled to participate in and benefit from the regime being established to conserve and sustainably use marine biodiversity of areas beyond national jurisdiction. The action research arising from direct engagement and participation in the BBNJ negotiation process therefore has real empowerment and emancipatory potential. It exemplifies participatory research practices being used by the CARICOM group in the multilateral forum of the UN with implications for ocean equity and justice within a blue economy and sustainable development framework.

Zuber-Skerritt (2001), drawing on Carr & Kemmis (1986), offers an alternative framework to Cassell & Johnson (2006) in which action research can be classified. She identifies three types of action research inquiry – technical, practical and emancipatory. How these categories of action research are related to this current research will be explained in more detail next. First, however, it must be noted that as a BBNJ negotiator, who is at the same time involved in academic research, I engaged in all three types of action research inquiry at various points. The Zuber-Skerritt (2001) framework helped me to think more clearly about my orientation in the action research process including whether I was an “insider” or “outsider” as I

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3 The paper entitled “Participating in negotiation of a new ocean treaty under the Law of the Sea Convention – experiences of and lessons from a group of small-island developing States” (Paper 5) reveals that these theoretical suppositions do not hold, with CARICOM States still at a disadvantage in the negotiation settings.
contemplated my dual roles as an academic researcher and a BBNJ negotiator for CARICOM.

Engaging within CARICOM through the CARICOM-WMU research fellowship saw the use of technical inquiry where I assumed the role of outside ‘expert’ seeking to catalyse interest and buy-in for better integrated regional ocean governance practices. To a lesser extent, I also engaged in practical inquiry. Given more time, I should advance fully into practical inquiry where my role would morph into one encouraging more participation and reflection as CARICOM actors and practitioners of ocean management take on more active responsibility in driving the crafting of an appropriate model to exercise regional ocean governance and facilitate blue economy development. Here, a cooperative relationship between myself and the stakeholders would need to be established where I act more as a consultant encouraging the development of endogenous solutions rather than an as expert prescribing what should be done. Lastly, negotiating for CARICOM within the UN, I engaged directly in emancipatory inquiry. Here, unlike within CARICOM where I was an external facilitator, I was an actual participant in the action research process with acknowledged biases. As a participant negotiating on behalf of the CARICOM group, I was an actor in an emancipatory mode of inquiry in action research seeking to achieve the attainment of CARICOM’s interests in an international process.

As alluded to earlier, AR deviates from the positivist paradigm of research where researchers are required to demonstrate objectivity and employ a methodology that divorces their values, relationships, passions, politics, identity and ideology from the topic under consideration (Guba & Lincoln, 1994). AR does not adhere to this paradigm and is idiosyncratic due the close relationship between researcher and participants and the explicit aim to change practice and circumstances. The approach of AR therefore, at times, accommodates some departures from traditional ethical dimensions (Williamson & Prosser, 2002; Gelling & Munn-Giddings, 2011). Most traditional ethics considerations have held true in this body of work (Greaney et al., 2012). These include not doing harm, not breaching confidentiality, honesty, treating people with respect and dignity and not distorting data. However, others, in particular informed consent and providing the right to withdraw, have been difficult to uniformly and universally apply, although they have been adhered to where practicable.

Informed consent was not feasible to obtain in some settings and interactions. This, as relates to informal, opportunistic conversations, will be discussed in more detail in the next section. For informed consent in the actual negotiation settings, due to formality and scale, it was also not possible to obtain the explicit permission of delegations and delegates in the process of observing and assessing them, along with their associated contributions. It was assumed however, given that the BBNJ agreement negotiations were taking place in a public setting, that there was
expectation on the part of all participants that observation and scrutiny was likely. This assumption was not unreasonable as evident from the rich literature arising from and describing the BBNJ negotiation processes.

The other ethical consideration which was not strictly fulfilled, the right to withdraw, is closely related to informed consent and similar considerations apply. For negotiating delegations to withdraw from this research, they would have had to withdraw from the negotiations entirely. If this were to have happened, it likely would have been as a result of circumstances and dynamics existing outside of and unconnected to these research endeavours.

A final consideration I had to be mindful of when performing the dual role of researcher and thematic lead for CARICOM on EIA, is that the views I would arrive at as an academic, could not supersede the views that I was obligated to express when speaking on behalf of the regional bloc. Indeed, it was in-keeping with the intent of this research that the work performed as an academic would be used to inform the Group’s position. Fortunately, it successfully did and no situation arose where the position I was required to convey on EIA, as lead of that thematic area for CARICOM, was irreconcilable with my personal view. It was therefore never necessary to confront problems of internal conflict which are known to sometimes affect action researchers (Shani & Coghlan, 2005).

In closing, it is important to touch on the philosophical underpinnings of AR. As an orientation of enquiry, with its democratic ideals and case specific approach, AR is rooted in an ontological positioning of relativism. Relativism proffers that multiple perspectives exist because each individual or community experiences the world differently due to their differing subjective experiences (Scotland, 2012). AR therefore acknowledges that there is not one single objective reality. Following on from this ontological positioning AR adheres to a constructivist epistemology. The constructivist outlook assumes that “truth” or meaning comes into existence based on our interaction and engagement with the world (Moon et al., 2021).

The application of an AR methodology seeks, in part, to derive what meanings a social unit values. As stated earlier however, the AR process usually goes further, undertaking to change a social unit’s circumstances and catalyse liberation to attain what is valued by that social unit. When AR ventures into a critical and emancipatory mode it also implicitly acknowledges that the ontological outlook of historical realism is a legitimate one. Here reality, as it exists, is recognized as having been shaped by social, political, cultural, economic, ethnic and gender factors and then crystallized in this form (Guba & Lincoln, 1994). This reality, however, is there to be challenged. The action research process is a means to legitimize the knowledge a social unit possesses and also to challenge the existing reality.
3.2 Research Methods

Action research as the orientation of inquiry has been complemented by a number of data collection methods including the following ones:

- Reading of primary, secondary and grey literature
- Document content analysis
- Interviews and informal conversations
- Meeting observation and participation with associated interventions

3.2.1 Reading of primary, secondary and grey literature

Literature reviews were used extensively throughout this thesis to examine the bodies of knowledge existing on a variety of topics. The reviews conducted were generally narrative literature reviews rather than being overly systematic. They relied on searching for key terms associated with topics of interest in search engines such as Google, Google Scholar and Web of Science.

Snowballing techniques were also used by accessing literature already cited in the reference lists of key documents. Topics on which literature reviews were conducted include, inter alia, the BBNJ agreement including all elements of the negotiating package, regional ocean governance, integrated ocean management, environmental assessment inclusive of both EIA and SEA, small States in international negotiations, and the blue economy.

3.2.2 Document content analysis

Research undertaken for Paper 1 is an example of when document content analysis was used in this thesis. This particular document content analysis exercise proceeded after conducting separate Google searches using *respective CARICOM country* followed by the terms *coastal zone management policy*, *integrated coastal zone management policy*, *ocean policy* and *blue economy policy*, as well as exploring document repositories on the Organization of Eastern Caribbean States (OECS) and CARICOM websites.

A total of 19 documents were sourced and examined as a result. They represented recent documents (post-2015, in keeping with the start of the 2030 Agenda for Sustainable Development and the time period when ‘blue economy’ really took hold in the development discourse) which addressed blue economy and integrated ocean and coastal governance in CARICOM countries. The documents reviewed were
limited to official national documents and those produced through government sanctioned processes that were, for example, funded by external donors.

National and regional documents reviewed related to ocean governance and blue economy that were published during the period 2015-2020. They included:


17. Barbados Blue Economy Scoping Study (2020)


19. “We Are Large Ocean States”: Blue economy and ocean governance in the Eastern Caribbean (2020)

These documents were reviewed, firstly, to get a sense of the main ocean activities, sectors, policies and governance strategies in CARICOM countries. This review was supplemented with insights into on the ground implementation and practice, gained from country sources who were colleagues within the researcher’s networks, to garner a more complete picture of the blue economy outlook being adopted by countries.

Subsequent to this, documents from Belize, Grenada and Trinidad and Tobago were further analysed for the occurrence and prevalence of key concepts, approaches and modes of development associated with the blue economy interpretations identified by Voyer et al. (2018). Trinidad and Tobago and Belize were chosen for further examination because in the initial document review they clearly exhibited contrasting blue economy ideologies. Grenada was selected as another case study example because, at the time, it was the CARICOM country that was most advanced in articulating a blue economy strategy (Patil & Diez, 2016).

The intention was to examine the notion, and illustrate through these country examples, that although all were supportive of blue economy development, CARICOM countries had varying understandings of what the concept represents. It was assumed, based on the initial document review, that the countries within CARICOM had blue economy posturing that existed within a range that was bounded by that of Trinidad and Tobago and Belize. In the qualitative analysis that was done some of the key concepts, approaches and modes of development that were associated with each of the blue economy discourses (Voyer et al., 2018) included:

- ‘Oceans as natural capital’ – climate change mitigation and adaptation; blue carbon; environmental restoration; conservation; protected areas; ecosystem approach; nature-based solutions
- ‘Oceans as livelihoods’ – sustainable livelihoods; livelihood diversification; community-based management; participatory governance; participatory approaches; property rights; small-scale development; artisanal; ecotourism; local knowledge; traditional knowledge
• ‘Oceans as good business’ – big business; capital intensive; large-scale; offshore oil and gas; sea-bed mining; cruise tourism; mass tourism; resort tourism; industrial/commercial fishing; shipping port development; blue growth; maritime clusters; job creation

• ‘Oceans as a driver of innovation’ – knowledge industry; marine scientific research; low-carbon; renewable energy; tertiary level programmes; bio-prospecting; use of technology

Examining the frequency and contextual usage of these key terms helped in establishing general narratives around the blue economy understandings of the three countries. These narrative interpretations were augmented by interviews and informal conversations and discussions with colleagues resident in the respective countries. Further details on informal conversations are found in the next section.

3.2.3 Interviews and informal conversations

Interviews and informal conversations also featured prominently as a data collection method in this thesis. The use of interviews was crucial in gathering information from CARICOM diplomats who have participated in the BBNJ process. Interviews were given ethics clearance by the World Maritime University (WMU) Research Ethics Committee which, among other things, approved the interview questions and protocol. The interviews did not target a critical mass, in terms of getting over a threshold number of participants to attain a given sample size. Rather, the interviews targeted specific persons with niche and specialist knowledge (expert sampling).

Potential interviewees needed to possess particular characteristics, namely, being lead negotiators or key participants for CARICOM during the BBNJ Prep Com and IGC stages. Of seven identified candidates, five were successfully interviewed. All interviews took place virtually via Zoom and were recorded. The recordings were subsequently revisited to be further analysed and to extract main themes from responses. The interviews helped in distilling lessons learned and arriving at the conclusions outlined in Paper 5.

Interviews conducted were all semi-structured in nature with the interview questions provided to interviewees prior to the actual interview exercise. It was felt that by providing the questions, interviewees would be given time to recollect experiences and reflect on responses, thereby better enabling the elicitation of detailed responses. Providing guiding questions beforehand was also prudent and practical given the extremely busy schedules of the interviewees.

The semi-structured nature of the interviews allowed this researcher to ask follow-up questions and to probe deeper on points of interest. The fact that this researcher was himself a lead negotiator in the BBNJ process proved beneficial in recognizing
what areas and responses were important for follow up questioning. However, because the researcher was also a negotiator, caution was taken in the phrasing of questions asked in the interviews so as to minimize leading the conversation in particular directions thereby projecting biases.

Apart from interviews with negotiators, a host of less formal conversations and discussions have taken place with other CARICOM actors to better understand, from a regional ocean governance and blue economy perspective, how arrangements function, including within individual countries and the numerous associated organizations. A research fellowship arrangement with the CARICOM Secretariat enabled increased access to some of the participants with whom informal, conversation-type approaches facilitated relationship and trust-building.

The conversations were very often opportunistic in nature with purposes which included gathering background information, deepening understanding and eliciting opinions and ideas. Informal, unstructured conversations have long been recognized as a valid and important data collection method in qualitative research (Swain & King, 2022). Such interactions are important in the initial stages of the action research cycle when problems are being defined and desired states are being conceptualized.

A lack of informed consent is the main ethical issue arising from these types of opportunistic conversations. Unlike with interviews where discussions are anticipated or planned, no consent was actively solicited in informal conversations because of impracticality. The lack of informed consent was mitigated by the fact that informal conversation participants were at least always aware of this researcher’s association with CARICOM and that no details were ever actively withheld with regard to the nature of the research.

Additionally, participants in informal conversations were afforded anonymity in this thesis and were treated with dignity and respect throughout the period(s) of interaction. As alluded to earlier, many of these informal consultations fed into the ideas and findings detailed in Papers 1 and 2 which, in combination, have focused on understanding and improving ocean governance and blue economy arrangements in the region.

3.2.4 Meeting observation and participation with associated interventions

The author’s position as a delegate and thematic issue coordinator for CARICOM on EIA in the BBNJ negotiations afforded the unique opportunity to access and participate in numerous multilateral, bilateral and other meetings that discussed BBNJ and ocean related matters (Table 1). The modalities of these meetings were mixed, some being in-person, others being virtual interactions. Virtual meetings
took place on a variety of online networking platforms such as Zoom, Cisco Webex and Microsoft Teams.

Large, multilateral and multi-stakeholder virtual interactions were an innovation introduced notably due to the COVID-19 pandemic so that informal discussions could continue during the lengthy, extended intersessional period. Two main fora were established in this regard. The first was an online forum which ran from September 2020 to March 2021. It was organized by the President of the IGC, H.E. Ambassador Rena Lee, who was supported by the United Nations Division of Ocean Affairs and Law of the Sea (UN-DOALOS). The second was the ‘High Seas Treaty Intersessional Dialogues’ which were hosted jointly by the Kingdom of Belgium, the Principality of Monaco and Costa Rica, in collaboration with other organizing partners.

Participation in meetings provided rich data and information for this thesis and also furthered the action research methodology by providing access to fora where CARICOM’s views were articulated. Meeting participation aided in determining the regional interests, from a blue economy perspective, for the BBNJ agreement negotiations. In addition, be it through experiential or substantive observations about fellow participants and/or meeting occurrences and outcomes, taking part in meetings contributed greatly in formulating ideas that were discussed in all the papers. Meeting participation was also crucially important in its ability to present the outputs of Papers 3 and 4 to the actors in the negotiations.
Table 1: Meetings in which research observations, data gathering and interventions occurred from January 2020 to March 2022

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Location</th>
<th>Additional comments</th>
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<tbody>
<tr>
<td>28th-29th Jan 2020</td>
<td>Workshop on EIAs and Strategic Environmental Assessments (SEAs) in ABNJ</td>
<td>Brussels, Belgium</td>
<td>There were over 100 participants at this workshop from governments, international institutions, business, NGOs, foundations and research institutes. The various panel sessions allowed experts to provide insightful and thought provoking contributions which encouraged discussion and progression on key outstanding EIA issues in the run-up to the IGC4 session (which was subsequently postponed). The official workshop report can be accessed at: <a href="https://op.europa.eu/en/publication-detail/-/publication/e8001250-9efb-11ea-9d2d-01aa75ed71a1/language-en/format-PDF/source-256235270">https://op.europa.eu/en/publication-detail/-/publication/e8001250-9efb-11ea-9d2d-01aa75ed71a1/language-en/format-PDF/source-256235270</a> (accessed: 5th June 2020)</td>
</tr>
<tr>
<td>13th-14th Feb 2020</td>
<td>Informal retreat to advance BBNJ negotiations</td>
<td>Mechelen, Belgium</td>
<td>This informal retreat saw 51 persons gathering from 31 negotiating delegations. The participating group also included civil society: Greenpeace, International Union for Conservation of Nature (IUCN), Pew Charitable Trusts, Natural Resources Defence Council and the High Seas Alliance. The discussions focused on specific articles contained in all elements of the draft agreement. While none of the contested issues were resolved during this meeting, the forum and facilitation was extremely helpful in allowing viewpoints to be expressed candidly, providing clarity on positions and revealing paths to possible compromises. The discussions that took place outside of the room were equally as valuable. Bi-lateral discussions were also held over the two days.</td>
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<tr>
<td>3rd-5th March 2020</td>
<td>High Seas Treaty dialogue Monaco – ABMTs including MPAs</td>
<td>Monte Carlo, Monaco</td>
<td>On the first day of this workshop former U.S. Secretary of State John Kerry was present to facilitate a ministerial-level, half-day dialogue on key issues related to the Treaty and, in particular ABMTs. Unfortunately, however, no Ministers participated. On the following two days, BBNJ delegations and technical experts took part in a dialogue intended to tackle and make progress on key issues, including Articles 15 and 19 of the draft treaty text, and the role of traditional knowledge in the agreement. The meeting was smaller than other intersessional meetings of this type that were held with 8 people cancelling because of COVID-19 virus travel restrictions. Although this meeting focused on the ABMT part, it was where the idea of CARICOM developing a joint text on EIA with the group of Pacific SIDS (PSIDS) was first explored.</td>
</tr>
<tr>
<td>28th-29th April 2020</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues – Preparatory meeting</td>
<td>Virtual</td>
<td>The formal BBNJ process was suspended due to the COVID-19 pandemic. Here BBNJ delegations met for the first preparatory informal online High Seas Treaty Dialogue to exchange ideas and identify the preferred choice of treaty provisions to be discussed in subsequent sessions.</td>
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<tr>
<td>10th-11th June 2020</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on MGRs and CBTMT</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were: What are the points of convergence towards a common understanding of benefits/ benefit sharing? How can we build an effective capacity-building/technology transfer framework? What are the options for dealing with access to MGRs in order to promote benefit sharing? What is the potential role of a BBNJ Financial Mechanism? Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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<tr>
<td>8th-9th July 2020</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on ABMTs and EIAs</td>
<td>Virtual</td>
<td>Guiding and facilitator questions for this dialogue were: What specific actions by State Parties would promote coherence and complementarity in the establishment of ABMTs including MPAs? What specific actions by States Parties would risk undermining relevant legal instruments and frameworks, etc.? Specify what or who you mean by “relevant legal instruments and frameworks and relevant global, regional, sub-regional and sectoral bodies” (IFBs). How would a framework in which a ‘decision’ by an entity under the implementing agreement is really only a recommendation (the real decision lies elsewhere)? How would that impact on the effectiveness of the whole regime? Would that enhance effectiveness? What would undermine effectiveness? Are there any actions that could be taken under the implementing undermine or negatively impact existing agreements? In concrete terms, how would a decision by an entity under the implementing agreement undermine other existing entities? Assuming that the implementing agreement adopts a highly internationalized framework where there is the EIA process that is administered under the entities established under the implementing agreement, what would be the relationship between this process i.e. this internationalized process under the implementing agreement and other processes for EIAs in existing IFBs?</td>
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If you did not have such an internationalized EIA under the implementing agreement, then how would this package (UNCLOS Arts. 204-206) be given effect in areas of ABNJ where there is not a requirement for EIAs?

Should the requirement to conduct an EIA apply only to activities conducted in areas beyond national jurisdiction or to all activities that have an effect/impact in areas beyond national jurisdiction?

In this dialogue delegations were alerted to a forthcoming proposal by CARICOM on EIAs, as it relates to internationalization, with some initial ideas shared.

Based on the discussions a session report was produced by the organizers which also informed this research.

Which step in the EIA process, if any, should be “internationalized” and in what way.

Whether they had any objection to include an article on objectives in Part IV on EIAs in the agreement, and what specific elements were to be included in such an article.

Whether they had any objection to include an enabling clause on SEA in the agreement and also to address the substantive and procedural modalities of such a clause.

The thresholds, criteria and list of activities that trigger the conduct of EIA.

Written submissions to this forum were made by CARICOM, New Zealand, the European Union (EU), Australia, UK, G77+China, PSIDS, India, Canada, Norway, the African Group (AG), Group of Core Latin American Countries (CLAM), the High Seas Alliance (HSA), Women Engage for a Common Future (WECF), Maldives, Madagascar, IUCN, Indonesia, UK, France, Japan, and Singapore. These submissions were used to inform this research.

In this forum, delegations were invited to comment on the following:

- Possible modalities of an access and benefit-sharing regime and in particular, (1) different stages at which benefits can be shared; (2) the triggers for benefit sharing; and (3) the role of institutional arrangements under Part VI of the Revised draft text of an agreement in facilitating benefit sharing.
- The role of traditional knowledge of indigenous peoples and local communities with regard to access and the sharing of benefits, as well as substantive and procedural modalities for operationalizing such a role.

Written submissions to this forum were made by CARICOM, PSIDS, CLAM, Australia, Norway, Canada, G77+China, Maldives, New Zealand, EU, HSA, Madagascar, DOSI, CI, IUCN, WECF, ICEL, UK, Alliance of Small Island States (AOSIS), Switzerland, Japan, and Singapore. These submissions were used to inform this research.

What would it mean to “undermine” relevant IFBs in the context of part III of the agreement.
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<th>Date</th>
<th>Event</th>
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<th>Notes</th>
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<td>Nov - 1st</td>
<td>Forum – ABMT work stream</td>
<td>Virtual</td>
<td>This dialogue had two distinct parts. The focus of the first part was on consultation, decision-making, management plans and the issue of “not undermining” or cooperation and collaboration with relevant or competent IFBs, and the process for the establishment or designation of ABMTs and MPAs. The focus of the second part was on the relationship between the BBNJ agreement and other relevant entities, acknowledgments of how delegations’ positions have evolved on these issues, complementarity of measures and coordination, and recognition of MPAs established before the agreement and/or outside the framework of the agreement. Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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<tr>
<td>Dec 2020</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on ABMTs</td>
<td>Virtual</td>
<td>Written submissions to this forum were made by UK, Monaco, PSIDS, Singapore, IUCN, EU, Canada, USA, New Zealand, HSA, WWF, Japan, Norway, G7+China, Holy See, Maldives, WECF, African Group, Australia, United Nations Environment Programme (UNEP), DOSI, the Food and Agriculture Organization (FAO) and the International Chamber of Shipping (ICS). These submissions were used to inform this research.</td>
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<td>2nd-3rd Dec</td>
<td>Virtual</td>
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<td>13th-19th</td>
<td>BBNJ intersessional work online forum – CBTMT work stream</td>
<td>Virtual</td>
<td>Written submissions to this forum were made by CARICOM, EU, PSIDS, WWF, CLAM, UK, HSA, WECF, Maldives, USA, the African Group, Norway, IUCN, Canada, Holy See, AOSIS, Madagascar, DOSI and ELI. These submissions were used to inform this research.</td>
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<tr>
<td>Jan-Feb 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on CBTMT</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were: Without qualifying as mandatory or obligatory, what types of CBTMT are important/essential for fulfilling the objectives of the future agreement as listed in Annex II of the revised draft of an agreement and are not already listed in other parts of the revised draft? (Article 46/Annex II). What are the linkages between CBTMT and the implementation of other parts of the future agreement, such as MGRs, including questions on the sharing of benefits; measures such as ABMTs, including MPAs; and EIAs? How will the needs and priorities of developing States Parties for CBTMT be assessed? Could a needs assessment be facilitated through a formal needs mechanism for CBTMT, and if so, how could such a CBTMT needs assessment review operate and be implemented/operated? For purposes of the Agreement what are the implementing elements of cooperation under article 266 (1) of UNCLOS? For purposes of the Agreement what are the implementing elements of “promoting”, as provided for in article 266(2) of UNCLOS? For purposes of the Agreement, what are the implementing elements of “promoting”, as provided for in article 268 of UNCLOS? What modalities could be required to ensure that relevant existing capacity-building efforts and activities are taken into account under the future agreement and not duplicated? How could the future agreement support strengthened cooperation, coordination and synergies between relevant IFBs with respect to CBTMT? What could be the role of a clearing-house mechanism in facilitating CBTMT? What kind of financial mechanism could be required to support CBTMT? How could such a mechanism be funded? What role should be made for private financing mechanisms?</td>
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<td>10th-11th</td>
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What modalities could be required to ensure effective monitoring and review of CBTMT under the future agreement?

Based on the discussions a session report was produced by the organizers which also informed this research.

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<th>Date</th>
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<th>Guiding Questions</th>
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<tr>
<td>19th March 2021</td>
<td>BBNJ intersessional webinar – cross cutting issues work stream</td>
<td>Virtual</td>
<td>Which of the Conference of Parties’ (COP) functions need to be set out in the future agreement and where and which functions could be left to elaborate in its rules of procedure? (Noting that the substantive functions of the COP are still under consideration in the context of the four elements of the package)? Would decision-making modalities be set out in the agreement and if yes, what would they be? Or would such decision-making modalities be left for the COP to agree on in a later stage in the context of its rules of procedure? How many members would the Scientific and Technical Body (STB) have? How would they be appointed? Would it consist of issue experts? Would the STB prioritize equal or proportional representation by different regions or be a body of the whole? Would it be gender balanced? Should the STB have any decision-making powers, or should its function be solely to make recommendations to the COP? How many members should the STB have and how should they be appointed? Should the STB be composed of issue experts, prioritize equal or proportional representation by different regions, or be a “body of the whole”? On the issue of other subsidiary bodies, is this something that needs to be reflected in the agreement or would it be decided by the COP? If you are in support of a subsidiary body besides the STB, what would the composition and functions of those bodies be or is that something the COP would decide? Would it have an advisory role? Who would be able to participate in the meetings of the COP, the STB, subsidiary bodies, and would all of these meetings be transparent with observers being able to participate? Would the future agreement need to specify who would participate in the first meeting of the COP? Who would perform the functions of the Secretariat? Would it be funded? Pending the entry into force of the agreement, who would perform the functions of a secretariat? What would be the relationship between the provisions on implementation and compliance in part VIII and the provisions on implementation, reporting, monitoring and review in the other parts of the future agreement? How would the future agreement address non-parties? Would the future agreement encourage non-parties to adopt laws and regulations consistent with its provisions? Would the future agreement include a specific provision that it would not affect the legal status of non-parties to UNCLOS or any other related agreements? If yes, where would it be placed? Would the procedure set out in part XV of UNCLOS apply mutatis mutandis to any dispute between States Parties to the future agreement concerning the interpretation or application of the agreement, irrespective of whether they are parties to the Convention? Would the future agreement provide for the possibility of the COP to seek an advisory opinion? What would be the relationship between the procedure for the settlement of disputes in the future agreement and the procedures under relevant IFBs? Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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<tr>
<td>29th-30th March 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on Institutional Arrangements</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were as follows: How would the future agreement promote compliance with its provisions? Should it include an implementation and compliance mechanism? What would be the relationship between the provisions on implementation and compliance in part VIII and the provisions on implementation, reporting, monitoring and review in the other parts of the future agreement? How would the future agreement address non-parties? Would the future agreement encourage non-parties to adopt laws and regulations consistent with its provisions? Would the future agreement include a specific provision that it would not affect the legal status of non-parties to UNCLOS or any other related agreements? If yes, where would it be placed? Would the procedure set out in part XV of UNCLOS apply mutatis mutandis to any dispute between States Parties to the future agreement concerning the interpretation or application of the agreement, irrespective of whether they are parties to the Convention? Would the future agreement provide for the possibility of the COP to seek an advisory opinion? What would be the relationship between the procedure for the settlement of disputes in the future agreement and the procedures under relevant IFBs? Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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<tr>
<td>28th April 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on implementation and compliance, non-parties and settlement of disputes</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were as follows: How would the future agreement promote compliance with its provisions? Should it include an implementation and compliance mechanism? What would be the relationship between the provisions on implementation and compliance in part VIII and the provisions on implementation, reporting, monitoring and review in the other parts of the future agreement? How would the future agreement address non-parties? Would the future agreement encourage non-parties to adopt laws and regulations consistent with its provisions? Would the future agreement include a specific provision that it would not affect the legal status of non-parties to UNCLOS or any other related agreements? If yes, where would it be placed? Would the procedure set out in part XV of UNCLOS apply mutatis mutandis to any dispute between States Parties to the future agreement concerning the interpretation or application of the agreement, irrespective of whether they are parties to the Convention? Would the future agreement provide for the possibility of the COP to seek an advisory opinion? What would be the relationship between the procedure for the settlement of disputes in the future agreement and the procedures under relevant IFBs? Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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<tr>
<td>29th April 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were as follows: What procedure would apply to amend the future agreement? What would be the entry into force conditions of the future agreement? How many instruments of ratification, approval, acceptance, or accession would be required? Should the future agreement provide for the possibility to provisionally apply its provisions pending its entry into force?</td>
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<td>Date</td>
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<tr>
<td>19th May 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on the financial mechanism</td>
<td>Virtual</td>
<td>This first part of this dialogue entailed presentations exploring different financial mechanisms and approaches followed by a panel discussion. The panellists giving presentations were the Gustavo Fonseca from the Global Environment Facility (GEF); Reginald Hernaus, Ministry of Infrastructure and Water Management, The Netherlands, who spoke about the financial mechanism under the Minamata Convention; Angelique Pouponneau, Chief Executive Officer, Seychelles' Conservation and Climate Adaptation Trust; and Alimata B. Kone, Permanent Secretary of the Côte d'Ivoire GEF National Commission. In the second part of the dialogue, participating delegations addressed the following guiding questions: What financial mechanism(s) is/are required for the implementation of the agreement, and in particular CBTMT? Do participants consider that an existing financial mechanism, such as the GEF, should be utilised, and/or should a wholly new special financial mechanism, e.g., a special fund, administered by the BBNJ Secretariat or another entity, be established? What are the pros and cons of each approach? Would any other funding streams/requirements need to be established in addition to a financial mechanism for CBTMT support and wider implementation of the future agreement? For example, do participants consider that a distinct funding stream is needed to support the institutional arrangements of the future BBNJ agreement (COP, STB and any other body/bodies, Clearing-House Mechanism and Secretariat)? If yes, what would be the source of funding? Contributions by each State Party according to the scale of assessments of the regular budget of the United Nations for the preceding financial year, adjusted to take account of participation in the agreement and/or another source? Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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<tr>
<td>26th May 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on ABMTs, including articles 4 and 6</td>
<td>Virtual</td>
<td>This dialogue had four main tranches of questions. <strong>Tranche 1</strong> With respect to Part III on measures such as ABMTs, including MPAs, what does “promote coherence and complementarity” mean? How could States promote coherence and complementarity through the future agreement and through relevant IFBs? Is it helpful to clarify what is meant by “not undermining” in article 4? This phrase also appears in Part III, article 15, paragraph 4. How does article 6 apply to Part III? How could States strengthen and enhance international cooperation? Who would be responsible for initiating such cooperation? What practical measures could be envisaged? <strong>Tranche 2</strong> What could be reflected in the future agreement in relation to the following: The process for identifying areas requiring protection through the establishment/designation of ABMTs, including MPAs: Who would identify such areas? Should there be indicative criteria listed in an annex to the future agreement to assist in the identification of such areas? The process for establishing/designating ABMTs, including MPAs: Who would establish/designate ABMTs, including MPAs? Who would adopt the related conservation and management/sustainable use measures? What could be considered a complementary measure? Is it a measure that falls outside the mandate of the relevant IFBs and/or would it be a measure that is stricter than the measure of the relevant IFBs, or is it another kind of measure? Should a COP under the future agreement be empowered to adopt complementary measures? Based on the discussions a session report was produced by the organizers which also informed this research.</td>
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</table>
What is the process if no action is taken by a relevant IFB pursuant to a recommendation of a COP under the future agreement (as described in article 19 Alt. 1, paragraph 1(c)(i) and article 19 Alt. 2, paragraph 1(c)), either due to the inability to form a consensus, for example, or to deliberate a decision? Should a COP be able to act in the event no action is taken? What time period is reasonable for relevant IFBs to act?

What is the process if the actions taken by two or more relevant IFBs are not mutually supportive?

What is the relationship between MPAs established by a limited number of States outside the framework of the agreement and the agreement?

What process should apply to such MPAs? Would such MPAs need to be established/designated under the future agreement in order to achieve "global status" or would that be a duplication of effort?

Tranche 3

Should the COP require an IFB or an entity to adopt a complementary measure or recommend a complementary measure be adopted? If a measure is adopted by an IFB would it apply to all BBNJ States Parties?

Tranche 4

What happens in this process if the action taken by IFBs are not effective? What if no action is taken by an IFB? What is the process if no action is taken?

Based on the discussions a session report was produced by the organizers which also informed this research.

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<tr>
<th>Date</th>
<th>Event Description</th>
<th>Type</th>
<th>Virtual Content</th>
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<tbody>
<tr>
<td>29th June</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were as follows:</td>
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<td>EAs, including SEAs</td>
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<td>If strategic environmental assessments (SEAs) are provided for under the future</td>
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<td>agreement, what could be the scope and process of such assessments? For example,</td>
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<td>who could have the responsibility to carry out SEAs? What could be their</td>
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<td>objective, purpose, how would they be operationalized, what could be the</td>
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<td>triggers, and programme of work? One could also address the relationship</td>
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<td>between SEAs and EIA and who would have the responsibility to carry out SEAs?</td>
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<td>What are the conditions under which the requirement to conduct an EIA would</td>
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<td>be triggered under the agreement and how would they be determined? How would</td>
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<td>an activity-based approach or an effects-based approach be assessed, taking into</td>
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<td>account considering also cumulative and transboundary impacts? How would</td>
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<td>article 194(2) of UNCLOS be operationalized? Would EIAs be done for activities</td>
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<td>only in ABNJ, or for all activities impacting ABNJ? For those in favour of a</td>
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<td>location-based approach, it would be good to hear how article 194(2) can be</td>
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<td>operationalized? How would transparency and accountability be ensured during the</td>
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<td>EIA process in light of the international community’s interest in the</td>
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<td>conservation and sustainable use of marine biological diversity?</td>
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<td>Notably, through its interventions in this dialogue, CARICOM’s affirmation of</td>
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<td>the need for SEA in the agreement was made and preliminary ideas on SEA</td>
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<td>were brought forward for the first time. The initial reactions by other groups</td>
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<td>were noted and led to the refining of CARICOM ideas on SEA. Paper 4 which</td>
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<td>discusses SEA in the BBNJ agreement and informs the CARICOM approach to SEA,</td>
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<td>was shaped, in part, by discussions in this dialogue). Based on the discussions</td>
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<td>a session report was produced by the organizers which also informed this research.</td>
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<td>30th June</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on</td>
<td>Virtual</td>
<td>This dialogue had two parts. The first part entailed a presentation and Q &amp; A</td>
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<td></td>
<td>MGRs with a particular focus on pre- and post-cruise</td>
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<td>with marine science expert Alex Rogers on pre-cruise and post-cruise</td>
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<td>notification</td>
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<td>Notification and the BBNJ agreement. The second part focused on the following</td>
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<td>guiding questions: How can the &quot;benefits&quot; from the sharing of scientific</td>
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<td>research and knowledge derived from MGRs be distinguished from the duty to</td>
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<td>promote scientific research (e.g. article 242) and its publication and</td>
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<td>dissemination (e.g. Article 244) of Part XIII of UNCLOS? What are the</td>
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<td>objectives and function of pre-cruise and post-cruise notification in relation</td>
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<td>to the agreement? Should the requirements for pre and post-cruise</td>
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<td>notification be detailed within the agreement or developed afterwards by the</td>
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<td>scientific expert body under the agreement? How will the notifications be</td>
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<td>monitored? Based on the discussions a session report was produced by the</td>
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<td>organizers which also informed this research.</td>
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<td>1st July</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were: The draft agreement contains a</td>
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<td>CBTMT</td>
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<td>non-exhaustive illustrative list of seven areas of CBTMT. Examples of each</td>
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<td>type are then expanded upon in Annex II. Are there any specific examples,</td>
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<td>listed under the different types in Annex II, that could be streamlined for</td>
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<td>greater coherence? Or is it important that each of these examples is retained?</td>
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<td>Conversely, are there any examples not currently included that might be added?</td>
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<td>In previous dialogues and conversations, &quot;needs assessment&quot; have been said to</td>
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<td>be essential to CBTMT. How are needs to be assessed and identified? Should there</td>
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<td>be different modalities for needs assessment depending on the different</td>
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<td>categories and examples of CBTMT? Should the state play a central role in needs</td>
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<td>assessments or can the needs assessment be completely left up to private actors?</td>
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For the providers, CBMTT might be seen as burdensome. In view of the list of in Annex II, how can CBMTT be incentivized?

Based on the discussions a session report was produced by the organizers which also informed this research.

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<tr>
<th>Date</th>
<th>Event</th>
<th>Type</th>
<th>Description</th>
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<tbody>
<tr>
<td>20th August</td>
<td>BBNJ Intersessional webinar – Discussion with the President – stocktaking and next steps</td>
<td>Virtual</td>
<td>This was a stock-taking webinar where Ms. Janine Coye-Felson (Facilitator of the informal working group on MGRs) and the President of the Conference presented highlights from the intersessional exchanges on MGRs, ABMTs, EIA, CBMT and cross-cutting issues.</td>
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| 1st-2nd September 2021 | Informal intersessional BBNJ High Seas Treaty dialogues on Principles and Approaches; Preamble and scope of application | Virtual | Guiding questions for this dialogue were:

**Principles and Approaches**

**Question 1**
What in the view of your delegation is the purpose of enumerating Principles and Approaches? How would the enumerated Principles/Approaches affect the agreement? Put differently, how would they interact with other parts of the agreement? Would they affect rules of international law outside the BBNJ agreement (e.g. the UNCLOS)?

Is the current treatment in terms of placement appropriate? In other words, might these principles/approaches be integrated into the more operational parts of the agreement, or might they be moved to the preamble?

How can Principles and Approaches be better operationalized?

**Question 2**
In the light of the above, are there any principles/approaches currently in article 5 that should: (a) absolutely be included? (b) absolutely be excluded? (c) be amended?

**Question 3**
Are there any additional principles/approaches not currently in article 5 that should be included or referred to? In this context, might the preambular paragraph alluding to intergenerational equity be included in the text of article 5?

**Question 4**
Should the agreement refer to the precautionary “principle” or “approach”?

**Preamble**
Do delegations consider that the current paragraphs in the President’s revised draft text of an agreement could be included in the preamble of the future agreement? What are delegations’ understanding of “acting as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations”? What does it entail?

Are there any additional elements that should be reflected in the preamble and/or elsewhere in the future agreement? (For example, delegations have submitted proposals to the President’s revised draft text of an agreement, and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment recommended in his report to the 75th session of the General Assembly that “[t]o protect human rights, healthy ecosystems and biodiversity, States should ... [e]nsure that the proposed agreement on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction includes appropriate consideration of human rights”)

**Application**

Should any vessels be excluded from the scope of application of the agreement? What about aircraft?

Does article 8 on “Application” in the President’s revised draft text apply only to Part II of the future agreement or the entire agreement? Are there any elements in article 8 that should be added or be removed?

This dialogue also included an exchange of views on the intersessional programme up to that point and future directions.
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<th>Date</th>
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<tr>
<td>14th October 2021</td>
<td>BBNJ Intersessional webinar – clearing house mechanism</td>
<td>Virtual</td>
<td>In this webinar a presentation was given by the International Oceanographic Commission of UNESCO (IOC-UNESCO) on efforts they have been undertaking in developing a clearing-house mechanism and the potential usefulness/applicability of this mechanism to the future BBNJ agreement.</td>
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<td>20th-21st October</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on Implementation, compliance and dispute settlement; Perspectives on data and information management and MGRs, including sharing of benefits</td>
<td>Virtual</td>
<td>This dialogue began with a presentation and Q&amp;A session with a representative of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes before going into the substantive issues. Guiding questions for this dialogue were: implementation and compliance. What type of assistance, and by whom, do you contemplate States Parties will need to assist them in the implementation of the agreement? What kind of support should be provided for in the agreement to assist developing countries, including SIDS, to fulfill their obligations under the agreement? How do delegations view the role of differentiation and equity in relation to implementation? Is there a role for the COP to promote compliance and address cases of non-compliance with the agreement? What kind of measures can be envisaged in cases of non-compliance? Dispute settlement. What could be the mechanisms for settling disputes under the agreement “by other peaceful means of their own choice”[Article 54]? There has been some discussion about the possible inclusion of a dispute prevention mechanism in the agreement – how could such a mechanism work? Perspectives on data and information management. What will be the purpose and key characteristics of the BBNJ Clearing House Mechanism? What are the necessary functions and operations that need to go into the agreement? In terms of design, would it be a hub that connects with other databases; a database of its own right; or a hybrid of both? Would it be open to all, or need some restricted access areas? How would confidentiality and intellectual property issues be addressed? Who could post/link information and data to the clearing house mechanism? Would it be part of the Secretariat? Could it be outsourced to an existing body/database? Both? If a Clearing House Mechanism were outsourced would it be &quot;willing&quot;/able to &quot;take orders&quot; from a BBNJ COP, as opposed to only from its own leadership structure? With respect to existing databases, are there constraints in terms of accessibility and interoperability? What would be the relationship between the Clearing House Mechanism under the agreement and existing databases? MGRs, including questions on the sharing of benefits. How would transparency with respect to activities related to Marine Genetic Resources and associated data and information be ensured and operationalized at different stages? Who would be responsible for taking the action? What benefit-sharing would be triggered? Should the future agreement address Intellectual Property Rights and, if so, how?</td>
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<td>8th-9th December 2021</td>
<td>Informal intersessional BBNJ High Seas Treaty dialogues on Implementation, compliance and dispute settlement; Relationship between the Institutional Arrangements under the future agreement</td>
<td>Virtual</td>
<td>Guiding questions for this dialogue were: implementation, compliance and dispute settlement. What type of assistance, and by whom, do you contemplate States Parties will need to assist them in the implementation of the future agreement? What kind of support should be provided for in the agreement to assist developing countries, including SIDS, to implement the future agreement? How do delegations view the role of differentiation and equity in relation to implementation? What is the role for the COP to promote compliance and address cases of non-compliance with the future agreement? Is there a role for an implementation and compliance mechanism? What kind of measures can be envisaged, including in cases of non-compliance? What could be the relationship between a potential implementation and compliance role for the COP and a potential implementation and compliance mechanism and the mechanisms for settling disputes under the future agreement? Relationship between the Institutional Arrangements under the future BBNJ agreement and relevant IFBs</td>
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<td>BBNJ agreement and relevant IFBs; MGRs, including questions on the Sharing of Benefits; and Transfer of Marine Technology</td>
<td>How can coherence among efforts towards, and the harmonization of relevant policies and measures for, conservation and sustainable use of BBNJ be ensured? How should the agreement address situations where coherence and harmonization falls short? Consider the following scenarios: One organization fails to take a decision to adopt protective measures, perhaps due to difficulties in achieving agreement? One organization wants to open an area for exploitation that another organization has described rare or fragile, or important for threatened or endangered species, or satisfies the other criteria for an Ecologically or Biologically Significant Marine Area (EBSA), or An organization allows activities, such as the exploitation of resources, in a way that may affect the marine biodiversity of ABNJ? An organization allows an activity that may adversely affect the ecological integrity of an existing MPA. Who would be responsible for taking the action and ensuring that the objective is achieved? MGRs, including questions on the Sharing of Benefits How would transparency with respect to activities related to MGRs and associated data and information be ensured and operationalized at different stages? Who would be responsible for taking the actions at the respective stages? What benefit-sharing would be triggered? How can the future agreement “future proof” the process for the reporting and benefit-sharing of marine genetic resources, especially in light of evolving technologies? Transfer of Marine Technology Should the future agreement provide for a transfer of marine technology mechanism? If so, what should the main functions of such a mechanism include? What are the essential elements of such a mechanism? Should the private sector be involved in marine technology transfer activities under the future agreement and, if so, how?</td>
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<td>16th-18th February 2022 Informal workshop in advance of the 4th session of the IGC Lisbon, Portugal</td>
<td>This workshop was an opportunity to: (i) Identify and explore common positions on the package elements of the President’s draft text; (ii) Discuss expectations for IGC4 and how to get there; and (iii) Explore modalities and procedures that may be relevant to successfully concluding the negotiations. It included 29 participants from 23 negotiating delegations and a further 9 participants from 5 civil society organizations. Ideas emanating from this research were raised at this workshop.</td>
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<td>7th-18th March 2022 4th Session of the BBNJ IGC New York, USA</td>
<td>This was the formal resumption of the BBNJ negotiations after the lengthy intersessional period due to the COVID-19 pandemic. At this IGC session, textual proposals, based on or informed by this research, were tabled. A summary of the IGC4 session can be found at: <a href="https://enb.iisd.org/sites/default/files/2022-03/enb25225e.pdf">https://enb.iisd.org/sites/default/files/2022-03/enb25225e.pdf</a> (accessed: 30th March 2022).</td>
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<td>Intermittent throughout the study period Bilateral discussions Virtual and in-person</td>
<td>Bilateral discussions were held with delegations such as G77+China, PSIDS, CLAM, African Group, UK, Belgium, Argentina, Singapore, Panama, Finland, New Zealand, Costa Rica, Australia, Chile, EU, Sweden, Chile, USA, Germany et al.</td>
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<tr>
<td>Frequent throughout the study period Internal group discussions Virtual and in-person</td>
<td>Discussions held among CARICOM member countries and other CARICOM stakeholders.</td>
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4 Findings and Discussion

This body of work produced this Kappa, five core papers and one additional paper for which I was a contributing author. In its entirety, the compilation seeks to achieve the research objectives by detailing answers to the research questions (Figure 4). The findings of the research will be discussed more extensively in the forthcoming sub-sections.

Figure 4: Map of the relationships among research objectives and questions and the output documents
4.1 Research Question 1: How does CARICOM understand and interpret the blue economy?

The term ‘Blue Economy’ was first popularised in scholarly literature through Gunter Pauli as the title of a book he authored which discussed moving society from scarcity to abundance by pioneering advances replicating the waste free efficiency of ecosystems (Pauli, 2010). While marine ecosystems certainly may have provided examples from which Pauli drew inspiration, it is safe to say that oceans were not the major focus of that body of published work. An alternative, more contemporary use of the term, and certainly the one on which this research is based, has its roots in the 2012 United Nations Conference on Sustainable Development, otherwise known as Rio+20.

On the agenda at Rio+20 was advancing the concept of the green economy which, put broadly, concerned encouraging economic growth while significantly reducing environmental degradation, maintaining ecosystems and improving human well-being and social equity (Barbier, 2012). However, SIDS struggled to find great connection with the largely terrestrial based construct of the green economy. With their small land masses but large ocean spaces, SIDS, and in particular Pacific SIDS, used Rio+20 to mainstream the idea of the blue economy, which, it was felt, aligned more closely with their developmental circumstances (Dornan et al., 2018).

The blue economy construct zeroed in on developing marine based activity while emphasizing improved human well-being, social justice and equity, ensuring conservation of natural resources and ecological sustainability. Situated within a present day context where economic growth is still the most recognised metric of development, but where planetary boundaries, tipping points and rising inequality are problematized as major threats to this, the blue economy, like the green economy, is romantically framed as a means to achieving all three pillars of sustainable development simultaneously (Winder & Le Heron, 2017).

Although originally advanced by Pacific SIDS, since Rio+20 the blue economy agenda has garnered global appeal, with the concept being adopted and adapted in a range of circumstances and contexts from island nations to coastal continental States, both in the developing and developed world (Childs & Hicks, 2019; Duarte, 2016; European Commission, 2012; Gamage, 2016; Llewellyn et al. 2016; Patil et al., 2016; Wenhai et al., 2019). Indeed, perhaps because the concept of the blue economy is fuzzily defined (Smith-Godfrey, 2016), the different interpretations of what blue economy means has allowed it to gain traction in the varying regional, national and local contexts.

For Rio+20, Caribbean SIDS were not particularly supportive about pushing the ‘blue economy’ terminology, offering reservations against having “too many colour
“economies” (UN Department of Economic and Social Affairs, 2011, p. 10, as cited by Silver et al., 2015). Subsequently, the resistance did not immediately abate, as evidenced by the 2014 UN General Assembly Resolution on SIDS Accelerated Modalities of Action (SAMOA) Pathway, where the term ‘sustainable ocean-based economy’ is preferred to the use of ‘blue economy’.

Nonetheless, in more recent times the blue economy terminology has been increasingly permeating the policy discourse in the Caribbean. CARICOM leaders can now be heard making reference to the blue economy in speeches occurring in national, regional and international fora. As more tangible examples of acceptance, it is instructive to see that Barbados now has a Ministry of Maritime Affairs and the Blue Economy, Belize a Ministry of Blue Economy and Civil Aviation, Antigua and Barbuda a Ministry of Social Transformation, Human Resource Development and the Blue Economy and Dominica a Ministry of Blue and Green Economy, Agriculture and National Food Security.

This research revealed that CARICOM member States are at varying stages of progress in articulating their blue economy strategies. Nonetheless, it is generally recognized and acknowledged that the activities associated with fishing, offshore oil and gas, maritime transport, and tourism, including cruise tourism, are major constituents of the countries’ blue economy. In addition, aquaculture, marine renewable energy, bioprospecting, sea bed mining, and carbon sequestration are seen as avenues of great potential (Patil et al., 2016; Roberts, 2014).

Environment conservation and social equity dimensions are openly acknowledged as important parts of blue economy development in CARICOM countries but little guidance is provided with respect to how and when these considerations are prioritized in comparison to economic growth. Also, it has been observed that CARICOM as a whole does not have an overarching blue economy or ocean policy, although it is noteworthy that the Organization of Eastern Caribbean States (OECS), which is made of primarily of a subset of CARICOM countries, does have the 2013 Eastern Caribbean Regional Ocean Governance Policy (ECROP).

The critical need for a CARICOM blue economy and/or ocean governance policy is discussed further in Paper 1. This includes with a view to improving engagement and outcomes at a global level on ocean issues, of which BBNJ agreement negotiation is one example. Also, urgently important, and probably a pre-requisite for developing a regional policy, is a coordinating mechanism to increase integration in ocean management efforts for CARICOM. This is discussed in detail in Paper 2.

It is important to stress that the CARICOM region is not bereft of existing institutions and expertise that can serve as a platform to formulate and execute a blue economy and ocean governance vision. The Caribbean Regional Fisheries
Mechanism (CRFM), the Caribbean Tourism Organization (CTO), the Caribbean Centre for Renewable Energy and Energy Efficiency (CCREEE), the Caribbean Community Climate Change Centre (CCCCC), the University of the West Indies (UWI), and the Environmental Health and Sustainable Development Department of the Caribbean Public Health Agency (EHS-CARPHA) are all such institutions that could be integral to any efforts.
4.2 Research Question 2: How are the regional interests of CARICOM in negotiating the BBNJ agreement influenced by the blue economy concept?

There is a conspicuous absence of an overarching blue economy or ocean policy for CARICOM to inform and guide discussions on the BBNJ agreement and its negotiation. Connected to this, there is also no formally institutionalized, enduring and efficiently functioning region-wide stakeholder coordinating and participatory mechanism to encourage ongoing broad-based engagement in efforts to gather input and refine positions on oceans, including with respect to BBNJ.

Nonetheless, in the negotiations it is important for the CARICOM group to have a clear understanding of its regional interests for the bloc to be influential, effective and impactful. This section examines the topics under negotiation in the BBNJ agreement, along with associated cross-cutting issues, to formulate a regional interest analysis for CARICOM from a blue economy perspective.

As alluded to earlier, the region’s interests were distilled from the author’s participation in meetings (stakeholder and otherwise) on BBNJ and oceans more generally, in consultations with actors both within and outside the region, and from personal experience and insights. It should be noted that the findings discussed below, which are organized by negotiation theme, align closely in many respects with the outcomes of a separate stakeholder engagement exercise conducted subsequently by the CANARI. That exercise, highlighted in Paper 5, elicited 10 regional priorities after stakeholder perspectives were synthesized4.

4.2.1 Marine Genetic Resources (MGRs) including questions on sharing of benefits

The huge financial windfalls forecasted from MGR of areas beyond national jurisdiction (ABNJ) through their use in developing unique pharmaceutical and cosmetic products and their employment in other scientific and commercial processes (Leary et al., 2009), has engendered great interest in this element of the BBNJ package. There are already examples of successful product development from marine genetic resources and evidence of an increasing interest and thrust to utilize

them, especially in the developed world (Blasiak et al., 2018). While it is recognized that the true scale of the potential benefits remains unknown, the largely speculative outlooks are decidedly positive (Tiller et al., 2020). This has motivated developing countries to seek what is perceived as their just returns from ABNJ MGR exploitation through this agreement.

In light of equity considerations in the blue economy (Österblom et al., 2020), the interests of CARICOM lie in having MGR from ABNJ being explicitly recognized as the common heritage of mankind (CHM). This was the group’s position since the Prep Com leading up to the IGC, as evidenced by submissions made to the Chair of that process in this regard. In ABNJ the CHM principle currently applies to the international sea bed ‘Area’ and its resources. This is enshrined in Article 136 of UNCLOS with the International Seabed Authority (ISA) administering activity in the Area acting on behalf of mankind as a whole. As a result, among other things, benefits resulting from exploitation of the resources of the Area are to accrue to and be shared among the international community and may not be wholly appropriated by States or other entities including for commercial profit and private gain.

However, debate is rife and unresolved as to whether MGR of the Area (and by extension ABNJ) can be, and should be, considered CHM (Marciniak, 2017; Elferink, 2017; Scovazzi, 2020). The opposing viewpoint argues that MGR of ABNJ should be governed by the ‘freedom of the high seas’ doctrine which allows users the right to access and extract renewable resources without being obligated to share the proceeds resulting from such, with the international community. This outlook suits developed States who currently have the capacity and expertise to exploit and develop MGRs from ABNJ. Indeed, Vadrot et al. (2021) consider CHM through an ethnographic lens and views the debates occurring in the BBNJ process as a means for developing countries to challenge the deeply entrenched inequities in the current world order.

The debate as to which principle of international law applies to MGR of ABNJ may as yet prove intractable thus pre-empting any explicit proclamations on the issue. Nonetheless, this does not preclude having provisions in the agreement that allow the governance regime for ABNJ MGR to take on characteristics that treat these

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5 CARICOM submission to the Chair (December 2016):

6 CARICOM submission to the Chair (April 2017):

7 “Resources” in Part XI of UNCLOS is defined in Article 133 as all solid, liquid or gaseous mineral resources in situ in the Area at or beneath the seabed, including polymetallic nodules.
resources like they are CHM. In light of this, having provisions in the text that mandate non-monetary and monetary benefit sharing are priority for CARICOM (Harriet-Davies et al., 2020; Long, 2022). The group is also cognisant of the fact that benefit sharing, especially as it relates to the monetary aspects, would require an effective traceability mechanism to monitor the extraction, utilization and development of MGR from ABNJ, or genetic information derived there from (Humphries et al. 2021).

Non-monetary benefits within the context of this part of the BBNJ agreement may refer to things such as partnership on research cruises, facilitated access of CARICOM researchers to ex situ MGR samples and genetic sequence data and the open-sharing information on and scientific outputs of ABNJ MGR research (Rogers et al., 2021). Monetary benefit sharing is more ambitious in intent where CARICOM would want an obligation on those who have used or are in the process of using ABNJ MGR to develop commercial products, to contribute part of the proceeds into a special fund. Milestone payments along the product development value chain may be the means via which this fund is resourced and/or through percentage royalties from the revenue obtained from final commercialized products. The fund could then be used to, *inter alia*, finance ocean conservation endeavours and build the capacity of SIDS to manage their marine environment sustainably.

While codifying mandatory sharing of monetary and non-monetary benefits may be the main focus of CARICOM as it relates to this Part, securing other commitments regarding MGRs is also of interest. Chief among these are guarantees on collaboration and capacity development in conducting MGR research (Harden-Davies & Gjerde, 2019). Opportunities and capacities within CARICOM to conduct pure and applied marine science can be greatly enhanced (Harden-Davies et al., 2020; McConney et al., 2016), including for specialized fields such as marine genetic research. At the same time, capacity development and knowledge and technology transfer to apply MGR tools and techniques useful in ocean conservation and management is also desirable. For example, barcoding, meta-barcoding and environmental DNA (eDNA) are all techniques CARICOM countries can increasingly utilize in efforts to manage the marine environment and encourage sustainability (Díaz-Ferguson & Moyer, 2014).

### 4.2.2 Measures such as Area-Based Management Tools (ABMTs), including Marine Protected Areas (MPAs)

With just over 1 percent of marine ABNJ protected, Aichi biodiversity and Sustainable Development Goal 14 (SDG 14) targets of establishing conservation measures for at least 10 percent of coastal and marine areas by 2020, has not been achieved (Thomas et al., 2014; Carr et al., 2020). Despite this, and looking towards
2030, the international community views the ABMT part of the BBNJ agreement as crucial to expanding and effectively implementing cross-sectoral marine biodiversity protections through an integrated, ecosystem approach that is adaptive and grounded in sound science (Gjerde et al., 2016; Warner, 2019).

All CARICOM countries, including by virtue of being State Parties to the Convention on Biological Diversity (CBD), fully participating in the 2030 Agenda for Sustainable Development and in recognizing their global stewardship responsibilities, are completely supportive of a comprehensive ABMT thrust through this part of the agreement. Alongside this however, to supplement regional buy in, the importance of this element of the package can be elucidated from an inward-looking perspective.

Ecological connectivity between ABNJ and coastal waters is acknowledged as an important yet understudied phenomenon in many respects (Maina et al., 2020; Popova et al., 2019; Vierros et al., 2020). This statement holds true for the Caribbean Sea’s connection to the adjoining west Central Atlantic Ocean and beyond. Ecological connectivity can be passive whereby larvae and other free-floating organisms are brought to national territories by prevailing ocean circulation patterns and currents. Alternatively, the mode of connectivity can be an active one where migratory species traverse geographic ranges that span both national and international waters.

Connectivity driven in this latter way is of particular interest to CARICOM members in relation to conceptualizing and implementing area-based management tools beyond national jurisdiction. Within CARICOM, numerous examples exist of community-based enterprises and sustainable livelihood activities built around transient species that spend portions of their seasonal migratory or life cycles in waters that fall under the jurisdiction of member countries. These activities provide significant social, cultural and economic benefits on local and national scales.

The Atlantic sub-population of the endangered leatherback turtle is one such species. Its range spans the entire Atlantic Ocean but, being very selective in where it nests, it finds a few suitable sites in some CARICOM countries including Suriname, Guyana, Antigua and Barbuda, Dominica and Trinidad and Tobago (Horrocks et al., 2016). The latter two, and Trinidad and Tobago in particular, have established thriving community-based ecotourism industries based around the nesting activity of this charismatic species (Harrison, 2007; Sammy et al., 2008). Whale watching in the eastern Caribbean is another ecotourism activity that has burgeoned in CARICOM countries based on migratory species. Resident populations of whales are present in the region but the peak whale watching season in the Caribbean is the Northern Hemisphere winter months, coinciding with when some species, like humpback whales, travel from high latitudes to breed. Again,
these mega faunae serve as the basis of a profitable and socially beneficial nature-based tourism industry (Alie, 2008).

Migratory species, some of which are critical constituents to the blue economy of CARICOM countries, need to be protected from the myriad of threats that exist both within and beyond national jurisdictions (Halpern et al., 2007). Threats are multisectoral, for example, in open water, endangered leatherback turtles are often victims of fisheries by-catch while whales are threatened by, inter alia, ship strikes and underwater noise (Lascelles et al., 2014). Other threats to migratory species are novel and at times poorly understood such as threats posed by climate change and ocean acidification. Within the context of the BBNJ agreement, CARICOM wants to ensure mechanisms are in place for member countries to have a legitimate voice in where and how ABMT are established and implemented in ABNJ, even those that may be perceived to be unrelated to or far removed from the region.

Alongside this though, CARICOM countries are also cognizant of the fact that increased ABMT enactment and implementation through this agreement would necessarily mean greater restrictions on vessels flying their flags and an increased onus on flag States to ensure rules are adhered to. A number of CARICOM States operate open registries and have been identified by the International Transport Workers’ Federation (ITF) as ‘flag of convenience’ (FoC) countries. CARICOM countries with this designation include Antigua and Barbuda, Bahamas, Barbados, Belize, Jamaica and Saint Vincent and the Grenadines. According to the ITF, the abuse of workers’ rights, illegal, unreported and unregulated (IUU) fishing and marine pollution are some of the international concerns frequently associated with FoC vessels and it is often found that the associated flag States are ineffective in the monitoring, control and surveillance (MCS) of their vessels (Miller & Sumaila, 2014; Tanaka, 2015).

Failure to implement measures to discourage vessel non-compliance with international rules and standards may not necessarily hold true for CARICOM FoC countries. However, for example, in response to sanctions imposed by various bodies, the Caribbean Regional Fisheries Mechanism (CRFM) has, in the past, lent assistance to both Belize and Saint Vincent and the Grenadines to develop legislation and other processes aimed at addressing high seas IUU fishing by vessels flying their flags (Murray & Singh-Renton, 2020). This points to the fact that all members of CARICOM must perform their due diligence by having strong legislation and MCS mechanisms to encourage adherence of vessels flying their flags to international rules and best practices, including those resulting from the BBNJ agreement.

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Lastly, current conservation approaches and practices stress on the importance of having a network of protected areas and implementing measures within national jurisdictions which complement those in ABNJ (O’Leary et al., 2012). Indeed, complementary measures across jurisdictional boundaries are a means towards building resilience, including as it relates to climate change (Bodansky et al., 2017). CARICOM is therefore pushing for commitments towards developing capacity to conceptualize, implement and manage ABMT, both within and beyond national jurisdiction, and to conduct the science needed to inform conservation. In addition, capacity building can also extend to MCS activities and the transfer of technology that would enable this (Cremers et al., 2020).

4.2.3 Environmental Impact Assessment (EIA)

The conduct of EIA is recognised as an obligation under general international law (Payne, 2011; Boyle, 2011) and it is seen as a process that operationalizes duties and principles of international environmental law, including the duty to prevent environmental harm, the precautionary principle and the duty to cooperate (Craik, 2020). In UNCLOS, the requirement of States to carry out EIA for activities proposed in marine areas is codified under Article 206. In ABNJ, the standards and processes for the conduct of EIA are fragmented, varying considerably among sectors, among regions and sometimes within sectors. In some instances, the duty to conduct EIA and the manner of its undertaking may not yet even be a consideration (Elferink, 2012; Warner, 2012). The BBNJ agreement, in part, seeks to bring some coherence to the conduct of EIA in ABNJ. It also broaches the need to have more proactive environmental assessment in ABNJ with text that speaks to the conduct of strategic environmental assessment (SEA) for ABNJ.

Carrying out projects in ABNJ are expensive, technical endeavours and the SIDS of CARICOM currently lack the capacity and expertise to do so. Therefore, apart from the desire and necessity to act as global stewards for the international commons of ABNJ (Ridings, 2018), the importance of paying close attention to what is negotiated in the EIA part of the BBNJ agreement may not be immediately apparent to CARICOM. However, ocean connectivity, and more so in this case, passive connectivity through ocean circulation, needs to be at the forefront of CARICOM’s thinking when assessing their interests in this part of the agreement. Activities occurring in ABNJ can have huge negative impacts on the nearshore and coastal ocean economies of CARICOM, especially if SEAs and EIAs are not adequately conducted and mitigation, monitoring and review measures not implemented for proposed projects.

Some studies have modelled circulation connectivity between ABNJ and the coastal zones in the Caribbean (Murphy et al., 1999; Papova et al., 2019). It is therefore known that this connectivity exists but, as alluded to earlier, there is great scope to
improve scientific knowledge and understanding of the processes and patterns that link ABNJ waters to those of the Caribbean Sea. That being said, in recent years this connectivity and some potential consequences, when examining it through the lens of the BBNJ agreement, has been adequately demonstrated in the form of Sargassum inundation of CARICOM States’ coastlines.

*Sargassum* is a pelagic, free floating form of brown algae that is only found in the Atlantic Ocean. Usually associated with the Sargasso Sea, it is a natural part of the ocean ecosystem, providing essential habitat, nursery grounds and food for many marine species (Huffard *et al*., 2014). Prior to 2011 it would only be found irregularly in the Caribbean Sea and at low densities. Since 2011 however, masses of *Sargassum* have been washing ashore in Caribbean countries bringing with it immense social, economic, health, environmental and cultural impacts (Louime *et al*., 2017; Resiere *et al*., 2018; van Tussenbrock *et al*., 2017).

The identified source of this *Sargassum* is new, not from the Sargasso Sea but rather from the Equatorial Atlantic (Putman *et al*., 2018). In what has been coined the ‘Great Atlantic Sargassum belt’ by Wang *et al.* (2019), *Sargassum* blooms from the Equatorial Atlantic migrate with ocean currents up through the Caribbean bringing with it negative effects when it beaches or overwhelms coastal waters. This has direct blue economy implications especially for fishers and the tourism sector. It is illustrative of the connectivity of ABNJ regions of the Central Atlantic to the coastal areas of CARICOM countries. Parallels can therefore be drawn of potential far reaching consequences should there be fallout from activities occurring in ABNJ due to their inadequate assessment and management through the BBNJ agreement.

With this in mind, it is in CARICOM’s interest to seek more comprehensive management of ABNJ through inclusion of the conduct of SEA in the agreement and through ‘internationalization’ of the EIA process. With regard to the latter, ‘Internationalization’ can occur in many different respects and will be a way to encourage transparency, accountability and legitimacy and to ensure that diverse interests and sources of knowledge are brought to bear in informing the EIA process. It is different from the EIA process being closed and secretive, with no independent oversight (Doelle & Sander, 2020). Some aspects of internationalization that would serve CARICOM’s interests include:

- Broad scale participation in all stages of the process
- Public access to the documents coming out of the EIA process, including assessment reports, decision making documents and monitoring and review reports
- Independent scientific review of EIAs for proposed activities and decision making based on recommendations of that scientific review
The last point is especially important in providing some form of reassurance to CARICOM States should they lack the capacity, both human and technical, to review EIAs for proposed activities in ABNJ that have the potential to impact the region. This may very likely be the case in many instances judging from current resource and competency constraints. Connected to this point, CARICOM is also seeking capacity development and training in the conduct and evaluation of EIAs and SEAs through the BBNJ agreement.

Finally, a cross-cutting issue for the agreement, but one that is especially relevant with regard to the outcomes of EIA, is liability and responsibility. The ‘polluter pays’ principle of international environmental law is fundamental to guiding deliberations on a liability regime within the BBNJ agreement (Long, 2019). However, detailing the intricacies of such a regime is by no means straightforward as evidenced by ongoing discussions at the International Seabed Authority (ISA) on liability and responsibility for deep seabed mining activities in the Area (Freestone, 2011; MacMaster, 2019; Svendsen, 2020). Nonetheless, it would be in CARICOM’s interests that mechanisms are put in place that would facilitate timely access to relief, redress and rehabilitation in the event of damage caused by approved activities. This access to redress may be through, for example, creation of a compensation and rehabilitation fund under the agreement or provisions that require proponents of activities to show proof of strict accident and liability insurance for permitted activities.

4.2.4 Capacity-building and transfer of marine technology (CBTMT)

In UNCLOS, provisions relating to capacity-building in scientific and technical aspects of conservation, management and sustainable use of the marine environment are found primarily within parts XI, XII and XIII of the treaty text (Harden-Davies & Snelgrove, 2020). In addition, complementing the relevant articles is part XIV of the Convention which speaks specifically to development and transfer of marine technology.

These provisions make it incumbent on States Parties, often directly or through competent international organizations, to lend assistance, transfer technology to and boost capacity to undertake marine science and management of developing countries in particular. These features of UNCLOS are a recognition and acknowledgement that, in order for less developed State parties to fulfil their obligations under the Convention, concerted and sustained capacity development efforts would be required. Effective CBTMT is also recognized as a path towards increasing equity in the sustainable use and management of the ocean (Österblom et al., 2020).
Today, four decades after the conclusion of UNCLOS negotiations, there is the recognition that the schemes and approaches for capacity building and technology transfer have not been as effective as hoped, requires a revisit and warrants the international community’s renewed efforts to that cause (Long, 2007; González, 2007). In light of this, the BBNJ agreement is an opportunity to get more concrete commitment, devise more practical and effective means of actualization and broaden the scope of capacity-building to be provided as it relates to ocean governance and management.

For CARICOM, capacity-building and the transfer of marine technology is a major element of interest within the negotiating package. Indeed, this Kappa has already identified a number of areas where CARICOM should be seeking capacity-building and technology transfer through the agreement. These include:

- Conduct of MGR research (and pure and applied marine science in general)
- Application of MGR tools and techniques
- Strengthening of MCS systems and mechanisms
- Conceptualization, implementation and management of ABMTs
- Conduct and evaluation of EIAs and SEAs

Current modalities see capacity-building and technology transfer relating to oceans taking place on a largely voluntary basis, even though this is not what some original negotiators of the Convention, especially from the developing world, may have envisaged (Yarn, 1984). Additionally, there is no dedicated funding mechanism to action capacity-building and technology transfer activities under UNCLOS like, for example, the Green Climate Fund now found under the UN Framework Convention on Climate Change (UNFCCC) and the Special Climate Change Fund under the Global Environment Facility (GEF) (de Sépibus, 2015; Bowman & Minas, 2018). The GEF does provide some ocean (and therefore UNCLOS) related funding where activities fall under its international waters and biodiversity conservation focal areas (Freestone, 2007). Notwithstanding, this arrangement can be described as ad hoc as the GEF has never been designated the funding mechanism for UNCLOS (Dolzer, 1998).

Great benefit ensues from having multiple funds be established through the BBNJ agreement, serving separate, distinguishable functions such as the financing of effective projects designed to implement the agreement and the funding of capacity building and technology transfer for developing States Parties. However, the merits or demerits of having these funds fall under the umbrella of GEF, be situated elsewhere, or involve a mixture of both options are outside the scope of this discussion.
Nonetheless, CARICOM is seeking to secure mandatory commitments to capacity building and technology transfer coming out of the BBNJ negotiations. These commitments need to be tied to a dedicated funding mechanism. In addition, it should be ensured that needs and priorities determined by the recipient States form the basis of the respective capacity building efforts rather than them being donor driven⁹. Importantly, CARICOM also wants to project its inclination that in the interim, while identified capacity-development needs are being met, contingencies and mechanisms should be in place through the agreement or otherwise, to ensure that member States can fulfil their duties as contracting parties.

As a final point, Harden-Davies et al. (2022) provides further discussion and insights on the BBNJ agreement and its potential, from a SIDS perspective, to influence capacity building and technology transfer. That paper, which I co-authored, can be found in the appendices as Paper 6.

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⁹ To be noted is that the conduct of needs-assessments is an area that may in itself require significant capacity-building efforts.
4.3 Research Question 3: From a regional group perspective, what approaches can CARICOM propose to encourage and achieve improved outcomes in the EIA part of the BBNJ agreement?

Notwithstanding the existing imprecision of what both sustainable development and blue economy represent, the family of approaches to environmental assessment (including both EIA and SEA, which are particular focus in this section) have been identified as important tools in pursuing sustainability (Sheate, 2009). Indeed, Principle 17 of the Rio Declaration provides that EIA must be conducted for proposed activities that are likely to have significant adverse impact on the environment. Rulings in international courts, including the seminal International Court of Justice (ICJ) judgment in the Pulp Mills on the River of Uruguay (Argentina v. Uruguay) case, the Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) case and the Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) case have all confirmed the conduct of EIA as an obligation under customary international law (Tanaka, 2017).

With origins in the late 1960s, the initial intent of EIA was to ensure the adequate consideration of the bio-physical environment in decision-making relating to development proposals and to serve as an instrument for strengthening environmental management processes (Morrison-Saunders & Bailey, 1999). In more recent times there has been the practice of integrating the other dimensions of sustainability i.e. social and economic considerations, into environmental assessment (Bond et al., 2012), although some have cautioned that the bio-physical environment and its protection should remain the core focus in order to avoid trade-offs being made which do not prioritize ecosystem integrity (Morrison-Saunders & Fischer, 2006). In this regard, Gibson (2006) has usefully provided some core criteria to consider in order to accommodate sustainability in assessment of proposed developments including:

- Socio-ecological system integrity
- Livelihood sufficiency and opportunity
- Intergenerational equity
- Intragenerational equity
- Resource maintenance and efficiency
- Socio-ecological civility and democratic governance
- Precaution and adaptation
• Immediate and long term integration

Additionally, if trade-offs are to be made arising out of the assessment process a few basic rules of trade-off include: maximum net gains, burden of argument on trade-off proponent, avoidance of significant adverse effects, protection of the future, explicit justification and open processes that allow effective involvement of all stakeholders (Gibson, 2006).

Environmental assessment under the BBNJ agreement, if procedurally and substantively robust, has the potential to afford CARICOM the opportunity to guide blue economy development in ABNJ (and within national jurisdiction) along a path that is in-keeping with the group’s vision of sustainability. Added to this, the EIA part of the agreement provides a good case study to exhibit and propose pathways to resolve an existing tension which cuts across the agreement, that of equity concerns and power dynamics apparent in managing the global commons.

As seen in the previous section, CARICOM’s interests in the potential BBNJ agreement are many across the negotiating package and indeed, within the EIA part. Given that the negotiation of the agreement is a multilateral process, apart from delegations understanding and seeking to capture their particular interests, it is also important to understand the interests of other parties involved in the negotiation. In attempts to satisfactorily capture heterogeneous interests and thus arrive at consensus, innovative approaches are often required in crafting proposals. This research will now go on to outline innovative approaches to aspects of the EIA part of the agreement. In-keeping with the action research methodology adopted, the proposals that were crafted arose through intimate participation by this researcher in the BBNJ negotiations in the role of coordinator for CARICOM on EIA in the BBNJ IGC.

4.3.1 ‘Internationalization’ of EIA in the BBNJ agreement

The report issued at the conclusion of the 3rd session of the IGC, Chair of the EIA informal working group highlighted that there is little convergence with respect to “the degree to which the environmental impact assessment process should be ‘internationalized’, for example by assigning roles to the scientific and technical body (STB) or the conference of the parties (COP)” (Statement by the President of the Conference at the closing of the third session, p. 13)\(^\text{10}\). This research examined internationalization within the EIA process that proposed activities would be subject to in the agreement and the decision-making procedure that would follow. A

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possible solution to the contentious topic of ‘internationalization’ was advanced particularly as it related to review and decision-making on proposed activities.

At the negotiations, that particular aspect of internationalization was very contentious. A seemingly intractable cleavage existed between countries wanting review and decision-making to be under the control of individual States and those wanting to see the process have global oversight. The European Union (EU), USA, Canada, the United Kingdom and several other countries from the Global North were some that expressed sentiments aligned with the former category while CARICOM, the group of Pacific small island developing States (PSIDS) and the Philippines were examples of the latter.

Countries which did not want internationalization of review and decision-making cited the interference with State’s rights under UNCLOS including the assertion that neither UNCLOS, nor the Pulp Mills case, set forth standards and procedures for EIA that necessitated internationalized review and decision-making and therefore it could not be deemed a feature of customary international law. Additionally, these negotiating States also highlighted the current existence of capable and well-functioning EIA machinery within their own territories, exorbitant costs to set up and maintain an internationalized system and possible lengthy delays in the process of review and decision-making as reasons for preferring the EIA procedure remain State controlled. Reasons for CARICOM’s desire for internationalization related to its recognition of limited capacity to review highly technical EIAs, and also the fact that permitting activities in ABNJ, which is a global commons, would be more legitimately and transparently done if a globally representative decision-making body had that role. A proposal was therefore presented in Paper 3 that aimed at bridging the divide that existed through a practical, yet progressive approach, seeking to balance the competing interests.

The proposal that was developed incorporated elements of the EIA process undertaken in the Antarctic Treaty System (ATS) under the Madrid Protocol, and in particular the threshold used there, that of ‘minor or transitory effects’. This threshold was used to propose a tiered approach to the EIA process for the BBNJ agreement which would see a State-led review and decision-making stream for activities deemed likely to have a ‘minor or transitory’ effect and an internationalized review and decision-making stream for activities deemed likely to have more than a ‘minor or transitory effect’ (Figure 5).

The practicalities and implications of this approach are discussed in detail in Paper 3. The approach does not lead to internationalized review and decision-making for all activities proposed in ABNJ, as CARICOM originally desired, but it does enable this to happen for the potentially most impactful activities. At the same time, this tiered approach should allow for an efficient system where the bodies established under the agreement that would be responsible for review and decision-making
would not be overwhelmed. This may make the approach amenable to consensus by being more attractive to those countries that originally wanted an entirely State-led process because of concerns about a global structure being sluggish.

4.3.2 Strategy-based SEA in the BBNJ agreement

SEA is a process that could transform the way that the BBNJ agreement approaches conservation and sustainable use. Effective conduct and use of SEA can encourage an ecosystem approach to management of oceans and serve as an integrative mechanism (Christiansen et al., 2022; Craik and Gu, 2022). It is a more proactive approach to environmental assessment that can be used in conjunction with and/or as a precursor to traditional project-based EIA. Traditional EIA often limits its focus to ‘how’ questions and, in doing so, may focus mainly on how best a project or activity can be carried out while mitigating and limiting environmental risk and impact. SEA though is seen as allowing for consideration of ‘why’, ‘what’ and ‘where’ questions even before specific project or activity ideas are placed in the development pipeline (Verheem & Tonk, 2000). The conduct of SEA has therefore often led to improvements in attempts to manage the environment (De Mulder, 2011) through, for example:
• Promoting integrated decision-making (focusing on biophysical, social and economic development);
• Facilitating the design of sustainable policies and plans;
• Facilitating consideration of alternatives;
• Taking account of cumulative effects;
• Enhancing institutional efficiency and administrative legitimacy;
• Increasing transparency;
• Building trust;
• Increasing influence from different sector policies and enhancing conflict resolution;
• Streamlining project assessments;
• Providing a mechanism for public and stakeholder engagement.

Unlike EIA, whose conduct is now a general obligation under customary international law (Payne, 2011; Boyle, 2011), SEA has not attained such a status (Sander, 2016; Warner, 2021). Consequently, at the time of writing, the inclusion of SEA in the BBNJ agreement, although garnering increasing support, was not universally justified or agreed. Article 28 of the November 2019 revised draft text of the BBNJ agreement\(^\text{11}\) addressed the conduct of SEA in ABNJ. The Article did not go into many details on how the conduct of SEA would be operationalized, partly a reflection of the fact that there was little clarity among delegations on how this would be achieved. Nonetheless, it was recognized that some of the language contained in Paragraph 1 could act as a placeholder to enable the conduct of SEA, with further details on how that would be done in practice being developed at a later stage.

As it stood however, the language on SEA contained in the draft text, including the definition of SEA and what was contained in paragraph 28(2), was leaning more towards a vision for SEA in the BBNJ agreement that was largely Eurocentric. This vision of SEA may not be as useful to CARICOM, and the global community as a whole, as other conceptualizations of SEA. As a consequence, Paper 4 detailed an alternative vision for SEA in ABNJ and provided clarity on how it might be operationalized through the BBNJ agreement.

A Strategy-based SEA approach was proposed. This is a more future-based approach to SEA when compared to an Impact Assessment-based SEA which is characteristic of what pertains in Europe. Strategy-based SEAs tend to be more regionally focused, seeking to consider the entire gamut of current and potential uses and activities of a given area with a view to determining what combination best meets sustainability criteria.

Paper 4 outlined an SEA process comprising of two interacting tracks of SEA and MPA/area-based management tool development (Figure 6). At the forefront, it involves the global scale mapping and zoning of ocean ecosystems into regions (a process currently ongoing through various initiatives) and then developing SEAs first in those zones which are highly vulnerable or prioritized for use. SEA development would be a collaborative process involving all countries, international frameworks and bodies and other stakeholders with interests in the given area with the aim of minimizing negative impacts on identified components of the ecosystem that are of high value.

The COP to the BBNJ agreement would provide ultimate oversight for the SEA process, while responsibility for the technical aspects of the process, including coordination, will lie with the STB to be established under the Agreement. The SEAs will lead to the formulation of region-specific policy advice that can be used to, among other things, guide the preparation of marine spatial plans. This proposed approach to SEA would be better for CARICOM because it represents a more globalized, cooperative method where the consideration of cumulative impacts, including those from climate change, may be more comprehensive. The onus to conduct SEA would not rest on individual States who may lack the capacity to do them, and connections between the conduct of SEA and the establishment of ABMTs may be more explicit.
Figure 6: Proposed approach to SEA under the BBNJ agreement
4.4 *Research Question 4*: How can CARICOM improve its impact as a negotiating group in the BBNJ agreement and future multilateral ocean processes with a view to deriving greater benefits and having its voice heard?

CARICOM has emerged as an important and active regional group in the BBNJ negotiations. The approach of CARICOM member States to these negotiations differ markedly from the approach adopted during the negotiation of UNCLOS in the 1970s and early 1980s. In those negotiations, Caribbean States, when they participated, did so individually with little to no co-ordination and pooling of resources among them. In the BBNJ process however, member States’ unified participation under the CARICOM umbrella has allowed for a more efficient, thorough and impactful engagement in the negotiations especially compared to what may have transpired if members acted individually. That being said, lessons have been learned and improvements can be made. In examining and seeking to understand CARICOM’s experience as a negotiating group, including through consideration of the author’s personal experiences and assessing the experiences of other key CARICOM participants in the process, Paper 5 ultimately sought to elicit ways to enhance CARICOM’s approach to the BBNJ negotiations. Importantly, these insights would also be applicable to other ocean-related processes in the future.

The first recommendation towards CARICOM improving multilateral engagement on ocean issues harks back to what was raised in Paper 1 and discussed further in Paper 2. It relates to the creation of and commitment to a formal and functional regional mechanism to contemplate, coordinate and execute a collaborative approach to developing and achieving an agreed vision on ocean-related development for CARICOM member States. Such an arrangement could increase public knowledge about sustainable ocean management and generate interest, input and desire towards realizing it. This may not only succeed in elevating ocean-related issues on the political agenda within CARICOM, but it may also produce more legitimate recommendations for negotiators to pursue and robust outcomes at national, regional and global levels. Additionally, an enduring coordination mechanism can help in developing and soliciting expert advice and in strengthening the region’s standing as an authority on ocean related issues. Therefore, it is crucial that activities and pursuits of the envisioned coordination mechanism are perpetually ongoing even after a clearly articulated overarching policy, which would outline long term vision, guiding principles and objectives with regard to sustainable
development of the ocean spaces, is collaboratively arrived at by all members and relevant stakeholders within the CARICOM regional arrangement.

A second recommendation stems from the observed scarcity of resources for capital based and other experts from CARICOM to participate in the negotiations. Within the contexts of the institutional architecture that would be created to govern BBNJ, CARICOM should push for the inclusion in the agreement of a special fund(s) to, *inter alia*, build regional expertise and capacity in BBNJ matters and also help developing countries participate in the Conference of Parties and other bodies that would be established. As it relates to the former, improved modalities for capacity building and technology transfer are under continued consideration in the negotiations. With regard to the latter point, Article 52(4) of the November 2019 revised draft text of the BBNJ agreement refers to such a fund, but it proposes that it will be a voluntary trust fund, similar to that which currently pertains to aid developing State participation in the negotiations towards the agreement. Paper 5 highlighted that the voluntary nature of the existing Fund makes it less than effective in meeting the needs of developing States. CARICOM, in coalition with like-minded delegations, should therefore lobby for the fund under Article 52(4) to be mandatorily resourced in order to ensure that developing State Parties, including those from CARICOM, continue to have a meaningful say in how BBNJ is managed after the agreement is signed and enters into force.

Thirdly, given the ocean’s importance to the economic, social and cultural fortunes of the region (Clegg *et al.*, 2020), CARICOM may want to consider creating a post within the organization of Ambassador for the Ocean. Countries such as Belgium, Sweden and Kenya possess recognized and influential international diplomatic representatives devoted to the ocean but this would be a novel idea within a regional group and indeed, for CARICOM. This specialist portfolio Ambassador would not supplant member States’ Ambassadors at international fora but rather could support them, assisting in intra-regional coordination and helping the group arrive at internal consensus as it relates to oceans. In addition, this person could represent the Community’s interests internationally on an ongoing basis, increase the region’s visibility and influence, and strengthen bilateral cooperation with partners. Diplomatic outreach by the Ocean Ambassador to governments, private sector and non-governmental interests could create abiding alliances with entities interested in maximizing CARICOM’s ocean potential and realizing its ocean vision, including through being a strong presence at international processes. The CARICOM Ambassador for the Ocean should be supported by a dedicated team within the CARICOM Secretariat. At present ocean matters fall under the programme area on sustainable development. However, the human and financial resources directed towards this important programme area are not sufficient to effectively meet the needs of its broad ambit. Therefore, along with a CARICOM Ambassador for the
Ocean, a dedicated, adequately resourced ocean desk under the sustainable development programme of the Secretariat would also be important.

Another recommendation builds upon the observed helpful interest and support provided by CARICOM’s Council for Foreign and Community Relations (COFCOR) for the group’s engagement in the BBNJ process. In this and future negotiations, other reflections of political support could further enhance CARICOM’s influence and redound to the group’s benefit. Increased presence of Ministers and other high-ranking officials from the region at sessions could send a strong message about the importance of the ocean to the region. Ministerial presence, including their making statements in plenary and engaging in bilateral talks on the margins, should therefore be employed more fervently in the future. More immediately, with the BBNJ negotiations at a critical point, the opportunity should be seized at every juncture on the international stage for CARICOM Ministers and senior spokespersons to highlight the importance to the region of securing a fair, equitable agreement without undue delay.

Finally, it is imperative that the value of creating and building coalitions with like-minded States and delegations is acknowledged and promoted. It was observed that CARICOM did not fully capitalize on opportunities in 2019 to 2022, when its member States were chairing large groups such as the G77+China and AOSIS, to develop and adopt cross regional proposals on issues of importance. Nonetheless, CARICOM did successfully build coalitions outside of these large factions. Some of those proved to be very effective in amplifying CARICOM’s voice and in advancing ideas and positions that reflected its interests.

The role of civil society in building alliances around CARICOM ideas in the EIA part of the agreement was found to be of paramount importance. Developing the trust and inclusive positions upon which strong coalitions are built is time-consuming and resource demanding. Civil society, among other things, helped in some of the necessary procedural aspects of coalition building. Swamped negotiators from small delegations may find it difficult to direct their energies towards these aspects in particular. In acting as bridges among various like-minded groups, civil society scheduled and provided spaces for engagement, facilitated discussion, and generally eased the process and provided the conditions in which negotiators could dedicate time to developing and strengthening the substance of the alliances.
5 Conclusions

Sustainable management of the ocean and its resources are integral to the development of SIDS and crucial to sustaining the livelihoods of their inhabitants (Bennett et al., 2019; Connell, 2013). In the SIDS region of the Caribbean the ocean is central to the economic, social and cultural identity of CARICOM’s member States, where 82 percent of their collective jurisdiction is made up of marine areas which adjoin comparatively tiny land masses (Haughton, 2005). With a disproportionate dependence on the ocean for current and future well-being it is imperative that the member States of CARICOM, and the regional grouping as a whole, are able to sustainably manage ocean spaces, and positively influence global consciousness and practice towards this objective as well. Against this backdrop, this thesis represents the first on the role of CARICOM as a negotiating group in a Law of the Sea process.

The negotiation of the BBNJ agreement, a proposed new international legally binding legal instrument under UNCLOS, is the point of departure for this research. The thesis is wide ranging and interdisciplinary, engaging with natural science, political science, social science and international law among other disciplines. Based on theory-informed research, it has suggested solutions to existing real-world problems, although the application of some of the proposed solutions in practice is still some distance from being realized. That being said, the body of work, through applying the action research methodology, including raising awareness of and securing interest and buy-in from relevant stakeholders and actors, has contributed to processes concerned with getting these proffered solutions to an implementable stage. In addition, the research has not only led to the consideration of CARICOM priorities as it relates to BBNJ and regional ocean governance, but also both created and capitalized on opportunities to discuss, examine and execute strategies to realize those priorities.

Interests outlined in this thesis, and CARICOM’s positions advanced in the BBNJ negotiations, have reflected understanding and appreciation of meeting basic needs, providing ecological protection and advancing the equity dimensions of sustainable blue economy development. For instance, appeals for the Common Heritage of Mankind principle to be foremost in guiding governance of ABNJ and for an ecosystem approach to management to be adopted are consistent with quests for equity and the safeguarding of ecological integrity. The desire for approaches and
mechanisms enabling broad and comprehensive participation in consultation and decision-making also reflect the pursuit of increased equity and inclusivity. CARICOM’s explicit recognition of coastal, small-scale livelihoods in the framing of their interests related to negotiations that deal with the far removed ABNJ, demonstrates the thinking that these considerations should be weighted alongside those of the industrial interests that possess greater power and economic clout. The calls for increased partnership, cooperation and collaboration in capacity-building, and ocean governance more generally, is emblematic of CARICOM’s ambition to cultivate global community and strengthen international society.

This thesis adds to the literature on international relations and regime theory, especially as it relates to understanding the processes, interactions and actors involved in the ocean governance system. It confirmed that while the UN system is not perfect, it is still an important and effective forum to advance multilateralism and cooperative global governance. Apart from contributing insights into the functioning of international society though, the body of work also directly concerned itself with building, advancing and codifying aspects of the actual future regime to govern biodiversity in areas beyond national jurisdiction. It confirmed that innovative ideas can be spurred by the need to compromise in the quest to accommodate broad interests, but, at the same time, the traction any given idea receives is also moderated by power relations and relationship dynamics.

After two years of postponement due to the COVID-19 pandemic, over 119 States, including CARICOM member States, convened at the UN in March 2022 to resume formal negotiations on the BBNJ agreement. This much delayed 4th session of the IGC was the final one of the initial four mandated in UN Resolution 72/249. With the resumption, CARICOM had the opportunity to further voice its opinion and officially put forward renewed proposals on the elements of the package. These included, inter alia, for ABMTs, specific consideration and opportunities for SIDS in relation to creating and implementing measures; for CBTMT, some degree of mandatory capacity building and technology transfer along with creation of a mechanism aimed at providing sustainable, predictable and long term financing for this; and for MGRs, the establishment of a traceability and access and benefit mechanism to facilitate the sharing of potential monetary benefits from utilization of MGRs alongside non-monetary benefits. For the MGR part in particular, proposed text was submitted jointly with the AG, the CLAM and PSIDS after conclusion of the IGC session. This in itself was a major development in the negotiation process. CARICOM also stood out in the remaining part of the package on EIA, which was of particular focus in this thesis.

Especially during the latter part of the intersessional period between the 3rd and 4th IGC sessions, CARICOM, through its lead for EIA (who is also this author), worked with the PSIDS to craft a joint textual proposal for the entire Part IV of the draft
agreement. Calls for cross-regional proposals were repeatedly made by the President of the Conference and the Facilitators of the Working Groups at the close of the 3rd session of the IGC and throughout the intersessional period. After realizing that CARICOM’s and PSIDS’ interests aligned on many aspects of the EIA part, generating the joint proposal was a natural, logical result of the action research process and was geared especially towards realizing AR’s participatory and emancipatory characteristics. This CARICOM-PSIDS proposal was significant because it represented the only cross-regional proposal for an entire part of the draft agreement to be tabled during the 4th IGC session.

The CARICOM-PSIDS proposal was also significant as it relates to this current body of work because the ideas discussed previously pertaining to internationalization of EIA were at the core of the joint proposal. Additionally, the work done in this thesis relating to SEA had a significant bearing on the framing of the proposed Article 28 on Strategic Environmental Assessments and subsequent related interventions from the floor. In numerous bilateral meetings on the margins of the IGC and in the discussions that took place in the informal working group and the ‘informal informals’ on EIA, this author was able to fully explain, discuss and defend the ideas emanating from this thesis. As a result of these and other efforts, the joint CARICOM-PSIDS proposal garnered expressed interest and support from numerous delegations, including the AG, Philippines, Chile and Costa Rica, both on the floor and in the corridors of the meeting. It was subsequently prominently reflected in the further revised draft text of the BBNJ agreement provided by the President of the IGC in May 2022.12

Action research also emphasizes and pursues practicality and utility. In conducting this research these features also emerged. For example, in collaborating with the CARICOM Secretariat, the usefulness and application of this research was exhibited through its informing the conceptualization and work of a newly established working group – the Technical Advisory Group of CARICOM Institutions on Ocean Matters (TAGCOM). The TAGCOM is intended to be a mechanism to improve coordination on oceans within CARICOM and, among other things, would provide overarching policy guidance to member States on emerging issues of importance with regard to oceans, raise the region’s profile and participation in international fora and law making relating to ocean governance, and provide guidance on matters pertaining to economic and social issues impacting ocean resources. The intent and structure of the TAGCOM therefore embodies, at an embryonic level, what has been

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12 The further revised draft text of the BBNJ agreement which will form the basis of negotiations for the 5th Session of the IGC can be found at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/368/56/PDF/N2236856.pdf?OpenElement (accessed: 31st May 2022).
called for at various points in this thesis as it relates to working towards coordinated regional ocean governance and improving global engagement.

Efforts toward empowerment of the CARICOM region in aspects of ocean governance continue. In light of the preceding synopsis of the occurrences in the 4th IGC session, contributions have been made through direct engagement with the CARICOM Secretariat and participation in the BBNJ negotiation process by this author. The insights and ideas generated by this research have been utilized, and will continue to be utilized. Delegations were unable to conclude the negotiation of the BBNJ agreement in IGC4, partly because of the restricted modalities for the session imposed due to COVID-19 precautions. Provisions have been made to have a 5th IGC session in August 2022. There is a strong push among many delegations to have this be the last negotiating session with the aim to have the final text of the BBNJ agreement before the end of 2022\textsuperscript{13}. There is therefore remaining time for CARICOM to further consider and refine its proposals, build strong coalitions with like-minded States and drum up support with a view to having the region’s interests reflected in the final text of the agreement. Additionally, looking beyond the BBNJ negotiations towards implementation of the regime, and also with sights set on other ocean related processes, CARICOM should continue to evaluate, consolidate and rationalize its blue economy architecture, building upon and working through ongoing developments such as the TAGCOM. Momentum exists and is growing. These opportunities need to be capitalized upon.

\textsuperscript{13} Several closing statements at the 4th IGC session expressed this desire. Copies of some of the closing statements made by delegations can be found at: \url{https://www.un.org/bbnj/statements} (accessed: 12th April 2022).
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CARICOM and the blue economy – Multiple understandings and their implications for global engagement

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ABSTRACT

The blue economy as a development paradigm has gained traction and favour in small island developing States (SIDS) including those of the Caribbean Community (CARICOM). The member States of CARICOM lie in close proximity to each other, exhibit high dependency on a shared space and resources and seek to establish a mutually beneficial interaction through an already institutionalized regional integration movement. Within CARICOM however, there is the problematic existence of different understandings of what the blue economy represents. This is illustrated through the use of case studies of three CARICOM countries, Trinidad and Tobago, Belize and Grenada. Competing interpretations of the blue economy complicate global engagement and lead to a re-emergence of issues which the Caribbean Community have never fully confronted and resolved. It is found that CARICOM needs to facilitate discussion, understanding and compromise among its members to arrive at an agreed policy and strategy that would effectively co-ordinate and operationalize blue economy development in the region. Such an understanding would enable CARICOM to optimise the collective economic, social and environmental benefits of the blue economy and allow the regional grouping to be an influential actor in all aspects of blue economy discourse on the global stage.

1. Introduction

The Caribbean Community (CARICOM) is the oldest surviving integration movement in the developing world [1]. Comprising 15 member States, the grouping rests on four main pillars of integration: economic; security; human and social development; and foreign policy co-ordination. All the members of CARICOM lie in, or border the Caribbean Sea – Suriname, Guyana and Belize being the three mainland coastal States of the regional grouping. However, all members of the organization are considered Small Island Developing States (SIDS) with the marine environment being integral to CARICOM countries’ cultural, social and economic identity [2]. This fact is underscored by the observation that 82% of the total area falling under the jurisdiction of CARICOM countries is made up of the oceans and seas that adjoin their comparatively tiny land masses [3]. Importantly, although CARICOM members make up less than a third of the countries and territories bordering or located in the Caribbean Sea, the group’s long history and commitment to co-operation and co-ordination on a range of issues makes CARICOM a significant bloc in the region.

The United Nations Sustainable Development Goals (UN SDGs) have been adopted as a global policy agenda geared towards achieving targets for sustainable development by 2030 [4]. Although the 17 goals are recognised and acknowledged as being indivisible and inter-dependent, due to the ocean’s omnipresence, SDG 14 is of great interest to CARICOM countries [5]. This SDG speaks to conserving and sustainably using the oceans, seas and marine resources for sustainable development. Target 7 of SDG 14 narrows in on increasing the economic benefits to SIDS and Least Developed Countries (LDCs) from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism.

This article seeks to delve into the sustainable ocean-based economy construct – better known in contemporary development jargon as the blue economy. Relying on considerable and in-depth exploration and analysis of discourses in the primary and grey literature, it will begin by giving context to the blue economy terminology. The paper will subsequently highlight where convergences, and more importantly, divergences are being seen as actors across the globe have sought to apply the blue economy concept in practice. It will go on to use case studies to illustrate that within CARICOM there are also different understandings of what it means to develop a country’s blue economy. Finally, it will show that for CARICOM and its member States, engagement with and by the wider regional and global community in regard to blue economy
development, is complicated by varied conceptions of blue economy competing within the group. It should be noted that it is not the intention of this paper to outline a blue economy strategy for CARICOM. Rather, the work seeks to highlight that varying blue economy discourses need to be carefully considered, negotiated and resolved internally if CARICOM is to be effective in deriving collective economic, social and cultural benefit from use of the oceans and its resources while ensuring environmental conservation and preservation.

2. Blue economy origins and interpretations

The term ‘Blue Economy’ was first popularised in scholarly literature through Gunter Pauli as the title of a book he authored which discussed moving society from scarcity to abundance by pioneering advances which replicate the waste free efficiency of ecosystems [6]. While marine ecosystems certainly may have provided examples from which Pauli drew inspiration, it is safe to say that oceans were not the major focus of that body of work on which he published. An alternative, more contemporary use of the term, and certainly the one on which this paper is concerned, has its roots in the 2012 United Nations Conference on Sustainable Development, otherwise known as Rio+20.

On the agenda at Rio+20 was advancing the concept of the green economy which, put broadly, concerned encouraging economic growth while significantly reducing environmental degradation, maintaining ecosystems and improving human well-being and social equity [7]. However, Small Island Developing States (SIDS) sought to find a greater connection with the largely terrestrial based construct of the green economy. With their small land masses but large ocean spaces, SIDS, and in particular Pacific SIDS, used Rio+20 to mainstream the idea of the blue economy, which, it was felt, aligned more closely with their developmental circumstances [8]. The blue economy construct zeroed in on developing marine based activity while emphasising improved human well-being, social justice and equity, ensuring conservation of natural resources and ecological sustainability. Situated within a present day context where economic growth is still the most recognised metric of development, but where planetary boundaries, tipping points and rising inequality are problematized as major threats to this, the blue economy, like the green economy, is romantically framed as a means to achieving all three pillars of sustainable development simultaneously [9].

Although originally advanced by Pacific SIDS, since Rio+20 the blue economy agenda has garnered global appeal, with the concept being adopted and adapted in a range of circumstances and contexts from island nations to coastal continental States, both in the developing and developed world [10-16]. Indeed, perhaps because the concept of the blue economy is fuzzily defined [17], the different interpretations of what blue economy means has allowed it to gain traction in the varying regional, national and local contexts.

In the lead up, during and in the immediate aftermath of the Rio+20 conference, blue economy rhetoric was used in different ways, by sometimes disparate proponents, in order to further their specific agendas. Silver et al. [18] explicitly teased apart the discourses to show how they differed in terms of the problems identified, preferred solutions and actors involved. They expanded on four conceptions: oceans as natural capital, oceans as good business, oceans as integral to Pacific SIDS and oceans as small-scale fisheries livelihoods. From then till now, instead of “one discourse about human-oceans relations […] (coming) to be seen as obvious or logical” as hopefully expressed by Silver et al. [18: p. 152], consensus is still yet to be forthcoming.

The most contemporary work on analysis of blue economy discourses comes from Voyer et al. [19]. Building upon the work of Silver et al. [18] but supplemented with additional inquiry and insight from more recent policy documents and grey literature, identified were areas of continued contestation and conflict along with areas of convergence. The analysis again revealed four lenses within which blue economy interpretations fell. Silver et al.’s [18] conceptions were subsumed in these new categorisations. The interpretations, expounded upon below, shall be what are considered in this paper going forward.

1. Oceans as Natural Capital

This discourse was common and similarly framed in both the Silver et al. [18] and Voyer et al. [19] analyses. Proponents recognise the economy, ocean based or otherwise, human well-being and human prosperity as being buttressed by a healthy ocean stock of biodiversity and resilient ecosystems. Maintaining ecological integrity and ecosystem services is the focus of this lens with support for initiatives that encourage protection and conservation, environmental restoration, ecosystem-based management and, with a specific view to mitigating climate change, capturing blue carbon [20].

2. Oceans as Livelihoods

This lens focuses on oceans being important to the poor and marginalized in society and those whose well-being are linked directly to healthy oceans and resources. This discourse’s interests lie around food security, artisanal fishing and other small-scale economic ocean sectors. Low impact livelihoods which can link conservation and development, like ecotourism and community based coastal tourism are also of interest here. It is broader than the “oceans as small-scale fisheries livelihoods” as identified by Silver et al. [18] and has the potential to resonate across large swathes of the developing world with coastal access. However, this lens in particular, has been identified as being prone to neglect as blue economy discussions advance and initiatives are implemented in various locales. In what has been labelled ocean grabbing [21], and akin to the global “land rush” in green economy critiques [22], local, small scale users are often disparaged and left voiceless. Consequently, they are disadvantaged in staking claims when competing with larger, better resourced external actors. A burgeoning blue economy literature is now directing more attention to identifying and alleviating these power imbalances where they arise, considering itself with better securing spaces for small traders, community interests and the use of local and traditional knowledge in charting blue development paths [23-25].

3. Oceans as Good Business

This lens focuses on investing in critical sectoral and industrial uses of the oceans. The conception stresses securing economic growth through promoting ocean usage in a capital-intensive manner which is sensitive to environmental concerns [26]. It also sees importance in valuation of ocean sectors to reflect their significance as a proportion of gross domestic product (GDP). The European Union (EU) have been flagbearers in this approach to blue economy thinking, emphasising on capitalization and improving efficiency and competitiveness in their ‘Blue Growth Strategy’ [27]. This blue economy discourse is also generally supportive towards encouraging maritime clusters as a strategic tool to promote maritime industries [28,29].

Critics of this ideological framing, while acknowledging the potential for huge economic gains to accrue to some, are sceptical that its inherent capitalist, growth centred focus will allow for balance to be properly struck with the other pillars of sustainable development [30]. Others are hesitant to embrace some activities, such as deep-sea mining, forms of commercial fishing, and offshore oil and gas, which are often given legitimacy in the blue economy construct through this lens. Questions are raised about how these activities align with the pursuit of environmental and social sustainability. For example, in the offshore oil and gas industry, concerns revolve around the implications of continued promotion of fossil fuels given climate change consequences. For deep-sea mining, the potential destructive nature and irreversibility of these activities on marine ecosystems that we presently know little about, is majorly unsettling [31,32]. Industries such as these are inherently
4. Oceans as a Driver of Innovation

This final lens can be considered to be bi-faceted. One aspect of its discourse focuses on novel ways of using the oceans and its resources by venturing into new or nascent territories that have the potential for growth e.g. marine bioprospecting, renewable ocean energy, seabed mining. The other aspect of this lens involves working to ‘green’ traditional ocean sectors, as can be seen in, for example, global moves towards low carbon shipping [34]. In addition to application of technological advancements, ‘greening’ through innovation can also involve devising and implementing creative financing and compliance mechanisms, for example, as done in the Seychelles [35]. Within this lens, investments in research and development institutes are seen as important for the modernization process and in expanding the horizon of possibilities for ocean use.

It has been observed that the four lenses through which the blue economy is seen are not mutually exclusive. Indeed, within national contexts, it is not uncommon to find multiple initiatives that each exhibit characteristics of a particular ideology being implemented alongside each other as a mixed bundle. However, it is important to note, and as pointed out by Voyer et al. [19], the ‘oceans as natural capital’/‘oceans as livelihoods’ constructs tend to show more synergistic alignment. The same can be said for ‘oceans as good business’/‘oceans as a driver of innovation’ lenses. Speaking broadly, the former pairing places greater emphasis on social and environmental aspects of the blue economy and attention is paid to more nearshore or coastal activities, which are less capital intensive and whose benefits tend to accrue at a local/community level. The latter pairing is characteristic of more industrialized societies or economies in transition. High value activities, often with multi-national/global appeal, are focused on and research and technological advancement seen as a means of increasing profitability and overcoming environmental pitfalls.

3. Reflections of the blue economy discourses within CARICOM

In the lead up to Rio+20, Caribbean SIDS were not particularly excited about pushing the ‘blue economy’ terminology, offering reservations against having “too many colour economies” (UN Department of Economic and Social Affairs, 2011, p. 10, in Ref. [18]). Subsequently, the resistance did not immediately abate, as evidenced by the 2014 UN General Assembly Resolution on SIDS Accelerated Modalities of Action (SAMOA) Pathway, where the term ‘sustainable ocean-based economy’ is preferred to the use of ‘blue economy’. Nonetheless, in more recent times the blue economy terminology has been increasingly permeating the policy discourse in the Caribbean. CARICOM leaders can now be heard making reference to the blue economy in speeches occurring in national, regional and international fora. As a more tangible example of acceptance, it is instructive to see that Barbados now has a Ministry of Maritime Affairs and the Blue Economy.

Most CARICOM countries have not yet fully articulated their blue economy strategies. Activities such as fishing, offshore oil and gas, maritime transport, and tourism, including cruise tourism, are recognised as major constituents of CARICOM countries’ blue economy. In addition, aquaculture, marine renewable energy, bioprospecting, sea bed mining, and carbon sequestration are seen as avenues of great potential [15,56]. Within the region, the blue economy ethos is being espoused albeit in varying ways, through the different lenses discussed earlier. Case study examples of Trinidad and Tobago, Belize and Grenada will be used to illustrate this point.

Recent (post-2015) official national documents and those produced through government sanctioned processes that are addressing blue economy and integrated ocean and coastal governance were reviewed and analysed for the occurrence and prevalence of key concepts, approaches and modes of development associated with the blue economy interpretations identified by Voyer et al. [19]. This document analysis was supplemented with insights into on the ground implementation and practice, gained from in country sources, to garner a more complete picture of the blue economy approach being adopted by the respective countries. Trinidad and Tobago and Belize were chosen for discussion because when compared to each other, the countries clearly exhibit contrasting blue economy ideologies. Most countries within CARICOM have blue economy posturing that exists within a range that is bounded by that of Trinidad and Tobago and Belize. Grenada was selected as the other case study example because it is the CARICOM country that is most advanced in articulating a blue economy strategy.

3.1. Trinidad and Tobago

Trinidad and Tobago is a two island State lying at the southern-most end of the Caribbean archipelagic chain. The country has not yet explicitly defined its blue economy approach but it has recognised the importance of the ocean-based economy to the nation’s current and future prosperity. Studies undertaken as part of a broader climate resilient coastal zone management program have estimated the country’s ocean-based economy to be worth US$22.5 billion or 81% of the country’s total GDP in 2015 [37].

Trinidad and Tobago is the most industrialized country in CARICOM coming on the back of its oil and natural gas wealth [38]. Marine drilling for hydrocarbons began in 1954 and a large proportion of the nation’s most productive wells and identified hydrocarbon reserves are now found offshore, primarily in shallow water environments [39]. The country recognises offshore oil and gas as a major constituent of its blue economy. This is despite the industry’s huge environmental impact [40] although, somewhat ironically, Henry et al. [41] do see the country’s long history in offshore energy development as a potential key competitive advantage in offshore renewable energy development in the Caribbean.

The draft National Integrated Coastal Zone Management (ICZM) Policy Framework of Trinidad and Tobago has an overarching goal that speaks to “maintaining and where necessary, enhancing the functional integrity of the coastal resource systems while enabling sustainable economic development through rational, inclusive decision-making and planning” [42]. It has a number of policy objectives that are aimed at achieving this goal including, “to alleviate poverty in the coastal zone through proactive development initiatives that generate sustainable livelihood options” and “to maintain the diversity, health and productivity of coastal and marine processes and ecosystems for the benefit of current and future generations”. Although through this document the country does appear to very mindful of the social and environmental imperatives in blue economy development, evidence points to the country having a primarily ‘oceans as good business’ type posture. A national ICZM policy framework would in help curtailling environmentally unsustainable and social inequitable practices of big business and industrial interests in the coastal and marine space. However, the national policy framework has been in draft for a protracted period. It was first submitted in 2014 but was never adopted because it was not deemed as a priority. Due to the elapsed time it was revised and resubmitted for adoption in 2019 but is still yet to get approval.

Perhaps the most glaring example of the country’s ‘ocean as good business’ outlook was the recent plan to construct a sprawling 500-750 all-inclusive hotel in one of the most ecologically sensitive areas of Tobago and directly adjacent to the Buccoo Reef – the only marine...
protected area (MPA) in the country [43]. The government asserted that the project would spur economic growth in Tobago but it was eventually stalled because of strong opposition from environmental and community activists. Other coastal and marine based mega-projects aimed at boosting economic growth, such as several port construction and expansion initiatives, also feature prominently on the government’s development agenda [44]. Positioning the country as a major shipping and maritime services hub in the region appears to be a high priority.

3.2. Belize

Belize is one of the three mainland countries of the Caribbean Community. Located on the north-eastern coast of Central America, it has an exclusive economic zone (EEZ) that is 35,351 km² in size; only about one and a half times its land area, a ratio that is relatively small in the Caribbean context [45]. However, within its EEZ is the Belize Barrier Reef. This designated World Heritage site extends for approximately 250 km and makes up part of the second longest Barrier Reef in the world, the Meso-American Barrier Reef. The reef and its resources are a major contributor to Belize’s GDP particularly through fisheries and tourism [46].

Unlike other CARICOM countries, such as Guyana and Trinidad and Tobago, Belize does not see offshore oil and gas as having a place in its blue economy. At the end of 2017 the legislature of Belize unanimously approved a bill providing for an indefinite moratorium on oil and gas activity (exploration and drilling) in its waters. At the same time, the country prides itself in the initiatives undertaken geared towards fisheries management and conservation [47, 48]. It currently boasts 10 marine reserves, the protection of 13 spawning sites and an established territorial use rights fisheries regime for all artisanal fishers in the county. The country appears to be very concerned about and committed to protecting its marine environment and, unlike Trinidad and Tobago, has approved and implemented its National Integrated Coastal Zone management plan since 2016. The participatory, ecosystem approach adopted in the plan is reflected in the country’s blue economy outlook which more closely aligns with ‘oceans as natural capital’ and ‘oceans as livelihoods’ lenses.

Belize is currently involved in a project implemented by the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Division of Ocean Affairs and Law of the Sea (UNDOAS) that aims to help the nation develop its ocean economy and trade strategy. The country selected four preliminary sectors as foci – sustainable marine fisheries, sustainable marine aquaculture, seafood processing and marine and coastal tourism. Forthcoming actionable items include helping fishers to access new fishing techniques to alleviate pressure on some stocks, supporting community-based initiatives that encourage local enterprise development, providing training in fisheries management in MPAs and encouraging fishers to assume greater management in the seafood processing industry, including self-regulation to improve standards and equity. As this project is progressing it is supporting the observation that Belize’s blue economy approach pre-eminently leans towards tangibly improving livelihoods, boosting equity and encouraging participatory ocean governance while also safeguarding the environment.

3.3. Grenada

The archipelagic State of Grenada [49] consists of three main islands – Grenada, Carriacou, and Petite Martinique. It has an EEZ that is about 26,000 km² in size compared to a total land area of only 345 km². In addition to being a member of CARICOM, the country is a founding member of the eleven-member sub-regional grouping, the Organization of Eastern Caribbean States (OECS). The nation’s economy is based largely on tourism and, to a lesser extent, agriculture [50]. It brands itself internationally as ‘Pure Grenada: The Spice of the Caribbean’, thereby maintaining a strong reference to nutmeg, the country’s largest agricultural export.

Grenada is an interesting case study because it is the first country in CARICOM to outline a blue economy vision. Its ‘Blue Growth Master Plan’ [51] was developed with assistance from the World Bank. The Master Plan outlines the principles on which its blue growth vision is based which include sustainability, good governance and equity. However, it places greater emphasis on specifying and delineating blue growth incentive zones and strategic projects in a manner that would see it serve as a prospectus for investors. Job creation is a heavy focus and the activities targeted in the incentive zones are wide ranging, including, marine tourism (centred around, inter alia, boutique hotels, 5-star hotels and cruise shipping), marine services primarily around the yachting sector, shipping, marine fisheries, and marine exploration inclusive of seabed mining and offshore hydrocarbons.

The Grenada Blue Growth Master Plan does show elements of ‘oceans as natural capital’ by proposing to declare certain areas MPAs. It also has ‘oceans as livelihoods’ aspects especially where attention is paid to improving amenities for small-scale fishers in places like Gouyave. Similarly, ‘oceans as a driver of innovation’ also finds a place as research facilities and science and technology clusters are proposed. However, overwhelmingly, ‘oceans as good business’ is the dominant discourse in the Master Plan with several major facility and site developments put forward for tourism resorts; marinas, harbours and ports; and infra-structurally to improve connectivity particularly through a coastal highway on the main island of Grenada and an international airport in Carriacou. The plan has received criticism for not being as consultative as claimed, thereby jeopardizing its path to environmental and social sustainability [52]. In addition, its feasibility in terms of executing the projects envisioned will depend heavily on being able to attract private investment and establishing terms for public/private partnership.

4. Global engagement without a unified regional understanding of blue economy

As already affirmed, it is common for examples of all four blue economy discourses to overlap and co-occur within any particular country. However, when aggregated, a nation’s blue economy strategy would tend to fall squarely into either the oceans as good business/innovation camp or oceans as natural capital/livelihoods camp [53]. Indeed, it is clear from the examples that understanding of what the blue economy represents, or should represent, varies from country to country within the Caribbean. For the Caribbean islands, who are connected by a dynamic and shared Caribbean Sea, and CARICOM, as a representative regional organization, it is important that these idiosyncrasies of the blue economy as a construct are acknowledged, understood, deliberated and compromises arrived at where needed.

In the CARICOM Strategic Plan 2015–2019, one of the eleven high priority areas for focused implementation is the deepening of foreign policy co-ordination (to support strategic repositioning of CARICOM and desired outcomes). The intention is to project one voice as a community. Of course, the coalition of Caribbean States under CARICOM as a unifying banner can also come with strategic benefits including enhanced

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1 For more detailed information on this, a four-part newspaper article series exploring the issue was published in one of Trinidad and Tobago’s daily newspapers. See: https://onlinemedia.meridith.docs/sandals.in.tobago.-.part-1_investigating (published on 22nd November 2014, accessed on 30th November 2019).


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CARICOM allows for members to engage with third countries without delay and non-implementation of decisions. The structure and design of regional organization and weak enforcement mechanisms that favour tempt a post-colonial legacy has CARICOM countries very insightful analysis, from a historical and functional perspective, of will also be complicated by the sovereignty afforded to individual States that each assemble their blue economy differently. It is only through ongoing, constructive and holistic engagement among member States that decisions can be made as to what blue economy discourses, outlooks and strategies are prioritized in international negotiations. Presently, regional co-ordination is lacking on ocean-based activities, the fisheries sector perhaps being the best example of an exception. A CARICOM common fisheries policy has been developed and approved since 2014 and the Caribbean Regional Fisheries Mechanism (CRFM) does viscerally promote co-operation and coordination in the fisheries management activities of CARICOM countries. However, it must also be recognised that the blue economy is complicated, requiring engagement with and integration across several different sectors in order to arrive at a comprehensive, cohesive outlook. Therefore, co-ordination in this regard would need to be broad-based, both across countries and across sectors. Achieving regional consensus to project one voice on the international stage is always a challenge e.g. Ref. [61]. However, for CARICOM nations, global engagement in efforts to execute blue economy visions will also be complicated by the sovereignty afforded to individual States that sit within the Caribbean Community. Bravo [62] has provided a very insightful analysis, from a historical and functional perspective, of CARICOM countries’ sovereignty within the context of protracted attempts to achieve economic integration. A post-colonial legacy has coloured institutionalization of regional co-operation by ensuring efforts proceed cautiously when it threatens to infringe on national sovereignty. Resultantly, Bravo [62] found that objectionable characteristics of integration in the Caribbean included, inter alia, preservation of member State governmental control of desired integration, a strong unwillingness to cede key aspects State sovereignty to advance the goals of the region and weak enforcement mechanisms that favour delay and non-implementation of decisions. The structure and design of CARICOM allows for members to engage with third countries without necessarily having to consider how such alliances may undercut the aspirations of the regional group.

For CARICOM countries closely interconnected by and sharing resources from the Caribbean Sea, the guarding and privileging of sovereignty can advance blue economy development of one nation at the expense of its neighbours, thereby diametrically opposing the intent of regional integration. Elliot [63] highlights a recent situation where the People’s Republic of China and the Bahamas were discussing a bilateral commercial fishing agreement in Bahaman waters. The proposed deal was earmarked to bring huge economic benefit to the Bahamas. It never went ahead because pressure was said to have been applied to the Bahaman government, both internally and by the US, but interestingly, none was noted from CARICOM [63]. However, consideration of the activities of distant water fishing fleets in other parts of the world can be instructive in understanding how a Bahaman/Chinese arrangement may have impacted CARICOM neighbours.

Many commentators have found that fisheries partnership agreements can negatively impact the livelihoods of artisanal fishers in tropical developing countries e.g. Ref. [64–67]. This impact may not only be limited to host nations but can also be region-wide due to increased illegal, unreported and unregulated (IUU) fishing and the transboundary nature of some target and bycatch species. Consequently, as a region dominated by artisanal fisheries [68] and for CARICOM countries looking to develop this facet of the blue economy to create sustainable livelihoods, unilateral decisions by other members of the Community to open waters to foreign vessels can be detrimental to these endeavours.

Another example worth flagging within the context of this paper, has a different framing but can help in visualization of a scenario to illustrate how international engagement in fulfilling CARICOM’s blue economy potential may be stymied by not having regional cohesion. As discussed before, having blue economy discussed on global platforms has renewed interest in SIDS from environmental NGOs and philanthropic organizations especially as it relates to the ‘oceans as natural capital’ discourse. A case in point, the Republic of Seychelles has capitalized on this, benefiting from a widely heralded debt for nature swap. This swap took an innovative approach, conceptualized and spearheaded by The Nature Conservancy (TNC), by mobilizing private investors in order to secure the deal [35]. The debt restructuring relieved US$ 21.6 million of debt in return for the Seychelles committing to marine spatial planning throughout its 1.37 million km² EEZ, and in doing so, dedicating 30% of that space to conservation and specifically, 15% to “no take” zones. This type of debt negotiation and arrangement may be available only to at least three CARICOM countries – St Kitts and Nevis, Grenada and Antigua and Barbuda – by virtue of the fact that they have similar debt relief histories with the Paris Club as the Seychelles [35]. However, private investors, who are integral to the arrangement, often require tangible realizations of social and environmental benefits to be demonstrated and also guarantees of stable regulatory frameworks and supports to allay fears associated with unpredictability and uncertainty [27]. Discussing the merits of the Caribbean islands involving themselves in a Seychelles-type blue economy arrangement is outside the scope of this paper. However, CARICOM countries who may have an ‘oceans as natural capital’ type outlook and who would want to engage international partners to help develop the blue economy in this way, may face challenges if international investors see transboundary issues, arising from a lack of regional blue economy cohesion, as a deal-breaker.

Most CARICOM countries are still grappling with the blue economy concept or are in the initial stages of developing a blue economy strategy. In this globalized world, engaging with the extra-regional and international community in blue economy development is inevitable and indeed, desirable. As this section has highlighted, to ensure this engagement is effective and collectively beneficial at national level within the group, CARICOM would need to facilitate discussion, understanding and compromise among its members as it relates to the blue economy. Equally as important, it would also need to devise an overarching blue economy policy and strategy of its own to provide guidance and allow the region to be an influential actor in all aspects of the discourse on the global stage.

5. Conclusion

Since Rio+20, blue economy has featured saliently in the lexicon of development practitioners. Despite its prominence, or perhaps paradoxically, because of its prominence, there is no clear understanding of what blue economy means. Countries using it as a strategy for development have deployed blue economy discourses in different ways, targeting (or being targeted by) different sets of actors, and seeking outcomes which each weigh the social, economic and environmental dimensions of sustainable development differently in time and space. The SIDS of CARICOM are no different in this regard. However, the member States are more peculiar than many other parts of the world because of the close proximity in which neighbouring islands lie, the shared nature of many of their ocean resources and the mutually beneficial dependency already initiated, and that is continually sought,
through its regional integration movement. Competing blue economy discourses coming out of individual States can be counterproductive to national and collective group aspirations.

A concerted regional effort to understand and co-ordinate blue economy vision, development and execution is needed among the Caribbean Community. Calls of this type are not new. Since before the turn of the century there have been appeals for a regional mechanism for ocean management.

“CARICOM views the establishment of a strategy and a Regional Mechanism for Ocean Management as matters of high priority. This is not simply a response to international requirements emanating from Agenda 21 and other international conventions; but to regional and national needs. Past experience has shown that the lack of co-ordination and integration of international and bi-lateral donor activities has resulted in inefficient use of aid resources and duplication of effort. To a great extent, this was due to CARICOM’s not having had a strategy and policy that would serve as a means of integrating activities in a beneficial manner.” – Byron Blake, Assistant Secretary-General for Trade and Economic Integration, CARICOM (retired) [69]: p.512.

Within the wider Caribbean region initiatives do exist aimed at engendering a regional approach to improve the transboundary governance and management of resources. The most noteworthy is the ten year (2015–2025) Strategic Action Programme (SAP) for the sustainable management of shared living marine resources in the Caribbean and North Brazil Shelf large marine ecosystems (CLME + region) [70]. Among the crucial components of the SAP is establishing a permanent co-ordination mechanism for ocean governance in the CLME + region. This is a laudable and necessary endeavour that is seeking to institutionalize regional ocean governance in the wider Caribbean in a manner that integrates and co-ordinates mechanisms that exist within a polycentric system [71]. CARICOM is seen as one of the ‘governance centres’ in the polycentric structure that characterizes the wider Caribbean region. However, it has to effectively organise its internal machinery and vision in order to potentely engage with the wider region and fulfill responsibilities that would be adopted through the CLME + SAP.

International processes such as the Sustainable Development Goals, in particular SDG 14, and the international agreement being negotiated under the LOSC on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, have placed deep-sea mining, Nat. Geosci. 10 (7) (2017) 464–69.

References

Examining Institutional Arrangements toward Coordinated Regional Ocean Governance and Blue Economy Policy Development in the Caribbean Community (CARICOM)

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ABSTRACT

Members of the Caribbean Community (CARICOM) exhibit strong economic, social and cultural connection with and dependence on the marine and coastal environment. Efforts to encourage the sustainable use and protection of the ocean and its resources should therefore be an area of interest and competence for the regional group which seeks to engender cooperation in matters of economic and social development. This paper examines the regionally relevant institutional arrangements that frame and execute ocean development and governance within CARICOM. It finds that while some important sectors, such as fisheries and tourism, have specific organizations established geared toward regional coordination in management of those activities, others, including offshore oil and gas, marine scientific research, and port and shipping development, lack similar arrangements. Additionally, the CARICOM group lags in adopting a holistic, ecosystem approach to ocean management with siloed approaches dominating and few formal mechanisms for intersectoral coordination existing. This paper advocates for and proposes means toward increased integration at a regional level for the management and continued governance of the marine space, its associated resources and activities. It also seeks to encourage the participatory development of a regional blue economy policy framework and strategy which would outline, among other things, CARICOM’s ocean vision and development priorities.

Introduction

Sustainable management of the ocean and its resources are integral to small-island developing States (SIDS) and the sustainable livelihoods of their inhabitants (Bennett et al. 2019; Connell 2013). This fact is underscored in a number of United Nations soft law documents such as Agenda 21, the Barbados Programme of Action, the Mauritius Strategy, the SIDS Accelerated Modalities of Action (Samoa) Pathway, several successive General Assembly resolutions on oceans and the law of the sea, and the Sustainable Development Goals (SDGs). The ocean now holds prominent standing within the sustainable development framework with SDG 14 being dedicated to conservation and sustainable use of
the ocean, seas and marine resources for sustainable development. Additionally, since the 2012 United Nations Conference on Sustainable Development (Rio + 20), SIDS, with their small land masses but large ocean spaces, have advocated for and adopted the blue economy paradigm (Silver et al. 2015). SIDS see the blue economy concept as adequately reflecting the ocean’s importance to them and consequently it now largely frames their developmental discourse (Vierros and De Fontaubert 2017).

There is no single agreed upon definition of the blue economy (Smith-Godfrey 2016) which has been partly responsible for its numerous interpretations (Voyer et al. 2018). Notwithstanding, blue economy is supposed to encompass marine-based economic activity that emphasizes improved human well-being, social justice and equity, ensuring conservation of natural resources and ecological sustainability. Naturally, Caribbean nations have been engaging in pursuits geared toward blue economy development (Patil et al. 2016). However, in light of the close proximity of the islands, dynamic and ever-changing environmental conditions and a high dependency on shared resources and space, it is increasingly recognized that a cooperative approach among the countries of the region is needed (Hassanali 2020). That being said, a comprehensive regional ocean governance model, which would support collaborative blue economy development, has long been elusive (Blake 1998).

This paper explores integrated regional ocean governance. A well-integrated regional ocean governance approach is seen as a pre-requisite to achieving effective blue economy development, particularly in SIDS regions (Fanning and Mahon 2020; Keen et al. 2018; Roy 2019). The next section will scope this study geographically and Section 3 provides insight into its analytical framework. In light of the analytical framework detailed, Sections 4 and 5 examine the relevant existing ocean governance institutions in the region while Section 6 considers where gaps exist. Section 7 presents a concluding discussion. The intention is to detail measures to better deliver coordinated and collaborative blue economy development in the Caribbean.

Defining the region

The 1992 United Nations Conference on Environment and Development (UNCED) Agenda 21 established an internationally agreed action plan for sustainable development into the 21st century (Kimbal 1993). The plan called for an “integrated and multisectoral approach to marine issues” at the regional level. Examples of efforts can now be found worldwide, with diverse approaches that cater to specific regional priorities, actors, geographical scales, environmental conditions and other peculiarities (Cicin-Sain et al. 2015; Mahon and Fanning 2019a). Wright et al. (2017) have identified five core types of regional ocean governance initiatives which are popular globally:

- Regional Seas Conventions and Action Plans
- Large Marine Ecosystems (LMEs)
- Regional Fisheries Bodies (RFBs)
- Leader-driven initiatives
- Political and economic communities that engage in regional ocean governance

In the Caribbean region all these typologies can be found co-existing in a polycentric governance system (Mahon and Fanning 2019b). For instance, the Cartagena
Convention is the regional legal agreement for protecting the Caribbean Sea under UN Environment’s (UNEP) Regional Seas Programme. The CLME+ Initiative, which encompasses the Caribbean LME (CLME) and the North Brazil Shelf LME (NBLME), is a suite of projects that is implementing a 10-year Strategic Action Programme (SAP) for sustainable management of shared living marine resources in the CLME+ region. It notably adopts a Regional Ocean Governance Framework and a regional coordination mechanism. The Western Central Atlantic Fishery Commission (WECAFC), the Caribbean Regional Fisheries Mechanism (CRFM), the Central American Fisheries and Aquaculture Organization (OSPECA) and the International Commission for the Conservation of Atlantic Tunas are fisheries management bodies whose geographical area of operation and material scope include part or all of the Caribbean Sea. With regard to leader-driven initiatives, the Caribbean Challenge Initiative is one such example. Lastly, political and economic communities that have interest, influence and which undertake ocean governance in the region include the Association of Caribbean States (ACS), the Central American Integration System (SICA), the Organization of Eastern Caribbean States Economic Union (OECS) and the Caribbean Community (CARICOM).

This paper focuses almost exclusively on CARICOM’s regional ocean governance and blue economy approach. CARICOM is the longest standing integration movement in the Latin American and Caribbean region comprising twenty countries – fifteen Member States and five associate members (O’Brien 2011). The Member States of CARICOM are Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Lucia, St Kitts & Nevis, St Vincent & the Grenadines, Suriname and Trinidad & Tobago (Figure 1).

Figure 1. CARICOM Member States and the ocean areas under their jurisdiction.
All are low-lying coastal or small-island developing countries (designated SIDS by the UN). Although its members make up less than a third of the countries and territories bordering or located in the Caribbean Sea, the group’s long history and commitment to cooperating and coordinating on a range of issues makes CARICOM a significant bloc in the region. CARICOM rests on four main pillars of integration: economic; security; human and social development; and foreign policy coordination. The ocean is central to CARICOM’s economic, social and cultural identity with 82% of Member States’ collective jurisdiction being made up of marine areas which adjoin their comparatively tiny land masses (Haughton 2005). In her installation as the 8th Secretary General of CARICOM in August 2021, Dr Carla Barnett flagged improved blue economy engagement as important to the Community.

Analytical framework and data collection methods

The dimensions and scope of integration that guided this paper on what is needed in CARICOM were adapted from dimensions previously outlined by Cicin-Sain et al. (1998) in their systematic examination of integrated coastal and ocean management (ICOM) in various national contexts over several years. In this current work, which is situated in a regional context, the dimensions of integration were shaped and understood as follows:

1. **Intersectoral integration.** This dimension’s considerations are almost identical at the regional level as at the national level. It considered the need to take into account conflicts and synergies among different ocean uses; between the environment and individual ocean uses; and between the environment and all ocean uses. Marine spatial planning (MSP) has been recognized as a useful tool for achieving intersectoral integration in ocean management both within space and time (Douvere 2008).

2. **Intergovernmental integration.** As opposed to the national to provincial to local level linkages made in national ICOM practice, vertical integration within the regional context is more concerned with how and to what extent regional prescriptions are adopted nationally. The converse is also of interest i.e. enabling States within the regional bloc to exert influence on and guide development of regional ocean policies, both within individual sectors and also more holistically. Intergovernmental integration, complemented by genuine participation and consultation with a wider body of stakeholders, is an important pre-requisite for enabling a region to establish and work toward a common vision for ocean governance and use.

3. **Spatial integration.** Under national ICOM, spatial integration is largely focused on management across the land-sea interface. From the regional perspective though, this dimension was reinterpreted to capture considerations relating to managing ecosystems and their components across the jurisdictional zones established under the United Nations Convention on the Law of the Sea (UNCLOS) i.e. archipelagic waters, territorial sea, exclusive economic zone, continental shelf, the high seas and the Area. Under UNCLOS, coastal States are afforded particular rights and responsibilities in these respective zones. Spatial integration at a regional level necessitates collaboration and coordination.
to manage ecosystems, resources and activities that straddle or are connected across UNCLOS defined jurisdictional zones. Spatial integration encourages a dual approach to regional ocean management (Tanaka 2016) marrying the zonal management of UNCLOS with the ecosystem approach that takes on board dynamics and realities, ecological and otherwise, of the biophysical environment, resources and activities of concern.

4. **Science-management integration.** Similar thinking is applied here at the regional level when compared to the national level. Policies and decisions should be informed by and based on sound science which has sought to understand ecosystem form, function and component interaction, including impact of human activity on the natural environment and vice versa (McConney et al. 2016a).

5. **International integration.** This dimension of integration within national ICOM practice more often refers to enabling sovereign nation States to collaborate, co-ordinate and negotiate in dealing with issues that have transboundary contexts. This is already partially captured in the spatial dimension of integration outlined for the regional approach. In this proposed rubric for regional integration of ocean management, international integration takes the form of representing, advocating for and negotiating the common interests of the bloc on global platforms. It may also deal with how the regional arrangement, as a whole, interfaces with other regional arrangements. CARICOM acting as a bloc within the CLME+ framework for management of the wider Caribbean marine environment (Debels et al. 2017; Fanning et al. 2021) would be an example of international integration in practice. Another is the Member States of CARICOM effectively negotiating as a group in the process to craft an internationally legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ agreement) (Hassanali 2018). The Council for Foreign and Community Relations (COFCOR) guides how and when CARICOM member States jointly engage on the global stage.

These dimensions of integration were used to examine the legal and policy documents and organizational arrangements that guide ocean governance in CARICOM. Semi-structured interviews and informal consultations complemented this analysis. They targeted key individuals within CARICOM regional organizations, academia and the non-governmental sector, allowing for a more complete understanding and consideration of the region’s important and emerging ocean sectors and their existing and potential governance architecture. The discussions also elicited viewpoints on whether and how the integration dimensions were being operationalized and any practical suggestions toward improving this. Participants were sourced from the author’s professional network and additional recommendations made by interviewees.

**The Revised Treaty of Chaguaramas as a guide for operationalizing regional ocean governance within CARICOM**

CARICOM came into being in 1973 with the signing of the Treaty of Chaguaramas. In 2001, this Treaty was significantly amended and the Revised Treaty of Chaguaramas
was signed establishing the Caribbean Community, including the CARICOM Single Market and Economy (CSME). The Revised Treaty now steers the present-day activities of CARICOM. Among other things, it details the principles and objectives of the group, outlines the group’s governance structure and specifies the functions of the various organs, and gives broad guidance on sectoral policy development.

The Revised Treaty of Chaguaramas does not explicitly guide regional ocean governance and overarching blue economy policy development and execution. It is certainly not as categorical on these interconnected topics as the 2010 Revised Treaty of Basseterre which guides the functioning of the OECS – a subregional, sister organization to CARICOM made up primarily of a subset of CARICOM members. The latter Revised Treaty more specifically identifies how oceans are to be treated. Article 4.2(o) entreats OECS Member States to “co-ordinate, harmonize and undertake joint actions and pursue joint policies in matters relating to the sea and its resources”. Resultantly, the OECS has established an Oceans Governance Team (OGT), formulated and approved an Eastern Caribbean Regional Ocean Governance Policy (ECROP) and is implementing the ECROP through the execution of initiatives such as the Caribbean Regional Oceanscape Project (CROP) (OECS 2020). Consequently, ocean management in the Eastern Caribbean is trending toward being more holistic, cross-sectoral and integrated when compared to CARICOM as a whole.

Prescriptions in the Revised Treaty of Chaguaramas have encouraged (or certainly not discouraged) a more fragmented approach to joint management of the oceans among CARICOM Member States when compared to the OECS. In CARICOM, the Council for Trade and Economic Development (COTED), is the organ appropriately placed to encourage regional ocean governance measures and facilitate blue economy policy formulation and implementation. COTED’s responsibilities are listed in Article 15 of the Revised Treaty. Among those that can be directly tied to ocean management are:

- Establishing and promoting measures to accelerate structural diversification of industrial and agricultural production on a sustainable and regionally-integrated basis;
- Promoting and developing policies and programmes to facilitate the transportation of people and goods;
- Promoting measures for the development of energy and natural resources on a sustainable basis;
- Establishing and promoting measures for the accelerated development of science and technology; and
- Promoting and developing policies for the protection of and preservation of the environment for sustainable development.

The Revised Treaty also establishes goals and objectives of some specific sectors which are ocean related and fall under COTED’s purview (Table 1). These include tourism, natural resource management, fisheries, environmental conservation and maritime transport. Therefore, the Revised Treaty of Chaguaramas provides CARICOM Member States the impetus to coordinate their management of some (but not all)
<table>
<thead>
<tr>
<th>Article</th>
<th>Focus area</th>
<th>Instructive excerpts with Blue Economy and Regional Ocean Governance relevance</th>
<th>Additional comments including with respect to the integration dimensions</th>
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<td>55</td>
<td>Sustainable Tourism Development</td>
<td>1. The Community shall, in collaboration with competent international organizations, formulate proposals for sustainable tourism development. These proposals shall recognize the importance of the tourism sub-sector to the economic development of the Region, and the need to conserve its cultural and natural resources and to maintain a balance between a healthy ecology and economic development.</td>
<td>Coastal and water dependent tourism is a major part of the CARICOM's blue economy (Clegg et al. 2020a). Article 55 speaks to developing tourism in a coordinated manner that respects cultural identity and preserves the environment. The interlinkage between sustainable tourism and other sectors is also acknowledged with a view to ensuring these considerations are taken into account in the Community’s tourism development.</td>
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<tr>
<td>58</td>
<td>Natural Resource Management</td>
<td>1. The Community shall adopt effective measures to assist the Member States in the management of their natural resources in support of the transformation and sustainable development of the agricultural sector. 2. Without prejudice to the generality of paragraph 1 and to obligations of Member States under existing international agreements, the Community shall adopt measures for: a. the effective management of the soil, air and all water resources, the exclusive economic zone and all other maritime areas under the national jurisdiction of the Member States; and b. the conservation of biological diversity and the sustainable use of biological resources of the Member States, especially those of important medicinal and traditional value.</td>
<td>Article 58 addresses a collaborative, intergovernmental approach toward effective management of the EEZ and all maritime areas under national jurisdiction of Member States. It also has relevance with regard to marine bioprospecting activities, a key emerging sector of the blue economy (Patil et al. 2016).</td>
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<tr>
<td>60</td>
<td>Fisheries Management and Development</td>
<td>3. The Community, in collaboration with competent national, regional and international agencies and organizations, shall promote the development, management and conservation of the fisheries resources in and among the Member States on a sustainable basis.</td>
<td>Fisheries is a major constituent of CARICOM’s blue economy (Oxenford and McConney 2020). Article 60 is expansive. In the Revised Treaty it encourages transboundary collaboration and therefore spatial integration. It goes on to speak to, among other things: 1. Enhancing institutional capabilities of Member States 2. Collaborative delimitation of maritime boundaries and management of straddling fish stocks 3. Implementing measures for protection of critical habitat 4. Establishing development programs for aquaculture which has been identified as Blue Economy sector with emerging potential in the Caribbean 5. Strengthening research capacity 6. Ensuring effective representation at international fora</td>
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(Continued)
Environmental preservation is one of the key considerations in blue economy development. Although the environment is broadly referred to in Article 65, it necessarily encompasses the marine environment and its constituents. This Article goes on to make reference science-based decision making and several guiding principles of international environmental law including the precautionary principle, the polluter pays principle and the principle of preventative action. It also reiterates the need to balance industrial development and the protection and preservation of the environment.

The Caribbean Sea is a heavily trafficked region and the maritime sector is a key blue economy constituent (Jean-Marie 2020). Article 140 calls for regular interchange among maritime administrators in the region. It also speaks to cooperating in implementing international maritime instruments and enhancing training of Community nationals to participate effectively develop the range of activities of the maritime industry including ancillary services. In addition, this article references the interlinkage between the maritime sector and cruise tourism sector.

In May 2011 the Wider Caribbean Region became a special area under MARPOL Annex V “Regulations for the Prevention of Pollution by Garbage from Ships” thereby generally prohibiting the discharge of any garbage into the sea.
effect intergovernmental integration. Nonetheless, the resulting management approach within CARICOM with regard to oceans is insufficient when considering contemporary insights (Winther et al. 2020; Rochette et al. 2015; Soma et al. 2015). The regional group is lagging in pursuing a coordinated, cross-sectoral, ecosystem approach to ocean governance and management. Additionally, the Revised Treaty of Chaguaramas does not have wording that explicitly encourages integration of ocean management at the national level and this too impedes attempts to achieve it on a regional scale. That being said, and as will be expanded upon in section 6, some CARICOM countries have pursued such national initiatives on their own accord.

**CARICOM organizations with roles in coordinated regional ocean governance efforts**

To promote the Revised Treaty’s objectives and help implement the Community’s strategic decisions, CARICOM has established numerous entities. This section examines several of them and their contributions or potential contributions to achieving the integration dimensions discussed in Section 3 and blue economy development more generally.

**Caribbean Regional Fisheries Mechanism**

As highlighted earlier, regional fisheries bodies are common regional initiatives. CARICOM’s inter-governmental fisheries arrangement is the Caribbean Regional Fisheries Mechanism (CRFM) (Haughton et al. 2004). Its mission is to “promote and facilitate the responsible utilization of the region’s fisheries and other aquatic resources for the economic and social benefits of the current and future population of the region.” (CRFM 2013).

The CRFM was instrumental in convening stakeholders to collaboratively develop CARICOM’s Caribbean Community Common Fisheries Policy (CCCFP), a binding treaty (McConney et al. 2016b). Unsurprisingly, given its already established mandate which includes conducting scientific work, providing management advice and facilitating networking and collaboration, CARICOM has tasked the CRFM supporting CCCFP parties in the treaty’s implementation. In sum, the CRFM has been important to all the integration dimensions reviewed in Section 3 as it relates to fisheries, although an independent performance review found the CRFM requires increased resources to be more effective (FAO 2013). Effectiveness may also be enhanced if a structure, similar to what is proposed in Section 6.4, is put in place.

**Caribbean Community Climate Change Center**

Within CARICOM, climate change should be central to blue economy development strategies and regional ocean governance thrusts because of its substantial, constantly evolving, and far reaching societal implications (IPCC 2019; Allison and Bassett 2015). The Caribbean Community Climate Change Center (5Cs) is therefore another important actor in this discussion on integrated regional ocean management.
The 5Cs can be especially critical in promoting international and science-management integration by mainstreaming climate change considerations into ocean sectors. The Center has undertaken several projects in these regards including encouraging climate neutral cruise and dive tourism, developing a regional action plan for building resilience of coral reefs, and boosting coastal protection ecosystem services through rehabilitation and better management of natural habitats. In addition, the 5Cs has conducted vulnerability and impact assessments for, among others, the tourism sector in Barbados and St Lucia and the fisheries sector in Jamaica. With growing interest in the ocean-climate nexus it is expected that the Center’s engagement in ocean spaces will increase (Hollowed et al. 2019).

Formally involving the 5Cs in a cooperative and coordinated regional ocean governance arrangement could not only help ensure that ocean policy and management actions across a range of sectors are climate smart and relevant, but it would also help the Center in achieving its mandate on a more macro level and with enduring influence beyond project-type modes of implementation. For example, oceans may be more adequately considered in any regional climate policy that is to be developed and adopted (Dundas et al. 2020). The 5Cs accreditation as a Regional Implementing Entity to the Green Climate Fund (GCF) could also prove valuable in helping regional partners access funding to undertake ocean management initiatives with climate change adaptation and mitigation implications.

**Caribbean Center for Renewable Energy and Energy Efficiency**

The Caribbean Center for Renewable Energy and Energy Efficiency (CCREEE), established in 2018, promotes itself as the regional implementation hub for sustainable energy activities and projects. Operating across seven strategic programme areas: knowledge management and transfer; sustainable transport; finance and project support; climate resilience; and sustainable buildings, CCREEE aligns with and is guided by the CARICOM Energy Policy (CEP) and Caribbean Sustainable Energy Roadmap and Strategy (C-SERMS). One of the CEP’s objectives is to attain greater use of renewable energy for electricity generation as well as in the transportation, industrial and agricultural sectors consistent with the C-SERMS target of 47% renewable power capacity by 2027. Established, new and emerging marine energy sources including offshore wind, floating solar, wave, and ocean thermal energy conversion could have a great role in achieving CARICOM’s renewable energy targets (Haraksingh 2020).

As the regional institution tasked with promoting renewable energy and energy efficiency it is therefore imperative that CCREEE is included in cooperative arrangements to develop and manage CARICOM’s blue economy. Apart from seeking to have the diverse forms of offshore renewable energy developed in an environmentally sound manner and in ways that minimize conflict with other ocean users and uses, involvement of CCREEE could extend into other realms such as assisting in the decarbonization of the maritime transport sector in the region. Thus, its potential to encourage intersectoral integration must be recognized and capitalized upon. As a relatively new institution, it is an ideal time to identify CCREEE’s potential blue economy development roles and functions whereby allowing these to be considered, accommodated and effectuated in these embryonic stages before the organization fully matures.
Caribbean Public Health Agency - Environmental Health and Sustainable Development Department

Globally, blue economy initiatives often undervalue environmental conservation and protection (Voyer et al. 2018; Bennett et al. 2021). One way of minimizing the likelihood of this occurring within CARICOM is to actively involve the Environmental Health and Sustainable Development (EHS) Department of the Caribbean Public Health Agency (CARPHA) in developing and implementing blue economy policy and governance in the region. The Department seeks to help manage the environment in the region for optimal public health by, among other things, providing environmental monitoring services and aiding Member States in conducting and evaluating multidisciplinary environmental impact assessment (EIA).

The EHS department can be an important actor in thrusts toward intersectoral, spatial and science-management integration. It currently has a public health focus and to advise on and effectuate mainstreaming environmental best practices into the policy and management of the wide range of sectors operating in the coastal and ocean realm it is foreseeable that the department may need to expand its operational lens, capacity and mandate. Given its EIA expertise, it may also be opportune to explore the possibility of the Department facilitating and guiding the conduct of regional environmental assessments (REA) in the marine space (Gunn and Noble 2009). REA are a proactive environmental assessment approach in which project-based EIA can be situated and which can help in identifying environmentally sensitive and vulnerable areas which may need to be afforded special attention.

Caribbean Tourism Organization

Tourism is one of CARICOM’s most important economic sectors overall and is considered a major component of the CARICOM blue economy (Clegg et al. 2020b; Cannonier and Burke 2019). While not being a strictly CARICOM institution (it has 24 Dutch, English, Spanish and French speaking country members) the Caribbean Tourism Organization (CTO) is headquartered in Barbados and all CARICOM Member States are represented on CTO’s Council of Ministers and Commissioners of Tourism. The CTO does not have a specific programmatic area related to oceans and coasts. However, it has a number of objectives which align well with developing the blue economy in a harmonized way.

As a functional cooperation organization, the CTO has existing intersectoral and intergovernmental integration efforts which can be built upon. These include being a collaborative mechanism and a liaison for tourism matters between Member countries; providing advice, technical assistance and opportunities for capacity development; increasing the tourism sector’s sustainability by researching and recommending means to minimize environmental impact; and strengthening linkages between tourism and other economic sectors. In addition, the CTO also includes in its membership a number of non-governmental, albeit mainly private sectors actors, who can serve as partners in tourism planning and innovation in the region (Séraphin et al. 2018).
Missing pieces to the organizational landscape?

The above discussion suggests several gaps in the CARICOM institutional framework. The following are some proposed organizations and mechanisms to coordinate and achieve more comprehensive regional ocean governance within individual sectors, and across sectors and transboundary spatial scales. Also examined is how they may further integration across the dimensions discussed in Section 3.

**Caribbean Organization for Offshore Extraction (COOE)**

Offshore extractive industries, in particular oil and gas extraction and deep seabed mineral mining, are major, albeit controversial, constituents of blue economy development in several parts of the world (Bond 2019; Carver 2019; Hunter and Taylor 2014). The ‘resource curse’ often associated with extractive industries (Ross 2015), continued promotion of carbon intensive energy pathways in light of climate change (in the case of offshore oil and gas development), and the as yet uncertain, likely long-term and perhaps irreversible impacts of deep seabed mining on sensitive marine environments (Levin et al. 2020), leave open the question of whether these activities are truly in-keeping with ideas of blue economy development given the concept’s social and environmental dimensions.

At least one CARICOM country, Trinidad and Tobago, has a long history of offshore oil and gas production (Boopsingh and McGuire 2014). Barbados has also undertaken some offshore hydrocarbon development, but to a far lesser extent. More recently Suriname, and more so, Guyana, have been positioning themselves as major emerging players on the global stage in offshore oil and gas development (Panelli 2019). Jamaica is also touted as having great offshore oil potential⁵. However, offshore hydrocarbon development is not a universal pursuit among CARICOM member States. For instance, Belize has legislated a moratorium on all petroleum activity in its maritime zones with a view to safeguarding its marine environment including the Belize Barrier Reef system (Tudela 2020). Other CARICOM countries may not have the necessary geological conditions existing within their territories that lend to the presence of viable hydrocarbon reservoirs.

With regard to deep seabed mining, there is no active deep seabed mineral mining (be it exploration or exploitation) taking place within the waters of CARICOM nations at present. This though does not preclude these activities taking place in the future if countries decide that this form of resource extraction should be pursued. Indeed, Jamaica, which hosts the International Seabed Authority (ISA) – the organization that regulates deep seabed mining in areas beyond national jurisdiction (Lodge 2017) – is already venturing into developing deep seabed mining opportunities. The country is sponsoring a company, Blue Minerals Jamaica Limited, which has received approval to explore for polymetallic nodules in the Clarion-Clipperton Zone (CCZ) located in the Pacific Ocean⁶. Although the company is, for now, aiming to operate in ocean space far removed from the Caribbean and in an area administered by the ISA, Jamaica has demonstrated that there is interest by States within CARICOM to get involved in deep seabed mining. The situation also shows that there is potential for CARICOM members, individually or collectively, to strategically pursue opportunities in this emerging sector.
In light of the preceding points, and to facilitate integration as envisioned in Section 3, an organization which would encourage cooperation by CARICOM members in exploration of offshore non-living resources might be useful. Proposed here is the formation of the Caribbean Organization of Offshore Extraction (COOE). This body could provide the framework to encourage joint ventures by countries within the group, be it within the Caribbean itself or further afield. It could also enable knowledge transfer and sharing of expertise between the States where capacity already exists and those CARICOM members seeking to develop it (Mohan et al. 2021). Additionally, the organization may facilitate the implementation of cross-regional environmental standards and institutional best practice. Lastly, the COOE may be a vehicle through which the private sector and civil society can adequately engage in matters surrounding offshore extractive industries at a regional level and through which CARICOM could participate in the activities of the Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean (ARPEL).

Caribbean Ports and Maritime Organization (CPMO)

CARICOM occupies a privileged geographical location, lying at the gateway to the Panama Canal and at an intermediate point between major East-West and North-South global trade routes. Nations within the group, in particular Jamaica, Bahamas and Trinidad and Tobago, have been able to capitalize on this strategic positioning by creating maritime freight and transhipment operations (McCalla et al. 2005). In addition, several CARICOM countries are flag States operating open registries for commercial vessels. The Bahamas is noteworthy, ranking among the top 10 flag States globally by gross tonnage in 20207. In operating open registries, nations have a responsibility to enforce international regulations on ships flying their flags including as it relates to safety, labor and the environment (Zwinge 2011).

For other CARICOM countries who may not be as involved in international shipping activities, effective and efficient maritime transport and port management is still recognized as integral facets to their development. They are important in tourism, both with regard to cruise shipping operations and in the import of commodities needed to make mass tourism functional and viable. Maritime activities are also key to islands’ food and energy security, the latter evidenced by the fact that almost all CARICOM countries are dependent on petroleum imports to meet their energy needs (Bryan 2009). Additionally, maritime transport is recognized as having the potential to play an increasing role in meeting the need for better intra-regional mobility and inter-island connection within the group (Roberts et al. 2016).

As highlighted earlier, the Revised Treaty of Chaguaramas has already recognized the need for COTED to encourage coordination and collaboration among CARICOM States in the development of maritime transport services. However, no formal subsidiary mechanism has been created to facilitate this. Establishment of the Caribbean Ports and Maritime Organization (CPMO) may be a first step in meeting this need. This organization could be tasked with the responsibility of enabling all that is outlined in the Revised Treaty and encouraging regional implementation of agreed safety, security and environmental precepts in governance of the maritime industry. The CPMO can also serve as a regional focal point for when engaging in cross-sectoral discussions.
on port and maritime matters that affect other important regional sectors such as cruise shipping in tourism and port control measures as it relates to fishing and the combat of illegal, unreported and unregulated (IUU) activity.

**Caribbean Center for Marine Science (CCMS)**

The conduct and subsequent availability of sound science and evidence-based approaches as being critical for guiding decisions on the conservation and sustainable use of the marine and coastal environment is an undisputed fact (Pendleton et al. 2020; Visbeck 2018; Boesch 1999). Indeed, this is reaffirmed in the SDGs where target 14a seeks the increase of scientific knowledge, research capacity and marine technology transfer in order to improve ocean health and wise use. SIDS are to be particularly focused on striving to achieve this target because of their disproportionate needs.

Within CARICOM various aspects of marine scientific research are currently conducted in a largely uncoordinated manner through an assortment of actors (Mahon and Fanning 2021). These include universities and academic institutions in the region, foremost of which is the University of the West Indies at its three main campuses in Barbados, Jamaica and Trinidad and a fourth to be established in Antigua; existing regional organizations such as CRFM and the Caribbean Institute for Meteorology and Hydrology (CIMH); private and not-for-profit organizations; branches of government ministries and departments; and, in one case, a dedicated marine scientific research institution established by the State, the Institute of Marine Affairs (IMA) in Trinidad and Tobago. However, marine scientific research capacity and communities of practice are neither uniformly nor adequately distributed throughout CARICOM. Additionally, even in countries where comparatively more capabilities exist, there is still a need for increased competences in a range of areas and expertise (Harden-Davies et al. 2020).

Outlined in Article 276 of the United Nations Convention on the Law of the Sea (UNCLOS), the benefit and necessity of creating regional centers for marine research has been recognized. In this regard, CARICOM could seek to add such an institution to its regional ocean governance architecture through establishing the Caribbean Center for Marine Science (CCMS). The functions of such an organization may be many. It could formulate a regional research agenda based on blue economy aspirations, and pursue strategic partnerships to fund research and encourage capacity development and the transfer of marine technology. The CCMS may also co-ordinate marine scientific research within CARICOM by, *inter alia*, acting as a data repository, creating a network of scientific expertise that could be drawn upon when required, and establishing working groups on key areas of interest. Lastly, CCMS may also be a facility through which pure and applied ocean science is conducted, acting as a center of excellence for the Caribbean in and of itself.

The Pacific Community (SPC) in the Pacific region and Europe’s International Council for the Exploration of the Sea (ICES) provide structures and modes of operation which CARICOM can explore and adapt in modeling the CCMS (Salpin et al. 2018; Walther and Mölmann 2014; Hempel 2002). CARICOM can seek to capitalize on the momentum and interest in marine science being generated by the UN Decade of Ocean Science for Sustainable Development 2021–2030 and position the CCMS to be a possible tangible outcome for the Decade (Claudet et al. 2020; Ryabinin et al. 2019).
Caribbean Blue Economy Forum

Attesting to harmonize strategic ocean direction and subsequently maximize blue economy potential within CARICOM is a complicated endeavor given the number of countries participating and the range of ocean activities and sectors, all sharing and competing for limited space and resources in the Caribbean’s coastal and marine environment. As suggested earlier, coordinating activities of Member States just within individual sectors is not enough. Interactions between the different sectors and across all countries, would also have to be coordinated in order to encourage sustainability, minimize negative pressures and optimize the benefits that can accrue to the CARICOM group. The Caribbean Blue Economy Forum is an arrangement which, it is anticipated, can help facilitate this. The Forum would be a venue to especially promote intersectoral and intergovernmental integration, allowing a full range of complex stakeholder interactions to take place, including regional actors interfacing with national actors, the realization of cross-sectoral engagement and national actors interacting with each other.

Within the Caribbean Blue Economy Forum, it is envisioned that countries would be represented by designated nominees from their national bodies tasked with ocean and coastal activity coordination and/or management. Some CARICOM countries already have such bodies existing as institutional arrangements stemming from national ocean governance efforts and associated attempts to integrate management (Muñoz 2020; McConney et al. 2016c). For instance, Belize has a Coastal Zone Management Advisory Council and Trinidad and Tobago currently has an Integrated Coastal Zone Management inter-ministerial committee. Where such national bodies do not presently exist they will have to be established and properly operationalized especially in the recognition that these arrangements are best practice globally (Cicin-Sain et al. 1998). Such operationalization initiatives have been undertaken within the OECS for example, through the ECROP and CROP. The CLME Initiative has also encouraged and led to the creation of national integration committees (NICs) (Compton et al. 2020; Fanning et al. 2021). National representatives in the Forum will be joined by officials from the regional bodies with roles in aspects of ocean governance and management including those previously outlined or suggested. Lastly, the Forum will also reserve spaces for participation and engagement by civil society organizations with a region wide mandate and advocates for traditionally under-represented groups such as youth, women and indigenous people.

The Caribbean Blue Economy Forum can perhaps convene once a year for in-person meetings. Here the setting may be provided to consolidate visions, discuss ideas and developments and explore synergies and conflicts between all actors operating in the ocean space. The forum can also be a venue where asymmetrical power relations can be managed through consensus building. Of course, coordination of stakeholders would have to occur on a continuous basis and outside of the Forum this could be facilitated by the CARICOM Secretariat, who, to be wholly effective, may need to create and resource a programmatic department dedicated to blue economy and oceans. Operating in tandem, the Blue Economy Forum and the CARICOM Secretariat can engender collaboration among vested interests, building understanding, connections, trust and the social capital needed for collective action toward sustainable ocean management in the region (Brondizio et al. 2009).
Discussion and conclusion

Institutional and policy integration is needed for effective blue economy development and will require the restructuring of organizational mandates and relationships (Singh et al. 2021). Depending on scope, resources, capacity and contextualization to suit the given circumstances in which they are embedded, institutions could succeed in giving voice to stakeholders, charting strategic directions, implementing approaches, evaluating successes and failures, reassessing priorities, adapting to changing circumstances and deepening integration (Cairney 2019). This analysis reveals that the levels of integration needed for sustainable development within CARICOM’s marine areas remains underwhelming, with organizational structures and interactions that are not entirely fit to optimize blue economy development. The key informants and practitioners consulted recognize this and acknowledge the need to improve.

To effect improvements, it must be emphasized that the regional ocean governance structure cannot stand alone. The structure’s activities and pursuits should be grounded in a clearly articulated overarching policy, collaboratively arrived at by all members and stakeholders of the regional arrangement. This policy should outline long term vision, guiding principles and objectives with regard to the region’s sustainable ocean related development (Elliott et al. 2020). Creating such a policy will not only promote regional stability but also allow for consistency as CARICOM engages in extra-regional and international fora, thus aiding in making international integration more effective. The policy could also explicitly speak to the dimensions of integration that have been highlighted and strategies to further enhance them.

Developing a CARICOM blue economy policy framework should therefore be paramount. The CARICOM Secretariat could drive this policy formulation using a mechanism with similar ideological underpinnings to the Caribbean Blue Economy Forum if, at that point in time, the Forum has not already been formally operationalized. The Forum and all that it entails, will be a lynchpin in deepening integration in all the dimensions laid out. Contributions by all relevant stakeholders and State governments would promote better understanding of the social-ecological system including insights into its status, the opportunities it provides and the pressures it faces. Through genuine engagement, roles and responsibilities in achieving set objectives can also be detailed, agreed upon and committed to, thus building the sense of ownership of the policy by the relevant actors. Subsequent periodic reevaluation and revision of the policy through the Forum, when coupled with responsive institutions, would help CARICOM nimbly and adaptively manage its marine space and resources into the future (Bork 2021).

To further advance intersectoral and spatial integration some have suggested, despite CARICOM being geographically fragmented, making transboundary implementation of MSP a region-wide practice. The Eastern Caribbean sub-region is more progressive in this respect compared to the rest of CARICOM (OECS 2020). Of course, a helpful proviso for effective MSP and indeed, intersectoral integration, is for individual sectors to have clarity in and of themselves, of their policies, plans and strategic direction. Regional sectoral organizations, such as those proposed in Section 6, are thus valuable in this respect as well as the conduct of strategic environmental assessments for their respective programmes (Fundingsland Tetlow and Hanusch 2012).
Regarding intergovernmental integration, uptake and implementation of regional prescriptions by nation States, has at times been slow (Lewis 2020). Interviewees have suggested increased capacity development efforts and also, where appropriate, making more use of the dispute resolution provisions of the Revised Treaty including the Caribbean Court of Justice (CCJ) in seeking judicial relief. In addition to interpretation of legal and policy documents of the Community, the Court may become more active in pronouncing on and codifying Community practice and norms (Caserta and Madsen 2016).

On improving the science-policy interface, in addition to the CCMS that was proposed above, practices and other ideas applicable to the wider Caribbean region are discussed in more detail in Mahon and Fanning (2021).

It will be resource intensive for the region to facilitate inclusive policy development, build capacity of existing organizations and create and resource new organizations in efforts to strengthen and invigorate regional ocean governance within CARICOM. In the past, the Global Environment Facility (GEF) – International Waters programme has been keen to fund regional integration initiatives and CARICOM could look toward them as a possible funding partner to aid in the transformation of the ocean governance landscape (Söderbaum and Granit 2014). The Commonwealth is another potentially worthwhile collaborator and benefactor. With fourteen of the fifteen CARICOM Member States also being members of the Commonwealth, and with blue economy being one of the core focus areas of the Commonwealth Blue Charter, the Climate Finance Access Hub of the Commonwealth could be tapped by CARICOM to facilitate human, institutional and technical capacity development in ocean management. Alongside these conceivable partners, the Caribbean Development Bank (CDB) may also be a willing and able ally especially as it relates to encouraging private sector investment in the blue economy through innovative financing mechanisms (Ram 2018; Tirumala and Tiwari 2020).

It is worth noting that CARICOM has been reluctant to establish and support new organizations under its ambit primarily because of costs. However, this paper has proposed them because the analysis demonstrates their need. To address resource constraints, it may be necessary to prioritize these proposals. It is important to strategize on where the group’s main interests and extra-regional standing would most benefit from a strong CARICOM organization while, at the same time, consider how other less important objectives outlined might be achieved via the existing and emerging coordination mechanisms like the CLME/PROCARIBE+ Initiative.

Ocean management integration challenges are apparent worldwide (Mahon and Fanning 2019b), but efforts and initiatives geared toward improvements are ongoing, including in other SIDS regions (Vince et al. 2017). This paper has highlighted where CARICOM can enhance its approach, but also emphasizes some of the region’s progressive arrangements that could be adapted and applied elsewhere across the globe. Cross-regional learning must be enhanced. The COVID-19 pandemic has had considerable impacts on the Caribbean, weakening already fragile economies (Byron et al. 2021). As the region emerges from the global pandemic however, making investments in sustainability, enhanced coordination and cooperation and deeper integration in ocean management can see CARICOM “build back better” and more resilient (United
Perpetuating comprehensive and cohesive blue economy development should be at the forefront.

**Notes**

8. The CCJ is the judicial organ of CARICOM with compulsory and exclusive authority in interpreting and applying the Revised Treaty of Chaguaramas and decisions taken by its organs (Bravo, 2005).
9. The Commonwealth Blue Charter is an agreement by all Commonwealth countries to actively cooperate to solve ocean-related problems and meet commitments for sustainable ocean development. For more information: https://bluecharter.thecommonwealth.org/ (accessed: 1st March 2021).

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Internationalization of EIA in a new marine biodiversity agreement under the Law of the Sea Convention: A proposal for a tiered approach to review and decision-making

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ABSTRACT

Environmental Impact Assessment (EIA) is one of the four main elements of the package being negotiated in the Intergovernmental Conference to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ agreement). “Internationalization” of EIA under the agreement, which partly relates to the international community’s role in oversight and outcome of the process, remains a contentious issue that requires continued consideration. Less controversial aspects of internationalization in the EIA process are internationalization of consultation and dissemination of information. They are shown to be critical to achieving quality outcomes and encouraging transparency and accountability. This paper addresses a third dimension of internationalization, relating to review and decision-making, which is proving to be the most divisive in the negotiations to date. This aspect of internationalization is fundamental to allowing decisions taken on proposed activities to be seen as legitimate but concerns exist about the bureaucracy and costs that the process may entail, as well as potential interference with sovereign rights of States Parties under UNCLOS. This paper advances a proposal for internationalization of review and decision-making under the BBNJ agreement that attempts to bridge the divide evident going into the 4th session of the Inter-governmental Conference in 2021.

1. Introduction

Environmental impact assessment (EIA) is commonly identified as having origins in 1969 when its practice was legislated in the US through the National Environmental Policy Act (NEPA) (Ortolano and Shepherd, 1995). In the present day, conduct of EIA is a requirement in the vast majority of countries around the globe (Yang, 2019). Rulings in international courts, most notably the International Court of Justice’s (ICJ) judgment in the Pulp Mills on the River of Uruguay (Argentina v. Uruguay) case, have affirmed the conduct of EIA as a general obligation under customary international law (Payne, 2011; Boyle, 2011). EIA is also acknowledged as a process that operationalizes duties and principles of international environmental law including the duty to prevent environmental harm, the precautionary principle and the duty to cooperate (Craik, 2020).

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) positively influenced the progressive evolution of the customary status afforded to EIA when the responsibility to undertake these assessments was made incumbent on States for activities proposed in marine areas. Although never specifically making reference to the term “environmental impact assessment”, Article 206 of the Convention embodied its essence in outlining that:

“When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.” – UNCLOS, Article 206.

Application and understanding of the discipline of EIA was still nascent when UNCLOS was being negotiated during the 1970s and early 1980s. It is therefore not surprising that EIA related provisions in UNCLOS are very general, with their vagueness leaving them open to interpretation. For instance, Article 206 does not specify the scope and content of impact assessment to be undertaken in marine areas. Article 205 speaks about the requirement on States to publish assessment and monitoring reports or provide them to competent international organizations, but does not elaborate on when and how this should be done.
and who the competent organizations are. That being said, Articles 205 and 206 of UNCLOS remain enforceable obligations under international law as exemplified by the ruling of the Permanent Court of Arbitration in the South China Sea case (Tanaka, 2018). However, with almost 40 years’ experience in the conduct of EIA since the Convention was agreed and extensive jurisprudence from international courts and tribunals on the topic, more detailed procedural and substantive requirements as it relates to EIA under UNCLOS can be developed. The opportunity to do this has presented itself in the context of ongoing intergovernmental negotiations to develop a new biodiversity treaty under UNCLOS known as the BBNJ agreement.

This paper, informed by a review of submissions by negotiating Parties, direct participation in the BBNJ agreement negotiations and consideration of other existing EIA frameworks and procedures, examines the issue of internationalization of the EIA process in the draft BBNJ agreement. It starts by giving a brief insight into the BBNJ process up to this point. A discussion on what is meant by “internationalization” within the context of the negotiations then follows. This discussion also considers if internationalization is important or needed. Based on this analysis, the paper then goes on to suggest a process for internationalization as relates to review and decision-making for proposed activities in areas beyond national jurisdiction (ABNJ). The intention of this article is to contribute to the ongoing debate and advance solutions in the intergovernmental negotiation of the BBNJ agreement.

2. Efforts to improve conduct of EIA in marine areas beyond national jurisdiction (ABNJ)

Due to its broad scope and character of universality and changing circumstances over time, UNCLOS has relied on supplemental agreements to clarify and develop more comprehensive rules on some of its provisions (Treves, 2013). Implementing agreements under UNCLOS, namely, the 1994 Agreement relating to the implementation of Part XI of the UNCLOS and the UN Agreement for the implementation of provisions of the UNCLOS relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (UNFSA), have been used for this purpose. As it relates to the former, it is interesting to note that this implementing agreement significantly amended what was originally contained in the Law of the Sea Convention in a number of respects (Duff, 1995). Currently, the negotiation of a third implementing agreement under UNCLOS is in progress. The agreement being negotiated addresses the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ agreement).

Developing the BBNJ agreement has been a long process of informal and formal efforts (Long and Chaves, 2015). It commenced under the auspices of the UN in 2004 with the setting up of the Ad hoc informal working group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ Working Group). The process then progressed through a Preparatory Committee (Prep Com) established through UN Resolution 69/292 and eventually to an Inter-governmental Conference (IGC) when UN Resolution 72/249 was adopted in December 2017. The negotiations address, together and as a whole, the topics identified in a package agreed in 2011 by the BBNJ working group:

- marine genetic resources, including questions on the sharing of benefits;
- measures such as area-based management tools, including marine protected areas;
- environmental impact assessments; and
- capacity building and the transfer of marine technology

Although UNCLOS already outlines the general obligation on States to assess impacts of proposed activities, in ABNJ the standards and processes for the conduct of EIA are fragmentized, varying considerably between sectors, between regions, sometimes within sectors and in some instances the duty to conduct EIA and the manner in which this is done may not yet even be a consideration (Elfferink, 2012a; Warner, 2012). Therefore, a critical objective of the BBNJ agreement is to bring coherence to the conduct of EIA in ABNJ including by establishing processes, thresholds and guidelines for conducting and reporting of assessments by States.

The IGC for the BBNJ agreement has been organized into four substantive meeting sessions. The first session took place in September 2018, the second in March 2019 and the third in August 2019. The fourth session was scheduled to be completed in the first half of 2020 but has been postponed due to the global Covid-19 pandemic. By the end of the fourth session, negotiators are supposed to have elaborated the text of the BBNJ agreement. However, at the closing of the third session, the Chair of the informal working group on EIA highlighted a number of issues on which there is still no convergence and which could benefit from further consideration. At the forefront of these is “the degree to which environmental impact assessment process should be ‘internationalized’, for example by assigning roles to the scientific and technical body or the conference of parties” (Statement by the President of the Conference at the closing of the third session, p. 13’).

3. Internationalization – the what and the why

There is no single interpretation of what is meant by “internationalization” of EIA under the BBNJ agreement. In the Report of the Preparatory Committee established by General Assembly resolution 69/292, which was produced in July 2017 and was the basis on which the UNGA decided to convene the IGC, it was identified that “further discussions are required on the degree to which the (EIA) process should be conducted by States or be ‘internationalized’” (p. 17 – emphasis added). On the surface therefore, “internationalization” may have been best understood as one end of a continuum between a State-led EIA process and one that is subject to full global oversight.

As discussions progressed during the IGC, what is meant by internationalization has been clarified. At the broadest level internationalization relates to having common standards for the conduct of EIA in ABNJ, the absence of which, as alluded to earlier, is a problematic feature of the current governance framework (Elfferink, 2012a; Warner, 2012; Doelle and Sander, 2020). Whether the standards set out in the BBNJ agreement should constitute global minimum EIA standards for all activities that impact ABNJ and how this is to be co-ordinated and realized given that there are existing entities with already established EIA responsibilities and mandates, are still topics of debate. The International Seabed Authority (ISA) is one such entity. Its regulations, including the Recommendations for the Guidance of Contractors for Assessment of the Possible Environmental Impacts Arising from Exploration for Poly metallic Nodules in the Area, already specify, inter alia, the extent of EIAs to be conducted under its purview. At the closing of the third session of the BBNJ IGC, the Chair of the EIA informal working group acknowledged that this aspect of internationalization i.e. interaction

1 UN Resolution 69/292: https://undocs.org/A/RES/69/292
2 UN Resolution 72/249: https://undocs.org/A/RES/72/249
3 Statement by the President of the Conference at the closing of the third session: https://undocs.org/a/conf.225/2019/10 (accessed on 17th August 2020)
with existing arrangements in the development and subsequent operationalization of the BBNJ agreement, needs further attention (Statement by the President of the Conference at the closing of the third session, p. 14). This particular discussion is outside the scope of this paper however.

Another dimension of internationalization shall be addressed here. The Chair of the EIA informal working group also highlighted that there is little convergence with respect to “the degree to which the environmental impact assessment process should be ‘internationalized’, for example by assigning roles to the scientific and technical body or the conference of the parties” (Statement by the President of the Conference at the closing of the third session, p. 13). This article therefore drills down deeper into the actual substance of what is being negotiated and discusses internationalization through that lens. It examines internationalization within the EIA process that proposed activities would be subject to in the agreement and the decision-making procedure that would follow. Within the context of the IGC, consideration of this process and decision-making dimension of internationalization, reveals that there is nuance to acknowledge and scrutinize. In this regard, generally, delegations see internationalization as entailing one or more of the following:

1. Internationalization of consultation which implies broad, global scale stakeholder notification, engagement and public participation as relates to consultation throughout the EIA process.
2. Internationalization of dissemination of information which refers to open distribution, circulation and public access to information, including to the reports and decision-making documents emanating from the EIA process.
3. Internationalization of review and decision-making where the issue of global oversight is addressed and EIA reports are reviewed by independent experts and forwarded to an identified representative body who determines whether activities proceed or not.

The first category, internationalization of consultation, is addressed under Article 34 (Public Notification and Consultation) of the President’s revised draft text6 released after the 3rd session of the IGC. Public participation is a well-established requirement in all EIA procedures (Glicker et al., 2013) for normative e.g. influencing decisions, empowering marginalized groups, enhancing democracy; substantive e.g. harnessing information and knowledge; and instrumental reasons e.g. resolving conflicts (O’Faircheallaigh, 2010). Article 34(1) of the revised draft text sets forth that:

“States Parties shall ensure early notification to stakeholders about planned activities under their jurisdiction or control and effective, time bound opportunities for stakeholder participation throughout the environmental impact process, including through the submission of comments, before a decision is made as to whether to proceed with the activity.”

Paragraph 2 of Article 34 goes on to outline a broad and comprehensive, but indicative and non-exhaustive list of stakeholders to be notified and consulted in the process. However, this paragraph is wholly bracketed along with some of the categories of stakeholders listed including “indigenous people and local communities with relevant traditional knowledge in adjacent coastal States”, who some commentators see as having an integral but traditionally marginalized voice (Mulalap et al., 2020; Vierraos et al., 2020), and “interested and relevant stakeholders”, which may include those who may wish to speak on behalf of nature (Harden-Davies et al., 2020). Encouraging internationalization of consultation lies firstly in sending the right signal through what is included in the text of the agreement. The text would help dictate and guarantee that mechanisms are put in place which ensure States genuinely and transparently enable participation and actively consult with the public and stakeholders who may have something to contribute, not just those who may be perceived as relevant, familiar or accessible. In this regard, in the absence of, or as a complement to listed examples, definitions of what constitutes the “public” and “stakeholders” may be useful inclusions in the agreement text.

Impetus and precedent for the second identified dimension of internationalization, internationalization of dissemination of information, can be found in two multi-lateral treaties that have been crafted for this purpose. The United Nations Economic Commission for Europe (UNECE) Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention),7 adopted in 1998, provides for the right of everyone to access environmental information that is held by public authorities and obliges public authorities to actively disseminate same (Oliver, 2013). Although originally crafted within a pan-European context it is open to signature by non-UNECE countries. Of more recent vintage, the 2018 Regional Agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (Escazú Agreement)8 is a sister agreement to the Aarhus Convention crafted with consideration to circumstances existing in that part of the world. Although not without shortcomings and challenges to implementation (Gómez, 2019; Stay and Jeniška, 2019), the intent and principles espoused in these two treaties are laudable and aspirational (Barrett, 2019). Indeed, Article 3(7) of the Aarhus Convention and Article 4(10) of the Escazú Agreement mandate that Parties promote the application of the principles contained therein in other international environmental decision-making processes. This is already being done to some extent in global climate change regime (Dyck, 2015), has been done in regard to the management plan for the Clarion-Clipperton Zone in the deep-sea mining regime and is certainly therefore also germane to the EIA process under the BBNJ agreement. The Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums can be instructive in these efforts.

The revised draft text of the BBNJ agreement contains avenues that can effect internationalization of dissemination of information in EIA processes. Again, article 34 is important where paragraph 5 speaks to States parties establishing procedures allowing for access to information related to the EIA process under the agreement. Exceptions are proposed to be made for “non-public information or information that would undermine intellectual property rights or other interests”. This allowance, while not unusual, may benefit from more clarity in the text as, as phrased, it is open to wide interpretation and therefore potentially disingenuous usage. Nonetheless, internationalization of dissemination of information is bolstered by Articles 36 and 40 which address public access environmental information that is held by public authorities and obliges public authorities to actively disseminate same (Oliver, 2013), the intent and principles contained in other international environmental decision-making processes. Thus far, this has been done in regard to the management plan for the Clarion-Clipperton Zone in the deep-sea mining regime and is certainly therefore also germane to the EIA process under the BBNJ agreement.


8 Escazú Agreement text: https://repositorio.cepal.org/bitstream/handle/11362/40583/1/S1600428.em.pdf (accessed on 7th August 2020)

making related documents be made public. This is currently found in bracketed text in Article 38(3).

Taken together, internationalization of consultation and internationalization of dissemination of information can ensure transparency and accountability in the EIA process and subsequent decision-making on and monitoring of activities that have effects in ABNJ. Accountability and transparency are features of good governance and have been identified as qualities inherent to “next generation environmental assessment” (Doolen and Sander, 2020). Overall, through effective operationalization of these aspects of internationalization, the quality of outcomes should be improved, adaptive management could be encouraged (Noble, 2000), opportunities for the process to be secretive and ad hoc would be lessened, balance of interests and equity can more readily be achieved and decision makers and persons in authority could be held to high standards (Morrison-Saunders and Early, 2008). Additionally, especially as it relates to internationalization of consultation, more legitimacy and acceptability in decisions can be generated (Glucker et al., 2017).

That being said, considering the global commons that are ABNJ, legitimacy in EIA decision-making entails more than just ensuring genuine and inclusive participation and consultation. Some commentators have called for advancing the principle of stewardship as a basis to guide governance of ABNJ with a view to expressing the idea that all States have a shared interest and responsibility in this regard (Ellerink, 2012; Ridings, 2018). Indeed, the preamble of the revised draft text speaks to States Parties to the agreement “desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations”. The evolving legal doctrine of common concern of humankind (CCH) captures the notion of the responsibility of States as stewards of the global marine environment (Shelton, 2009) and warrants consideration for inclusion in Article 5 on general principles and approaches (Bowling et al., 2016). It must be made clear however, that to say this is not to advocate for CCH replacing the related but more robustly developed and legally distinct principle of common heritage of mankind (currently bracketed in Article 5), which has been suggested in the past in discussions about access and benefit sharing of marine genetic resources in ABNJ (International Institute for Sustainable Development, 2017).

In the global commons, recognition and acknowledgement of shared interest and responsibility has important implications for decision-making. It shapes the understanding that it cannot be considered good governance practice to have a framework where a State is allowed to make a unilateral decision as to whether an activity, with great potential to affect the environment and its constituents in ABNJ, may proceed or not. Such a decision would be used to further argue that to make such a decision is not the legitimate right of a singular State in an area under global custodianship. In sum, it provokes the realization that legitimacy would better result from internationalization of review and decision-making as it relates to EIA for activities proposed in ABNJ.

At the negotiations however, this aspect of internationalization remains very contentious. A seemingly intractable cleavage exists between countries wanting review and decision-making to be under the control of individual States and those wanting to see the process have greater global oversight. The European Union (EU), USA, Canada and United Kingdom are some of the countries that have expressed sentiments aligned with the former category while the Caribbean Community (CARICOM), group of Pacific small island developing States (PSIDS) and the Philippines are examples of the latter. Countries not wanting internationalization of review and decision-making cite the interference with State’s rights under UNCLOS, the existence of capable and well-functioning EIA machinery already existing within their own territories, exorbitant costs to set up and maintain an internationalized system and possible lengthy delays in the process of review and decision-making as reasons for preferring the EIA procedure remains State controlled. With this in mind, this paper will now go on to present a proposal aimed at bridging the divide that exists as relates to internationalization of review and decision-making in the negotiations.

4. Proposal for internationalization of review and decision-making

With a view to attaining a resolution which, in the spirit of compromise, would see the interests of States on both sides of the divide being accommodated to some degree in a solution that is practical and implementable, a novel approach must be sought. Given the elicited positions of negotiators, the ongoing, protracted debate on internationalization of review and decision-making for EIA under the BBNJ agreement requires creative adaptation and adoption of features found in assessment frameworks that are currently employed elsewhere around the world. That is the idea behind this proposed novel framework. The main features of this arrangement, which includes tiering and roles for organs set up under the agreement, shall be expanded upon below.

Ceding review and decision-making to international authorities or cooperative bodies is not an untried concept in the governance of ocean affairs. For example, individual countries do not unilaterally establish ship routing; proposals made by countries in this regard are evaluated by the International Maritime Organization’s (IMO) sub-committee on Navigation, Communication and Search and Rescue (NCSR) and adopted by the Maritime Safety Committee (MSC). This is so despite activities such as navigation and fishing being qualified as “freedoms” in the high seas under Article 87 of UNCLOS. It therefore reinforces the fact that these and other freedoms are not absolute but subject to certain obligations such as the duty to cooperate in the conservation and management of living resources, as expressed in Article 118 of UNCLOS.

However, one only has to look at the Commission on the Limits of the Continental Shelf (CLCS), a part-time body established under UNCLOS which gives recommendations to coastal States on their extended continental shelves submissions, to see that concerns about lengthy delays in the process of international review and decision-making, can be well founded. Currently, the workload of the CLCS far exceeds its resources and capacity and it is now the norm for States to have wait times of well over a decade for their submissions to be given consideration (Subedi, 2011). Although the workload of an international body which would have responsibility for EIA review and decision-making for proposed activities with impact in ABNJ is as yet uncertain, if not properly resourced there is the possibility that such an arrangement could become non-functional, ineffective and moribund. Tiering of the EIA process would be a feasible way to minimize the likelihood of unmanageable caseloads, allowing in country expertise to be utilized where appropriate, while still ensuring that the most impactful activities are subject to the internationalization of review and decision-making.

The Antarctic Treaty system (ATS) which aims that Antarctica shall be used for peaceful purposes and provides the mechanism for international cooperation and management for the vast continent (Triggs, 2011), has adopted an EIA procedure that employs a tiered approach as a central feature of the mechanism. The 1991 Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol), which entered into force in 1998, sets out how the tiered EIA system works. The protocol operationalizes the threshold of “minor or transitory” effects in order to give effect to the tiered approach. Under Article 206 of UNCLOS the threshold used for conduct of EIA is “substantial pollution of or significant and harmful changes to the marine environment”. Importantly, for the purposes of the BBNJ agreement, which is meant to at least be consistent with, if not build upon, what is found in the Convention, the Madrid Protocol’s threshold can be squared with UNCLOS’ threshold. Proposed activities with “more than minor or transitory” effects can be deemed to match the standard found in Article 206 of UNCLOS (Bastmeijer and Roura, 2008). It should be noted that in Article 24 of the revised draft text, in one alternative put forward for the threshold for the conduct of EIA, the “more than minor or transitory effects” threshold is confusingly proposed to operate alongside the UNCLOS threshold even
though they essentially mean the same thing. This paper will attempt to alleviate this confusion in the approach that it presents. At the same time, it will be seen that what is being proposed here will not derogate from or dilute the primary obligations flowing from the Convention.

Under the Madrid Protocol, three levels of potential impacts are established which sets the stage for how the EIA regime proceeds. A preliminary assessment for proposed activities is conducted which determines whether its impacts are likely to be less than minor or transitory; minor or transitory; or more than minor or transitory. If the impacts are determined to be less than minor or transitory the activity can proceed. If impacts are deemed to be minor or transitory an additional initial environmental evaluation (IEE) is required. However, if the preliminary assessment determines that the impacts are likely to be more than minor or transitory, a comprehensive environmental evaluation (CEE) is needed. In the Madrid Protocol, IEE and CEE have different requirements and the latter is subject to international scrutiny (Bastmeijer and Roura, 2009). For the EIA approach under the BBNJ agreement, what is being proposed, and explained in more detail later on, is adoption of preliminary assessment to determine the likely level of impact. The likely level of impact would then be used to tier the process with the functional variable being not the type of EIA to be carried out but rather the level of global oversight any conducted EIA is subject to.

Global oversight would entail, in the first instance, a review of the initial EIE report the STB established by the BBNJ agreement. There is general support for an STB to be established under the BBNJ agreement, with details regarding it being addressed in Article 49 of the revised draft treaty text. At present, it is uncertain what form the STB would take, with many delegations choosing to defer that discussion to a later stage when there is a clearer picture emerging on how the agreement as a whole would take shape (International Institute for Sustainable Development, 2019). “Form follows function” is often the remark made by delegations in this regard. This proposal would see the STB performing functions related to ensuring adherence of EIAs to procedural requirements of the agreement e.g. mandatory report content and extent of public consultation; and assessing the actual quality of the report, including the alternatives and mitigation measures it will propose. In order to adequately carry out these functions the STB would need to have access to a wide range of expertise contingent upon the subject matter and regional peculiarities of the assessment. Internationalization of review is not only important for transparency purposes but it also allows countries who may want, or need, to review EIA reports (as is their right), but lack the capacity to do so, to find comfort in the fact that an independent body of qualified experts is tasked with this responsibility on their behalf.

But what if a review of the EIA is done by the STB, it will then forward its recommendation to a body representing the global community to make a decision as to whether the given activity would be given leave to proceed or not, and if so under what conditions. A Conference of Parties (COP) is such a global body and it too seems to be a favoured institutional arrangement to be established under the BBNJ agreement (International Institute for Sustainable Development, 2019). The intention is to have the COP make its decision based on the advice of the STB to reinforce a science-based approach to management (Elferink, 2012b). However, it is acknowledged that other factors, including political ones, may play a part in decision-making under the COP. There may be use in developing transparent criteria for decision-making that can be objectively scrutinized to improve accountability in the procedure. That being said, it is recognized that development of such criteria may also be a long and contentious process which should not delay implementation of this proposal if it is adopted.

With the preceding considerations in mind, the proposal for internationalization of review and decision-making can now be fully outlined (Fig. 1). Under Article 30 on “Screening” in the revised draft treaty text, a preliminary assessment of the proposed activity will be carried out. This screening is with a view to determining the level of effect on the marine environment and associated ecosystems the activity is likely to have. The level of effect would be classified as either “less than minor or transitory effects”; “minor or transitory effects” or “more than minor or transitory effects”. It is being advanced that this screening process be conducted by the State under whose jurisdiction or control the activity falls, but those States must provide documents to the STB and general public outlining how its decision was arrived at, for information purposes and to allow challenges to that decision should it be clear, on the basis of science or otherwise, that it was improperly taken. The STB would therefore have latitude to make recommendations to the State to address inadequacies in its analysis. It is also being suggested that a body of experts, independent of the STB, be established under the agreement to assist States in conducting the preliminary assessment, should there be need to do so but, at the same time, a lack of capacity. Members of this body of experts can be accredited by the STB. States may then commission them to conduct screening with costs to be borne by the proponents of activities.

Based on the findings of the screening the proposed activity will then enter either a State controlled stream for review and decision-making or an international one. If the screening determines that the proposed activity is likely to have minor or transitory effects, the activity goes into a State-led mandatory EIA process where, after the EIA has been conducted to the standards outlined in the Agreement, decision-making as to whether the activity proceeds or not would be done by the State under whose jurisdiction or control the activity falls. In this stream, all EIA and decision-making documents are still required to be made public through whatever means is decided, including the clearing-house mechanism. On the other hand, if the screening determines that the proposed activity is likely to have more than minor or transitory effects then the internationalization of review and decision-making occurs. This should also occur when the screening determines that the effects of the proposed activity are unknown or poorly understood which is in line with the application of precaution especially in the face of novel activities that may have impacts in ABNJ. As outlined above, internationalization of review and decision-making entails review of the EIA by the STB and decision-making on behalf of the global community by the COP. Lastly, as with the Antarctic Treaty, if the screening determines that the proposed activity is likely to have less than minor or transitory effects, no further evaluation will be required under the Agreement.

This proposal on how the EIA procedure under the BBNJ agreement should function is one of compromise. It seeks to achieve internationalization of review and decision-making where it matters most i.e. with activities that have the potential to cause the most harmful effects. At the same time the tiering of the system provides a means to not overburden the bodies established under the agreement with assigned roles, in particular, the STB. The STB will only have responsibility to review EIA reports for activities forecasted to have more than minor or transitory effects. The experience in Antarctica may be used as a proxy to gauge the future workload of the STB. Perusal of the EIA database of the Secretariat of the Antarctic Treaty10 reveals that from 1991 (the year the Madrid Protocol was signed) to now, only 26 projects required the conduct of CEE. Thousands of other proposed activities during that time required only IEE or preliminary assessment. These statistics may serve to allay some fears of an unmanageable caseload, especially if the STB were to be properly resourced.

5. Challenges and opportunities in the proposed approach

With this novel proposed approach there will likely be teething issues and challenges to application. However, there are also safeguards and supporting and complementary mechanisms that could be put in place to aid implementation and functionality of the arrangement being suggested. For instance, an effective system hinges on the ability of States

10 Antarctic Treaty EIA database: https://www.ats.org/e/eia.html (accessed on 13th August 2020)
parties to accurately and transparently classify activities by the appropriate level of likely effects during the screening stage. The revised Guidelines for Environmental Impact Assessment in Antarctica, adopted in 2016, notes that, despite attempts, no agreement has so far been reached on how “minor or transitory” effect is defined. It goes on further to suggest that interpretation needs to be made on a case by case, site specific basis due to the dependence of a number of variables associated with each activity and each environmental context. The lack of concrete criteria has led to some tensions in the past within the setting of the Antarctic Treaty Consultative Meeting where scientific, environmental and operational issues are discussed (Hemmings and Kriwoken, 2010).

Under the BBNJ agreement there may be room for the STB to build upon what has already been tabled under the auspices of the Antarctic Treaty and attempt to develop more objective specifications and guidelines, tailored to ABNJ, for the “minor or transitory” threshold. It should be noted that the UNCLOS Article 206 threshold also remains unelaborated and open to interpretation (Kong, 2011). Therefore, absence of specific guidelines for the “minor or transitory” threshold should not be seen as a deterrent to endorsing this proposal. However, development of further guidance as to what this particular threshold means would be a prudent, pragmatic action that could be undertaken to improve implementation of the BBNJ agreement. Guidelines may be gradually developed over time and should also not be seen as a reason to delay implementation of this proposal should it be adopted.

As alluded to earlier, criteria and guidelines may also be important to obtaining an objective decision as to whether an activity proceeds or not. This is so whether the decision is to be made in the State-led stream or the internationalized stream for decision-making. The development of such transparent criteria and guidelines will also ultimately aid in the BBNJ agreement being effective in implementation. In the draft treaty text there is currently one listed criterion, found in the bracketed Article 38(2), which says that no proposed activity may proceed where the EIA indicates there will be “severe adverse impacts on the environment”. With specific regard to this point, it is important to highlight that “severe” as a standard for classifying adverse impacts is found nowhere in international law as it relates to EIA (High Seas Alliance, 2020). Strong consideration should therefore be given to adopting the more commonly used standard of “significant”, when referring to adverse effects, as the bar for not permitting activities to proceed.

Confidence in this proposed process being effective and fit for purpose can be bolstered by adequate implementation of strategic environmental assessment (SEA). SEA is also a major feature under discussion in this Part of the BBNJ agreement, and can help in determining whether the threshold for internationalized review and decision-making for proposed activities has been crossed and improve the subsequent evaluation that is carried out. There is no single understanding of what SEA entails (Noble and Nwanekezie, 2017) but it may be seen as a proactive evaluation of the vulnerability of a geographic area or ecosystem type to potential human activities so as to establish what kinds of activities may be permitted and how the likely impacts will be assessed by EIA. SEA conducted under the BBNJ agreement can help to inform decision-making including as it relates to screening of proposed activities (Clark et al., 2020).

Finally, as noted by Yotova (2016) in commentary on the judgment delivered by the ICJ in the joined cases of Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of...
a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica), the Court’s analysis highlighted that the threshold of risk triggering the obligation to conduct EIA is subject to international judicial scrutiny and not up to the State alone. Although these cases were not connected to ABNJ, they did concern transboundary effects and effects on shared resources. The ruling suggests that under the BBNJ agreement the standard of due diligence should be firmly linked to the decisions and actions taken by States. Furthermore, it is prudent to ensure decisions made at all stages of the EIA process be subject to the established dispute resolution mechanisms under the agreement.

It is also important to note that for the purposes of liability and compensation, in line with Article 235 of UNCLOS, due diligence on the part of the State becomes an important consideration where they have jurisdiction over persons causing damage as a result of approved activities (Svendsen, 2020). State responsibility in relation to screening and subsequent review and decision-making on an EIA is applicable in this regard. For the purposes of activities impacting ABNJ however, it is being advanced here that the liability and compensation regime needs to go further, especially in light of the fact that, under this proposal, the STB and the COP will have roles in the permitting of some activities. Liability and compensation have not received much attention in discussions at the IGC thus far and there are no provisions that address it in the revised draft text (Long, 2019). States under whose jurisdiction proponents of activities in BBNJ fall should be required to implement strict liability on them in order to ensure prompt and adequate compensation in the event of damage to the environment. Consideration should be given to creation of a liability fund under the agreement to which proponents of activities would be required to contribute or a provision ensuring that proponents of activities acquire suitable accident and liability insurance to cover permitted activities throughout the duration of their life-cycle.

6. Conclusion

Provisions in UNCLOS, and Article 206 in particular, do not specify the scope and content of impact assessment to be undertaken in marine areas. The Convention is also largely silent on procedural matters pertaining to the internationalization of EIA, apart from Article 205 which requires the publication of assessment and monitoring reports, either directly or by providing them to competent international organizations which should then make them available to States. The BBNJ agreement is a means to clarify and build upon UNCLOS’ EIA provisions, in ABNJ in particular. With a total of twenty-one articles, Part IV on EIA is the longest section of the revised draft text of the BBNJ agreement. During the third session of the IGC, deliberations on this part were lengthy with negotiators convening in two informal working group sessions and ten “informal-informals”. Despite many hours dedicated to the various facets relating to internationalization of EIA, the issue remains a divisive and unresolved aspect of the BBNJ agreement negotiations. This is less so as it relates to internationalization of consultation and dissemination of information but is definitely the case with respect to internationalization of review and decision-making.

As a global commons, ABNJ require a framework for EIA that is cooperative, transparent, accountable and robust. At the same time, a framework that is efficient, nimble and cost-effective is also expected. Proposals on internationalization of EIA under the BBNJ agreement need to effectively balance these interests. As negotiations enter the fourth session of the IGC, delegations will need to move away from their entrenched positions if the issue of internationalization is to be settled. The proposal outlined here, it is felt, represents an arrangement of compromise, practicability and progressive ideas which can support the goal of conservation and sustainable use of marine biological diversity of ABNJ. Moreover, it encourages precaution and evidence-based decision-making in the management of the marine environment which are crucial characteristics to inculcate in blue economy development models.

Author statement

All persons who meet authorship criteria are listed as authors. The author certifies that he has participated sufficiently in the work to take public responsibility for the content, including participation in the concept, design, analysis, writing, or revision of the manuscript. Furthermore, the author certifies that this material or similar material has not been and will not be submitted to or published in any other publication before its appearance in Environmental Impact Assessment Review.

Declaration of Competing Interest

The Author is a negotiator for the Caribbean Community (CARICOM) on Environmental Impact Assessment in the intergovernmental process to develop an internationally legally binding instrument under the United Nations Convention on the Law of Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

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References

Encouraging proactive governance of marine biological diversity of areas beyond national jurisdiction through Strategic Environmental Assessment (SEA)

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ABSTRACT

The international legal agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ Agreement) currently being developed by the United Nations will be the foundation for conservation and sustainable use of these marine areas for the foreseeable future. As presently formulated the draft text seems more oriented to a reactive approach, based on the use of Environmental Impact Assessment (EIA) to respond to proposals rather than proactively pursuing what needs to be done to ensure sustainability of ocean ecosystems in ABNJ. In this paper we argue that a Strategic Environmental Assessment (SEA) process could transform the way that the BBNJ agreement approaches conservation and sustainable use. By conceptualising SEA as a process designed to facilitate strategic thinking it can facilitate a proactive approach to ecosystem function conservation and enable transitions toward sustainability. We outline and describe a SEA process that could be incorporated into the BBNJ Agreement. This process would be consistent with the currently proposed structure of the Agreement and the EIA process that is currently envisaged. The proposed process comprises two interacting tracks of SEA and Marine Protected Area/Area-based Management Tool (MPA/ABMT) development. The process would also facilitate engagement of the full range of regional and global stakeholders required for effective governance of Areas Beyond National Jurisdiction (ABNJ).

1. Introduction

The global ocean is subject to immense and rising anthropogenic influences including impacts from climate change [1–3]. Most human activity is still currently concentrated in coastal and nearshore areas, but effects on the oceans are by no means limited to these regions [4]. Globalisation, technological development and human ingenuity and curiosity, coupled with increasing resource scarcity and the pursuit of economic growth, has seen areas beyond national jurisdiction (ABNJ), including deep sea environments, also subjected to elevated pressures [5]. These marine areas beyond national jurisdiction, which cover nearly half of the earth’s surface and represent over 90% of the ocean space by volume, contain high levels of biodiversity and vast areas yet to be explored [6,7]. For ABNJ, it has been recognised that there is a need to build upon the existing ocean governance framework, including that outlined in the United Nations Convention on the Law of the Sea (UNCLOS), to secure a sustainable future [8].

For over 15 years, informal and formal efforts have been ongoing under the auspices of the United Nations towards developing an international legal instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ Agreement) [9–12]. The agreement being negotiated focuses primarily on a package of four issues, agreed in 2011. These topics are marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and the transfer of marine technology. Negotiations are currently at the final stage of elaborating the text of the agreement through an intergovernmental conference (IGC).

The impacts of failure to conserve biodiversity, especially ecosystem function, in ABNJ are likely to be greatest for Small Island Developing States (SIDS) and coastal Least Developed Countries (LDCs) [13]. High ocean to land area ratio, proportion of population living on the coast and dependency on ocean related activities (economically, socially and
culturally) are key reasons for this risk. Therefore, for these countries it is imperative that the new BBNJ agreement take a proactive approach to ecosystem function conservation as a foundation for sustainability. As presently formulated the draft text seems more oriented to a reactive approach, based on the use of Environmental Impact Assessment (EIA) to respond to proposals rather than proactively pursuing what needs to be done to ensure sustainability of ocean ecosystems in ABNJ (and by extension in adjacent Areas Within National Jurisdiction (AWNJ)). A reactive approach deals with problems largely after they have occurred or are about to occur rather than anticipating and pre-empting them. The strategic approach will be particularly important given the uncertainties associated with human induced climate emergency. Indeed, the lack of proactive, strategic assessment of the world’s ocean was flagged as a significant deficiency by the Second World Ocean Assessment [1]. Thus, it seems timely to consider how this can be remedied in ABNJ by the BBNJ Agreement currently being developed. 

Emerging in the late 1980s, SEA has since defied attempts to pigeonhole it to a single definition [17]. It is respected as a flexible process with many different approaches and tools that can be applied [14,18]. Indeed, the practice in countries varies legally, institutionally and procedurally [19]. There is agreement among practitioners on the overall concept of SEA, with Verheem and Tonk (p. 177) [20] succinctly capturing it as “a structured, proactive process to strengthen the role of environmental issues in strategic decision-making”. Yet even with this elucidation of the concept requires caution as SEA may also encompass considerations beyond just biophysical ones [21]. For instance, the United Nations for Europe (UNEP) Protocol on Strategic Environmental Assessment as part of the Convention on Environmental Impact Assessment in a Transboundary Context (SEA Protocol) emphasises the inclusion of human health considerations in SEAs [22]. SEA is acknowledged as important and necessary to alleviate some of the shortcomings of the new ubiquitous project-level EIA [23]. Indeed, it is considered an important tier which precedes EIA in ‘Next Generation Environmental Assessment’ [24]. Traditional EIA often limits its focus to ‘how’ questions and, in doing so, may focus mainly on how best a project or activity can be carried out while mitigating and limiting environmental risk and impact. SEA though is seen as allowing for consideration of ‘why’, ‘what’ and ‘where’ questions even before specific project or activity ideas are placed in the development pipeline [20]; although in many settings SEA theory has outpaced its practical application [25].

Following is a non-exhaustive list of potential benefits of SEA adapted from De Mulder (p. 234) [26]:

- Taking account of cumulative effects
- Enhancing institutional efficiency and administrative legitimacy
- Increasing transparency
- Building trust
- Increasing influence from different sector policies and enhancing conflict resolution
- Streamlining project assessments
- Providing a mechanism for public and stakeholder engagement

Unlike EIA, whose conduct is now a general obligation under customary international law [27-28], SEA has not attained such a status [29,30]. That being said, and although the term ‘strategic environmental assessment’ is not specifically mentioned in UNCLOS, SEA has been applied on numerous occasions in marine areas. Many countries have conducted SEA in waters under their national jurisdiction including the USA, Canada, Norway, Denmark and Australia in regard to sectors such as offshore oil and gas, offshore renewable energy development, transport and fisheries [30]. Indeed, for close to two decades, the European Union (EU) requires SEA of plans and programmes that apply in the marine environment under its SEA Directive (Directive 2001/42/EC). One is hard pressed to find examples of SEA application in areas beyond national jurisdiction (ABNJ) however, mainly because there are few legal frameworks that encourage it [29]. The Convention on Biological Diversity (CBD), which is applicable to marine areas beyond national jurisdiction, has produced draft guidance on how biodiversity can be better considered in SEA. These draft guidelines in and of themselves do not mandate the conduct of SEA though. The BBNJ agreement is seeking to fill the SEA lacuna in ABNJ by attempting to formalise a process for their conduct.

3. SEA in the BBNJ process

The Preparatory Committee (Prep Com), established to make substantive recommendations to the United Nations General Assembly (UNGA) on the elements of the draft text of the BBNJ agreement, reached the general consensus that there was scope for the text to address SEA, whether it be under the EIA section or in the part of the instrument that focused on area based management tools, but there was still divergence in views as to whether it actually should be included [31]. This divergence persisted in the 1st and 2nd sessions of the IGC (32,33). This was fuelled by concerns and a lack of clarity on how and by whom SEA in ABNJ would be conducted. Emerging from the 3rd IGC session however, delegations showed increasing support for a provision on SEA to be included in the draft text even though the practical modalities for implementing SEA in ABNJ still remained unclear [34]. The President’s report on the third IGC highlighted that this, and the proposed definition of SEA, would benefit from further deliberations. The 4th session of the IGC was postponed indefinitely in March 2020 due to the Covid-19 pandemic. Although formal negotiations have temporarily halted, informal negotiations and dialogues have continued in virtual spaces including through intersessional work organised by the President of the Conference and the ‘High Seas Treaty Intersessional Dialogues’ which are jointly hosted by the Kingdom of Belgium, Principality of Monaco and Costa Rica in collaboration with other organising partners [35]. SEA has been a topic of discussion in these fora and desire for an enabling clause on SEA has been reiterated repeatedly by the EU, the United Kingdom, New Zealand, Australia, Norway, the Pacific Small Island Developing States (PSIDS), the Caribbean Community (CARICOM) and Canada among others. Other delegations and groups

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2 More information on the High Seas Treaty Intersessional Dialogues can be found at: https://highseadialogues.org/ (Accessed 11 August 2021).
with existing objectives, rules and commitments as well as to assess their potential environmental (and other) effects with a view to pre-emptively mitigating these by detailing alternatives prior to the PPP’s adoption. Indeed, this approach to SEA is observed in the European context and is characteristic of the UNECE’s SEA protocol and the EU’s SEA Directive [36]. IA-based SEA is considered less strategic than Strategy-based SEA. In the draft BBNJ agreement text, given that the definition of SEA was imported from the SEA protocol, and that paragraph 2 of Article 28 explicitly states that SEAs conducted shall follow along the lines of the EIA process outlined, it can be assumed that an IA-based type SEA is being envisioned here.

Strategy-based SEA is a more contemporary approach geared to “establishing strategic direction(s), versus (reactively) appraising or assessing the impacts of proposed PPPs. Emphasis is on PPP formulation, identifying and evaluating alternative futures or development intentions incorporated in PPP initiatives, and determining the necessary institutional context and transformations, to facilitate desirable outcomes” (Noble and Nwanekezie, p. 169) [14]. This type of future-based approach to SEA tends to be more regionally focused and seeks to consider the entire gamut of current and potential uses and activities of a given area with a view to determining what combination best meets sustainability criteria [37]. The output of this type of SEA may then inform PPP formulation and decisions and further IA-based SEA can be situated within the Strategy-based SEA framework.

CARICOM has proposed a definition for SEA which seems to be more aligned to the concept of Strategy-based SEA. The group sees SEA as “a proactive evaluation of the vulnerability of a geographic area or ecosystem type to potential human activities so as to establish what kinds of activities may be permitted and how the likely impacts will be assessed by EIA”. While this definition does not yet appear to have generated any significant support, it does signify that conceptions of SEA outside of those practiced in the pan-European contexts are being considered by negotiating delegations. This paper will go on to detail a vision for how Strategy-based type SEA in the BBNJ regime may work in practice. In doing so it will highlight why, for ABNJ and the BBNJ agreement, such an approach might prove to be useful in several respects.

4. The approach to including SEA in the BBNJ agreement

The inclusion of Strategy-based SEA in the BBNJ Agreement must be underpinned by a clear process that meets international governance standards [38]. We have outlined such a process in which there are two parallel tracks, both of which start with global scale mapping of marine ecosystems and zoning into regions based on ecological function, importance and uniqueness (Fig. 1). In the SEA track the sequence is: prioritisation of regions based on vulnerability and potential for use; region-specific SEA based on the prioritisation; the development of region-specific policies based on the SEA, leading to marine spatial plans for the regions that will determine what activities may be considered in the regions, and ultimately EIAs for specific proposals for either use or conservation. In the MPA track, mapping and zoning lead to proposals for a representative system of MPAs for the global oceans. The two tracks are complementary and linked at several stages illustrating the close relationship between the EIA (Part IV) and ABMT (Part III) sections of the draft agreement (Fig. 1). The connections between the two tracks also ensure that conservation receives high priority in the SEA process. The following sections expand on key aspects of this process. However, the intention of this paper is not to be prescriptive in detail, but rather to take a high-level view of the potential SEA process and its implications for effective implementation of governance of marine biological diversity in the BBNJ Agreement. There are many resources regarding frameworks for SEA that can guide implementation (e.g., Refs. [14,37]).
is a substantial literature on vulnerability assessment from which approaches could be adapted to provide a framework that is appropriate to BBNJ [52–54]. Much of the work that has been done in this area builds on risk assessment developed for climate change impacts by the Inter-governmental Panel on Climate Change [53,54]. Generally, such assessments bring together components of hazard, exposure, sensitivity, adaptive capacity, and vulnerability and develop sets of indicators for each of these components. Developing appropriate indicators is beyond the scope of this paper and the forgoing information is provided to demonstrate that there is a considerable body of research and practice upon which to build.

4.3. Zone specific SEA and policies

SEAs would be conducted in regions based on the prioritisation. The aim of these SEAs is to provide the basis for a set of region-specific policies that would guide proponents in developing their proposals for activities. SEA could also help scope the extent and nature of any EIAs, ABMTs and other measures that should be applied for that region. Ideally, SEA would support the development of Marine Spatial Plans (MSP) for regions to guide application of ABMTs and other management of sustainable use activities. Conservation and management measures for that region could then be identified and pursued independently of applications for use. EIA would be a supporting tool that would be used particularly in relation to subsequent specific project proposals and applications as guided by the SEA process and would be conducted and reviewed as specified in the BBNJ Agreement.

The zoning, prioritisation and MSP activities will ultimately provide a foundation for the development of an overarching plan for a geographically and ecologically representative set of MPAs and the application of other ABMTs in BBNJ as also proposed by The Pew Charitable Trusts [55]. Areas already protected or identified as of high priority for protection could be grandfathered into the first iteration of this exercise. These would include Ecologically or Biologically Significant Areas (EBSAs) in BBNJ identified in the CBD process [56,57] and existing high seas MPAs, such as those established by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and under the OSPAR Convention [58].

5. SEA form and function

As alluded to earlier, SEA can vary in terms of, for example, objects of focus, processes for conduct and content of outcomes thereby influencing, among other things, strategic extent and ability to assess cumulative impacts. There is therefore a need to provide further insight into what is being conceptualised and proffered for SEA in this instance. Under this vision for SEA in the BBNJ agreement the outcome would be regionally focused and the methodological framework may closely follow that which has been proposed by Gunn and Noble [37]. The quality of the output, which would be a living document to be revised as new sectoral interests, knowledge, and forms of innovation come to the fore, is heavily dependent on having a collaborative process that engages all stakeholders with interests in the given region, including States Parties, non-governmental organisations and international frameworks and bodies with management and regulatory functions. It is envisaged that this collaborative process would be coordinated by the STB.

In this collaborative process, stakeholders would volunteer categories of information including any baseline data they may possess about the region in question, opinions on what they perceive are valued components of the ecosystem, current extent of activities being undertaken including their nature and geographical scope, and any future plans for the region. The BBNJ agreement has the potential to encourage open data sharing and management including through the proposed clearing-house mechanism [59]. Collation of this information would enable the STB to identify regional stressors and trends, taking into
account the combined effects of activities and additional factors such as climate change. The aim would be to especially minimise negative impacts on the identified components of the ecosystem that are of high value. With this goal in mind, the STB and participating stakeholders would dialogue to identify strategic alternatives for the region, in both time and space, that ensures social, economic and environmental sustainability. The preferred strategic alternative would then be selected and policies and management actions tailored to realising it.

This proposed approach to SEA promotes cross-sectoral engagement and, if it has sufficient buy-in from all relevant stakeholders, should be able to gauge cumulative impacts of activities affecting ABNJ. It can be contrasted with another, ongoing SEA-type approach being employed in ABNJ which involves the creation of regional environmental management plans (REMPs) under the auspices of the International Seabed Authority (ISA) [60]. These plans are intended to be proactive spatial management strategies taking into account the cumulative impacts of all various sectors of activity or mining a predefined area. Among the shortcomings of strategic environmental management by the ISA [61-63], is that REMP's currently are limited to consideration of impacts arising from just the mining sector. The SEA under the BBNJ agreement would be broader and should enable the ISA’s data and vision to be considered and integrated into a wider whole. Importantly therefore, this proposed SEA process under the BBNJ agreement, in being collaborative, also provides the space to pre-empt conflicting decisions by the bodies with mandates to govern different aspects of ABNJ. Consequently, it is an avenue to enable the governance regime under the BBNJ agreement to “not undermine” other existing regimes [64,65].

6. Institutional arrangements and responsibilities

The institutional arrangements and responsibilities for the stages of the processes described in Sections 4 and 5 must be clearly defined in the formulation of the BBNJ Agreement [38]. Ultimate responsibility for oversight of the process would be taken up by the COP, while responsibility for the technical aspects of the SEA process and for provision of advice for decision-making at various stages will lie with the STB. The STB, or a sub-body thereof will be responsible for the initial zoning and prioritisation of regions. Once these are approved by the COP, the STB will be responsible for the zoning of those regions in order of prioritisation and as resources permit. The SEAs will lead to the formulation of region-specific policy advice to be reviewed and approved by the COP. These policies will guide the preparation of MSPs for regions which will be led by the STB. They will also guide the treatment of proposals and the EIAs that may be required to evaluate them.

These arrangements and responsibilities are consistent with the current formulations of the roles of the COP and STB, especially as concerns EIA [30,66]. It must be noted that carrying out the zonation, prioritisation and SEAs of regions will require a high degree of collaboration between the BBNJ Agreement and the numerous global and regional bodies with responsibility for the oceans. Mahon et al. [67] reviewed intergovernmental organisations with responsibility for various aspects of fisheries, pollution, biodiversity and climate change in ABNJ, and found there to be 25 global and 100 regional arrangements. An analysis of regional ocean governance arrangements found 165 regional arrangements related to ecosystem-based management of oceans in 20 regional clusters covering most of the world’s oceans within national jurisdiction [68]. Most regions had 10 or more arrangements while some had more than 20; and this does not include non-governmental organisations (NGOs), whether conservation or private sector. Consequently, the coordination task required for undertaking regional level SEAs will be substantial. Additionally, many of these regions comprise predominantly developing countries, therefore capacity building in how to conduct SEAs, as well as having the right governance arrangements in place to ensure that the process is fair equitable and inclusive, will be an important aspect of implementation.

It has been argued that the need for coordination is the result of many decades of sectorally oriented governance and the associated arrangements that have led to fragmented ocean governance [16]. However, if an ecosystem and precautionary approach that proactively addresses the impacts of cumulative impacts on ecosystems in ABNJ is desired, the coordination role that has been described above will be essential, as also noted by De Santo et al. [12]. While engagement with the many regional organisations whose mandate is primarily if not exclusively within national waters may appear to be overreach for an ABNJ focused agreement, it must be noted that marine ecosystems and impacts extend across ABNJ and national boundaries. Indeed, these regional organisations are the ones that will be required to deal with any downstream impacts that activities in ABNJ may ultimately have in national waters [13,69].

7. Conclusion

The process described in this paper provides a proactive way of promoting conservation of biodiversity in ABNJ through the incorporation of SEA in the BBNJ Agreement. It shifts the role of environmental assessment from being purely reactive to proposals, towards being the basis for forward looking policy at global and regional levels. There is a considerable amount of global-level mapping to support this approach through zonation of the global ocean, based on best available science. There is also adequate conceptualisation of approaches to assessing vulnerability and risk in ocean regions to support adaptation and application in ABNJ. Clearly, there will be the need to resolve many issues both prior to and during implementation (e.g. Ref. [70]). Capacity building, including institutional capacity to conduct SEA, and for States to effectively participate in the process, would also need to be forthcoming, particularly in the global south. Ensuring developing States parties have the capacity to conduct SEA and evaluate SEA is currently a bracketed objective in the Draft agreement text with the modalities of capacity building also undecided.

The proposed approach makes the relative roles of SEA and EIA in the BBNJ Agreement clear. The roles of the COP and the STB are outlined and are consistent with currently proposed mandates for these bodies. The SEA approach also provides a framework for engagement of researchers and NGOs with relevant resources in moving the work of the agreement forward. It may also facilitate identifying where regional organisations may be best placed to support implementation of conservation and/or take the lead in ensuring that their regions are protected against downstream impacts. In this way it could facilitate the “structured consultation [that] could enable a hybrid approach that would catalyse regional and global cooperation to improve conservation and management outcomes in ABNJ” described by Friedman [65] and Gjerde and Yadav [71] as being needed for the effective governance of marine biological diversity in ABNJ.

Author statement

The authors certify that they have participated sufficiently in the work to take public responsibility for the content, including participation in the concept, design, analysis, writing, or revision of the manuscript. Furthermore, the authors certify that this material or similar material has not been and will not be submitted to or published in any other publication before its appearance in Marine Policy. KH and RM contributed equally in all respects to the production of this article.

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Negotiations are currently underway into establishing a new international agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. This paper discusses some of the experiences and challenges faced by the Caribbean Community (CARICOM), a regional group of small island developing States, in the negotiation of this agreement. The group has been engaged as a bloc since the preparatory stage of the process. The process has now advanced well into an intergovernmental conference, which had an original mandate for four sessions, but will be extended for at least one more session in August 2022. CARICOM has managed to innovate, adapt and access and pool resources in order to be relevant and impactful participants throughout the ongoing negotiations and in face of the Covid-19 pandemic. Some suggestions are offered with a view to ensuring continued meaningful involvement of the group in the remainder of the negotiations, as well as in future ocean related multilateral processes.

Keywords: BBNJ, UNCLOS, CARICOM, small States in negotiations, ocean governance

INTRODUCTION

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), commonly referred to as the “constitution for the oceans”, was the result of nine years of formal intergovernmental negotiations; the longest in the history of the United Nations (Freestone, 2012). This monumental effort produced a comprehensive and far reaching instrument of international law, many aspects of which are now recognized as having ‘customary’ status (Roach, 2014). Since its adoption, some provisions in UNCLOS have been further developed through the use of implementing agreements, namely the 1994 Agreement relating to Part XI, and the 1995 UN Fish Stocks Agreement (Boyle, 2005). An intergovernmental conference (IGC) to establish a third implementing agreement under UNCLOS began in 2018. This conference was convened to develop the text of an agreement which focuses on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, otherwise known as the BBNJ agreement.
The intergovernmental conference to elaborate the text of the BBNJ agreement is the final stage in a long process of formal and informal efforts to develop this instrument (Long and Chaves, 2015; Tiller et al., 2019; Mendenhall et al., 2019; De Santo et al., 2020). Commenced under the auspices of the UN General Assembly in 2004 with the setting up of an ad hoc informal working group to study the issues relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Working Group), the process progressed through a Preparatory Committee (Prep Com) established through UN General Assembly Resolution 69/292 and eventually to the IGC when Resolution 72/249 was adopted in December 2017. The resolutions mandated that both the Prep Com and the IGC were open to all Member States of the UN, members of the specialized agencies and parties to UNCLOS. In addition, the participation of a range of observers, including NGOs, was facilitated through these resolutions.

The Caribbean Community (CARICOM) have been active participants in the BBNJ process, negotiating as a regional group since the Prep Com stages. CARICOM is an integration movement from the developing world comprising of 20 countries – 15 member States and 5 associate members (O’Brien, 2011). Integration rests on four main pillars: economic; security; human and social development; and foreign policy co-ordination. In the BBNJ negotiations, when a member State of the group takes the floor, it almost always does so on behalf of 14 independent nations. These countries, who are all considered to be small island developing States (SIDS) by the UN, are Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname and Trinidad and Tobago. The 15th member State of CARICOM, Montserrat, is not spoken for because it is an overseas territory of the United Kingdom.

In the field of international relations there has long been interest in how small States, especially developing ones, assert themselves and influence multilateral processes (Ingebritsen et al., 2012). It is generally accepted that small developing States start at a disadvantage in international negotiations because of the fewer available administrative and financial resources (Panke, 2012a). Payne (2004) proffers that the participation of such States in global politics is more often characterized by their expressing vulnerabilities to potential changes that may result from issues under consideration e.g. de Agraed and Mols (2014), rather than, at the forefront, exercising the opportunity to affirm their broader interests. But research suggests that small States do impose themselves in international negotiations through the use of capacity-building strategies; to improve how they perform in diplomatic arenas, and shaping strategies; to become more persuasive and thus better influence outcomes (Panke, 2012b). All things being equal, small States seem to fare better in negotiations under the auspices of multilateral institutions where transaction costs are lower; there are set rules of procedure; power asymmetries are less pronounced e.g. consensus based decision-making is practiced; and coalitions can be more easily shaped and realized (Thorhallsson and Steinsson, 2017).

This paper adds to the literature on small States in international negotiations. Of focus is CARICOM’s participation in the BBNJ negotiations. In examining the involvement of this group of SIDS it draws on the experiences of the author, who is CARICOM negotiator in the process and the lead on the environmental impact assessment strand of the draft agreement. This is complemented with insights from group’s other negotiators which were garnered through semi-structured interviews. The paper documents the experiences and challenges encountered as the group has interfaced with the BBNJ process and offers details as to how it has adapted to remain an effective contributor. Discussed in the forthcoming sections will be stakeholder engagement in formulating negotiating positions, engaging and utilizing regional experts in the negotiations, CARICOM’s exercising of “institutional windows of opportunity”, and the impact of the Covid-19 pandemic. In the closing discussion some suggestions are also offered as to how CARICOM may equip itself to be a more influential and active group in this and other multilateral ocean related processes in the future.

**COLLECTIVE REGIONAL OCEAN VISIONING AND GARNERING STAKEHOLDER INPUT**

It is well recognized and acknowledged that Caribbean SIDS exhibit a substantial economic, social and cultural connection to and dependence on the ocean and its resources (Clegg et al., 2020). Indeed, within recent years; since blue economy ideologies emerging out of the United Nations Conference on Sustainable Development (Rio +20) have been mainstreamed into SIDS’ development policy discourses (Silver et al., 2015), individual CARICOM countries have been at the forefront of thrusts towards strategic development of the sustainable ocean economy. A number of detailed plans, policies and/or scoping documents have since emanated out of CARICOM nations including, for example, Grenada (Patil and Diez, 2016), Barbados (Roberts et al., 2020), Dominica (Roberts, 2019) and Belize (Coastal Zone Management Authority and Institute (CZMAI), 2016).

Within CARICOM as a whole however, blue economy development is not coordinated to the extent that it should be. While the Organization of Eastern Caribbean States (OECS), which is made up primarily of a subset of CARICOM members, does have a regional ocean policy (OECS, 2020), there exists no agreed regional vision for Member States of CARICOM to collectively align their ocean development endeavors to and few formal mechanisms existing for collaborative ocean management at this larger scale.
This is despite there long having been calls for such within the organization (Blake, 1998), but which never materialized in the face of limited resources and competing priorities. In the absence of a regionally considered and developed vision, along with a guiding document detailing ocean management priorities and objectives, the CARICOM negotiating bloc entered the BBNJ negotiations with a handicap and in some respects ill prepared to maximize the outcomes for the welfare and benefits of their peoples. This stands in contrast to the European Union (EU) for instance, who could be guided by the EU Marine Strategy Framework Directive (MSFD) and several other endogenous ocean related instruments. With this groundwork already done, this delegation was therefore better equipped and positioned to fully consider how what is contained therein, and the architecture developed as a result, related to the BBNJ discussions (Long and Brincat, 2019; Ricard, 2020).

Developing and executing a regional vision necessitates, *inter alia*, having a coordinating mechanism which includes multiple established fora for encouraging widespread, genuine stakeholder interaction and input (Fanning et al., 2021). A paucity of these have also impeded CARICOM’s engagement in the BBNJ negotiations in the sense that there has been limited domestic stakeholder knowledge and interest about the process, its purpose and potential implications. Concomitantly, in crafting its negotiating strategies, CARICOM has not fully tapped in to and benefitted from the expansive pool of knowledge and perspectives – traditional, contemporary and otherwise (Raymond et al., 2010; Mulalap et al., 2020; Tessnow-von Wysocki and Vadrot, 2020) – that the group potentially has at its disposal.

As the BBNJ negotiations progressed through the Prep Com into the IGC stages, this limitation was recognized. Consequently, through a grant provided by the Oak Foundation, CARICOM embarked on a stakeholder engagement process that targeted government agencies, civil society, private sector, regional agencies, academia and private individuals and resource users, among others. National workshops held in Guyana, Jamaica and Trinidad and Tobago were complemented by a number of key informant interviews and a more, far-reaching online survey. Through this engagement process CARICOM was able to distil 10 regional priorities from the elicited perspectives and these have been used to inform ongoing negotiations in the IGC. The priorities were indeed a good starting point but would have benefited from ongoing, deeper and more nuanced discussions among the relevant stakeholders. Therefore, while the process and its results have proven to be important and instructive for a more robust and enduring system of stakeholder engagement on ocean related matters for the regional group.

**ENGAGING AND DEVELOPING REGIONAL EXPERTISE**

Of course, an important faction that need to be perpetually engaged for the purposes of effective BBNJ agreement negotiations are those with professional and high-level technical expertise in ocean related fields. They are needed to complement and support the New York based diplomats at the seat of their Permanent Missions at the UN who, themselves, are not expected to be subject matter experts in the topics being discussed, especially in specialist fields such as the law of the sea. Fortunately, emerging from and/or practicing in a number of regional organizations; national bodies, agencies and Ministries; and higher-level education and research institutions, CARICOM has a cadre of professionals in a range of disciplines pertaining to biodiversity, oceans and marine management (Mahon and Fanning, 2021). That being said, while many of the skills and bodies of knowledge that these experts possess are transferable to ABNJ contexts, specific expertise dealing with BBNJ is more limited as CARICOM nations are constrained by capacity and resources in undertaking activities outside of their national jurisdictions (Gicin-Sain et al., 2018; Harden-Davies et al., 2020; Harden-Davies et al., 2022).

At the same time, while ocean experts can be found within CARICOM, it is fair to say that they are not ubiquitous – there is still a limited pool to draw from (Harden-Davies et al., 2020). Experts who are best equipped to advise in the exceedingly technical BBNJ negotiations also generally find themselves saddled with many other responsibilities. They often hold highly demanding positions and may be consequently, overworked and/or time-strapped. Incidentally, these are traits also observed in New York based negotiators, an issue that will be touched upon later. However, these characteristics of CARICOM experts present a challenge to having them contribute in the BBNJ process through their offering of guidance and technical advice to negotiators. CARICOM has recognized that to be most effective, it is imperative that the diplomatic and international relations skills and understanding of the CARICOM negotiators are paired with the specialist knowledge of the regional ocean experts. The group therefore had to devise effective and feasible means to elicit expert advice and engagement to bolster the bloc’s participation in the negotiations.

Key to eliciting expert advice has been the hosting of regional workshops which brought negotiators, capital-based experts and foreign experts together to facilitate learning and dialogue. International non-governmental organizations, primarily Pew Charitable Trusts in this case, were integral in funding these workshops. Up to the time of writing, four separate events were convened. Two took place in Belize City, Belize in February 2017 and July 2018, just before the 3rd Prep Com session and 1st session of the IGC respectively. A third regional workshop was

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hosted by Barbados in July 2019 prior to the 3rd IGC session and a fourth hybrid regional workshop was hosted in Tarrytown, New York just prior to the most recent IGC session in March 2022. These three-day workshops allowed participants to have uninterrupted, dedicated time and focus on matters pertaining to the BBNJ negotiations. Additionally, in what is shaping into a burgeoning, meaningful partnership (Harden-Davies et al., 2022), Pew is also currently funding a BBNJ capacity building initiative related to area-based management tools and environmental impact assessments, aimed at further enhancing CARICOM’s understanding of the issues and capacity constraints in implementing potential obligations.

It can be said that the workshops successfully aided in building regional capacity and knowledge through interaction with international experts situated within the BBNJ epistemic communities. Crucially, the workshops also allowed the negotiators and regional and international experts to build and strengthen personal connections. An enduring legacy has been the formation of a regional team of experts to act as a devoted advisory group with formal and informal communication channels between themselves and negotiators. In addition, regional experts and negotiators were given time and space to concentrate on contextualizing the BBNJ agreement in light of CARICOM’s needs and wants and to develop regional strategy including consideration of ‘red lines’ – issues on which the region would not yield on its bottom-line position. An important point to note about the collaborations that have taken place with the external donors is that conditionalities on their funding have not been imposed. CARICOM has rightfully been allowed to be independent and self-determining in the decisions they take with regard to the BBNJ negotiations and positions adopted.

ININVOLVING CAPITAL-BASED EXPERTS AT THE THE NEGOTIATING SESSIONS

At its annual meetings since 2015, the Council for Foreign and Community Relations (COFCOR), which is comprised of the Ministers of Foreign Affairs from the CARICOM Member States, have discussed, monitored developments in, and made recommendations with regard to CARICOM’s engagement in the BBNJ process. Subsequent to the establishment of the advisory group of experts, COFCOR has continually called on Member States to ensure that these experts are included on national delegations for the negotiation sessions at the UN in New York. It is recognized that the presence of experts on location is needed to provide timely, relevant advice to lead negotiators. In addition, their presence in-person allows them to get a genuine sense of the negotiating atmosphere thus better facilitating the provision of the most appropriate and sophisticated guidance.

The physical presence of capital-based experts in the negotiating rooms in New York also has other vital benefits, most notably, adding to the human resources available to the CARICOM delegation and thereby facilitating more complete coverage of all aspects of the negotiations. CARICOM countries, being small, developing States with limited resources, do not have large Missions to the UN (O’Súileabáin, 2014). Consequently, foreign service officers stationed at the UN Missions of CARICOM States are tasked with the responsibility of covering multiple processes and committees which often occur in tandem; a workload that is extremely demanding. Given resource constraints, no CARICOM State, acting alone, would be able to adequately and effectively cover the BBNJ process. CARICOM States acting as a unit have strategized, dividing the BBNJ negotiation workload and having different countries lead on the various elements of the package.

It must be noted that if one were to look at the final lists of participants for the negotiating sessions it would appear that the CARICOM collective have had very sizeable delegations. However, these lists must be considered with caution as CARICOM countries tend to put all senior officers at their UN Missions on the participant’s list, but the reality is the vast majority are not involved in the proceedings. Even with combined efforts, having the critical mass of (wo)man-power available to ensure that CARICOM is present, completely following and comprehensively analyzing the proceedings that are occurring in the negotiating rooms is still a challenge especially with the gradual stepping up in intensity of deliberations as the process has progressed. In the 3rd IGC session the format of the negotiations shifted to one where parallel ‘informal’ and ‘informal-informal’ meetings were taking place in separate rooms (International Institute for Sustainable Development, 2019; De Santo et al., 2020). This necessitated a further division of human resources for the CARICOM negotiating team. The March 2022 4th IGC session had to be significantly scaled down and restricted due to Covid-19 safety protocols. For the future IGC session(s) however, it is imperative for CARICOM to have a larger, more diverse delegation, inclusive of as many experts as possible as modalities are expected to return to normal.

For developing countries, including the SIDS of CARICOM, the costs involved in getting experts to New York along with the associated accommodation and other living expenses for a two-week negotiation period, can be especially prohibitive. To address this challenge, the UN General Assembly in its resolution 69/292, authorized the establishment of a special voluntary trust fund to facilitate participation of capital-based delegates from the developing world, and in particular, least developed countries, land-locked developing countries and SIDS. Resolution 72/249 renewed the mandate of this trust fund for the IGC. For both the Prep Com and IGC this trust fund defrayed the cost of travel and provided daily subsistence allowances for those who successfully applied. The trust fund has not been a guaranteed source of funding however. It is resourced solely through voluntary contributions, and thus depends on the benevolence of UN Member States; international financial institutions, donor agencies, intergovernmental organizations,

NGOs and natural and juridical persons. There have been points when the funding available has lagged behind the demand for assistance. There were not sufficient funds deposited into the trust fund to service the first two sessions of the Prep Com and the problem of not enough available resources to meet demand became particularly acute again in the more recent sessions of the BBNJ process (Table 1).

CARICOM has benefitted from trust fund assistance (Table 1). However, two points are noteworthy with regard to the statistics. Firstly, it appears that CARICOM has been underutilizing the trust fund facility. With fourteen States under the group and funding theoretically available for one participant from each State, the number of applications from CARICOM to the fund has been underwhelming. It may be related to the fact that capital based experts, for reasons alluded to earlier, find it difficult to commit to two weeks away from their substantive portfolios. The second point of note is that the total number of completed applications from CARICOM is a moot one if there are not enough funds available to facilitate participation as was the case in the first two Prep Coms, the 3rd IGC session, and which would have been the case for the cancelled 4th session in March 2020. Overall, the Fund has proven to be an uncertain source of assistance and therefore not an entirely satisfactory mechanism to support delegations from the global south attending the BBNJ meetings. Indeed, throughout the BBNJ process CARICOM has constantly appealed for better resourcing of the Trust Fund. For example, in its statement delivered at the closing of the 3rd IGC session CARICOM appealed for more assistance in saying: “CARICOM therefore remains extremely concerned about the state of the Voluntary Trust Fund. We believe that adequate funds deposited into the trust fund to service the

**CARICOM IN ORGANIZATIONAL POSITIONS OF IMPORTANCE**

In discussing how small States make their voices heard in international negotiations, Panke (2012b, p. 322) highlights the use of “institutional windows of opportunities such as being the Chair of meetings or holding the office of the Presidency to increase the influence via arguing, framing, bargaining or value-claiming positions”. Schulz et al. (2017) provide examples of this use of entrepreneurial leadership in regard to Switzerland’s role in negotiations of the Cartagena and Nagoya Protocols to the Convention on Biological Diversity. In the BBNJ negotiations CARICOM has also been availed of “institutional windows of opportunities” which has allowed the group to exercise further influence.

A fitting example of this is with respect to CARICOM ensuring that one of its member countries obtained a position on the Bureau for the IGC. The Bureau of the IGC is made of 15 countries who are then Vice Presidents to the Conference and, in particular, assist the President on procedural matters in the general conduct of the President’s work. In-keeping with this mandate the Bureau has been consulted by the President throughout the IGC. It consists of three countries from each of the five geopolitical regional groups of the United Nations – the African Group, Asia-Pacific Group, Eastern European Group, Latin American and Caribbean Group, and Western European and other Group. CARICOM countries fall within the Latin American and Caribbean Group (GRULAC).

In the Prep Com, as per paragraph 1(e) of UN General Assembly Resolution 69/292, the Bureau was limited to two members from each regional group. The Caribbean had no representative on the Bureau during this stage of negotiations with Latin American and South American countries from GRULAC assuming the roles (Costa Rica and Chile for the 1st and 2nd Prep Coms; Argentina and Mexico for the 3rd and 4th Prep Coms). With increased Bureau membership in the IGC, CARICOM felt that it would naturally follow that a Caribbean country from GRULAC would then be afforded the opportunity to serve as a Vice President to the Conference. However, CARICOM was met with resistance from within GRULAC, with some States of the opinion that a Caribbean country’s place was not automatically a given.

Therefore, unlike the other four UN regional groups, the representatives of GRULAC to serve on the Bureau of the IGC were not elected by acclamation on the first day of the 1st IGC session. Rather, these members were elected a couple of days later by secret ballot among all States participating in the Conference. The fact that the decision had to come to a vote was a source of consternation among some Conference participants. The feeling was that it set the wrong tone for the IGC especially given the fact that decisions in the Conference were to be made, as far as possible, by consensus. At the conclusion of the voting, CARICOM’s choice, the Bahamas, earned a place on the Bureau alongside Mexico and Brazil from GRULAC, Algeria, Belgium, Bulgaria, Canada, China, Japan, Mauritius, the Federated States of Micronesia, Morocco, Poland, the Russian Federation and the United States of America. For CARICOM, this position has been important particularly in having direct input in when the sessions of the IGC are organized and how they are structured.

**TABLE 1 | BBNJ Voluntary Trust Fund applications and recipients of assistance as relates to CARICOM.**

<table>
<thead>
<tr>
<th>Prep Com 3</th>
<th>Prep Com 4</th>
<th>Organizational Meeting</th>
<th>IGC 1</th>
<th>IGC 2</th>
<th>IGC 3</th>
<th>Canceled IGC 4</th>
<th>IGC 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total applications received</td>
<td>34</td>
<td>31</td>
<td>30</td>
<td>47</td>
<td>70</td>
<td>60</td>
<td>42</td>
</tr>
<tr>
<td>Total completed applications</td>
<td>27</td>
<td>21</td>
<td>22</td>
<td>24</td>
<td>38</td>
<td>37</td>
<td>32</td>
</tr>
<tr>
<td>Total approved recipients of assistance</td>
<td>17</td>
<td>21</td>
<td>22</td>
<td>24</td>
<td>38</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Total CARICOM applications</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Total completed CARICOM applications</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total approved CARICOM applications</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>
Apart from the Bahamas being a Vice President to the IGC, Trinidad and Tobago’s Ambassador Eden Charles has also served as Chair of the Prep Com for the first two sessions. The Chair was appointed by the President of the UN General Assembly after that office held informal consultations with a number of groups and delegations participating in the process and found there was broad support for the Trinidad and Tobago Ambassador to be chosen. In his position as Chair, among other things, he conceptualized and developed the model for the negotiations in respect of having informal working groups on the different elements of the package, and also identified suitable candidates to serve as facilitators of these working groups. This model for the negotiations has persisted into the IGC. After the 2nd Prep Com session however, in what was a sovereign national decision, Ambassador Charles was recalled to capital thereby ending his tour at the UN. This decision, which culminated in him having to give up this prestigious position in the negotiations, probably did not aid CARICOM’s standing in the BBNJ process. As a result of the reshuffling that took place due to his departure however, another CARICOM national, Ambassador Janine Coyle-Felson, was appointed to serve as the Facilitator for the Informal Working Group on Marine Genetic Resources (MGRs). She has competently served in this position, which deals with the most intractable and difficult aspect of the negotiations, from Prep Com 3 onwards.

In the BBNJ process, when persons are appointed to positions such as President, Chair and Facilitator of a working group they have earned these posts due to having established reputations of being highly astute, impartial and fair. They are expected to perform their duties without view to furtherance of national (or regional) positions in negotiations and in doing so are integral to success in consensus based negotiations (Buzan, 1981). For CARICOM, having nationals from the region in these positions of authority increase the stature, prominence and legitimacy of the bloc and also brings with it the added benefit of having access to persons with ‘insider knowledge’ and a thorough grasp of all the issues at play in different aspects of the negotiations. There is a trade-off however, as these positions also bring with it the drawback of not having available to the group its most seasoned and effective negotiators in real time. This is especially the case when sessions are being held in parallel. The situation therefore adds to the challenge faced by a group already strapped for human resources.

Finally, as it relates to CARICOM countries in influential positions, it must be noted that Guyana was the Chair of G77 + China in 2020, Belize the Chair of the Alliance of Small Island States (AOSIS) from 2019-2020 and Antigua and Barbuda the Chair of AOSIS in 2021-2022. Guyana’s position as the G77 + China Chair coincided with a break in formal negotiations, of which more will be said on later. As a result, it was probably not as impactful from a CARICOM BBNJ perspective as it could have been if the IGC was being held. With regard to Belize’s time as AOSIS Chair, a tangible outcome was the commissioning and production of an insightful report on capacity challenges and options relating to MGR research (and marine scientific research more generally) in SIDS and as it relates to areas beyond national jurisdiction (Harden-Davies et al., 2020). Fellow CARICOM member States were indeed very supportive of their sister countries as they executed their roles as Chairs of these large groups. However, in the future, the CARICOM bloc may better strategize in order to further leverage opportunities that could arise from members holding these positions including in the building of cross-regional alliances and tabling of joint proposals on the key contentious issues under negotiation.

THE INFLUENCE OF THE COVID-19 PANDEMIC

A couple of weeks before the fourth IGC session was scheduled to take place in March 2020, the UN General Assembly took the decision to postpone it due to the emerging threat of the Covid-19 disease5. Indeed, few would disagree that to host an international negotiation process during a time when the virus was an epidemic in many parts of the world and with global pandemic looming, would have been logistically impossible and ethically reprehensible. Subsequent to the postponement decision, new dates were scheduled for the session but these targets were unable to be met as the pandemic was not brought under control soon enough. After two years of postponement, the 4th IGC session eventually took place in March 2022. In the lengthy intervening period between IGC3 and IGC4 however, informal work and discussions were ongoing through a shift to virtual interaction and adopted modalities of operation using online networking platforms such as Zoom, Cisco Webx and Microsoft Teams (Vadrot et al., 2021).

The pandemic was beneficial to the negotiation process in the sense that it allowed additional time to reflect on the many outstanding issues in the negotiations (Tsioumanis, 2020), and, in that regard, seeking to generate more dialogue towards consensus. Two main multilateral and multi-stakeholder fora were established to have this occur. The President of the Conference, H.E. Ambassador Rena Lee from Singapore, supported by the Division of Ocean Affairs and Law of the Sea (DOALOS), organized intersessional work through an online forum which ran from September 2020 to March 2021. Participants discussed and proposed ideas in response to various questions posed on elements of the negotiations. This was complemented by the ‘High Seas Treaty Intersessional Dialogues’ which were hosted jointly by the Kingdom of Belgium, the Principality of Monaco and Costa Rica in collaboration with other organizing partners. These dialogues were conversational, held in a video conference format as opposed to the written interaction modality of the intersessional work organized by the President. They commenced in July 2020 and sessions were held regularly, each time focusing on different pre-specified topics and areas of interest6. Apart from participating in these multilateral

5 UN General Assembly decision regarding the postponement of the 4th IGC session: https://undocs.org/en/a/74/l.41 (accessed: 5th July 2021)
6 More information on the High Seas Treaty Intersessional Dialogues can be found at: https://highseadialogues.org/ (accessed: 6th July 2021)
interactive platforms, CARICOM also engaged in bilateral discussions with other delegations virtually. These too were helpful in getting CARICOM interests known, learning the interests of other delegations and proposing issue linkages and compromises towards common interests.

There were few barriers to participation in these virtual intersessional events; all that was required was a reliable internet connection and communicating to the organizers an interest to participate. Transaction costs were therefore low especially when considering that in-person intersessional meetings in different parts of the world would have required a considerably larger budget to fund travel and other expenses. The virtual intersessions resulting from postponement due to the pandemic therefore, theoretically, allowed for increased opportunity for participation by CARICOM negotiators and interested experts. However, at the same time, the pandemic also saw a proliferation of online engagements as work modes migrated to virtual spaces, people became more familiar with the available technologies and their use, and meetings became easier to organize and coordinate. This, in turn, led to inundation of members of the CARICOM BBNJ delegation, who, as alluded to earlier, are tasked with numerous roles and responsibilities apart from the BBNJ process in their professional capacities. They therefore had to be selective in where to direct attention. It follows then that enhanced opportunity to participate in BBNJ discussions did not always necessarily translate into enhanced ability to participate.

Two final points need to be made on the influence of the Covid-19 pandemic on CARICOM’s engagement with the BBNJ process. Firstly, during the delay and postponement of formal negotiations the regional group saw the departure of experienced negotiators, with vast institutional knowledge of the BBNJ process and, among other things, well-honed networks of alliances with other delegations. Continuity and momentum in advancing the CARICOM group’s positions were affected as they either have not been replaced or as incoming delegates transitioned into their new roles and under difficult circumstances. Secondly, the Covid-19 pandemic brought with it physical, mental and emotional challenges both within and outside the professional sphere (Pedrosa et al., 2020). These came along with the sudden and drastic departure from the usual learnt and accepted practices of societal engagement and lifestyle changes that resulted. In commenting upon the influence of the pandemic on CARICOM’s delegation as a whole, the impact that was had at personal, individual levels must fully acknowledged and not understated.

**DISCUSSION AND RECOMMENDATIONS**

Based on the Virginia Commentary (Nordquist et al., 1985) it appears that CARICOM States did not approach negotiations in the Third United Nations Conference on the Law of the Sea (UNCLOS III), which ran from 1973 to 1982 and yielded the Law of the Sea Convention as we know it today, as a negotiating bloc. Indeed, Carnegie (1987) has commented that CARICOM countries did not exercise much influence within the Group of 77, who played a major role in those negotiations on behalf of developing countries. Several authors have made the point that interest groups, rather than regional groups, were more impactful at the UNCLOS III negotiations (Buzan, 1980; Koh, 1983). Some CARICOM member States were prominent in those interest groups e.g. Bahamas in the negotiation of the archipelagic State regime (Andrew, 1978), but there was not a regionally strategized approach. In the present day BBNJ negotiations however, there has been a shift. Many regional groups are active and influential including the Pacific Small Island States (PSIDS), the African Group (AG), the European Union (EU), the Core Latin American Countries (CLAM) and CARICOM. This reflects what has been a growing trend of regionalization of international negotiations (Panke et al., 2017).

Undeterred by postponement of formal proceedings due to the pandemic, the BBNJ process has been ongoing. CARICOM was enthusiastically engaged before and during the interruption and continued to be prominent when the IGC officially resumed. To date, despite considerable challenges, the group have delivered well-articulated positions on all the substantive issues and articles under discussion, at every session and setting, be it plenary, informal working groups, ‘informal-informals’ and virtual intersessional dialogues. Spurred by internal impetus and with the help of external donors, the CARICOM delegation have adapted and persevered through the difficult and complex circumstances of the most important law of the sea negotiations in the past 25 years. In thinking through developing and delivering a common strategy there has been evidence of increased stakeholder engagement, accessing and networking with experts and the sharing of workloads. That being said, although improvised, interim solutions have been sought, most challenges are still to be adequately overcome in a long-term, sustainable way. The group has also been negatively affected by the periodic turnover of negotiators during the process. Added to this, the challenge of securing reliable, predictable funding to have a critical mass of capital-based delegates physically participate in the remaining negotiation session(s), has proved intractable, even in the short term, and still needs immediate redress.

CARICOM has negotiated as a bloc in other international processes which focus on different policy areas such as trade and security. It has been observed that many of group’s challenges highlighted in this paper are not uniquely experienced in the BBNJ process (Lewis, 2005; Joseph, 2013). A common thread, regardless of the forum or area of interest, is a lack of human and financial resources which inhibits the achievement of the most optimal results from the region’s perspective. This is in-keeping with observations in the published literature on small States even though CARICOM represents a group of small States which have pooled resources (Panke, 2012a). Amalgamation of resources by CARICOM member States in the BBNJ negotiations has proven

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1The seven volume “Virginia Commentary” is based on the formal and informal documentation of UNCLOS III coupled, where necessary, with the personal knowledge of editors, contributors, or reviewers, many of whom were principal negotiators or UN personnel who participated in the Conference.

2Tommy Koh, President of the final sessions of UNCLOS III did highlight the Latin American Group as being a unified and effective negotiating bloc in that conference however (Koh in Nordquist et al., 1985).
to be an astute and judicious approach. Although it is not entirely perfected, the group should continue to pursue this path in the future. At the conclusion of these negotiations it would be important for further, comprehensive analysis of CARICOM’s engagement to take place, considering what was desired and juxtaposing this against the eventual outcomes. This would not only help determine the pros and cons of CARICOM member States signing the final BBNJ agreement but could also help to prioritize and action improvements and innovation in the way the group participates in and influences future multilateral negotiation processes, be they ocean related or otherwise. As it pertains future engagement in the ocean realm however, based on what has been observed in the BBNJ negotiations thus far, a few recommendations can be made.

Firstly, the creation of anambulatory commitment to a formal and functional regional mechanism to contemplate, coordinate and execute a collaborative approach to developing and achieving an agreed vision on ocean related development is imperative for CARICOM member States. Such an arrangement could increase public knowledge about sustainable ocean management and generate interest, input and desire towards realizing it. This may not only succeed in elevating ocean related issues on the political agenda within CARICOM, it may also produce more legitimate recommendations for negotiators to pursue and robust outcomes at national, regional and global levels. Additionally, an enduring coordination mechanism can help in developing and soliciting expert advice and strengthen the region’s standing as an authority on ocean related issues. Therefore, it is crucial that activities and pursuits of the envisioned coordination mechanism are perpetually ongoing even after a clearly articulated overarching policy, which would outlines long term vision, guiding principles and objectives with regard to sustainable development of the ocean spaces, is collaboratively arrived at by all members and relevant stakeholders within the CARICOM regional arrangement.

Secondly, within the contexts of the institutional architecture that would be created to govern BBNJ, CARICOM should push for the inclusion in the agreement of a special fund to, inter alia, help developing countries participate in the Conference of Parties and other bodies that would be established. Article 52(4) of the revised draft text of the BBNJ agreement which was prepared by the President of the IGC in November 2019\(^9\), does refer to such a fund, but it proposes that it will be a voluntary trust fund, similar to that which currently pertains to aid developing State participation in the negotiations towards the agreement. This paper has already highlighted that the voluntary nature of the existing Fund makes it less than effective in meeting the needs of developing States. CARICOM, in coalition with like-minded delegations, should therefore lobby for the fund under Article 52(4) to be mandatorily resourced in order to ensure that developing State Parties, including those from CARICOM, continue to have a meaningful say in how BBNJ is managed after the agreement is signed and enters into force.

Thirdly, given the ocean’s importance to economic, social and cultural fortunes of the region (Clegg et al., 2020), CARICOM may want to consider creating a post within the organization of Ambassador for the Ocean. Countries such as Belgium and Sweden have recognized and influential international diplomatic representatives devoted to the ocean but this would be a novel idea within a regional group and indeed, for CARICOM. This specialist portfolio Ambassador would not supplant Member States’ Ambassadors at international fora but rather could support them, aiding in intra-regional coordination and helping the group arrive at internal consensus as it relates to oceans. In addition, this person could represent the Community’s interests internationally on an ongoing basis, increase the region’s visibility and influence, and strengthen bilateral cooperation with partners. Diplomatic outreach by the Ocean Ambassador to governments, private sector and non-governmental interests could create abiding alliances with entities who are interested in maximizing CARICOM’s ocean potential and realizing its ocean vision, including through being a strong presence at international processes. The CARICOM Ambassador for the Ocean should be supported by a dedicated team within the CARICOM Secretariat. At present ocean matters fall under the programme area on sustainable development. However, the human and financial resources directed towards this important programme area are not sufficient to effectively meet the needs of its broad ambit. Therefore, along with a CARICOM Ambassador for the Ocean, a dedicated, adequately resourced ocean desk under the sustainable development programme of the Secretariat would also be important.

Fourthly, the interest and support provided by COFCOR for the CARICOM group engagement in the BBNJ process has indeed been helpful. In this and future negotiations, other reflections of political support could further enhance CARICOM’s influence and redound to the group’s benefit. Increased presence of Ministers and other high ranking officials from the region at sessions could send a strong message about the importance of the ocean to the region. Ministerial presence, including their making statements in plenary and engaging in bilateral talks on the margins, should therefore be employed more fervently in the future. More immediately, with the BBNJ negotiations at a critical point, the opportunity must be seized at every juncture on the margins, should therefore be employed more fervently in the future. More immediately, with the BBNJ negotiations at a critical point, the opportunity must be seized at every juncture on the international stage for CARICOM Ministers and senior spokespersons to highlight the importance to the region of securing a fair, equitable agreement without undue delay. A case in point relates to the high profile taken by Canadian Minister Tobin at the Fish Stocks Conference in 1995 to secure favorable outcomes to Canada (Curran and Long, 1996).

Finalizing the BBNJ agreement would represent one of the most significant milestones in ocean multilateralism for almost three decades. CARICOM has been a diligent participant in the process thus far, lobbying for its regional interests and the special circumstances of SIDS all within the context of sustainable and equitable use of the ocean and its resources. The group has been noticeably vocal on, inter alia, equitable benefit sharing arising out of utilization of marine

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genetic resources from areas beyond national jurisdiction, ‘internationalization’ of the EIA process (Hassanali, 2021), and securing predictable, accessible and adequate funding for capacity building and technology transfer (Harden-Davies et al., 2022). The BBNJ process has also presented the opportunity for the regional group to adapt, retool, grow and evolve in order to remain relevant and impactful into the future. Having the region’s interests robustly reflected in the final agreement and strengthening the regional approach to international negotiation are two equally important, and mutually beneficial, outcomes which CARICOM should be focused on achieving.

DATA AVAILABILITY STATEMENT

The raw data supporting the conclusions of this article will be made available by the authors, without undue reservation.

ETHICS STATEMENT

The studies involving human participants were reviewed and consent to participate in this study. The patients/participants provided their written informed consent to participate in this study.

REFERENCES


AUTHOR CONTRIBUTIONS

The author confirms being the sole contributor of this work and has approved it for publication.

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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
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 researchers 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 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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