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# MARIPOLDATA Ocean Seminar

## "Developing countries in the BBNJ - CARICOM interests from a blue economy perspective and a proposed approach to EIAs"

<sup>rd</sup>  
23 June, 2021

**Guest Speaker:** Kahlil Hassanali

**Kahlil Hassanali** has over eight years' experience as a research officer in marine policy and governance at the Institute of Marine Affairs, a multidisciplinary marine and environmental research organization in Trinidad and Tobago. He has a strong interest in the creation and implementation of policy focused on conservation and the sustainable use of ocean and coastal resources, especially within national and regional contexts.

Mr. Hassanali holds an MSc in Environment and Development from the University of Reading in the United Kingdom. He was also a 2013/2014 United Nations-Nippon Foundation of Japan Fellow, receiving advanced education in ocean affairs and the Law of the Sea.

He is currently pursuing a PhD in Maritime Affairs at the World Maritime University- Sasakawa Global Ocean Institute (WMU-GOI). His PhD research is examining the inter-relationship between aspects of the legally binding instrument being negotiated under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ agreement) and the blue economy of the Caribbean Community (CARICOM). He also serves as a negotiator for the CARICOM in the process to develop the BBNJ agreement.

We welcome **Kahlil Hassanali** to the MARIPOLDATA Ocean Seminar, who introduces each aspect of the package and highlights what CARICOM interests are from a blue economy perspective, as well as presents on the proposed approach for review and decision-making under the EIA part of the agreement.

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### Reading Material for the Session:

**Hassanali, Kahlil.** (2020). CARICOM and the blue economy – Multiple understandings and their implications for global engagement. *Marine Policy*, 120, 104137.

**Hassanali, Kahlil.** (2021). 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. *Environmental Impact Assessment Review*, 87, Environmental impact assessment review, 2021-03, Vol.87.

The monthly **MARIPOLDATA Ocean Seminar Series** offer a virtual space to get information and engage in exchanges on ocean governance issues, through presentations by international experts from academia, governments, international organisations and civil society.

**To register:** Please contact [ina.tessnow-vonwyssocki@univie.ac.at](mailto:ina.tessnow-vonwyssocki@univie.ac.at), indicating your name and institution.

**More information:** [MARIPOLDATA Ocean Seminar Series](#)



## 1. General Context

- International negotiations for a new legally binding agreement for the conservation and sustainable use of marine biodiversity beyond national jurisdiction (BBNJ) under the United Nations Convention on the Law of the Sea (UNCLOS) are ongoing
- The Caribbean Community (CARICOM) is a negotiating bloc in the BBNJ negotiations consisting of:

Member States	Associate Members
Antigua and Barbuda	Anguilla
Bahamas	Bermuda
Barbados	British Virgin Islands
Belize	Cayman Islands
Dominica	Turks and Caicos Islands
Grenada	
Guyana	
Haiti	
Jamaica	
Montserrat	
Saint Lucia	
St Kitts and Nevis	
St Vincent and the Grenadines	
Suriname	
Trinidad and Tobago	

- Interests of CARICOM can be identified within the 4 package elements of the agreement:  
MGRs: to ensure the sharing of information and benefits from MGRs;  
ABMTs, including MPAs: consultation in establishing ABMTs/MPAs;  
EIAs: internationalization of the EIA process, creation of a liability mechanism;  
CB&TT: strengthening CB&TT as identified by receiving states.

*The MARIPOLDATA Ocean Seminar Series is part of the MARIPOLDATA project which has received funding from the European Research Council under the Horizon 2020 research and innovation programme (No 804599).*

## 2. An Introduction

### Readings:

**Hassanali, Kahlil.** (2020). CARICOM and the blue economy – Multiple understandings and their implications for global engagement. *Marine Policy*, 120, 104137.

**Hassanali, Kahlil.** (2021). 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. *Environmental Impact Assessment Review*, 87, Environmental impact assessment review, 2021-03, Vol.87.

### The BBNJ Agreement and Intersessional Period

The UN negotiations for a new legally binding agreement under the UN Convention of the Law of the Sea are currently still ongoing. Due to the COVID-19 pandemic, the planned- to- be final intergovernmental conference (IGC) was again postponed and is now envisaged to happen in 2022. In the meantime, informal exchanges among state and non-state actors are taking place. The MARIPOLDATA Ocean Seminar was identified as a valuable informal space where policy-makers can gather with scientists, practitioners and civil society to discuss open questions regarding the BBNJ negotiations and keep the momentum.

### CARICOM and BBNJ

The Caribbean Community (CARICOM) is an organisation of 15 member states and 5 associate members in the Caribbean with the aim to achieve economic integration; foreign policy coordination; human and social development; and security in the region<sup>1</sup>. This MARIPOLDATA Ocean Seminar discusses the interests of CARICOM in the BBNJ negotiations, regarding the blue economy and in a second step, also dedicates time to environmental impact assessments in BBNJ.

While, on the one hand, the United Nations Convention on the Law of the Sea (UNCLOS) Art. 192 reads: “States have the obligation to protect and preserve the marine environment”, discussions on environmental impact assessments (EIAs) are still widely open regarding e.g.

- Under what conditions EIAs are supposed to be undertaken,
- How transparency and accountability can be ensured in the process

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<sup>1</sup> See more information on CARICOM on their official website: <https://caricom.org/>

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These, among other topics, are also part of informal discussions –[the BBNJ Informal Intersessional Dialogues](#) – in June 2021, organized by Belgium, Costa Rica and Monaco, as well as a number of NGOs.

### 3. Developing Countries and the BBNJ Agreement: Presentation

Presentation by **Kahlil Hassanali**

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**Ina Tessnow- von Wysocki, June 2021**

# Developing Countries in the BBNJ negotiations

CARICOM interests from a blue economy perspective  
and a proposed approach to EIAs

Kahlil Hassanali

PhD Candidate

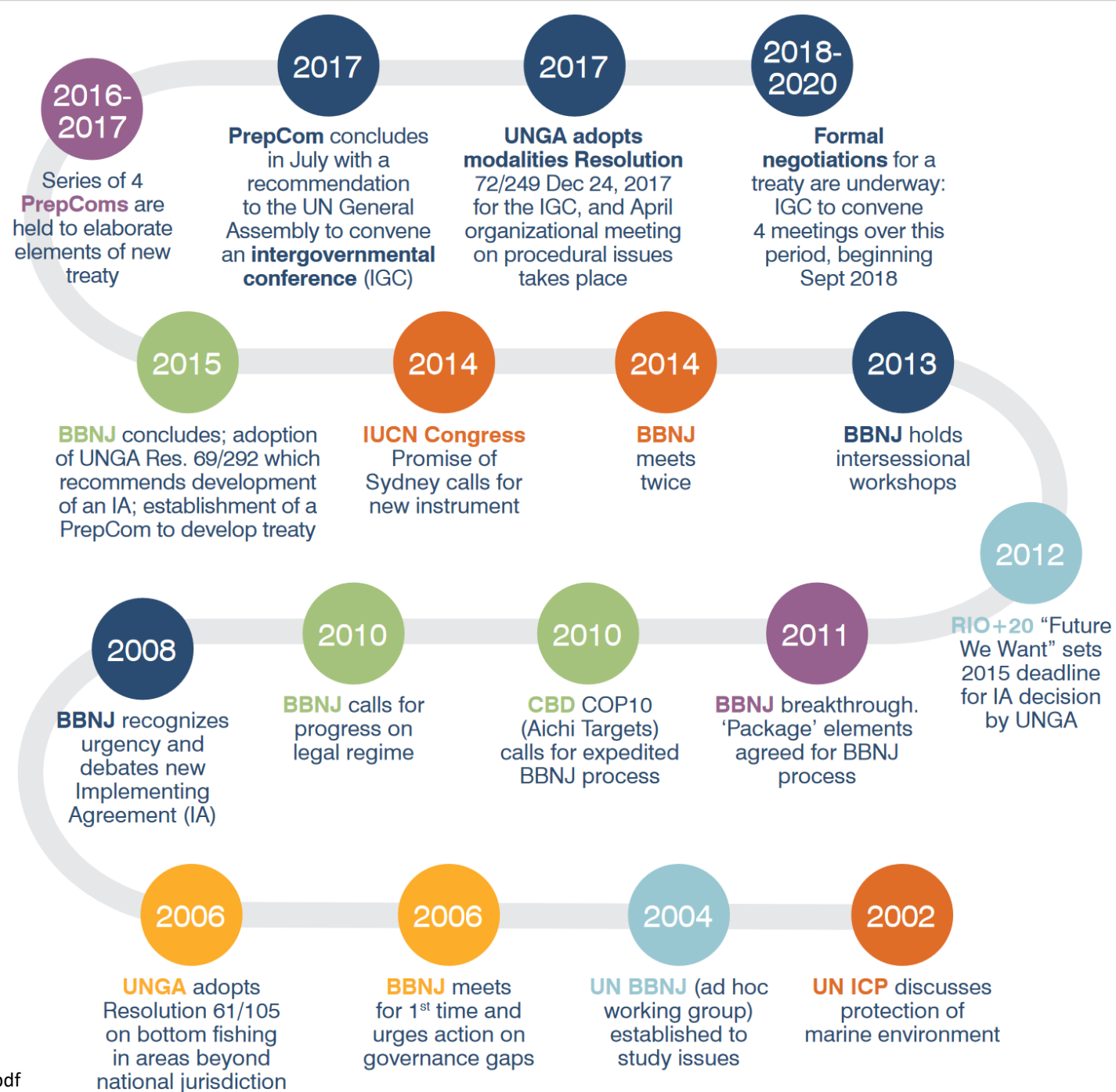
World Maritime University – Sasakawa Global Ocean Institute



# BBNJ Agreement

- Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
- Package deal (adopted in 2011)
  - MGR including access and benefit sharing
  - ABMTs including MPA
  - Environmental Impact Assessment
  - Capacity building and transfer of marine technology
- Timeline
  - UN BBNJ Ad hoc WG (2004-2015)
  - UNGA Res 69/292 which recommended development of IA (2015)
    - Preparatory Committee 2016-2017
  - UNGA Res 72/249 allowed for convening of IGC (2017)
    - 4 sessions held between 2018-????







**CARICOM**  
CARIBBEAN COMMUNITY







# THE BLUE ECONOMY.



uses smart shipping to lessen the impacts on the environment



is inclusive and improves the lives of all



harnesses renewable energy

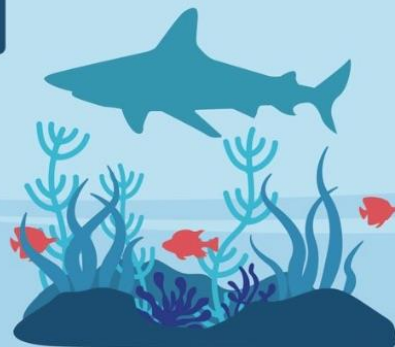


is based on sustainable fisheries



conserves marine life and oceans

creates jobs, reduces poverty and ends hunger



protects coastal communities from the impacts of climate change



takes action against illegal fishing



tackles marine litter and oceans pollution

# Marine Genetic Resources (MGRs)

- Common heritage of (hu)mankind (CHH)
- Mandatory sharing of information and benefits
  - Non-monetary
  - Monetary
- Capacity building, knowledge and technology transfer



# Area Based Management Tools (ABMTs) including MPA

- Genuine consultation and engagement
- Strengthening of ability to encourage vessel compliance
- Capacity development to conceptualize, implement and manage ABMT





# Environmental Impact Assessment (EIA)

- 'Internationalization' of the EIA process
- Capacity development and training in conduct and evaluation of EIA/SEA
- Compensation and liability mechanism

# Capacity Building and Transfer of Technology (CBTT)

- Cross-cutting issue
- CBTT needs determined by States
- Mandatory commitment to fund CBTT

# Environmental Impact Assessment under the BBNJ Agreement

*A focus on Internationalization*



# Part IV – Environmental Impact Assessments (EIAs)

- Article 21 bis - Objectives
- Article 22 – Obligation to conduct EIAs
- Article 23 – Relationship between this agreement and other EIA processes
- Article 24 – Thresholds and criteria for EIAs
- Article 25 – Cumulative impacts
- Article 26 – Transboundary impacts
- Article 27 – Areas identified as ecologically or biologically significant or vulnerable
- Article 28 – Strategic environmental assessments (SEAs)
- Article 29 – List of activities
- Article 30 – Screening
- Article 31 – Scoping
- Article 32 – Impact assessment and evaluation
- Article 33 – Mitigation, prevention and management of potential adverse effects
- Article 34 – Public notification and consultation
- Article 35 – Preparation and content of EIA reports
- Article 36 – Publication of assessment reports
- Article 37 – Consideration and review of assessment reports
- Article 38 - Decision making
- Article 39 – Monitoring
- Article 40 – Reporting
- Article 41 - Review

# 'Internationalization' of EIA under the agreement

*"Different views continue to be expressed regarding 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"*

– René Lefeber (Netherlands), **Facilitator of the informal working group on EIA**

- Internationalization of the EIA process (Articles 24, 30, 34, 36, 37, 38)

# What is meant by 'Internationalization' of EIA?

- Internationalization of consultation
- Internationalization of dissemination of information
- Internationalization of review and decision-making



# Seeking Compromise

Threshold is Key (Article 24)

- Tiered approach
- Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol)
  - Minor or transitory effects
- Screening under Article 30
  - < minor or transitory effects → no further action needed
  - minor or transitory effects → State led EIA process
  - > minor or transitory effects → EIA review and decision making process ‘internationalized’
- Madrid Protocol (1991-2020) – 26 projects
- Threshold = “substantial pollution of or significant harmful changes to” (UNCLOS Article 206)

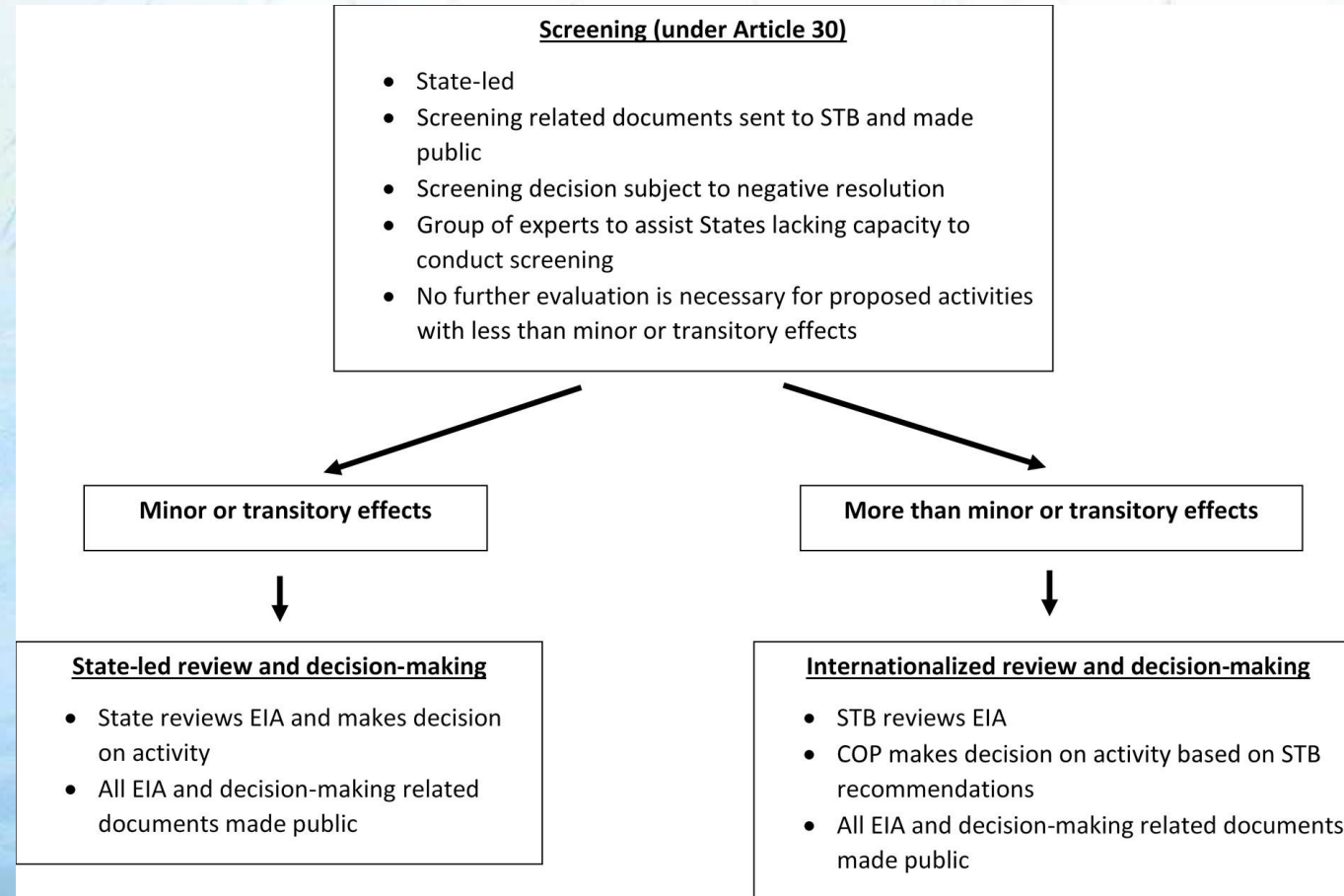
# Role of Scientific and Technical Body (STB)

For EIAs submitted, the STB should:

- Ensure that reports adhere to the requirements of the agreement (content – Article 35, and procedural e.g. public consultation – Article 34)
- Assess the quality of the report and mitigation and management measures proposed
- Make recommendations to the COP

STB review important for States who lack capacity to evaluate EIAs

# Proposal for Internationalization of EIA under the BBNJ agreement





# Thank you!

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**Swedish Agency  
for Marine and  
Water Management**



Federal Ministry  
of Transport and  
Digital Infrastructure



## 4. Questions and Discussion

### Main Take- Aways

- Different forms of knowledge needed for BBNJ
- Genuine engagement of actors and consultations are crucial in the establishment ABMTs
- The Antarctic Treaty and the Madrid Protocol provide helpful guidelines for a threshold for EIAs
- Discussions could be encouraged surrounding a potential liability fund
- The application procedure for GEF funds could be facilitated
- An updated draft text during the intersessional period would move the negotiations forward

### What knowledge is needed for the BBNJ knowledge base?

There are different knowledges needed to make informed decisions regarding marine biodiversity governance. On the one hand, natural science, such as physical oceanographic science is crucial to understand the ocean and marine ecosystems, e.g. the understanding that pollutants move in order to make decisions on environmental impact assessments. But on the other hand, also social science is needed, e.g. to study how these impacts on the marine environment affect people. Additionally, also traditional knowledge of indigenous peoples and local communities are further knowledges to take into account.

### “Facilitated access” to MGRs

While there are many discussions about the importance of “facilitated access” to MGRs, there are different definitions of facilitated access. In the case of CARICOM, facilitated access to MGRs would refer to facilitation for CARICOM members to access stored ex situ MGRs in repositories, as well as digital sequence data, in which case it would regard lowering burdensome bureaucracy and costs.

### Genuine Consultations and Engagement of stakeholders

The genuine engagement of actors and consultations are crucial in the establishment of area-based management tools, including marine protected areas. CARCIOM has been making efforts to engage a wide variety of stakeholders, including local knowledge holders, but there is always room for improvement.

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## EIAs

The BBNJ discussions are currently evolving around under what conditions to undertake environmental impact assessments and who would be responsible for deciding whether an activity can be undertaken. Thresholds play an important part in this regard, as they set limits to unrestricted activities. The Antarctic Treaty and the Madrid Protocol provide helpful guidelines for thresholds as they have already been established in international law.

Discussions have not yet evolved too much around the possibility of a liability fund. CARICOM regards a liability fund as important, particularly to cover compensation costs, if court cases need a long time to be resolved regarding the responsible party. In cases of companies as private actors, it is not always clear who will be responsible for pollution/ accidents and impacts on the marine environment, but they would need to go through the national authorities first before undertaking the activity, which puts responsibility on the state.

## Providing CB&TT to CARICOM

CARICOM has concerns about the Green Climate Fund (GEF) being the responsible body for financing CB&TT, as there have been difficulties for CARICOM members in applying for funds. This point was taken on in the discussion with the opportunity to take it further: What are factors that make it difficult for CARICOM members to use GEF funding and how can the GEF application process be facilitated for CARICOM? The “complicated and time consuming” process of applying for funds might be looked at more closely to understand what CARICOM countries would need as support to make use of the GEF.

## How to keep the momentum over the intersessional period?

As the planned-to-be last IGC was postponed again due to the COVID-19 pandemic, the intersessional period (time in between the conferences) was extremely extended. From an initial 6 months intersessional period, we are already approaching 1.5 years of intersessional period – which is now indefinitely postponed to “as soon as practicable in 2022”. In this time, no formal text-based work has happened, but informal online exchanges have taken place, initiated by UNDOALOS, the UN Secretariat for BBNJ and by Belgium, Costa Rica, Monaco and non-state actors<sup>2</sup>. Besides these initiatives, the policy-makers under the participants in the [MARIPOLDATA Ocean Seminar Series](https://highseasdialogues.org/) named these sessions as valuable to keep the momentum and discuss in an informal and comfortable atmosphere, to raise questions and clarify each other’s points.

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<sup>2</sup> See more information: Intersessional Work organized by UNDOALOS: <https://highseasdialogues.org/> and BBNJ Informal Intersessional Dialogues: <https://highseasdialogues.org/>.

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An updated draft text was mentioned as a requirement for further advancement in the BBNJ process over the extended intersessional period. Policy-makers have partly mentioned the need for text-based work, however it would be up to the president of the negotiations (Ambassador Rena Lee) to take such a decision to move the process forward. A joint request for more formal work by a number of state delegations could potentially push the momentum while on-site negotiations in New York are being put on hold.

The MARIPOLDATA Team is happy to further contribute to keeping the momentum by bringing together policy-makers, scientists, and civil society from around the world in the monthly Ocean Seminars to discuss relevant ocean issues and present timely research, inviting experts in the field.

We thank Kahlil Hassanali for the presentation and discussion on CARICOM interests and a new approach for EIAs as regards the current BBNJ negotiations.

The MARIPOLDATA Team is looking forward to upcoming Sessions and will soon publish the new program for the second half of 2021!

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