

From fragmentation to polycentricity: The manifestation of the hybrid approach throughout the intergovernmental conferences on biodiversity beyond national jurisdiction



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CONTENTS

1	Introduction	4
2	Background.....	6
3	Polycentricity as a mode of governance.....	6
3.1	Modes of governance	6
3.2	Operationalization of successful polycentricity as governance mode	7
4	Data and methods.....	9
4.1	A case study	9
4.2	Data collection methods.....	9
4.3	Analytical framework.....	10
4.4	Data analysis method	10
5	Results.....	12
5.1	Illustration of the terminology	12
5.1.1	How to read the illustration.....	13
5.2	terminology indicating a polycentric governance Architecture	15
5.3	Power	15
5.3.1	Distribution across levels	15
5.3.2	Degree of centralization	17
5.4	Cooperation and coordination	20
5.4.1	Formal provisions supporting coordination.....	20
5.4.2	Inclusion of different levels.....	22
5.4.3	Overarching legislation	23
5.4.4	Overview of results	24
6	Discussion	26
6.1	Reflection on relevant observations	26
6.2	Critical reflection on the framework.....	26
6.3	Policy recommendation: working towards delegation as strategy towards successful polycentric governance.....	27
7	Conclusion	28
7.1	Limitations	29
7.2	Future research	29
8	References	30
8.1	Legislation	33
8.2	United Nations documents	33
9	Appendices.....	34
9.1	Appendix A – terminology	34

Abstract

The current governance structure, which sets out to protect biodiversity beyond national jurisdiction, is fragmented and insufficient in achieving this goal. The ongoing intergovernmental negotiations on biodiversity beyond national jurisdiction provide a unique opportunity to overcome this issue. The three governance architectures being discussed are the global, regional/sectoral, and hybrid approaches. The hybrid approach, which is a form of polycentric governance, is arguably a promising but overlooked solution. However, the discussion seems to be stuck between those delegates favoring a global approach, and those who prefer a regional/sectoral structure. Drawing on over 400 policy documents around the negotiations on an internationally legally binding instrument, I show evidence of the hybrid approach in the language used by delegates and within the latest legal draft. This may hint towards the potential for a successful polycentric governance structure as future architecture in the high seas. The results demonstrate that the language used by a broad range of delegates could support this form of governance, even if delegates have not labeled it as such. Similarly, the legal text shows promising characteristics of a successful polycentric system, which would make the hybrid approach a realistic option. Overall, the degree to which terminology supporting the manifestation of a polycentric governance architecture is used, can be rated as moderately high. The indication of a polycentric governance architecture brings out the potential of delegation under the internationally legally binding tool. Delegation, as a form of polycentric governance, provides a useful directory on how to design a successful governance architecture specifically. It might also provide a valuable solution to the dispute between the global and regional/sectoral approaches. Delegation could satisfy advocates for the regional/sectoral and global approach as it delivers strong guidelines at an international level as well as freedom at the regional and sectoral levels to implement guidelines. It would support the frequently discussed “form follows function” approach for establishing the internationally legally binding tool.

Glossary

Abbreviation	Meaning
ABMT	Area-based management tools
ABNJ	Areas beyond national jurisdiction
BBNJ	Biodiversity beyond national jurisdiction
CBD	Convention on Biological Diversity
CBTT	Capacity building and marine technology transfer
CLAM	Core Latin American Group
COP	Conference of the Parties
DOALOS of OLA	Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations
DOSI	Deep Ocean Stewardship Initiative
EIA	Environmental impact assessments
FAO	Food and Agriculture Organization of the United Nations
HSA	High Seas Alliance
ICC	International Chamber of Commerce
ICEL	International Council of Environmental Law
ICPC	International Cable Protection Committee
ICS	international chamber of shipping
IGCs	Intergovernmental conferences
ILBI	Internationally legally binding tool
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission
IPCC	Intergovernmental Panel on Climate Change
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
MGR	Marine genetic resources
NEAFC	North East Atlantic Fisheries Commission
NPFC	North Pacific Fisheries Commission
NRDC	Natural resources defense council
PSIDS	Pacific Small Island Developing States
Relevant Institutions	Relevant legal instruments and frameworks and relevant global, regional/ sectoral bodies
RFMO	Regional fisheries management organization
UNCLOS	United Nation Law of the Sea
UNEP	United Nations Environment Program
WWF	World Wildlife Fund

*abbreviations are relevant for the figures

1 INTRODUCTION

The governance architecture in place to protect areas in the high seas, its deep-seabed and biodiversity is insufficient, fragmented, and incompatible in dealing with increasing environmental pressures (De Lucia, Prip, Dalaker Kraabel, & Primicerio, 2018). The currently ongoing intergovernmental conferences (IGCs) on biodiversity beyond national jurisdiction (BBNJ) provide a valuable opportunity to overcome this issue. Alas, delegates are disagreeing on the prospective governance architecture, which is holding back the negotiations set out to establish an internationally legally binding instrument (ILBI). Disagreements on decision making in 1973 almost cost the United Nations Law of the Sea (UNCLOS), the foundation of the ILBI, universal acceptance (Kraabel, 2018). Continuing the pattern, during the preparatory committee, the institutional arrangement was amongst the most divisive topics between developing states, which generally prefer a global approach, and developed states, that tendentially favor a regional/sectoral governance structure (Kraabel, 2018). Arguably, neither of the two approaches would be a suitable solution.

A global approach would allocate roles, including scientific advice, decision-making, review, and monitoring of implementation to the global level (Eden, 2017). However, the existing governance structure makes this approach unlikely. The discussion to not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (short: relevant institutions) as manifested through the United Nations General Assembly resolutions 72/249 makes clear that the existing structure would not allow for top-down steering based on an ILBI. The interpretation of the by delegates frequently used phrase "not to undermine" is manifold. However, it brings out the demand of some delegates to avoid duplication, change, or to subordinate existing structures (Mendenhall, De Santo, Nyman, & Tiller, 2019). International organizations such as the International Maritime Organization (IMO) or the International Seabed Authority (ISA) claim their authority over their respective jurisdiction. The ongoing discussions make clear that they would likely not give up their mandate.

The debate around the terminology "not to undermine" highlights the currently fragmented governance architecture (Wright, Rochette, Gjerde, & Seeger, 2018). Fragmentation often causes subversion of existing bodies and instruments, and such structures are generally not sufficient in tackling wicked problems like climate change (Biermann, 2014). In our oceans, climate change is causing increased pressure on resources, and consequently, new governance mechanisms are necessary to manage exploitation without harming the local biodiversity (Hildebrand & Brigham, 2018). The deliberated regional/sectoral approach would keep full authority to decide on measures, ensure follow-up and review of implementation with regional and sectoral bodies and only facilitate cooperation and coordination at the global level (Eden, 2017). Therefore, a regional/sectoral approach would almost copy the status quo, which has already proven to be inefficient in managing areas beyond national jurisdiction (ABNJ) (Kraabel, 2018). Besides, as the name implies, the aim is to establish an internationally legally binding tool.

As highlighted above, discussing the governance architecture in terms of global versus regional/sectoral is not reflective of how the system would likely operate in practice. This argument has also been made by the European Union (EU) during the second of four IGCs (section 5.1, 29.03.2019). Instead, the discussion should shift to explore a third option, the hybrid approach, a polycentric form of governance. The main feature of a polycentric governance architecture is that it has multiple centers of decision making (V. Ostrom, Tiebout, & Warren, 1961). The portrayal of the hybrid approach fits into the categorization of a polycentric governance architecture, as it is said to provide general guidance and oversight,

criteria, and standards at the global level as well as scientific advice, implementation, and compliance by regional and sectoral organizations (Eden, 2017). Highlighted by Iceland during the preparatory committee, the suggestion received significant interest as this approach might be able to combine elements from the regional/sectoral and global approach and so satisfy a broader audience (Kraabel, 2018). Yet, the hybrid approach collected little attention at the IGCs thus far, with barely any delegation explicitly talking about it. Still, researchers are predicting the hybrid approach as the most likely outcome (Mendenhall et al., 2019), which leaves the question if delegates might indirectly reference or indicate their agreement to the hybrid approach. Assessing the terminology used by delegates at the IGCs could provide an answer to this.

The assessments by Wright et al. (2018) highlights the current gaps in the existing framework, including its fragmented architecture, whose inadequateness has been shown by de Santo et al. (2019) and Freestone, Johnson, Ardron, Morrison, and Unger (2014). In general, Biermann (2014) and van Asselt (2014) point out the issues of such governance architectures. As an option to remedy this fragmentation, researchers such as Mendenhall et al. (2019) have been discussing the hybrid approach as a third option. The hybrid approach could provide a valuable solution if it meets the criteria of a successful polycentric governance architecture (see for instance Biermann, Pattberg, van Asselt, & Zelli, 2009; Ostrom, 1990; Pahl-Wostl & Knieper, 2014; Pahl-Wostl, Lebel, Knieper, & Nikitina, 2012). While Kraabel's (2018) work illustrates the clear divide in governance architecture and introduces the general potential of the hybrid approach to bridge the gap, to my knowledge, the presence and manifestation of a polycentric governance architecture within the ILBI negotiations is still lacking. With this in mind, the objective of this research is to identify the potential of a successful polycentric governance architecture to emerge from the intergovernmental conferences on biodiversity beyond national jurisdiction.

The framework by Pahl-Wostl and Knieper (2014) will be used for this assessment. However, like various other theories on modes of governance (see for instance Driessen, Dieperink, van Laerhoven, Runhaar, & Vermeulen, 2012; Kooiman, 2003; Lange, Driessen, Sauer, Bornemann, & Burger, 2013; Thorelli, 1986), the framework focuses on the national context. Due to the lack of theories focusing on the international context, I extend the scope of the Pahl-Wostl and Knieper (2014) framework. Drawing on over 400 policy documents around the ILBI negotiations, the study assesses the discourse around the relationship of the new tool with the existing governance architecture and its potential within it.

The main contribution of this research is two-fold. First, by assessing the presence and potential of a successful polycentric governance architecture, this research is, above all, contributing to the policy level. It provides policymakers with a roadmap on how to move forward in developing a successful governance architecture by providing a potential solution to the dispute between the implementation of a global, regional/sectoral, or hybrid governance architecture. Second, this research contributes to the literature and theory around modes of governance as it shows the applicability of theories focusing on the national context at an international level. This will be done by answering the research question, "To what extent is a successful polycentric governance architecture manifesting within the ILBI negotiations and legal text?".

In the following, the conceptualization of different modes of governance is first reviewed, followed by a revision of polycentric governance before the analytical framework is introduced. The subsequent presentation of materials and methods describes how a discourse analysis will be applied to the BBNJ case study.

2 BACKGROUND

The four intergovernmental conferences are the final stage of a long process dating back to 2006 when the first BBNJ working group met. The conferences are set out to create the legal text of the ILBI. Based on resolution 72/249, the United Nations General Assembly, on December 24, 2017, called for four intergovernmental conferences to work on an ILBI to protect BBNJ under UNCLOS to address the current framework gaps. As mentioned earlier, the architecture under UNCLOS is fragmented. Instruments and institutions mostly concern a specific sector or issue, are focused on a global vs. regional level, and sometimes are geographically bound. This fragmentation has led to gaps and inefficiencies in the overall governance framework (Wright et al., 2018). The new tool is hoped to bring forward currently lacking inter-regime learning and cooperation (Young & Friedman, 2018).

The marine areas which would fall under this jurisdiction are “the area,” which is the seabed and ocean floor, and the “high seas,” which consists of the water column beyond the jurisdiction of coastal states. The relevance for delegates to establish a robust legal framework for the area and high seas is undeniable. This is most notably as climate change is putting additional stressors on the ocean's ecosystem. The Intergovernmental Panel on Climate Change (IPCC) recognized the shift in the distribution of fish populations in the high seas and the overall reduction in global catch potential, which may lead to communities highly depending on seafood to run into the risk of food insecurity (IPCC, 2019). Additionally, the melting of polar ice makes once unreachable resources in the area viable and accessible sources of profit (Hildebrand & Brigham, 2018), and an increasing interest in deep-sea minerals is observable (Levin et al., 2016). Continuous technological advancements enable once unimaginable explorations and exploitations (Rothwell & Stephens, 2016). These concerns are incorporated within the four themes under which the negotiations have been arranged: marine genetic resources (MGR), area-based management tools (ABMT) including marine protected areas (MPAs), environmental impact assessments (EIAs), capacity building and marine technology transfer (CBTT) and the cross-cutting issues including institutional arrangement (A/AC.287/2017/PC.4/2).

3 POLYCENTRICITY AS A MODE OF GOVERNANCE

3.1 MODES OF GOVERNANCE

The discussion around a global, regional/sectoral versus hybrid approach depicts a power struggle between actors over the ideal governance architecture to match their concerns. When speaking about the governance architecture, the overall institutional framework is described. It is a complex web of rules and claims to authority by actors representing diverse sets of interests (Biermann, 2014). The divide between the regional/sectoral and global approach is representative of the conflicting interest between those actors favoring the freedom of the high seas versus the common heritage of humankind principle (Kraabel, 2018). The freedom of the high seas' principle means that all states have the right to certain practices, including fishing and laying of submarine cables and pipelines in the high seas. The common heritage of humankind principle, on the other hand, brings out that these resources should be beneficial to humanity as a whole and, therefore, should not be exploited by individual states.

The concept of governance, as opposed to the government, reflects explicitly the complex network of actors, sectors, and levels implementing and formulating policy (Lange et al., 2013). The various combinations of actors coming together through institutions to achieve a goal by using the policy instruments available to them are called modes of governance (Driessen et

al., 2012). Governance modes describe different approaches to how governance is realized (Pahl-Wostl, 2019). The global, regional/sectoral, or hybrid approach could each be considered a mode or cluster of modes of governance. Identifying which mode of governance is applied allows us to scrutinize and compare potential limitations (or advantages) of the existing governance architecture (Lange et al., 2013). It also lets us to understand their complexity and to tap into existing knowledge on governance modes. By understanding the interplay and dynamics of global governance, we can then reinvent and restructure current systems to allow for the necessary sustainability transformation (Biermann & Kim, 2020).

Several approaches can be applied to distinguish between these modes of governance. Kooiman (2003) differentiates between self, co-, and hierarchical governance modes. Wherein self-governance describes forms of governance initiated by actors such as civil society or the market, independent from the government. Hierarchical governance explains the traditional top-down steering by the government, and co-governance is something in between where public and private actors govern together. Thorelli (1986) had the same understanding, having clustered modes based on actors but marked these as "hierarchy" (government), "market" (industry), and "network governance" (government, industry, and civil society). Such categorizations differentiating based on actor groups are less useful for the assessment of the governance structure in the high seas as it is government focused by nature. Meaning that all outcomes of governance architecture established at the IGCs would have governmental stakeholders as the main actor.

Lange et al. (2013) set apart modes based on state intervention versus societal autonomy, applying the three dimensions of politics (actors and processes), polity (institutions), and policy (content). These three dimensions were also suggested by Treib, Bähr, and Falkner (2007). In comparison, another distinction judges the mode of governance based on the three dimensions of governing styles and instruments, public-private relationships, and policy levels (Hysing, 2009). These distinctions would be suitable to assess the potential governance architecture, but the categorizations are more useful if no indication of the potential governance architecture is available. Since this assessment is purposely testing for polycentric governance, it makes sense to focus on literature that outlines this form of governance architecture specifically. Additionally, these differentiations do not provide judgment on the desirability of the modes, which is relevant for this research. The following therefore dives deeper into classifications of successful polycentric governance modes.

3.2 OPERATIONALIZATION OF SUCCESSFUL POLYCENTRICITY AS GOVERNANCE MODE

The main feature of a polycentric governance architecture is that it has multiple centers of decision making (V. Ostrom, Tiebout, & Warren, 1961). The current governance architecture shows many similarities to the proposed hybrid approach, including its decentralized nature and clustered responsibility allocation to different regions, levels, and sectors. What would differentiate the current governance structure from the proposed governance architecture is its capacity to protect biodiversity in areas beyond national jurisdiction (ABNJ) (De Santo et al., 2019). In general literature, such forms of governance are called fragmented, rather than polycentric (Biermann, 2014; Lieberman, 2011; van Asselt, 2014). Fragmentation highlights the potential of decentralized systems to duplicate efforts and create conflicts (Biermann, 2014). Indeed, the current governance structure, which has been identified as fragmented, is inefficient in managing ABNJ (Blasiak, Pittman, Yagi, & Sugino, 2016; De Lucia et al., 2018; Wright et al., 2018).

Alternatively, successful decentralized governance architectures are rather called polycentric than fragmented (Jordan et al., 2015). The concept of (successful) polycentric governance architecture, first envisioned by Polanyi (1951), has been defined by Vincent Ostrom et al.

(1961) and manifested within Elinor Ostrom's work on managing the commons. Throughout her research, Ostrom highlighted specific conditions under which such decentralized governance architectures can work well. These conditions form her eight design principles, including monitoring, graduated sanctions, and conflict-resolution mechanisms (E. Ostrom, 1990). Biermann et al. (2009) also provided a categorization that allows discerning a successful polycentric structure from a fragmented one. The team differentiated between three types of fragmentation – synergistic, cooperative, and conflictive. What separates synergistic fragmentation, or polycentric governance, from the other governance architecture, is an "integrative umbrella and authority in linking the different amendments and political processes" (Biermann et al., 2009, p. 20). Pahl-Wostl and Knieper (2014) provide a framework to discern modes by identifying shared characteristics of polycentric governance systems compared to other structures like fragmented ones.

Polycentric systems generally share basic features, including multiple decision centers and an overarching system of rules (Aligica & Tarko, 2012). A successful polycentric governance system characteristically has numerous centers of authority and distribution of power like a fragmented one but also provides effective coordination among various centers and across spatial levels (Pahl-Wostl & Knieper, 2014). What makes such a polycentric system successful compared to a fragmented (regional/sectoral approach) or centralized (global approach) structure is its capacity to deal with shocks and disturbances to the system and its overall resilience (Pahl-Wostl & Knieper, 2014). A polycentric structure supports experimentation and learning and is generally assumed to be high performing (Folke, Hahn, Olsson, & Norberg, 2005; E. Ostrom, 2001; Pahl-Wostl et al., 2012). So arguably, a successful polycentric governance architecture could be a favorable outcome of the negotiations. Similar observations have been made by de Santo et al. (2020) in the BBNJ context. They stated that fragmentation could be overcome if there was coordination among related agreements and that this would increase polycentricity.

Successful polycentric governance systems can take on several forms, for instance, through orchestration or delegation. When politicians are using delegation to govern, then they use hard measures, including regulations, and implement these indirectly through a third actor (Majone, 1997). Translated into the BBNJ context, regulations could be established under the ILBI, which would then be translated into practice and enforced by, for instance, the ISA or regional fisheries management organizations. Orchestration applies rather soft measures. It functions similarly to the currently fragmented governance architecture in the high seas, but it also uses cooperation and coordination to assure better performance of decentralized governance (Abbott, 2012). Orchestration is frequently used when governments are interacting with the private sector, which in the BBNJ context could include the governance through industry labels such as the Marine Stewardship Council label.

To summarize, the hybrid approach could be clustered as a polycentric mode of governance. Sorting the hybrid approach under such a categorization makes it possible to understand the logic under which it is operating. It provides insights into the potential strengths and weaknesses and enables policymakers to reinvent and restructure current systems purposefully. Polycentric governance in itself can take many forms like delegation or orchestration, but there are specific criteria, like cooperation and coordination, which are shared by successful polycentric governance modes. Therefore, when designing a polycentric governance architecture, attention should be paid to the presence of these criteria.

4 DATA AND METHODS

4.1 A CASE STUDY

A case study of the four BBNJ negotiations or IGCs has been conducted to assess if a polycentric governance architecture is manifesting at the ILBI negotiations. This exploratory research was performed by looking at statements made by delegates throughout the process and the latest ILBI legal text. A deep understanding and rich description can be achieved through the setup of such a single case study (Yin, 2003). This was done with the purpose to attain an in-depth understanding of the extent to which polycentric governance has manifested at the negotiations (Gerring, 2004).

4.2 DATA COLLECTION METHODS

Qualitative methods were utilized within this single-case research. Archival data was used for this purpose, as direct access to the meetings was not an option. Through applying a judgmental non-probability sampling technique, all materials published on the official UN BBNJ website have been studied. The sample is limited to official BBNJ sources and the timeframe of the IGCs so far.

Primary sources include Papersmart as a database for those documents officially uploaded by participants of the negotiations, including general statements given by delegates, responses to the legal draft/aid, and textual proposals as a reaction to the latest legal text. These statements are mostly scripts of the speeches given by delegates at the negotiations, thus directly reflect the language used at the negotiations. In total, this encompasses around 400 documents. Statements referenced in this paper are available on the UN Papersmart website for the conference [<https://papersmart.unmeetings.org/en/>], and other documents on the UN website for the conference, available online [<https://www.un.org/bbnj/>] and have been archived by the author.

The assessment does not include non-English statements from delegates shared on Papersmart, as no suitable option to overcome the language barrier was available within the timeframe of this research. The documents on Papersmart do not cover all discussions which have been taking place at the IGCs. A request was submitted to get access to further documents, including recordings from the side-events, but no response has been received on this request. Nonetheless, the amount of data that was available to me was sufficient to answer the research question. It should also be noted that the availability of data is not an equal representation of all delegates involved within the ILBI negotiations. That is because some delegates have been providing more feedback and comments on Papersmart than others.

The assessment of the legal text focuses on the revised legal draft (A/CONF.232/2020/3) as it is the latest version. The revised draft is the result of the two president's aid and the first legal draft. The first president's aid was published before the first IGC. It provided guidance based on issues, questions, and options which could not be agreed upon during the preparatory committee. The second president's aid, based on opinions voiced at the first IGC, was the guiding document at the second IGC and was the first document using treaty language. After the second IGC, the first ILBI legal text was prepared to then guide the third IGC. The documents were prepared by the president of the Conference (Rena Lee), with the help of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations.

I have not differentiated between text that is still written in brackets within the revised legal text. Text in brackets and Articles with multiple options for a clause are still being discussed by delegates and might be deleted or adjusted at a later point. If a text is still in brackets or not, does not make a difference for the current state of the extent to which a successful polycentric structure is indicated. The potential of a polycentric system is there, nonetheless.

4.3 DATA ANALYSIS METHOD

Text-based, qualitative discourse analysis was applied to assess the extent to which a polycentric governance architecture has been manifesting at the negotiations. In this case, discourse is understood as the language utilized by delegates at the negotiations and its consequences (Antiki, 2012). By looking at the terminology used to describe power distribution and cooperation and coordination, I set out to explain how this discourse has shaped the discussion on the potential governance architecture (Chouliaraki & Fairclough, 1999). For that purpose, I studied discourse-as-text focusing on the usage of specific vocabulary (Fairclough, 1992), like "not to undermine" or fragmented. In general, I do not follow a specific set of epistemological or ontological school of analysis, but rather apply discourse analysis as basis for my working procedure, following the basic principles of such an analysis (Antiki, 2012). These principles are that the text or talk is naturally found, words are understood in their context, the non-literal meaning is considered to reveal the social actions and consequences achieved through the language used (Antiki, 2012). This means that this assessment is based on archival data, looked at in the BBNJ context, and I am considering the potential underlying purpose of a language to reveal its impact on the manifestation of a polycentric governance architecture within the legal text. This approach was chosen to allow for the assessment of the language used as input for the analytical framework. The suitability of such a method is supported by the common usage of discourse analysis in the field of political discourse (Wodak, 1989; Chilton et al., 1998; Fairclough 1992).

Coding of the research materials has been implemented. Within the data, I coded those parts which described the relationship of the ILBI to the existing structure. The codes were not preset but rather emerged whilst reading through the statements given by delegates. Though sensitization and pre-assumptions to specific terminology certainly played a role throughout the coding process (Creswell, 2013). These codes were then clustered into categories. A category is based on the interpretation of the language used and consists of codes that share a meaning (Creswell, 2013). The categories were then matched to the analytical framework by looking at the structural features of the text and by identifying linguistic meaning (Miles, Huberman, & Saldana 2014). The qualitative data analysis software NVIVO has been used to code, cluster, sort, and organize this data. Complementary, Gephi, a network visualization tool, has been employed to visualize the data collected using NVIVO.

4.4 ANALYTICAL FRAMEWORK

The indicators used as part of this research to identify the governance architecture as successful polycentric have been adopted from Pahl-Wostl and Knieper (2014) and were slightly adjusted to fit the BBNJ and international context instead of focusing on national water governance. To fit the scope, the third criterion of power has been excluded because it is meant to judge if decentralized governance systems are higher in adaptive capacity. Instead, I built on the conclusion from the Pahl-Wostl and Knieper (2014) paper that polycentric governance architectures with decentralized power distribution and cooperation and coordination are higher in adaptive capacity. In sum, the governance architecture is considered successfully polycentric if it scores high on all categories. Moderate scores are not

indicative enough, and low scores either indicate a centralized or fragmented governance architecture Pahl-Wostl et al. (2012).

Table 1

Operationalization of power (modified from Table A3 in Pahl-Wostl & Knieper, 2014, page 150).

	Definition	Low	Moderate	High
Distribution across levels	Distribution of legally institutionalized functions, responsibilities and power across levels	Legislation only at one level, no distribution at all	Functions and responsibilities are distributed, but no authority	Functions, responsibilities, and authority are allocated to various levels
Degree of centralization of both policy development and implementation	Degree of centralization of both policy development and implementation	Both policy development and implementation are controlled by one central actor	Policy development is centralized, but implementation is decentralized	Not centralized system

Table 2

Operationalization of cooperation and coordination (modified from Table A3 in Pahl-Wostl & Knieper, 2014, page 150).

	Definition	Low	Moderate	High
Formal provisions supporting coordination	Formal provisions to support coordination in ABNJ (among governmental organizations) across the administrative and sectoral level	Clear allocation of tasks, but no coordination (overlap)	Task overlap, but coordination	Cooperation/ coordination and clear allocation of tasks
Inclusion of different levels	Involvement of local governments and relevant institutions in the creation of the institutions (and their execution) at higher levels, if the institutions affect the local level	The role of local governments and relevant institutions is restricted to the implementation of institutions from higher levels	Local governments and relevant institutions are consulted in the creation of institutions at higher levels, if they will be affected by these institutions	Local governments and relevant institutions are involved in the creation of institutions at higher levels and participate in decision-making, if they will be affected by these institutions
Overarching legislation	BBNJ related regulatory framework is coordinated/integrated under one single piece of legislation	A single piece of legislation does not exist	A single piece of legislation does not exist but is under formation	One single piece of legislation exists to coordinate/integrate

5 RESULTS

First, the terminology used by delegates will be illustrated. The results reflect delegates' views on the governance architecture for the four themes addressed at the intergovernmental conferences and in the legal text: marine genetic resources, area-based management tools including marine protected areas, environmental impact assessments, and capacity building and marine technology transfer. An in-depth analysis of the terminology follows the general overview. Each section then starts with a definition of the terminology, based on statements given by delegates, and is later followed by some examples. Thereupon the terms will be linked to successful polycentric governance architecture based on the research framework adapted from Pahl-Wostl and Knieper (2014). Afterward, a short overview of the Articles in the legal text, which shows the manifestation of the terminology is provided. In conclusion, a table summarizes the findings.

5.1 ILLUSTRATION OF THE TERMINOLOGY

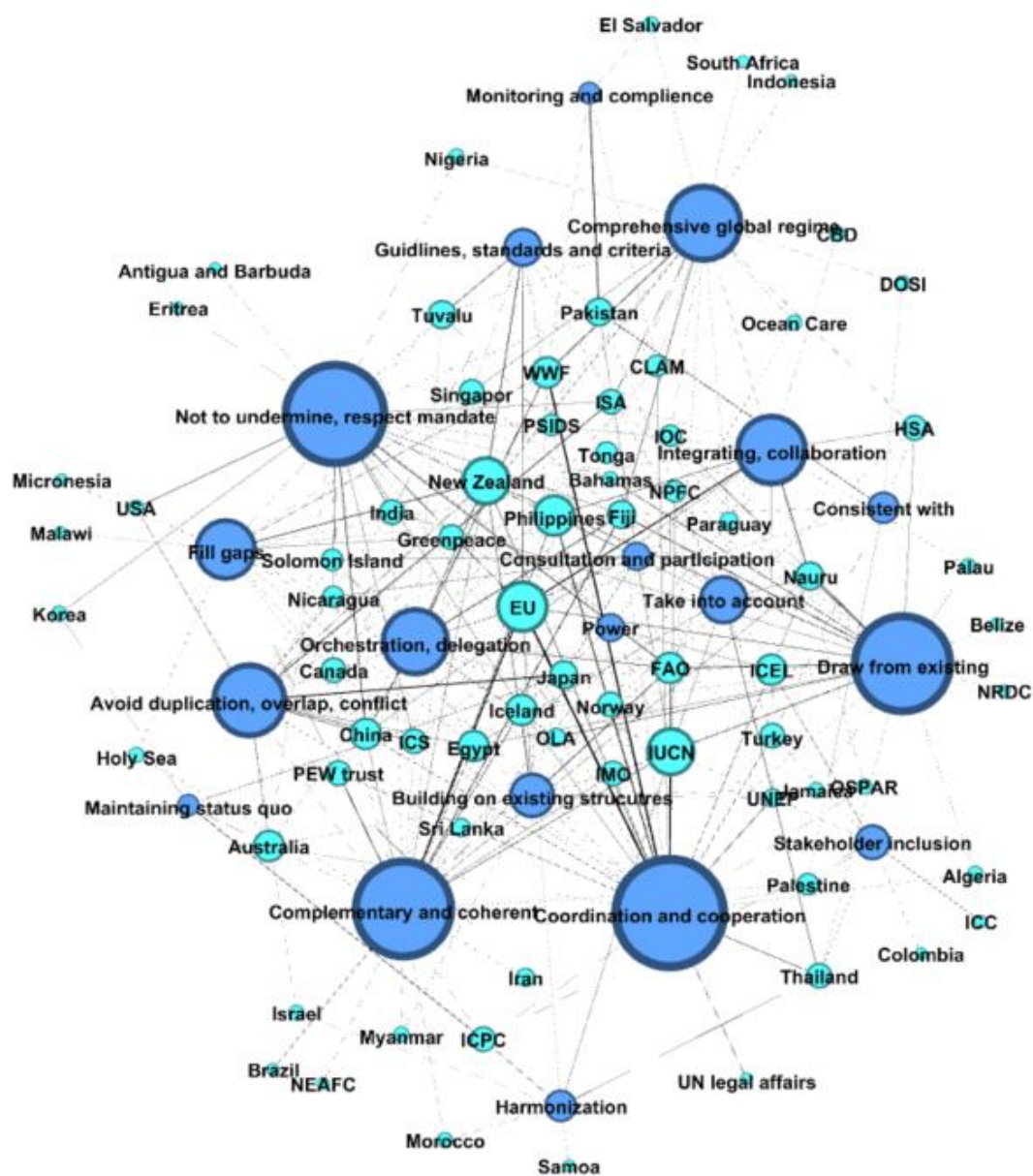


Figure 1. Illustration of categories and their linkages to delegates

The assessment of about 400 policy documents resulted in 486 codes which are describing the role and relationship of the ILBI within the existing governance architecture. Each code represents a statement made by one of 103 delegations at one of the first three IGCs or through textual proposals in preparation for the final IGC. These codes, based on their content, were then clustered into categories. Nineteen categories emerged, which could then be linked to the analytical framework of this research. The categories of terminology covered all criteria of the analytical framework. An overview of the definition for the categories can be found in the appendix.

5.1.1 How to read the illustration

The illustration shows categories of terminology which have been used by delegates to describe the relationship between ILBI and existing structures. Delegates are centered between the terminology which they have been using. The figure shows that most delegates have employed a broad range of terminology. The ISA, for instance, has used terminology which could be linked to “not to undermine/ respect mandate,” “integrating/ collaborating,” “comprehensive global regime,” “avoid duplication/overlap/conflict,” and “draw from existing” (figure 2).

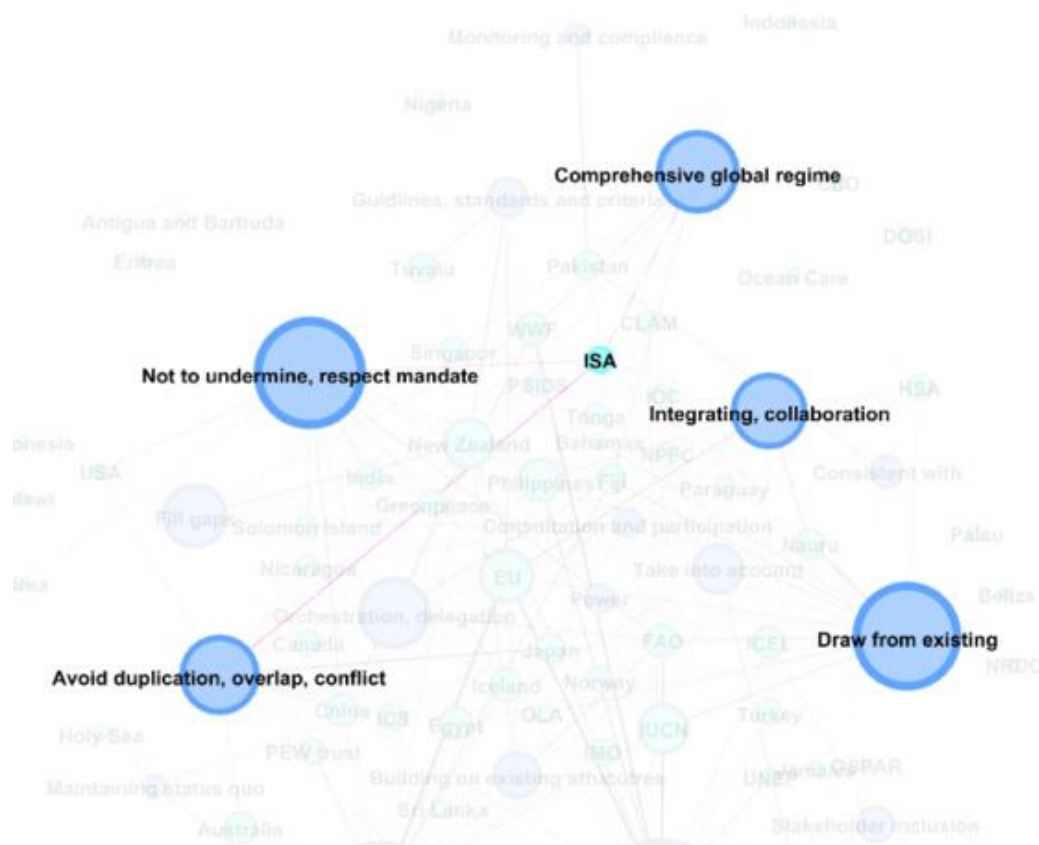


Figure 2. Terminology used by the ISA

The bigger the bubble, the more frequent a terminology has been used. The thicker the line which connects the two nodes, the more the terminology has been applied by that delegation. “Not to undermine, respect mandates,” for example, is a repeatedly used terminology which has been utilized by a broad range of actors, but most persistent by the EU, China, USA, and the ISA (figure 3).

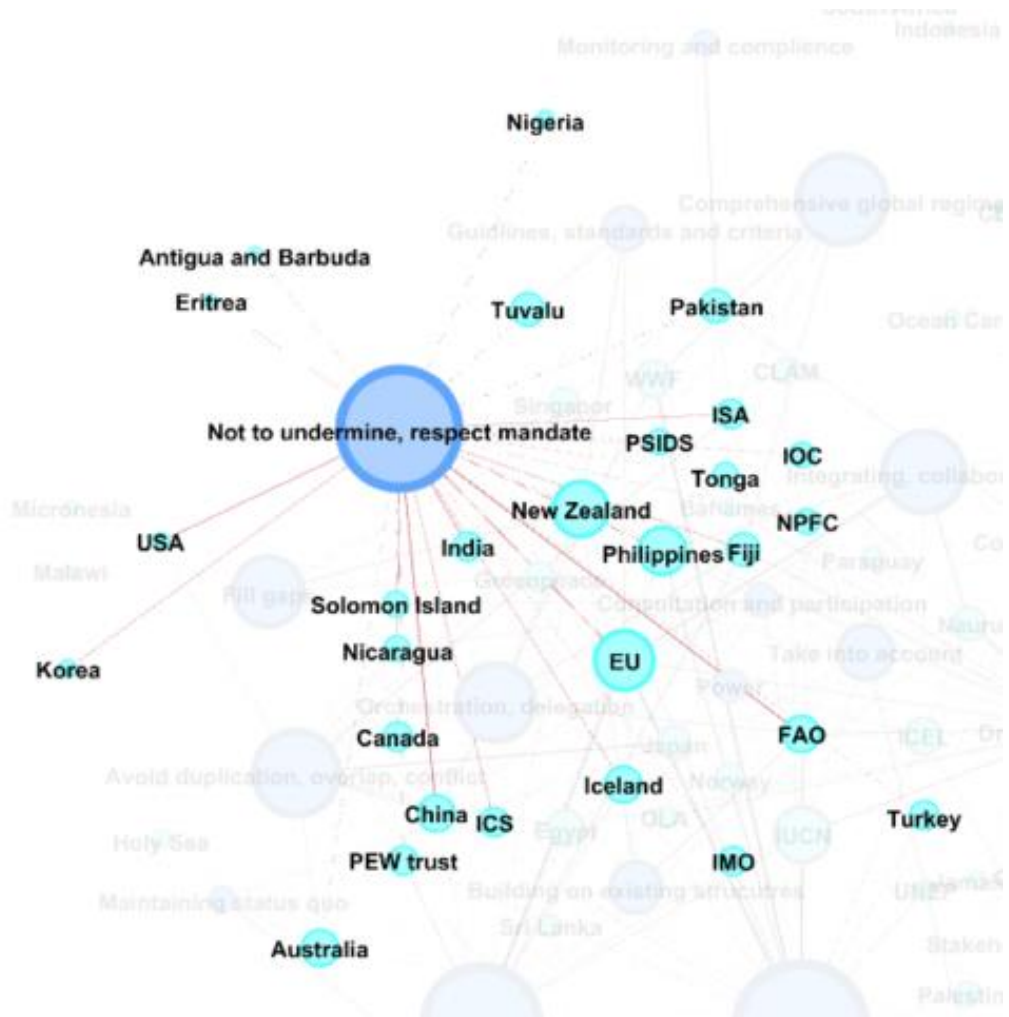


Figure 3. Delegations used the terminology not to undermine, respect mandate

decide whether to require an EIA in the first place. Using existing guidelines and relying on states to make decisions is an example of wanting to keep the status quo. However, from a polycentric perspective, this does fulfill the criteria to distribute responsibilities and authority to different levels.

Nevertheless, it also means that no single overarching legislation under the ILBI would exist or be necessary. So overall, successful polycentricity would not be achieved. Noteworthy is how delegations sometimes want to keep the status quo in some respect but not in others. When looking at the language which delegates are using to describe their preferred relationship to existing structures, many are inconsistent. They are rather cherry-picking their preferred governance architecture depending on the issue area. For instance, during the second IGC, both the EU and Australia generally stated that they would want strict rules for environmental protection and an overarching and connected system implemented in MPAs, but that this would not necessarily need to apply to all elements of ILBI, like benefit sharing. "Maintaining the status quo" is somewhat reflected under Article 23, which still has the option that no environmental impact assessments under the ILBI framework are necessary if appropriately established under existing bodies or when under their mandate. This may lead to rather lenient assessments. Also, Article 29 sets out guidelines (list of activities) for EIA but states that these are voluntary, and Article 44 might make capacity building and transfer of marine technology partly voluntary.

Further, also on the rather critical array is language such as "avoid duplication, overlap, and conflict." This terminology is most frequently used by delegates who are hinting towards existing structures that already fulfill the purpose, and therefore the ILBI is argued as unnecessary. It may even be said to be conflicting. The International Chamber of Shipping used this terminology to highlight as part of their textual proposal (20.02.2020) the mandate of the IMO. They pointed out that the ILBI would not need to cover those elements which are already addressed by international bodies like the IMO regarding the designation of ABMTs and EIAs related to shipping activities. The ISA, as an IO with an existing mandate and authority in the area (seabed), highlighted its responsibilities and concluded that comprehensive legislation at the international level already exists (textual proposal, 20.2.2020). With this, they are indirectly hinting that this would not need to be addressed again under the ILBI. The terminology "avoid duplication, overlap, and conflict" clues to the existence of various actors with responsibility and authority at different levels. The terminology is reproduced in Article 44 and 23. A potential clause has been added, stating that regarding capacity building and transfer of marine technology, no existing programs should be duplicated (Article 44). An option under Article 23 states that an EIA is not necessary if it is covered under an existing one when meeting specific criteria.

"Not to undermine, respect mandate" means not to interfere with the mandate of an existing institution negatively and is another redundantly used term by delegates. What stands out throughout all the terminology, but explicitly concerning the terminology "not to undermine" is that it can mean different things to different actors. The USA reminded the room during IGC1 (general exchange of views, 05.09.2018) and 2 (05.03.2019) on this under Resolution 72/249 agreed-upon phrase and interpreted it close to duplicating. On the other hand, the UN Food and Agriculture Organization (FAO) linked it to the strengthening of existing bodies (IGC3, agenda item 5). This shows that two delegations using the same terminology can interpret its meaning contrarily and, therefore, might favor different governance architectures. This brings out the importance of looking at the overall terminology used by delegates and in the legal text. Overall, this clause could be connected to a clear allocation of responsibility and maintenance of existing decentralized authority. The clause is still part of the treaty under

The degree of centralization is the second criterion of a polycentric power structure. Figure 5 illustrates the relevant terminology and delegations which have been applying it. “Building on existing structures” favors the targets set out under the ILBI to be implemented through existing structures, including regional and sectoral bodies or international organizations like the IMO and ISA. This terminology has been utilized by delegates, including relevant institutions like the FAO, the IMO, and the UN Environment Program, to refer to the existing decentralized structure. Delegates involved with the current high seas' governance highlighted that relevant work, while there is room for improvement, is already taking place (FAO, IGC 1, agenda item 6). Consequently, governance under the ILBI should assure that it works together with these existing structures and further builds on them (FAO, IGC 1, agenda item 6). “Building on existing structures” would allow for centrally developed policies to be implemented in a decentralized fashion. The concept is closely linked to the concept of “orchestration or delegation” as under the ILBI, different existing actors could be “orchestrated.” “Orchestration or delegation” by acting through existing structures would take place when, for instance, a global body acts through regional ones or international organizations like the ISA. Canada “recognize[d] the importance of finding the right balance between effective action at the global level and making the best use of the breadth of expertise, experience, and processes already available in other relevant regional and sectoral entities” (IGC2, statement by Canada). “Orchestration” means that functions and responsibilities are distributed across levels. The concept “building on existing structures” and “orchestration/delegation” is reflected in Articles 13, 18, 19, 20, 23, 35, 40, 42, 43, 49, 50, 51 and 53. These Articles cover all four topic areas. Existing structures may, for instance, carry out the function of the secretariat of ILBI (Article 50). Article 51 allocates the role of the clearing house mechanism to an existing institution. Article 53 expresses that states should take necessary legislative, administrative, or policy measures to assure the implementation of ILBI, and Article 23 states that existing bodies have to conform with standards set under ILBI.

“Power” would mean that under the ILBI authority can be executed, it has decision making power, can hold governments accountable, and enforces regulations. Power distribution is a very dividing and frequently discussed topic amongst delegates. Iceland, a strong supporter of the regional/sectoral approach, would not prefer a global BBNJ overhead, which is seen as a big and costly international body overlapping or duplicating the responsibility of existing bodies (IGC2, institutional arrangements, 04.03.2019). On the other hand, Greenpeace, on behalf of the High Seas Alliance, argued that decision making on MPAs should be under the ILBI as otherwise fragmentation would be continued (IGC2, agenda item 6, 28.03.2019). So, the terminology power indicates that one central actor controls both policy development and implementation, which would not be an indicator of polycentric governance. Nevertheless, currently, the legal text allocates most power to the COPs, which consist of the member states and could, therefore, be considered as decentralized power distribution. Power is allocated to governance under the ILBI in Articles 1, 11, 19, 20, 22, 28, 30, 38, 48, 49, 50, 51, 67 and 76. For example, Article 1 explains that states and international organizations have consented to be bound by the agreement, making it legally binding to them. Additionally, key bodies have been established under the agreement, including a COP (Article 48), scientific and technical body (Article 49), a secretariat (Article 50), and a clearing-house mechanism (Article 51).

“Draw from existing,” “consistent with,” and “take into account” are three categories of terminologies that are closely related but need to be differentiated. “Draw from existing” hints towards existing guidelines, bodies, and rules which could be used as inspiration, e.g., by directly copying specific strategies. It is a frequently employed terminology by delegates, including the FAO, the IMO, the Intergovernmental Oceanographic Commission, Office of Legal Affairs of the United Nations, and the ISA, which could all be categorized as relevant institutions. The range of elements that could be drawn from existing bodies greatly varies. It,

for instance, is used to describe taking over processes or elements of existing mechanisms (FAO, IGC 2, agenda item 5) or basic requirements for EIAs (High Seas Alliance, IGC 2, 01.04.2019). Draw from existing means that policy development relies on decentralized insights. Article 49 states that the scientific and technical body may draw appropriate advice from existing bodies.

On the other hand, “consistent with” aims to assure those existing agreements are honored by being consistent with what has been established, for instance, under UNCLOS. Pakistan stated that no management tool should be developed, which will not align with the existing bodies (textual proposal, 20.02.2020). “Consistent with” symbolizes the preference for decentralization of policy development as it is based on existing decentralized structures. The preamble, Articles 4, 6, and 12 remind state parties to recall relevant provisions under UNCLOS.

Finally, “take into account” means raising awareness and attention towards individual institutions that are relevant for a specific topic and should, therefore, be considered. Delegations generally highlight specific institutions relevant to them, which they think are important to consider during the establishment of the ILBI. The second president’s aid includes lists of relevant institutions that were mentioned by delegates and are to be “taken into account” in the footnotes. For the establishment and distribution of power, this supports a decentralized establishment of policy. The preamble stresses that rights and obligations under UNCLOS need to be respected. Articles 19 and 11 exclaim that it is necessary to “take into account” existing measures under relevant bodies and current international practices in the field. The terminologies “draw from existing,” “consistent with,” and “take into account” are arguably most relevant for the development of the legal text and would less frequently appear within the legal text itself. To conclude on the distribution across levels and the degree of centralization, the terminology supports a successful polycentric structure if the necessary cooperation and coordination are given. The following section provides insight into that.

5.4 COOPERATION AND COORDINATION

With a decentralized, multi-level power structure, cooperation, and coordination are necessary to assure a successful polycentric governance architecture instead of a fragmented one. Terminology, which signifies if that is the case, is clustered under the criteria formal provisions supporting coordination, the inclusion of different levels, and under overarching legislation.

5.4.1 Formal provisions supporting coordination

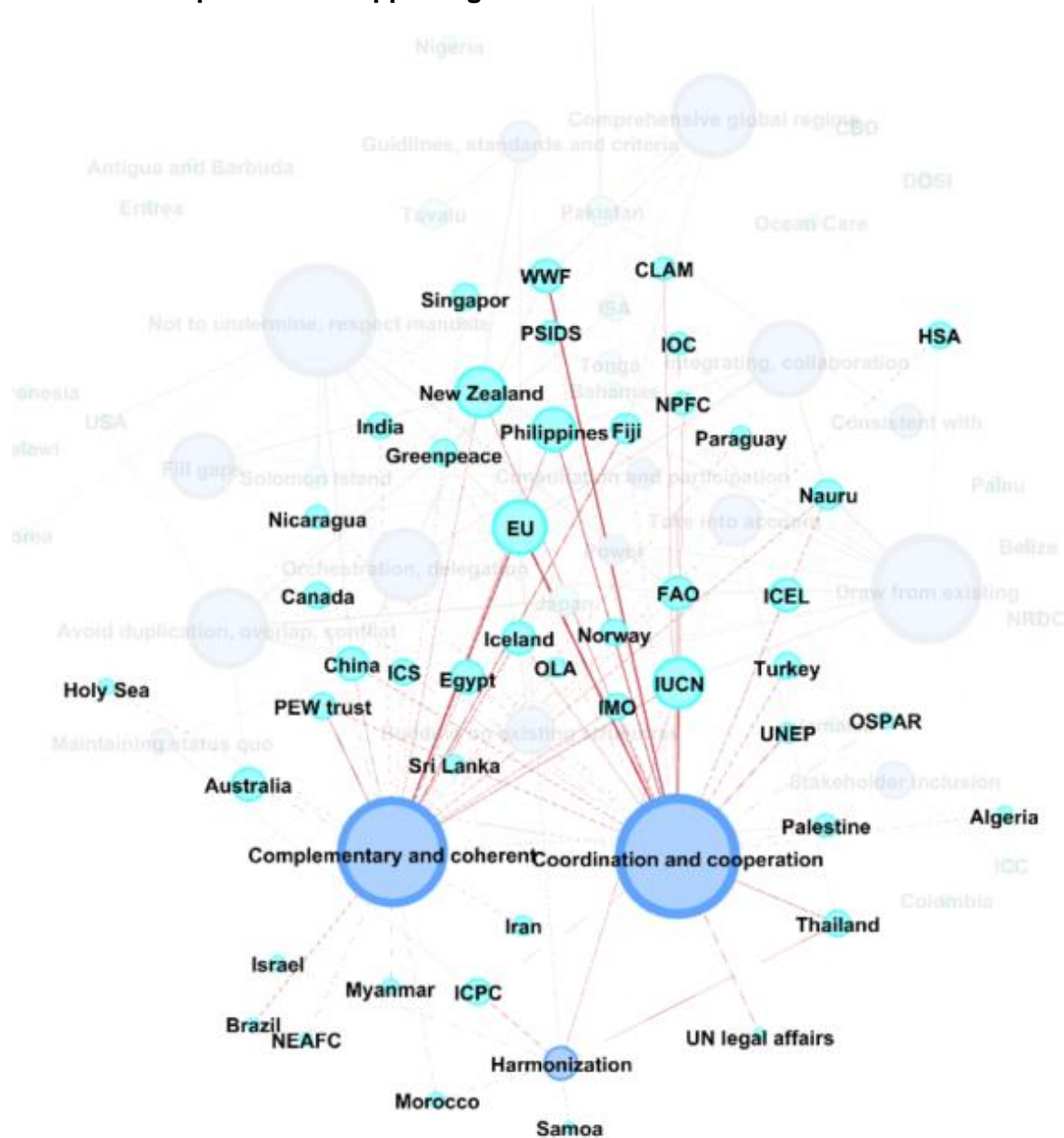


Figure 6. Delegates using the terminology coordination and cooperation

Figure 6 displays the delegates that have been using terminology supporting coordination. As part of the negotiations, the terminology of “cooperation and coordination,” as such, has been recurrently used by delegates. It was mobilized to recognize the fragmented governance architecture and knowledge that “cooperation and coordination” are necessary to assure that all relevant institutions are working together towards the shared goals incorporated within the ILBI. This terminology is amongst the most frequently used overall, and there is a common

agreement that the ILBI should enhance “cooperation and coordination” in the high seas. Cooperation has been asked to be cross-sectoral by the EU (IGC1, ABMTs, first session), and Nicaragua advocated for a framework of respect, cooperation, and communication (textual proposal, 20.02.2020). Korea is an interesting supporter of the terminology as they typically rather advocate to keep the status quo. The delegation barely agrees to any rules and binding measures, does not want to share benefits, nor conduct monitoring practices. However, based on their textual proposal (20.02.2020), they are not opposed to allocating a coordinating role under the ILBI. The USA, another rather critical delegation, suggested that “cooperation and coordination” would be key in assuring that existing mechanisms are not undermined (textual proposal, 20.02.2020). The terminology supports that the formal provisions of the ILBI support coordination. Mentioning of “cooperation and coordination” are present in Articles 2, 6, 12, 14, 15, 20, 23, 27, 28, 43, 48,50, 51 and 53 of the revised legal draft. The main substance of Article 2 focuses on the role of the ILBI to further international cooperation and coordination as a general objective of the treaty. Also, Article 15 is specifically about international cooperation and coordination. Interestingly, cooperation and coordination in the legal text are also mentioned as the tool to establish other factors, including coherence and complementarity (Article 15) or a holistic and cross-sectoral approach (Article 14).

The terminologies “complementary and coherent,” and “harmonization and streamlining” are two separate categories, but they are interconnected. “Complementary and coherent” indicates that the ILBI should actively reinforce and connect to other tools and relevant institutions. This terminology has most often been used by the EU to bring out the role of the ILBI to support the existing structure tackling specifically those aspects currently not addressed by them and to achieve an overall coherent governance architecture. “Complementary and coherent” brings together the existing structure and enhances coordination while also respecting the current task allocation. “Complementary” helps explicitly to avoid duplication and overlap of tasks. “Complementary and coherent” allow for “harmonization and streamlining.” Thailand, for instance, highlighted during IGC1 (benefit-sharing, 11.09.2018) that the ILBI could harmonize conservation and management measures and set a global standard for those measures of the regional fisheries management organizations. This would create a complementary to the existing structure and coherent overall governance architecture. The general aim of both categories has manifested within Articles 11, 14, 15, 21bis, 42, 46, 48, 50, 51, and under V. Clearinghouse mechanism. “Harmonization” is incorporated by promoting linkages (Article 51). Article 48 sets the aim for the COP to promote harmonization of relevant policies and measures for the protection of BBNJ. “Complementary and coherent” is implemented by providing assistance (Article 50) and strengthening the capacity of existing bodies and state parties (Articles 11 and 42). Article 21bis sets out the aim for coherent environmental impact assessments. Conclusively, formal provisions supporting coordination are reflected in the legal text and recognizable in the language used by delegates.

Finally, terminology which has been employed by delegates, which would support a regulatory framework integrated under one single piece of legislation, is summarized in figure 8. The ILBI could set clear “guidelines, standards, and criteria” on a global level. The terminology is broad and might mean slightly different things to different parties, depending on the delegation. Tuvalu, on behalf of the Pacific Islands Forum, would like to “improve global governance with strong sets of common standards and criteria and a global level institution that ensures accountability” (IGC 3, 19.08.2019). The EU would prefer that these overarching guidelines under the ILBI are carried out by states (IGC2, monitoring, reporting, and review, section 5.1, 29.03.2019). Either way, guidelines, and standards would fulfill the requirements of overarching legislation. This terminology is manifested in multiple Articles, including Articles 13, 16, 17, 21bis, 24, 25, 41, 44, 46, 49, and 51. These Articles provide “guidelines, standards, or criteria” for all four topic areas: ABMTs, EIAs, MGRs, and capacity building. Annex 1 of the ILBI provides further criteria and guidelines.

“Comprehensive global regime” arguments support an overarching, holistic, or universal governance architecture. This is backed by non-governmental organizations like the World Wildlife Fund and Greenpeace, but also by other delegates, including the ISA. The ISA during IGC 1 (agenda item 6, 5.09.2018) and 2 (agenda item 5, 25.03.2019), highlighted that further fragmentation of the law of the sea should be avoided and that the framers of the convention (UNCLOS) had a comprehensive and holistic approach in mind which should be honored within the ILBI. A comprehensive global regime would put much power at a centralized level but can also avoid undermining existing bodies by working in cooperation with these institutions (HSA, IGC1, 11.09.2020). A “comprehensive global regime” would mean to create a single piece of legislation to coordinate the existing structure. The preamble highlights the need for a comprehensive global regime. The terminology is also reflected in Articles 14 and 23. Article 21bis sets as an objective under the ILBI to establish a coherent EIA framework for ABNJ, and under Article 23, a global minimum standard for EIA might be established.

“Monitoring and compliance” includes reporting, reviewing tasks, and assuring that responsibility has been allocated. The Core Latin American Group suggested as part of their textual proposal to include implementation and compliance mechanisms under the ILBI and Pakistan suggested regular standardized reporting (textual proposals, 20.02.2020). This could best be categorized as part of overarching legislation. “Monitoring and compliance” is incorporated under Articles 13, 18, 21, 39, 40, 41, 46, 47, 48, 49, 54, and 55 and is currently dominantly enforced through reporting. The latest draft text also includes a section that elaborates on dispute settlements (Articles 54 and 55). The language used, which would indicate overarching legislation, is arguably present, but linking to the first section, “maintaining the status quo,” is somewhat hindering the achievement of this factor. While the status quo does allow for the typical power distribution under polycentric governance, it does not provide the necessary overarching cooperation and coordination of a successful one.

5.4.4 Overview of results

To summarize, the terminology which has been used by delegates and was clustered into categories, covers all criteria derived from the Pahl-Wostl and Knieper (2014) framework. Each criterion was not only reflected in the language but mostly matches the “high indicator for a successful polycentric governance architecture” category. Table 3 clusters the terminology based on the assessment as either low, moderate, or high. Conclusively, based on this framework, the extent to which the governance architecture is manifesting within the ILBI negotiations and legal text is judged as moderately high.

Table 3

Overview of results linking terminology to the analytical framework

	Power		Coordination & cooperation		
	Distribution across levels	Degree of centralization	Formal provisions supporting coordination	Inclusion of different levels	Overarching legislation
Low					Maintaining status quo
Moderate		Power		Consultation and participation	
High	Avoid duplication, overlap, conflict	Consistent with	Coordination and cooperation	Integrating, collaboration	Comprehensive global regime
	Fill gaps	Draw from existing	Complementary and coherent	Stakeholder inclusion	Guidelines, standards and criteria
	Maintaining status quo	Take into account	Harmonization		Monitoring and compliance
	Not to undermine, respect mandate	Building on existing structures			
	Orchestration, delegation				

6 DISCUSSION

6.1 REFLECTION ON RELEVANT OBSERVATIONS

Relevant observations from the findings include that “cooperation and coordination” seem to be a common denominator amongst delegates who generally disagree on power distribution. Focusing on “cooperation and coordination” could, therefore, bring the negotiations forward. What also stands out is that delegates do not use consistent language when describing their ideal relationship between the ILBI and the existing structure. For instance, different degrees of stringency of rules and regulations are favored for EIA and MPAs versus for CBTT. It also emerged that sometimes the same terminology is used to describe different things. This supports the statement by Mendenhall et al. (2019), who highlighted the ambiguous interpretation of not to undermine. This brings out the importance of looking at the overall language, which has been used by delegates to better judge their intentions compared to stand-alone statements.

In general, the terminologies used are closely interconnected and sometimes even complimentary, as is, for instance, the case with “building on existing structures” and “orchestration or delegation.” The concepts are not the same, but they achieve similar outcomes and show similar characteristics regarding their role within a polycentric governance architecture. Finally, it was also observable that some of the terminologies, including “draw from existing” and “consistent with” have been frequently used during the negotiations, but because of their purpose are less often part of the actual legal text.

6.2 CRITICAL REFLECTION ON THE FRAMEWORK

Even though the language hints towards a polycentric governance architecture, it is difficult to judge if the legal text is sufficient to provide effective governance in the high seas. Firstly, there are no clear guidelines on how many or which specific elements are needed for polycentric governance architectures actually to work (Morrison, 2017). Regarding sufficient elements to support successful polycentricity, it can be very complex to judge if it is sufficient. For instance, there has been direct involvement from industry and civil society actors. The High Seas Alliance is a group of 40+ non-governmental, which is actively involved through the BBNJ process, and the International Chamber of Commerce and the International Chamber of Shipping have submitted textual proposals. Nonetheless, their suggestions and not necessarily reflected in the legal text. The International Cable Protection Committee, for example, suggested including sectoral stakeholders, but this request was not reflected in the legal text.

Moreover, when looking at the elements which are included or missing from the draft text, a more critical approach should be applied. The lack of precise guidelines on which elements would be vital makes it difficult to judge if the emerging polycentric governance architecture is successful until it is actually implemented. For example, the strict exclusion of sovereign territory may render the ILBI insufficient. As stated in the preamble and throughout the legal text, the sovereignty of states must be respected. This has also continuously been highlighted by delegates at the negotiations. Indeed, the tool is limited to areas beyond national jurisdiction. An issue with this is the interconnectedness of the ocean and how straddling fish stocks do not differentiate between high seas and national jurisdictions. However, so far, coastal states are not required to ensure that activities within their jurisdiction do not undermine the effectiveness of measures in ABMTs (Mossop & Schofield, n.d.). The agreement also focuses on state parties and International Organizations, whereas many harmful activities, including fishing, are conducted by industry actors. Conclusively, it could

appear essential for future governance architecture to interact with the industry as well directly. To take on such a role, it would be essential for the secretariat of the ILBI to show some interest in orchestration of private actors (Abbott & Snidal, 2010). Nevertheless, from the current legal text and the negotiations, this is not apparent.

In addition, the framework by Pahl-Wostl and Knieper (2014), like most other theories on modes of governance, rather focus on the national context. This is, however, an issue when considering that we are living in a globalizing world, and international governance illustrates an important part of national politics (Koenig-Archibugi & Zürn, 2006). More and more issues are becoming transnational, and issues such as the sustainable management of the high seas require international cooperation. The focus on national governance throughout academic literature and within national governance seems inappropriate when working towards solving international issues. It could, therefore, be valuable to reconsider how we approach international governance.

6.3 POLICY RECOMMENDATION: WORKING TOWARDS DELEGATION AS STRATEGY TOWARDS SUCCESSFUL POLYCENTRIC GOVERNANCE

Delegation is a form of polycentric governance. The European Union applies this governance architecture in an attempt to extend national governance beyond state boundaries. This is an example of how to extend national politics into the international context. The basic approach could provide valuable solutions to some of the key issues visible in the BBNJ context, including the question on how to respect the mandate of existing bodies (or states), and the conflict on the ideal power distribution.

Alfred Chandler (1966) advanced the thesis "structure follows strategy." In essence saying that we can build the structure we need once we know which function it should fulfill. At the preparatory committee, its elected chair ambassador Nandans brought the same idea forward by indicating that "form follows function." However, much of the ongoing discussions at the IGCs circulate around institutional arrangements and how much power the ILBI institutions should have. Conversely, Iceland even suggested that "function follows form". Arguably, the focus on the governance architecture is holding the negotiations back as it takes away the focus of discussing the content of the ILBI and because it creates significant disagreements amongst delegates. A disagreement on decision making had already almost cost UNCLOS universal agreement (Kraabel, 2018). The IGCs so far have not been able to agree on the structure/form under which the ILBI would be implemented. Therefore, the consideration if the thesis "structure follows strategy" should be applied throughout the ILBI negotiations may be appropriate. Once the aim of a policy (or legal text) is set, structural changes can take place at any later point in time to adjust based on needs when using delegation (Majone, 1997). We do not yet need to know the exact governance architecture if we have created a structure that allows for necessary adjustments.

It is not surprising to see the EU as an advocate for the so-called hybrid approach as the member states know from personal experience how a polycentric approach can work well and rather supports the mandate of existing bodies instead of undermining them. The EU functions as a polycentric system as rules and regulations set at the EU level are the responsibility of the member states to implement (Majone, 1997). It is, however, up to the states to translate the set goals into national legislation and therefore decide on the governance architecture within their jurisdiction so long as they fulfill the agreed-upon policy aim. Translated into the BBNJ context, this would mean that existing institutions can execute their mandate and draft out specific requirements as they see fit, as long as they stay true to the policy targets set under the ILBI. Therefore, this approach could help satisfy advocates for both a regional and a global approach as it leaves existing institutions and regional bodies the space to execute

and implement the rules as they see fit as long as targets set under the ILBI are honored. This could, therefore, satisfy those advocates for a global body whose concern is a fair and democratic distribution of power.

The necessary elements which would allow for delegation as polycentric governance strategy in the high seas under the ILBI are, based on the assessment of the language used by delegates and within the legal draft, not impossible. Essentially, if institutions under the ILBI would take on such a delegating, it would benefit from having monitoring capacity and being able to set out standards and guidelines, access to a mechanism for dispute settlement, the capacity to make rules (standard setting), judicial review of agency decisions, strict standards of accountability and clear objectives (Majone, 1997). Based on the current terminology used in the legal draft text, guidelines, standards, and criteria and monitoring and compliance are currently integrated within several Articles including 21, 39, 40, 46 and 51 (monitoring and compliance) and Article 24, 25, 44 and 51 (standards and guidelines). Under part IX, a clause for dispute settlement has been included through Articles 54 and 55. However, strict standards of accountability (giving reason requirement) would still be needed. Rulemaking is currently also still quite limited and a dividing topic, but so far, limited rulemaking on some specific aspects have been granted to the ILBI institutions, for instance, under Article 28 and 38. Judicial review of agency decisions could be achieved through the International Tribunal for the Law of the Sea, which currently has jurisdiction over disputes related to UNCLOS. The setting of clear objectives may be possible to achieve if the discussion moves on from focusing on the potential form of the ILBI. Overall, the current legal text shows promise to be suitable to take on a delegating role.

7 CONCLUSION

The current governance architecture in place to govern the high seas is fragmented and insufficiently able to cope with current and future stressors, and thus a successful governance structure needs to replace it. Out of the three discussed options, the global, regional/sectoral, and hybrid approach, the latter seems to be the most suitable. It reflects the aim to establish an internationally legally binding tool, in which the regional/sectoral approach appears not to match. Moreover, the existing decentralized architecture would not coincide with the global approach as it would likely undermine existing mandates of relevant institutions. The hybrid approach appears to encompass what the regional/sectoral and global approaches do not.

Coordination and cooperation can best be achieved if the institutions under the ILBI have some type of authority. At the same time, it needs to honor the existing structure and authority which has been assigned to relevant actors. This would suggest a polycentric architecture as most suitable, and it also seems to be the structure manifesting throughout the ILBI negotiations. Most delegates use language which would support a polycentric governance architecture. The same applies to the terminology which is being used in the ILBI draft text. This endorses the likelihood of a polycentric (or hybrid approach) as the most suitable outcome for the future governance architecture in the high seas.

To answer the research question, "To what extent is a successful polycentric governance architecture manifesting within the ILBI negotiations and legal text?", based on the adjusted Pahl-Wostl and Knieper (2014) framework, the manifestation of a successful polycentric governance architecture can be rated as moderately high. Whilst "power" and "consultation and participation" do rate moderate at this stage, this does not automatically eliminate the potential of the polycentric governance architecture to be successful. What should be paid close attention to is the terminology that would align with "maintaining the status quo" as this would prevent a polycentric governance architecture. As a general conclusion, we should

move on from dividing delegates into advocates for a regional/sectoral, global, or hybrid approach and instead focus on the "function" of the ILBI. This may be achieved through delegation, a form of polycentric governance in which the form of the governance architecture is adjustable and can be decided upon at a later stage.

7.1 LIMITATIONS

The assessment so far does not include language used at the fourth IGC as it got postponed due to Covid-19. While this means that the assessment of the legal texts polycentric qualities is not based on the full set of negotiations and does not include the final results, it also created the opportunity to provide valuable policy recommendations. That is because the final governance architecture has not been decided yet. Additionally, the submitted textual proposals, which were handed in after the third IGC, already provide some indication on the terminology used at the fourth IGC.

Textual documents do not reflect the full picture of the negotiations. Often discussions continue during breaks, and much of potential valuable interactions occurring at the side events, have not been included. This affects the constructed validity of the research (Yin, 2003). Moreover, bias by the research was unavoidable. The interpretations of the statements made by delegates and Articles of the legal text got clustered under the categories based on my subjective judgment. However, reliability on the results is still high as the large number of statements that have been assessed minimize the impact of individual misinterpretations. Which would make it likely that the replicability of the data collection procedure would lead to the same results (Yin, 2012).

7.2 FUTURE RESEARCH

This research assessed if elements which would indicate a polycentric governance architecture are present. Yet, it would be advisable also to explore if these are sufficient, meaning that an effectiveness study including the context would be advisable once the governance architecture has been established and the tool is being implemented (Morrison, 2017). This also ties into the evaluation criteria from the Pahl-Wostl and Knieper (2014, p. 150) framework which judges if the "level of decentralization [is] in accordance with the available technical capacity and [is] taking into account economies of scale", which has been excluded within this research due to its scope. Additionally, the final draft text would need to be assessed on its degree of polycentricity.

When clustering the terminology used by delegates throughout the first three IGCs and the textual proposals, it stood out to me that the language used over time was changing. Indeed, de Santo et al. (2020) emphasized that some topics like the common heritage of humankind and freedom of the high seas principle were more frequently mentioned at IGC 3 than at IGC 2 and that some delegates felt like their opinions were not reflected in the legal text. It would, therefore, be interesting to track changes of the legal text from the first president's aid to the final legal draft and to link these changes to statements made by delegates either supporting or opposing the language. This would provide insight into potential power imbalances and actors' capacity to guide, shape, or block the negotiations.

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8.1 LEGISLATION

The United Nations Convention on the Law of the Sea (1982)

8.2 UNITED NATIONS DOCUMENTS

United Nations General Assembly (UNGA) Res A/RES/72/249. ‘International legally binding instrument 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’ (December 24 2017)

United Nations General Assembly (UNGA) AC. A/AC.287/2017/PC.4/2. ‘Report of the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument 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` (10-21 July 2017)

United Nations General Assembly (UNGA) CONF. A/CONF.232/2020/3. ‘ Revised draft text of an agreement 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` (November 18 2019)

9 APPENDICES

9.1 APPENDIX A – TERMINOLOGY

Term	Definition
Avoid duplication, overlap, conflict	Hinting towards existing structures which already fulfil a certain purpose and therefore the ILBI is not needed or would even conflict
Building on existing structures	Building on existing structures sees the targets set out under the ILBI implemented through existing structures including regional and sectoral bodies or international organizations like the IMO and ISA
Complementary and coherent	The indication of something being complementary indicates that it can actively reinforce and connect to other tools.
Comprehensive global regime	Elements which would create an overarching, holistic, universal governance architecture
Consistent with	Assuring that existing agreements are honored by being consistent to what has been established for instance within UNCLOS
Consultation and participation	Consultation takes place with relevant actors
Coordination and cooperation	Recognizing the fragmented governance architecture, cooperation and coordination is necessary to assure that all relevant institutions are working together towards the shared goals which have been expressed within the ILBI
Draw from existing	Hinting towards existing guidelines, bodies and rule which could be used as inspiration, e.g. by directly copying certain strategies.
Fill gaps	Filling in gaps that the current governance architecture is showing. Including lack of processes, regulations or institutions
Guidelines, standards and criteria	Under the ILBI clear guidelines and criteria on a global level are set
Harmonization	Clear guidelines allow for harmonization and streamlining
Integrating, collaboration	The ILBI is drawing from different bodies and combines their tools whilst also adding value
Maintaining status quo	Recommendations only, voluntary, not supersede, states keep power/make decisions, exclusive towards stakeholders
Monitoring and compliance	Reporting, reviewing tasks and responsibility has been allocated
Not to undermine, respect mandate	Not to negatively interfere with the mandate of an existing institution
Orchestration (hybrid)	Orchestration is built on the concept, that institutions under the ILBI "orchestrate

Power	different actors". Could for instance mean global body acting through regional ones institutions under the ILBI can execute authority, has decision making power, can hold accountable and enforce
Stakeholder inclusion	This can include non-parties, public and private sector, etc.
Take into account	Raising awareness and attention towards certain institutions which are relevant for a specific topic and should therefore be considered
Recommendatory and advisory	Institutions under the ILBI should rather function as an advisory body and can only make recommendations to an existing institution