

MASTERARBEIT | MASTER'S THESIS

Titel | Title

Contested Waters: The Struggle over the Common Heritage of
Humankind Principle in Marine Biodiversity Negotiations

verfasst von | submitted by

Daria Sander BA

angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of
Master of Arts (MA)

Wien | Vienna, 2025

Studienkennzahl lt. Studienblatt | Degree
programme code as it appears on the
student record sheet:

UA 066 824

Studienrichtung lt. Studienblatt | Degree
programme as it appears on the student
record sheet:

Masterstudium Politikwissenschaft

Betreut von | Supervisor:

Univ.-Prof. Mag. Dr. Alice Vadrot

I. Abstract

In 2023, over 100 governments adopted a new legally binding international agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) under the United Nations Convention on the Law of the Sea (UNCLOS). This agreement represents a significant advancement in the governance of biodiversity in the high seas. From the outset, the negotiations were characterized by conflicts over the Treaty's guiding principles. The discord between proponents of the Common Heritage of Humankind Principle (CHP) and the Freedom of the High Seas (FOS) principle is rooted in long-standing power asymmetries between the Global North and the Global South. This thesis examines how and why states introduced the Common Heritage of Humankind (CHP) principle in the BBNJ negotiations. Drawing on primary ethnographic data from the MARIPOLDATA research project, the theoretical concept of epistemic selectivities is applied to analyze state positions and argumentation. The findings demonstrate that the CHP functioned as a practice of contestation, strategically used by actors from the Global South to challenge global hegemonic orders. While the CHP was ultimately included in the Treaty text, its meaning was shaped and constrained throughout the negotiation process.

Im Jahr 2023 haben über 100 Regierungen im Rahmen des Seerechtsübereinkommens der Vereinten Nationen (UNCLOS) ein neues rechtsverbindliches internationales Übereinkommen über die Erhaltung und nachhaltige Nutzung der biologischen Vielfalt der Meere in Gebieten außerhalb der nationalen Gerichtsbarkeit (BBNJ) verabschiedet. Dieses Übereinkommen stellt einen bedeutenden Fortschritt in der Governance von Biodiversität auf Hoher See dar. Die Verhandlungen waren von Beginn an von Konflikten hinsichtlich der Leitprinzipien des Vertrags geprägt. Die Spannungen zwischen den Befürworter:innen des Prinzips des gemeinsamen Erbes der Menschheit (CHP) und des Prinzips der Freiheit der Hohen See (FOS) sind auf die tief verwurzelten ungleichen Machtverhältnisse zwischen dem Globalen Norden und dem Globalen Süden zurückzuführen. In der vorliegenden Arbeit wird untersucht, wie und warum Staaten das CHP in die BBNJ-Verhandlungen eingebracht haben. Auf der Grundlage primärer ethnographischer Daten aus dem Forschungsprojekt MARIPOLDATA wird das theoretische Konzept der epistemischen Selektivitäten angewandt, um die Positionen und Argumentationen der Staaten zu analysieren. Die Ergebnisse der Untersuchung zeigen, dass das CHP als eine Praxis der Anfechtung fungierte, die von Akteur:innen aus dem Globalen Süden strategisch genutzt wurde, um globale hegemoniale Ordnungen herauszufordern. Obwohl das CHP letztlich in den Vertragstext aufgenommen wurde, wurde seine Bedeutung während des Verhandlungsprozesses geformt und eingeschränkt.

II. Acknowledgments

I started this Master's thesis as part of my employment at the European Research Council project MARIPOLDATA. Since then, I have remained linked with the project, and I am very grateful for being able to use the data collected by the research team on-site and online.

I want to thank the entire MARIPOLDATA team for their valuable feedback and support throughout the process of conducting this thesis. I especially thank my supervisor, Assoc. Prof. Dr. Vadrot, for her guidance in my Master's thesis.

I also want to thank my family and friends for their unconditional support.

III. Contents

I. Abstract	i
II. Acknowledgments	ii
III. Contents	iii
IV. List of Abbreviations	v
V. List of Figures	vi
VI. List of Tables	vi
1. Introduction	1
1.1 Research Interest	2
1.2 Relevance	3
1.3 Structure	4
2. State of the Art	5
2.1 Ocean Governance and the BBNJ Negotiations	5
2.2 Power Imbalances in Ocean Governance	7
2.3 Common Heritage of Humankind Principle (CHP)	9
2.3.1 Development	9
2.3.2 Counter-Hegemonic Potential	11
2.3.3 CHP and FOS	12
2.3.4 Shift of Meaning	13
2.3.5 CHP in BBNJ	15
2.4 Theorizing Negotiation Spaces and Agreement-Making	16
2.4.1 Bourdieu: The Field, the Social World, and Language	17
2.4.2 Weighted Concept	18
3. Theoretical Approach: Epistemic Selectivities	20
3.1 Influences	20
3.2 Definition	22
3.3 Change	24
4. Methodology and Methods	26
4.1 Collaborative Event Ethnography and the MARIPOLDATAbase	26
4.2 Data Analysis	28
4.2.1 Qualitative Content Analysis	29
4.2.2 Data Analysis in this Thesis	30
5. Results	33
5.1 Negotiation Site	33
5.2 Categories	34
5.3 IGC4	36

5.4 IGC5	40
5.5 IGC6	43
5.6 IGC7	54
5.7 Across all IGCs.....	65
5.7.1 Reference to FOS	65
5.7.2 In Favor of the CHP	65
5.7.3 Statements Against the CHP and Neutral or Undefined Statements	68
6. Discussion	69
6.1 Results in the Context of Findings by Vadrot et al. (2022)	69
6.2 Contested Understandings of Marine Biodiversity.....	73
6.3 CHP: A Counter-Hegemonic Claim?	74
6.4 How did States Introduce the CHP in the Treaty?	76
6.5 The Final Treaty	77
7. Limitations of the Study	79
8. Conclusion	81
9. References	83

IV. List of Abbreviations

ABNJ	Areas Beyond National Jurisdiction
ABMTs	Area-Based Management Tools
AOSIS	Alliance of Small Island States
BBNJ Negotiations	Intergovernmental Conference on 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
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CB&TT	Capacity Building and the Transfer of Marine Technology
CEE	Collaborative Event Ethnography
CLAM	Core Latin American Group
COP	Conference of the Parties
DSI	Digital Sequence Information
EIAs	Environmental Impact Assessment
ENB	Earth Negotiations Bulletin
G.A.	United Nations General Assembly
GEF	Global Environment Facility
IGC	Intergovernmental Conference
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	Intergovernmental Panel on Climate Change
IPR	Intellectual Property Rights
IR	International Relations
ISA	International Seabed Authority
LDCs	Least Developed Countries
LLDCs	Landlocked Developing Countries
LLGS	Landlocked and Geographically Disadvantaged States
MGRs	Marine Genetic Resources
MPAs	Marine Protected Areas

MSR	Marine Scientific Research
NGOs	Non-Governmental Organizations
PSIDS	Pacific Small Island Developing States
SDGs	Sustainable Development Goals (UN)
SIDS	Small Island Developing States
UN	United Nations Organization
UNCLOS	United Nations Convention on the Law of the Sea

V. List of Figures

Figure 1: Three maritime zones recognized by UNCLOS	7
Figure 2: Category co-occurrence in statements in favor of the CHP.....	67
Figure 3: Category co-occurrence in statements opposing the CHP	67
Figure 4: Category co-occurrence in neutral or undefined statements	67
Figure 5: Government positions of IGC1, 2, and 3	70
Figure 6: Anonymized government positions of IGC6	70

VI. List of Tables

Table 1: Overview of government statements regarding the CHP	60
--	----

1. Introduction

On June 19, 2023, international negotiations for a legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) were successfully concluded (United Nations, n.d.). After over a decade of work, including five years of formal negotiations, more than one hundred governments adopted the instrument at the United Nations (UN) headquarters in New York (Vadrot et al., 2024, p. 152). The Treaty is expected to enter into force during the UN Ocean Conference in 2025 (Vadrot et al., 2024, p. 153).

The BBNJ Treaty (henceforth: the Treaty) is expected to fill legal gaps in the governance of the high seas, which compose over two-thirds of the world's oceans. Due to the fragmented nature of marine governance, regulation is particularly needed for the sustainable use and conservation of marine biodiversity (Tessnow-von Wysocki & Vadrot, 2020, p. 2). Marine biodiversity is increasingly threatened by anthropogenic stressors, including overfishing, plastic pollution, ocean warming, and acidification. These human activities lead to biodiversity and habitat loss in the high seas (WWF, 2019, pp. 5-6). New global rules and regulations for states through the Treaty aim to halt and potentially even reverse some of these problems of overexploitation. Central goals are conserving marine ecosystems, regulations for using marine resources sustainably and strengthening marine science (Tessnow-von Wysocki & Vadrot, 2020, p. 2). The BBNJ negotiations were structured around four pre-defined "package elements": Marine Genetic Resources (MGRs)¹, Area-Based Management Tools (ABMTs) including Marine Protected Areas (MPAs), Environmental Impact Assessments (EIAs), and Capacity Building and the Transfer of Marine Technology (CB&TT) (Vadrot et al., 2022, p. 228).

The negotiation process was intensive and characterized by several conflicts. One of these conflicts pertained to the principle underlying the new legally binding instrument. A key disagreement arose over the inclusion of the Common Heritage of Humankind Principle (CHP) in the BBNJ negotiations. The conflict between states and state groups advocating for the integration of the CHP in the Treaty and states that rejected it was so strong that they almost brought the negotiations to a halt (Vadrot et al., 2022, p. 233). Another principle, often framed as opposing the CHP, is the Freedom of the High Seas principle (FOS). The dispute between those principles is related to a fundamental debate of who *owns* marine biodiversity and how marine biodiversity is viewed: Who can exploit marine biodiversity? Who can research marine biodiversity? Who can keep the profit or scientific knowledge from such activities? The jurist Cymie R. Payne even attested, ahead of the beginning of the BBNJ negotiations in 2018, that

¹ MGRs are defined in the General Provisions of the Treaty as „[...] any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value“ (United Nations, 2023a, Part I, Art. 1, Para. 8)

the BBNJ negotiations “either strengthen or weaken basic principles of how humanity shares the Earth” (Payne, 2018, p. 120).

1.1 Research Interest

Studying the negotiation site is important because the dynamics in the room symbolically reflect broader processes in global politics, providing an insight into global environmental politics dynamics. These negotiation sites offer a valuable opportunity to empirically investigate how power, interests, and authority are enacted within the highly structured context of international diplomacy (Vadrot, 2020, p. 235). I follow this research tradition of viewing the negotiations as sites with the possibility to contest the current world order – particularly shifting epistemic, political, and social orders (Vadrot, 2020, p. 235).

This study aims to understand the struggle over the inclusion of the CHP in the BBNJ negotiations. This conflict is interesting because it is closely linked to power dynamics between the Global North and the Global South², which become visible in moments of contestation. In these moments, existing power relations and established orders are challenged (Vadrot, 2020, p. 237). As Vadrot points out, “International negotiation sites may be used by actors strategically to contest hegemonic orders” (Vadrot, 2020, p. 235). These are precisely the conflicts that researchers aim to better understand by studying negotiation processes. Although the Treaty's primary goal is to establish a framework for safeguarding and conserving BBNJ, it also offers an opportunity to bridge significant disparities between states of the Global North and the Global South in ocean exploration and resource exploitation (Vadrot, 2019).

Focusing on the negotiation *process* rather than its *outcome* provides insights into the development of global environmental agreements such as the BBNJ agreement. It also allows for a study of the micropolitics of the negotiations (Vadrot et al., 2024, p. 153). These micropolitics include moments of contestation and can reveal selectivity of actors. This study concentrates on the negotiation process of the struggles over the CHP. Yet, it is helpful to look at the final wording in the Treaty text negotiators agreed on to help interpret the process. In the official outcome of the negotiations – the Treaty text –, both principles have been incorporated under the section on General Principles and Approaches (United Nations, 2023a, Part I, Art. 7). I study the path of the negotiations towards this outcome, and how and why states advocated for the CHP in the BBNJ negotiations.

² The terms Global North and Global South point towards economic and distributional conflicts of interests between the two areas, even though there are internal differences (Hartmann, 2015, pp. 338-339).

This leads to the following research question:

How and why did states introduce the CHP in the BBNJ negotiations?

I write this thesis in the framework of MARIPOLDATA, a six-year European Research Council project from 2018 to 2024 led by principal investigator Alice Vadrot. In 2022, the MARIPOLDATA researchers Alice Vadrot, Arne Langlet, and Ina Tessnow-von Wysocki published a study titled “Who owns marine biodiversity? Contesting the world order through the ‘common heritage of humankind’ principle”. They examined the CHP in the earlier negotiation rounds and how it became a “practice of contestation” (Vadrot et al., 2022, p. 226). Their analysis relied on primary negotiation data the MARIPOLDATA research team has gathered over the entire BBNJ negotiation process. For researching the struggle of including or rejecting the CHP in the Treaty text, an ethnographic study and therefore an approach which is sensitive to practices in the negotiation room can be particularly helpful. I was able to use the data for the subsequent negotiation rounds and closely built on their 2022 research paper to continue the study of the CHP in the BBNJ negotiations. While there are differences in the theoretical approach, my findings can be seen as complementary to their study, resulting in a more comprehensive account of the debates surrounding the CHP throughout the entire formal BBNJ negotiation process³.

1.2 Relevance

Academic interest in the BBNJ process has been high since the outset of the negotiations (Vadrot et al., 2024, p. 153). Still, political science studies regarding marine biodiversity policies and negotiations constitute a newly emerging field. Political aspects of marine biodiversity data “remain understudied” (MARIPOLDATA, n.d.). The CHP has been studied from legal perspectives, but not much empirical research has been conducted to study the political aspects and emancipatory implications. In fact, the paper by Vadrot et al. has been the first study with an ethnographic lens to the issue of the CHP (Vadrot et al., 2022, pp. 226, 233). Studying the CHP-related BBNJ negotiations thus contributes to addressing this research gap.

Examining the negotiation process provides valuable insights into the negotiation dynamics that led to the final Treaty text and can support the future interpretation of its provisions. Recognizing which actors supported or opposed certain elements can help foresee potential points of contention in future BBNJ Conferences of the Parties (COPs). The BBNJ Treaty is not only a legal outcome but also a product of historically rooted power structures and interests. As such, it both reflects and has the potential to reshape the global political, social, and economic order (Vadrot et al., 2024, p. 173). This study

³ Interessional work of negotiated conducted virtually due to the COVID-19 pandemic was not included in the study. This work is not part of the formal BBNJ negotiation process.

contributes to uncovering these dynamics by examining why states pushed for the inclusion of the CHP and what political meanings and significance they attached to it.

The UN called for a “decade of ocean science for sustainable development” from 2021 until 2030 (UNESCO, 2020). As a master’s thesis, this study’s impact will be modest, but it would be a goal of this research to contribute to a bigger consciousness and attention to the issue of marine biodiversity and the importance of the political processes involved in negotiating the protection and sustainable use of marine biodiversity.

1.3 Structure

This thesis is structured in seven parts. I begin with a detailed review of the state of the art, which includes the background of the BBNJ negotiations, power imbalances in ocean governance, the development and meaning of the CHP and a discussion of its relationship to the FOS, and theorization of negotiation spaces. After this literature review, I proceed by elaborating on the theoretical approach chosen for this thesis – the concept of “epistemic selectivities” by Alice Vadrot (2013, 2014, 2017). Furthermore, I explain the methodology and methods applied for this study, including information on the data and its analysis, which is an approach influenced by qualitative content analysis by Kuckart/Rädiker (2018). I then present the results from my analysis and consequently discuss these results in relation to literature. After laying out the limitations of this study, I conclude this thesis.

2. State of the Art

2.1 Ocean Governance and the BBNJ Negotiations

The high seas – referred to in UN negotiations as marine areas beyond national jurisdiction (ABNJ) – remain largely unexplored in terms of biodiversity and the impacts of climate change. An example of this knowledge gap is that most marine species are still scientifically unknown (Tessnow-von Wysocki & Vadrot, 2020, p. 17), and research on marine biodiversity only began relatively recently (Vadrot et al., 2022, p. 232). While advancements have been made, particularly in marine genetic research, overall marine research remains limited, despite the ocean's crucial role in absorbing CO₂ and producing oxygen. Protecting the ocean is therefore not only an environmental concern but also a key issue in addressing climate change. Additionally, the effects of increasing human uses of the ocean, including bioprospecting and deep-sea mining, are insufficiently understood. To prevent the intensification of these threats and potentially reverse some consequences of overexploitation, robust multilateral agreements are necessary to establish global regulations for states (Tessnow-von Wysocki & Vadrot, 2020, p. 1). The academic literature emphasizes the urgent need for action to prevent further marine biodiversity loss (Tessnow-von Wysocki & Vadrot, 2020, p. 5).

Beyond the relative lack of scientific knowledge and data on marine biodiversity in areas beyond national jurisdiction (BBNJ), significant legal gaps exist in its governance and use. The legal constitutional framework governing the high seas is the UN Convention on the Law of the Sea (UNCLOS), which structures a complex system of treaties, implementing agreements, and institutions (Payne, 2018, p. 118). This governance framework is often described as fragmented, as it consists not only of UNCLOS but also of various “bilateral and multilateral agreements, customary international law, the domestic law of flag states for ships that ply the ocean, and soft law principles” (Payne 2018, 120). Academic literature on BBNJ negotiations has criticized this ocean governance framework for being too fragmented and incomplete, and for its inadequacy in ensuring the conservation and sustainable use of marine biodiversity (Tessnow-von Wysocki & Vadrot, 2020, p. 3). The BBNJ negotiations and the resulting legally binding agreement aim to address these shortcomings by introducing targeted regulations without undermining existing legal frameworks (Payne, 2018, p. 120).

In 2006, pre-negotiations among UN member states began to lay the groundwork for what would later become the BBNJ Treaty (Tessnow-von Wysocki & Vadrot, 2020, p. 2). In 2015, a Preparatory Committee of the United Nations General Assembly (G.A.) was established to develop “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” (United Nations, 2015b). This committee built on the work of the Ad Hoc Open-ended

Informal Working Group, which had convened in 2014 and 2015 (United Nations, 2015a). By December 2017, the UN General Assembly had decided to consider the committee's recommendations for a draft text and proceed with further elaboration (United Nations, 2018). This process led to the creation of a "zero draft" of the instrument. Formal negotiations began in 2018 through sessions of the Intergovernmental Conference (IGC), which were held in the following sequence: September 2018 (IGC1), March-April 2019 (IGC2), August 2019 (IGC3), and after delays due to COVID-19⁴, March 2022 (IGC4), August 2020 (IGC5), and a resumed fifth session in February-March 2023 (United Nations, n.d.). States met again on 19 and 20 June 2023 in the framework of a further resumed 5th session to adopt, by consensus, the "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" (United Nations, 2023a) on 19 June 2023. For clarity, I will refer to the resumed fifth session as "IGC6" and the further resumed session as "IGC7" throughout this thesis.

A central objective of the negotiations was to address legal gaps in the UNCLOS, since existing agreements and legal frameworks such as the Convention on Biological Diversity (CBD) target marine biodiversity in *national*, rather than in *international* waters (Vadrot et al., 2022, p. 228). As shown in Figure 1, UNCLOS stipulates a division of the ocean into different zones: territorial seas (up to 12 nautical miles from the coastline), Exclusive Economic Zones (EEZ; up to 200 nautical miles), and the High Seas beyond national jurisdiction, which lie beyond the territorial seas and EEZs (Vadrot et al., 2022, p. 228). For the purpose of this thesis, these are the relevant aspects of UNCLOS concerning maritime zones.

⁴ Due to the COVID-19 pandemic, BBNJ negotiations (specifically IGC4) were postponed, and virtual intersessional work took place from September 2020 to February 2022. This work was not intended to substitute IGC4 but instead was established as an opportunity to clarify positions (ENB, 2023, p. 3).

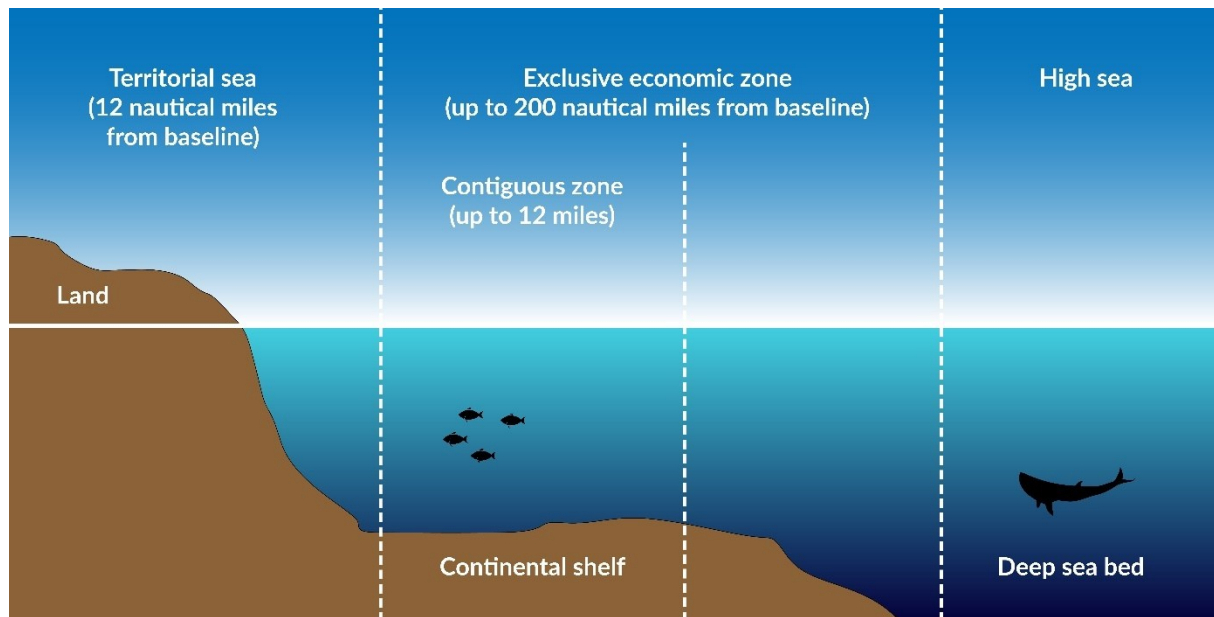


Figure 1 illustrates the 'zonal approach' with the three different maritime zones recognized by UNCLOS: territorial sea, exclusive economic zone, and continental shelf. From "Who will own the oceans?" by Graffy, C., 2022, GIS Reports Online (<https://www.gisreportsonline.com/r/maritime-law/>).

In addition to the "package elements" outlined in the introduction, the BBNJ negotiations also addressed several cross-cutting issues, such as the interconnectivity of the ocean (Tessnow-von Wysocki & Vadrot, 2020, p. 11). Other cross-cutting issues included the "principles and approaches governing the new instrument, financial and technical considerations, institutional arrangements, and dispute-settlement measures" (ENB, 2023b, p. 1).

A wide range of actors participated in the BBNJ negotiations. Alongside official state representatives, representatives of non-governmental organizations (NGOs), academia, and corporate actors were also present. However, local and Indigenous communities were not directly represented. During the IGCs, the draft Treaty text was developed and contested. These multilateral negotiation spaces are highly structured and constrained, shaping how agreement-making unfolds (Vadrot, 2020, p. 235).

2.2 Power Imbalances in Ocean Governance

Power relations are inherent to international environmental negotiations. Authority and influence are unevenly distributed, which restricts the capacity of some actors to influence the conferences and outcomes. In the context of marine biodiversity governance, there is a deep-seated divide between the Global North and the Global South, particularly regarding access to and production of scientific knowledge. Within the negotiation rooms, where delegation sizes vary significantly, a struggle emerges over what constitutes scientific and "legitimate" knowledge. These differences often lead to disputes over specific formulations in the negotiation text (Vadrot, 2020, p. 234).

Moreover, some delegations lack the technical, scientific, or legal experts necessary to meaningfully engage in the process. Yet, possessing such expertise is crucial for a state's authority and capacity to influence negotiations. Numerous scholars have emphasized that international environmental negotiations are fundamentally shaped by power dynamics, interests, and authority. The dynamics of certain practices and conditions privilege certain actors while marginalizing others (Vadrot et al., 2022, pp. 233-234). Studies have also shown that countries from the Global South remain underrepresented in the BBNJ negotiations (Tessnow-von Wysocki & Vadrot, 2020, p. 11).

The divide between the Global North and the Global South in marine biodiversity research stems from the high costs of marine research and the requirements for advanced technological and scientific infrastructure, which many Global South countries cannot afford. Only a handful of countries, including European Union member states, the US, Australia, Canada, and Japan, have developed the scientific and technological infrastructure required for the study of ABNJ and deep-sea marine biodiversity (Vadrot, 2019). This disparity is reflected in academic contributions, with OECD (Organization for Economic Cooperation and Development) member states producing 97% of the literature on BBNJ (Tessnow-von Wysocki & Vadrot, 2020, p. 11). Marine technology transfer, which could help address this issue, remains insufficient due to significant shortcomings in UNCLOS. As law professor Stephen Minas points out, the relevant UNCLOS article on technology transfer has been “largely unfulfilled [...], with limited implementation by the International Maritime Organization” (Payne, 2018, pp. 121-122). Authors find this shortfall is due to the fragmentation of UNCLOS and a lack of coordination. In addition to technological resources and infrastructure, it is essential to provide opportunities for training personnel in marine research (Vadrot, 2020, p. 240).

The power dynamics in negotiation rooms are deeply connected to the structural imbalances that shape the real-world conservation and use of marine resources. Countries possess vastly different capacities for accessing, collecting, and utilizing marine resources, with these capabilities being unequally distributed (Vadrot, 2020, p. 240). Another factor influencing these power dynamics is the growing economic value and therefore attractiveness of marine biodiversity science. MGRs, for example, are increasingly extracted for commercial purposes, such as pharmaceutical companies (Tessnow-von Wysocki & Vadrot, 2020, p. 17). However, many countries, particularly in the Global South, lack the financial, technological, institutional, and human resources necessary to access and benefit from MGRs. This disparity extends beyond MGRs to all “package elements” of the BBNJ negotiations – area-based management tools (ABMTs), environmental impact assessments (EIAs), and capacity-building and technology transfer (CB&TT). As a result, countries from the Global South face significant challenges not only in studying and utilizing marine biodiversity but also in implementing effective conservation measures to protect the ocean and marine biodiversity. Without adequate CB&TT, they will struggle to carry out complex, ambitious protective measures under the BBNJ Treaty,

including establishing marine protected areas (MPAs) and conducting EIAs. CB&TT has the potential to “rebalance” these inequalities between the Global North and Global South by providing not only financial assistance but also non-monetary benefits such as knowledge-sharing and technology transfer (Tessnow-von Wysocki & Vadrot, 2020, p. 11). Recognizing this, Global South countries pushed for the inclusion of MGRs and CB&TT in the Treaty. The focus on the four “package elements” reflects an effort to “balance interests and reduce inequalities” (Vadrot et al., 2022, p. 236) between the Global North and the Global South.

Countries of the Global South have used alternative forms of knowledge, particularly Indigenous and local knowledge (TK), to challenge the Global North’s dominance in legitimizing environmental knowledge. TK has, for example, played a role in shaping the outcomes of the CBD negotiations. Additionally, there has been a growing body of scientific knowledge emerging from the Global South, which these countries use to “counter Northern countries’ domination over the legitimate forms of authority to know and represent the environment” (Hughes & Vadrot, 2019, pp. 19-20).

Scientific terms and concepts can spark contention and political disagreements between the Global North and Global South, as their meanings often promote certain environmental approaches and ways of relating to nature over others (Vadrot, 2020, p. 241). In the BBNJ negotiations power dynamics between the Global North and Global South were evident in the polarization surrounding the Treaty’s guiding principles. A key point of contestation was the debate over including the principles of “Freedom of the High Seas” (FOS) and the CHP (Vadrot et al., 2022, p. 226). According to the Earth Negotiations Bulletin (ENB), the debate between CHP and FOS “haunted the entire process” (ENB, 2023a, p. 18). The following section takes a closer look at the development and meaning of the CHP.

2.3 Common Heritage of Humankind Principle (CHP)

2.3.1 Development

The CHP was first introduced in 1967 by Maltese UN representative Arvid Pardo, who advocated for international regimes to regulate the use and protection of shared natural resources, such as the deep seabed and the moon (Pureza, 2005, p. 274). Collaborating with Elisabeth Mann Borgese, Pardo played a central role in integrating the CHP into UNCLOS. Their conceptualization of the ocean as a commons – belonging to all humankind – formed the basis for introducing the CHP as a new legal principle (Taylor, 2019, p. 142). Pardo described the CHP as an acknowledgment in international law of the “overriding common interest of [hu]mankind” (Taylor, 2019, p. 143) in both preserving the marine environment in ABNJ and ensuring the “rational and equitable development of resources” in these areas (Taylor, 2019,

p. 143). As such, the CHP has been considered a potential “solution to the ‘tragedy of the commons’⁵” (Vadrot et al., 2022, p. 227).

In her “Introduction to the Symposium on Governing High Seas Biodiversity”, environmental law professor Cymie R. Payne describes the ocean in ABNJ as “a global commons with many intersecting regional and sectoral interests, presenting complex governance challenges akin to those implicated by outer space, Antarctica, and cyberspace” (Payne, 2018, p. 118). The CHP has been introduced in various UN treaties and agreements, such as the 1959 Antarctic Treaty and the 1967 Outer Space Treaty. In 1967, it was first proposed for UNCLOS. Following protracted and heated negotiations, it was included only in 1982 in seabed legislation under UNCLOS, albeit with a shift in meaning, as discussed below (Vadrot et al., 2022, pp. 230-231). Article 136 of UNCLOS, under Principles Governing the Area, states: “The Area and its resources are the common heritage of [hu]mankind⁶” (United Nations, 1982, Part XI, Art. 136, Section 2). The international seabed regime thus asserts that all resources located on the seabed in ABNJ belong equally to all of humanity, including future generations. As a result, any company seeking to exploit these minerals must share the benefits. The International Seabed Authority (ISA) is responsible for ensuring that (MARIPOLDATA Team, 2019). Interestingly, UNCLOS further stipulates that state parties to the convention agree that “there shall be no amendments to the basic principle relating to the common heritage of [hu]mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof” (United Nations, 1982, Part XVII, Art. 311, Section 3).

⁵ “The Tragedy of the Commons” is a term that was introduced in 1968 by Garrett Hardin, pointing to the issue of common goods becoming eroded when they are exploited beyond their capacity. Hardin exemplifies this with the allegory of a pasture open to all, where each herd[wo]man, in an effort to maximize their gain, increase their number of sheep, which eventually will lead to the degradation of the pasture for all due to overgrazing (Hardin, 1968, pp. 1243-1244). He concludes: “Freedom in a commons brings ruin to all” (Hardin, 1968, p. 1244). In his essay, Hardin briefly discusses the situation of the ocean, stating that “Likewise, the oceans of the world continue to suffer from the survival of the philosophy of the commons. Maritime nations still respond automatically to the shibboleth of the ‘freedom of the seas.’ Professing to believe in the ‘inexhaustible resources of the oceans,’ they bring species after species of fish and whales closer to extinction” (Hardin, 1968, p. 1245).

⁶ UNCLOS further states that: “The Review Conference shall ensure the maintenance of the principle of the common heritage of [hu]mankind, the international regime designed to ensure equitable exploitation of the resources of the Area for the benefit of all countries, especially the developing States, and an Authority to organize, conduct and control activities in the Area. It shall also ensure the maintenance of the principles laid down in this Part with regard to the exclusion of claims or exercise of sovereignty over any part of the Area, the rights of States and their general conduct in relation to the Area, and their participation in activities in the Area in conformity with this Convention, the prevention of monopolization of activities in the Area, the use of the Area exclusively for peaceful purposes, economic aspects of activities in the Area, marine scientific research, transfer of technology, protection of the marine environment, protection of human life, rights of coastal States, the legal status of the waters superjacent to the Area and that of the air space above those waters and accommodation between activities in the Area and other activities in the marine environment” (United Nations Convention on the Law of the Sea 1982, Article 155, Part XI, Section 3)

2.3.2 Counter-Hegemonic Potential

This section explores whether the CHP can be considered counter-hegemonic. The concept of hegemony is interpreted and defined differently across various theoretical perspectives, generally referring to the dominance of one social group or state over others. In neo-Gramscian theories, hegemony is a central concept describing a social relationship in which certain groups succeed in universalizing their particular interests within society (Wullweber et al., 2013, p. 24). The state, in this context, is seen as representing a specific form of social relations that embodies both capitalism and hegemony (Vadrot, 2017, p. 66).

In a 2020 research paper, Alice Vadrot stated that the BBNJ negotiations have the “potential to shift the epistemic order underlying ocean protection” (Vadrot, 2020, p. 242), which might challenge and reshape hegemonic global orders. The question arises whether the application of the CHP and its obligation of states to protect marine resources for future generations could have this effect.

A distinct aspect of the CHP is that it entails the objective of protecting and preserving BBNJ for *future generations*, implying a normative element for the sustainable use and conservation of natural resources. Its potential lies in simultaneously tackling the overexploitation of marine resources and equality issues, and it can be seen as a particularly revolutionary and radical concept of international law. Therefore, it is barely surprising that the CHP is very contested and that in UNCLOS, the conflict line ran between countries of the Global South, the G77, who were mostly in favor of the CHP’s inclusion, and established maritime powers from the Global North, who were generally against its inclusion in the treaty (Vadrot et al., 2022, pp. 226-229). Likewise, in other areas of potential inclusion of the CHP, countries of the Global North have campaigned remarkably against incorporating it in international treaties, trying to avoid any enforcement mechanisms (Pureza, 2005, p. 276). There is, however, a third group of landlocked and geographically disadvantaged states (LLGS), consisting of both developed and developing countries such as Austria and Paraguay. In the UNCLOS negotiations, this diverse group of countries has found their own interest in the CHP and have therefore not actively challenged it. The G77 bloc was big and powerful enough to insist on the inclusion of the CHP; Otherwise, the entire negotiation could have come to a standstill. The LLGS supported the Global South by advocating for the CHP as a means to strengthen landlocked states’ rights in ABNJ, even though they were not able to include specific provisions in their interest. The Area and its resources being placed under the CHP resulted in the establishment of the international organization ISA to regulate seabed activities in this area (Vadrot et al., 2022, p. 230-231).

Law and sociology professor José Manuel Pureza characterizes the CHP as a counter-hegemonic use of international law and believes that it shows “an ambition of radical cut with the hegemonic international legal models at both a normative and a political level” (Pureza, 2005, p. 268). In its

essence, the CHP therefore constitutes a “clear break” with the dominant traditional regulation of global commons, which was a liberal regime serving the Euro-centric international system, according to Pureza. Regarding the high seas, this traditional regulatory scheme was characterized by historical controversy and debates between different state groups, either supporting the *mare clausum* or the *mare liberum* doctrine. Combined with an expansion of sovereign rights of coastal states, the *mare liberum*, meaning the free use of the ocean and its resources, prevailed (Pureza, 2005, p. 274). What must be kept in mind is that at the time of the introduction of this liberal regime, the ocean was mainly used for shipping, and the extraction of MGRs and other uses of the ocean body have only come later, with technological developments. This, together with increasing awareness of the limits of ocean resources, has led to criticism, especially by countries of the Global South. They have called for the non-appropriation of this global commons – the ocean and its resources – and making its use more equal for all, which implies equitable sharing mechanisms (Pureza, 2005, pp. 274-275).

Pureza sees the counter-hegemonic meaning of the CHP above all in “its ability to express in innovative terms the principle of community – as opposed to the principles of the market and the state – at the international regulatory level” (Pureza, 2005, p. 275). This is based on an understanding of all of humankind, understood in a transgenerational way and therefore community, being owners and responsible for the management of those resources defined as common heritage. To ensure that all humankind can indeed manage and own these spaces and resources, equitable sharing of benefits is pivotal. According to Pureza, poorer countries must be supported more; Therefore, positive discrimination is needed (Pureza, 2005, pp. 275-276).

2.3.3 CHP and FOS

A principle that can be seen as opposing the CHP, or at a minimum where there is the possibility of tensions, is the principle of the “Freedom of the High Seas’ (FOS), or the aforementioned *mare liberum*, principle granting all states, whether coastal or landlocked [...] free access to international waters” (Vadrot et al., 2022, p. 227), which is also of UNCLOS. This principle primarily mirrors economic and security interests. States, then, have open access to the ocean in ABNJ, can perform various activities and keep any arising economic profit themselves, so long as other states’ rights are regarded (Payne, 2018, p. 120). In contrast to the CHP, where states have a legal responsibility to regard the common interests of all of humanity, they can follow their self-interests (Taylor, 2019, p. 143). Security questions are of central importance to states in ocean governance, leading to tensions between, for instance, establishing restrictive MPAs and the interests of military powers to navigate freely on the high seas. James Kraska believes that “possessory attitudes” toward MGRs bring traditional maritime powers with their technological capabilities to defend the FOS and reject the CHP, which reflects an “archaic strategy

of mercantilism” (Payne, 2018, p. 122). Pureza conceives the FOS as “formal equality before the law and material inequality” (Pureza, 2005, p. 274).

The FOS under UNCLOS, Article 87, applies to international waters, granting all states the freedom to ship, overflight, under certain conditions to lay cables and pipelines and construct installations, fish, and conduct marine scientific research (MSR) (United Nations, 1982, Part VII, Art. 87, Section 1). The high seas water column is therefore guided by the FOS. However, the seafloor or the Area is, as discussed before, governed by the CHP (Vadrot et al., 2022, p. 228). It shall ensure that all states receive an equal portion of financial and economic benefits resulting from the exploitation and extraction of mineral resources. The provision of the freedom of MSR enables and facilitates not only industrial but also academic researchers to carry out genetic research (Vadrot et al., 2022, p. 232).

According to a publication by law professor Konrad Marciniak in 2020, the legal interpretation of the conflict between the two principles is still unresolved (pp. 63-64). Some scholars have examined ways to reconcile the CHP and FOS principles by introducing concepts such as environmental stewardship and public trusteeship (as cited in Vadrot et al., 2022, p. 233). I will not explore these possibilities in this thesis but instead focus on how the CHP was introduced in the BBNJ negotiations, which includes how negotiators approached the relationship between the CHP and FOS.

2.3.4 Shift of Meaning

In UNCLOS, the CHP applies to the deep seabed and its resources. It was intended to provide a legal basis for the equitable sharing of economic benefits derived from these resources, and to prevent coastal states – which hold rights to maritime zones extending a certain distance from their shores – from further expanding their sovereign claims (Vadrot et al., 2022, pp. 226, 230).

However, the inclusion of the CHP has been interpreted as a consequence of governments successfully shifting their meaning from a more normative perspective rooted in environmental protection, preservation, and intergenerational justice to a market-oriented economic approach. These normative aspects had made the CHP an “advanced expression of a counter-hegemonic international legality” (Pureza, 2005, p. 276), which was strongly opposed by countries of the Global North. These states managed to block several of UNCLOS’s more progressive provisions, such as the creation of a robust ISA equipped with effective legal powers to regulate state and corporate activities. In their place, liberal market-based principles were adopted, including the removal of distinctions between seabed-mined minerals and those sourced elsewhere. As a result, although the CHP formally applies to the deep seabed and its resources under UNCLOS, only a small part of its transformative potential has been realized. Pureza notes that “the intensity of counter-hegemonic uses of international law is very much conditioned by the intensity of the resistance confronting hegemonic forces” (Pureza, 2005, p. 277),

with such forces typically resisting international regulatory enforcement mechanisms. Similarly, Ina Tessnow-von Wysocki from MARIPOLDATA argues in a blog post that the CHP has been “strongly instrumentalized to serve solely financial considerations, rather than conservation aspects” (Tessnow-von Wysocki, 2023). Still, Elisabeth Mann Borgese viewed the limited implementation of the CHP in UNCLOS not as a shortcoming, but as a first step toward a broader, more ambitious regime (Taylor, 2019, p. 144).

The CHP became less popular in international negotiations concerning environmental issues in the later 1980s and 1990s. The collective management of the global commons, as intended by the CHP, was rejected; Even characterizing resources as common property was opposed. The beginning of the BBNJ negotiations, however, marked a resumption of the discussion on the CHP (Vadrot et al., 2022, p. 231). Since the outcome of the BBNJ is a legally *binding* instrument, it could be assumed that the CHP is not included with its original aim of intra- and intergenerational equity, but with a shifted meaning. Prue Taylor in 2019 issued concern about the CHP getting dropped altogether, since until then, “references to its broader ethical and ecological responsibility elements are vague” (p. 150), which means that the original vision for CHP was not in discussion.

There is another critique going further than criticizing the economic considerations of the CHP in UNCLOS: It points at the *human-centric* view on protecting nature, therefore negating or disregarding the intrinsic value of nature. To include this, the CHP could be formulated more broadly, for instance, “common heritage of *all life*” (Taylor, 2019, p. 149). Taylor, however, also views the CHP in its “original” meaning, as already going further than what the anthropocentric terminology implies. With her idea for a reformulation of the concept, the more radical understanding of the CHP, which would include the intrinsic value of nature and understanding humanity as part of it, would be embraced (Taylor, 2019, p. 149). The debate surrounds the protection of the ocean for “current, future generations and the planet as a whole” (Tessnow-von Wysocki, 2023).

After discussing the Global South’s efforts to include the CHP, it is crucial to acknowledge that developing countries do not always prioritize the strongest possible protection and conservation of the marine environment. Rather, they pursue their own strategic interests, which can at times conflict with environmental goals. For example, during the UNCLOS negotiations, some developing coastal states pushed to expand the national continental shelf. This stands in contrast to the expectation, shared by many developing countries, that the CHP would “slow down the run on the ocean floor and seabed resources, [and] prevent their privatization” (Vadrot et al., 2022, p. 230). This thesis does not aim to comprehensively analyze the varied interests of developing countries in environmental negotiations such as BBNJ. However, it is important to note that support for the CHP is not necessarily based solely on its potential to protect and conserve marine biodiversity but may also reflect other national

interests. Moreover, although there is a strong dividing line between Global North and Global South countries regarding their stance on the CHP, not all countries of the Global South unambiguously support its inclusion in the BBNJ Treaty, and those that do may not share the same motivations.

2.3.5 CHP in BBNJ

In the BBNJ negotiations, there have been tensions and uncertainties over what falls under the CHP and what does not. Until the BBNJ treaty in 2023, there was no legal provision with the application of the CHP to marine biodiversity, since in UNCLOS, legal scholars found it only pertains to mineral, non-living resources of the deep seabed. This is significantly due to the lack of scientific knowledge on marine species at the time of the establishment of UNCLOS. Since then, knowledge about marine species has expanded also on the deep seafloor, where it was found that biodiversity loss is accelerating (Vadrot et al., 2022, p. 232). MGRs *within* areas of national jurisdiction are the responsibility of the relevant state and are regulated under the Nagoya Protocol of the CBD. This states that the collection of MGRs in national waters is dependent on prior informed consent and permission of the MGRs' country of origin (Vadrot et al., 2022, p. 232).

Already in pre-negotiation rounds of the BBNJ negotiations, delegates of countries from the Global South have called for the applicability of the CHP for MGRs. Tensions and controversy started early on regarding the debate whether the CHP or the FOS shall be the guiding principle of the Treaty. This soon led to a deadlock situation, and so the first draft document, which was the basis for IGC1, included both the CHP and the FOS. To find common ground, further discussions were needed (Vadrot et al., 2022, pp. 232, 236). So, while the CHP has become quite subordinate in international law, as discussed above, it was simultaneously very powerful during the BBNJ negotiations, since it has almost led to a standstill of the negotiations (Vadrot et al., 2022, p. 233).

The division in the positions was between the Global North and the Global South, which strongly resembles the situation during the UNCLOS negotiations. The intense opposition of countries of mainly the Global North in the early stages of the BBNJ negotiations might stem from the experience in UNCLOS, where the G77 was successful in integrating the CHP in the treaty text, and the knowledge that the CHP is a challenge to the BBNJ negotiations (Vadrot et al., 2022, p. 238). As Vadrot et al. have found, these debates in their very early stages, during the Ad Hoc Open-Ended Informal Working Group and before the first IGC, centered around the BBNJ package element CB&TT (Vadrot et al., 2022, p. 337). The CHP in BBNJ negotiations has evolved to become not exclusively, but substantially relevant to the negotiations' package element MGRs. The FOS under UNCLOS and therefore the almost unlimited – if a state is capable – access to MGRs leads to an increase in the inequality between countries of the Global North and those of the Global South. Those with the economic and technological capabilities to extract MGRs benefit from advantages in scientific research as well as

economic profits. As Tessnow-von Wysocki and Vadrot emphasize, a fair and equitable mechanism for the extraction of MGRs in the high seas is therefore seen as critical to the BBNJ agreement (Tessnow-von Wysocki & Vadrot, 2020, p. 4).

In line with the FOS and its inference of 'first come, first served', MGRs are currently being profited from; However, even though the FOS grants states free access to international waters, high-seas MGRs are being privatized by biotechnology companies. To date, patents to MGRs are mostly in the hands of private companies, with one company having the rights to almost half of all patents. The CHP could address the inequality issues connected to this privatization and profitability by introducing a more equitable access and benefit-sharing instrument (Vadrot et al., 2022, pp. 227, 232). There is much academic debate considering this instrument and how to regulate and oversee it (Tessnow-von Wysocki & Vadrot, 2020, p. 4). To conclude, countries advocating for the application of the CHP to MGRs claim to imply "no appropriation, peaceful use, common management, intergenerational responsibility, equitable access and benefit-sharing" (Becker-Weinberg, 2017, p. 572).

In 2019, Prue Taylor viewed the BBNJ negotiations as a new opportunity for the CHP. In light of the urgency and severity of the ecological degradation of the ocean, she advocates for the CHP as the overarching concept for the whole ocean regime, including not only the seabed but the "water column, surface and space above, as an interconnected ecological whole" (Taylor, 2019, p. 146).

Payne finds that besides the CHP and FOS, another competing legal principle in UNCLOS pertains to states' obligation to the marine environment's protection with science and scientific facts being its strongest advocate (Payne, 2018, p. 120). The BBNJ negotiations, with the objectives of the sustainable *use* and *protection* of marine biodiversity, are committed to balancing all three legal principles: using the high seas and its resources, environmentally protecting it, and considering "social needs" (Payne, 2018, p. 120), pointing towards sharing marine resources.

2.4 Theorizing Negotiation Spaces and Agreement-Making

Multilateral negotiations have been studied from various theoretical and conceptual approaches. As Alice Vadrot and Hannah Hughes point out in their recent book "Conducting Research on Global Environmental Agreement-Making" (2023), studying agreement-making should entail looking beyond the formal negotiation venues and state delegates. Agreement-making is also influenced by NGOs and by informal conversations between and among state and non-state actors in corridors. Therefore, conceptual frameworks can help researchers find actors pertinent to the issue and research question (Hughes & Vadrot, 2023, p. 59). While this research is limited to formal negotiation sites due to the accessible data, theoretical concepts aid in reflecting the negotiation site itself and better understanding the processes and discussions in this site. The chosen theoretical concept of this thesis will be covered in the following chapter, this chapter explains the need for theorization, and presents

theorization of negotiation spaces by other authors and useful concepts for studying agreement-making sites.

Vadrot and Hughes find that certain concepts and theories can help understand power relations and power asymmetries that become noticeable in negotiations: States struggle to exert influence and embed their interests in the treaty text. As outlined above, there are significant differences between the relative negotiation capacities of states, since delegation sizes and the expertise of the negotiators vary strongly. Furthermore, the position of a specific state in the world order, as well as its economic strength, determines the resources a state can have at its disposal (Hughes & Vadrot, 2023, pp. 58-59).

It is imperative to acknowledge from the beginning that the selection and application of theory has effects since it shapes assumptions and the view of the social world. (Hughes & Vadrot, 2023, p. 63). Furthermore, what must be kept in mind is that theoretical concepts are part of specific ontological and epistemological perspectives, and it may be difficult to both only extract certain elements for one's research as well as to apply them entirely (Hughes & Vadrot, 2023, p. 61). Theories or theoretical concepts have been developed with specific motivations and concerns of theorists engaging with specific problematics: They do not always fit their own specific problem exhaustively or perfectly. This is where the adaptation of existing and the development of new concepts becomes prolific, as Hughes and Vadrot showcase (2023).

To study negotiation sites, it is helpful to engage with social theorists such as Pierre Bourdieu and Michel Foucault since negotiation sites are part of the social world with power relations. The approach of Bourdieu and his concepts of habitus, capital, and field have been applied to research on global environmental agreement-making in multiple works. Aspects of these concepts and their specific wording have also influenced global environmental politics itself, for instance, "symbolic power", which is used to position organizations within the political landscape (Hughes & Vadrot, 2019, p. 18).

Hannah Hughes describes how she has applied Bourdieu's thinking in her research of the Intergovernmental Panel on Climate Change (IPCC), where she has aimed to extensively use Bourdieu's theory and concepts of the social world (Hughes & Vadrot, 2023, p. 64). Certain concepts are especially useful to help understand the setting environmental negotiations take place. I will first briefly discuss a sociological understanding of global environmental agreement-making developed by Pierre Bourdieu, and then the development of a concept by Hughes and Vadrot, which is inspired by Bourdieu.

2.4.1 Bourdieu: The Field, the Social World, and Language

Bourdieu's concepts have helped researchers to reflect on the negotiation site, which can be conceptualized as a field with struggles of different actors to exert influence and protect their interests.

Bourdieu is cautious to define terms such as the “field” because they need to be seen within their theoretical system; However, in dialogue with Loïc J. D. Wacquant in the book “An Invitation to Reflexive Sociology”, which is intended to provide an overview of Bourdieu’s social theory, he says: “In analytic terms, a field may be defined as a network, or a configuration, of objective relations between positions” (Bourdieu & Wacquant, 1992, p. 97). It is thus thought of *relationally*. He elaborates that the positions are objectively defined by their current, but also potential placement within the structure of power distribution. Additionally, they are shaped by their objective relation to other positions, such as domination or subordination. The specific placement determines the influence and advantages accessible to the occupants of the positions, whether agents or institutions (Bourdieu & Wacquant, 1992, p. 97). Furthermore, Bourdieu specifies that: “A field is not the product of a deliberate act of creation, and it follows rules or, better, regularities, that are not explicit and codified” (Bourdieu & Wacquant, 1992, p. 98).

In his conversation with Loïc J. D. Wacquant, Bourdieu explains his conceptualization of the social world as a *site* that is characterized by the constant struggle to define what the social world is, in his words to “tell the truth of this world” (Wacquant, 1989, p. 35). In his role as a sociologist, he emphasizes being a “party to the ongoing struggle over truth” (Wacquant, 1989, p. 34) himself. For this thesis, what is important is precisely this notion of the struggle to define the truth about the social world, which can be observed in multilateral negotiation rooms. Language plays a key role in this regard, through which power relations are enacted: “The relations of communication *par excellence* – linguistic exchanges – are also relations of symbolic power in which the power relations between speakers or their respective groups are actualized” (Bourdieu, 1982/1991, p. 37). In negotiations, power relations and the social construction of reality take place through language. This thesis studies language from government actors.

2.4.2 Weighted Concept

Bourdieu’s school of thought and his theoretical concepts have inspired further theoretical thinking and concepts, for instance, a concept named “weighted concept”. Inspired by Bourdieu and his account of the importance of “naming”, it focuses on concepts and terminologies utilized in negotiations and their meaning. According to the weighted concept, developed by Alice Vadrot and Hannah Hughes, the meaning of a concept encompasses not only its definition but also the historical, social, and political struggles that shape its definition and position within the text (Hughes & Vadrot, 2019, p. 21). The authors have discussed this concept in their study of the contestation in negotiations surrounding the term “biocultural diversity” in the framework of an IPBES thematic assessment report. Briefly summarized, the assumption is that a specific concept or scientific term becomes “weighted” once social and political struggles are activated and the position taking by government delegates imprints

on this terminology or concept. When it is brought up anew in the negotiations, this struggle might be reignited (Hughes & Vadrot, 2019, pp. 30-31).

The following aspects of the process of introducing concepts in negotiations are useful to consider, which Vadrot and Hughes have identified: Repetition, transposition, and political order. Repetition relates to the observations of researchers and authors that government delegates in negotiations often deliver apparently scripted interventions and repeatedly make the same points across sessions and forums. Transposition refers to the aforementioned process of position taking by delegates, social and political struggles, and the historical journey imprinting or transposing on the terminology in question contributing to its meaning, with the resulting potential to revive struggle when it is brought up again. Political order indicates an explanation for the repetition and transposition: The basis of struggles over terminology “is the authority or symbolic power to determine reality and, ultimately, one’s location in the global political order through that reality” (Hughes & Vadrot, 2019, p. 31). These aspects help to better understand the attempt of actors to “tell the truth” of the social world in negotiations.

Applying the thinking of an author such as Bourdieu comprehensively would, naturally, exceed the limits of this Master’s thesis, and as discussed above, scholars need to be careful when extracting only certain elements of bigger theoretical contexts. Moreover, since the CHP has been political from the start, it is not suitable to use the weighted concept for my thesis. This concept has been developed to study how concepts are introduced in negotiations and how their definition and reception then *become* shaped by existing forces and social and political struggles, making up the concepts’ social construction (Hughes & Vadrot, 2019, p. 31). Furthermore, I do not focus on the reception when the CHP was brought up in BBNJ negotiations, which would add to its social construction and meaning; I concentrate on *how* and *why* the CHP is introduced and analyze solely delegate statements that contain explicit reference to the CHP.

To understand the role of knowledge and power in international environmental politics better and specifically how policymakers strategically use knowledge for the protection of their interests, it is useful to apply the “epistemic selectivities” concept. This concept has been developed by Alice Vadrot and will constitute the main basis for the theoretical part of this thesis. While I do not directly apply theory by Bourdieu and the weighted concept, the chosen epistemic selectivities concept is influenced by social theory.

3. Theoretical Approach: Epistemic Selectivities

The concept of epistemic selectivities provides insights into the “role and social construction of knowledge” (Vadrot, 2017, p. 61) in international environmental politics and International Relations (IR) more broadly. Alice Vadrot developed this concept through her research on the interplay between science and political power during the formation of a knowledge institution akin to the IPCC, the IPBES (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services). As Hughes and Vadrot (2023, p. 66) emphasize, this relationship is characterized by a mutual shaping of scientific and political dynamics throughout the negotiation process.

3.1 Influences

To develop her theoretical concept, Alice Vadrot engaged with several theoretical approaches. Ontologically and epistemologically, Vadrot draws on the assumptions of critical realism, which recognizes the presence of real causal mechanisms that impact events and become evident through these events. Vadrot views these events in the context of global environmental agreement-making in negotiation settings as moments when dominant understandings of the respective policy issue are challenged, and implicit conflicts turn explicit. These events occur in the negotiations and obtain specific meaning (Hughes & Vadrot, 2023, p. 67).

She built on Michel Foucault’s thinking and expanded on his theories in her analysis of the IPBES negotiation process (Hughes & Vadrot, 2023, p. 66).

As Hughes and Vadrot (2023, p. 66) explain:

For Foucault, it is a matter of being “in the truth” (“dans le vrai”) in the sense that propositions (statements) can only be heard and considered if they are formulated within the rules of a specific (scientific) discipline and logic [...] that is itself aligned with the *authority of the truth* and the efficiency logic of the political economy, which are inherent to the concept of “governmentality” introduced by Foucault to describe the techniques, rationalities, and mentalities governing subjects. (Hughes & Vadrot, 2023, p. 66)

Foucault’s thinking of actors striving to „be in the truth” can be related to Bourdieu’s theory, in which actors struggle to “tell the truth of the social world” and gain authority when they succeed in imposing their vision or *truth* of that world – a vision that is then legitimized by those who are dominated.

Vadrot explained that during research in the negotiation room for the institutionalization of the new IPBES, several questions came up, including: How and why do discourses emerge? How do they

materialize? How do they change? Under which conditions do they change? The theories of Foucault did not suffice to find insights into these questions, to which end she generated the epistemic selectivities' concept (Hughes & Vadrot, 2023, pp. 66-67).

The concept of epistemic selectivities explores the correlation between structure and agency in IR⁷ and specifically international environmental politics and constitutes a “critical” alternative to the concept of “epistemic communities” by Peter Haas (Vadrot, 2013, pp. 108-109). These communities are understood as a group of professionals or scientists with recognized expertise claiming policy-relevant knowledge, in other words being able to transform knowledge claims into a political agenda. Critique of this concept has pointed out a narrow focus on scientists, not taking the social construction of expert knowledge into account (Vadrot, 2017, p. 62). In contrast to Haas' concept, the concept of epistemic selectivities investigates the distribution of power, the conditions under which strategies and interests form, and the role of the state. Furthermore, knowledge is not merely understood as scientific but also considers indigenous knowledge (Vadrot, 2013, pp. 108-109). The role of power and hegemony is important because knowledge is tied to social order and political power and cannot be studied independently (Vadrot, 2017, p. 69): “Those that (seem to) possess knowledge are seen as legitimate holders of power” (Vadrot, 2017, p. 61).

Other theoretical approaches Alice Vadrot engaged with included the concepts of “strategic selectivities” by Bob Jessop and “discursive selectivities” by Colin Hay. The epistemic selectivities concept builds on but also departs in its assumptions from the strategic-relational approach by Jessop and its strategic selectivities concept. Jessop considers that – and studies how – political action happens under structured conditions, whereby some actions or strategies are more likely to succeed within a preexisting structural context (Vadrot, 2014, p. 363). These actions, in turn, influence the strategic selectivities available within certain social structures (Vadrot, 2017, p. 67). Vadrot assumes that the *knowledge* of actors structures the context they act in, and how they understand and construct the context selectively shapes how the underlying structure is selectively strategically constituted (Vadrot, 2014, p. 363).

Colin Hay's concept of discursive selectivities emphasizes that knowledge about the context the actors act in is always partial and is discursively mediated (Vadrot, 2014, p. 364). Therefore, the context itself is discursively mediated and the particular understanding of it defines the strategy options actors choose (Vadrot, 2017, p. 67). The concepts of epistemic selectivities and discursive selectivities deviate

⁷ The problem of structure and agency refers to substantive debate in International Relations (IR) about whether political phenomena are better explained by analyzing structural or agency factors. Structure means the setting, whereas agency implies a “specific sense of choice, free will and autonomy” (Vadrot, 2017, p. 63). Studying the relationship between agency and structure in IR helps understand the relationship between nation-states and the international political system on a theoretical, abstract level (Vadrot, 2017, p. 69).

in their notion of knowledge. For Hay, it is limited to the actors' knowledge of the structure they operate within and the conditions for achieving their goals, whereas Vadrot contends that the partial knowledge actors possess about the knowledge about the object to be governed must also be considered, as this plays a role in the success of their strategies as well (Vadrot, 2014, pp. 364-365). "Knowledge about knowledge" is understood as "the selectivities involved in the way in which concepts, terminologies, and tools are used to promote certain scientific and political 'self-evidences'" (Vadrot, 2014, p. 365). Knowledge therefore serves to legitimize specific solutions to problems, discredit alternative approaches, and support arguments that shape future scientific research, its funding, and following policy advice (Vadrot, 2017, p. 69). The relationship between the knowledge and selection of objects to be governed and the way of formulating and addressing scientific and political problems is relational; Both influence each other. The selective nature of this process is explained by its inherent promotion of "self-evidences" to achieve acceptance of certain strategies over others (Vadrot, 2014, p. 365).

To briefly summarize the key insights from the strategic and discursive selectivities' concepts and additional and partly differing perspectives of the concept of epistemic selectivities: Strategic and discursive selectivities help explain how actors select strategies based on their knowledge of political contexts and the potential success of certain strategies considering the resources available to them. Knowledge is therefore shaped by expectations about which strategies are most suitable, based on the actors' insights on the political context and on dominant hegemonic patterns in the policy field, including the strategic use of science and expert knowledge to justify political claims. The concept of epistemic selectivities highlights that the knowledge about hegemonic patterns is nevertheless ever partial and that the application of science and expert knowledge is selective (Vadrot, 2017, pp. 68-69).

3.2 Definition

In this regard, **"epistemic selectivities are those mechanisms within political institutions that favor specific forms of knowledge, problem perceptions, and narratives over others"** (Vadrot, 2014, p. 364, emphasis added). In negotiation processes and political institutions, specific knowledge is thus included or excluded and deemed legitimate. The chosen concept helps make this process visible (Vadrot, 2013, p. 109). A key step in stabilizing dominant forms of knowledge, problem perceptions, and narratives is their institutionalization (Vadrot, 2017, p. 69).

The epistemic selectivities concept rests upon a particular understanding of selectivities as a "political mode of the political economy of international biodiversity politics" (Vadrot, 2014, p. 363). As a result, the much-debated governance ineffectiveness in tackling the environmental crisis cannot be solely attributed to a lack of political will or conflicting political interests. Instead, these issues are seen as

intrinsic to the conflicting dynamics of modern capitalist systems and societies. Specifically, they reflect a broader trend toward the commodification of nature, which is often seen as a seemingly reasonable approach to addressing these issues (Vadrot, 2014, p. 363).

The concept acknowledges that this political economy is embedded in North-South relations (Vadrot, 2014, p. 363). It is based on the assumption that political institutions are material condensations of social relations and power dynamics and therefore mirror hegemony (Vadrot, 2013, p. 109). In the negotiation setting, actors often mirror the structural context in which they operate by favoring discursive strategies and narratives that enhance the likelihood of their success. These strategies tend to perpetuate the dominant knowledge about the policy issue at hand. This occurs based on their understanding of the context that is influenced and reflected by discourse and institutional frameworks (Hughes & Vadrot, 2023, p. 67). The assumption is that the “actors’ knowledge of the context within which they act, and the policy issue at hand, is selective and incomplete” (Hughes & Vadrot, 2023, p. 67).

Besides the epistemic and strategic selectivities’ roles, the particular “knowledge-power nexus” (Vadrot, 2014, p. 363) causes certain institutional arrangements. This nexus means a specific understanding of studying and governing biodiversity which becomes accepted as ‘common sense’ or self-evident in political and scientific circles, before leading to changes in institutions. These “self-evidences” (Vadrot, 2014, p. 363) are closely tied to the way certain concepts and terms are chosen and used in these settings. These choices reflect underlying epistemic selectivities that shape what is considered valid or important (Vadrot, 2014, p. 363). In the last years, the valuation of biodiversity in economic terms and associated market-based policy instruments have been gaining prominence in international biodiversity politics. These topics, characterized by conflicting interests, often lead to disputes and criticism but also serve as a driving force for compromise in seeking a “reasonable” solution to environmental and economic crises such as the biodiversity crisis. This aligns with a broader debate on making biodiversity science more relevant to policy-making, with a dominant argument being that biodiversity will only be protected by commodifying its various elements (Vadrot, 2017, p. 261). Vadrot has helped explain the rise of an economic understanding of nature in biodiversity policies with the epistemic selectivities concept (Vadrot, 2020, p. 238). In her research, she has studied the concept of “ecosystem services⁸” and its surrounding conflicts in the negotiation and establishment process of the IPBES (Vadrot, 2017, p. 261). The emergence and use of the concept “ecosystem services” is an example of the “self-evidences” in the science-policy interface (SPI) of international biodiversity politics and of how approaches used in both science and politics to define and address

⁸ Definitions of “ecosystem services” are “the benefits people obtain from ecosystems” or “ecological processes or functions which have value to individuals or society” (IPBES Glossary).

problems are often blended in SPIs. This includes how issues are framed and the tools, concepts, and strategies used to tackle them. In this sense, “ecosystem services” offered a useful framework for addressing scientific and political uncertainties about how to effectively manage the environmental crisis (Vadrot, 2014, p. 363).

The mechanism of epistemic selectivities does not only include certain specific knowledge and forms of knowledge but also excludes certain contextual meanings (Vadrot, 2013, p. 110). If, for example, in the case of the BBNJ negotiations the CHP was excluded in the negotiation text, this means that specific knowledge and meanings in connection with this principle were rejected.

3.3 Change

The concept of epistemic selectivities does not only offer insights into why dominant forms of knowledge, problem perceptions, and narratives persist in political institutions but also into why these can be challenged: “Epistemic selectivity explains why the politico-institutional and discursive settings within which we negotiate environmental problems are relatively stable but open to contestation and conflict” (Hughes & Vadrot, 2023, p. 67). During the aforementioned “structural moments”, i.e. moments of contestation, conflicts over terminology can become explicit and actors use concepts and terminology strategically, reflecting a certain framing of an issue (Vadrot, 2020, p. 238).

To understand change and struggles better, it is helpful to briefly return to the structure-agency problem. A structural approach to hegemony influenced by scientific realism views them as situated within structural conditions that determine their potential as well as the potential of relevant agents and their initiatives. “Transformative action” (Vadrot, 2017, p. 67) is those social activities that change the context and structures in which they operate. Such transformations are linked to actions in the struggle for hegemony that occur during structural crises: When the social reproduction process is questioned, agents become aware of their situation and the possibilities available to them, which provokes resistance from others aiming to preserve the existing structures. This dynamic constitutes hegemonic struggles that are aimed at either conserving or transforming structures (Vadrot, 2017, pp. 66-67). Vadrot writes that the understanding of hegemony as the “result of and the condition under which knowledge emerges” (Vadrot, 2017, p. 67) gravitates towards favoring structure over agency. She does not focus on hegemony but instead studies the strategies and selectivities involved both in structure and agency (Vadrot, 2017, p. 67).

The theoretical approach of epistemic selectivities is useful for my thesis because 1) the role of knowledge and power in marine biodiversity politics is of interest, 2) it has been developed for international environmental politics, including negotiations and institutions, 3) it considers the embeddedness of the political economy in relations between the Global North and the Global South,

4) it helps explain why economic understandings of nature are persistent in biodiversity politics, but also 5) it can give insights into the possibility of contestation and conflict in settings of environmental negotiations, where the global political order can be reoriented and 6) it stresses the importance of “structural moments” for conflict. This concept might also be well suited to study the dominance of the FOS in the high sea’s governance, but this is not the aim of this thesis. Instead, I examine the struggles and strategies of states to include the CHP in the BBNJ negotiations. I conceive speech acts by state delegates as shedding light on specific knowledge, problem perceptions, and narratives relating to marine biodiversity and the CHP.

4. Methodology and Methods

4.1 Collaborative Event Ethnography and the MARIPOLDATABASE

This research draws on primary negotiation data collected through an approach rooted in the tradition of Collaborative Event Ethnography (CEE), carried out by researchers from the MARIPOLDATABASE project.

CEE is a team-based ethnographic approach well-suited to studying the political practices behind global environmental agreement-making. By “being there” (as cited in Vadrot et al., 2022, p. 233), researchers are able to analyze the shared practices performed by actors during negotiations, meanings, and understand the context and processes of reaching agreements (Vadrot et al., 2022, p. 233). In practice, CEE involves researchers observing negotiations directly within the negotiation rooms and recording detailed field notes (Vadrot, 2020, p. 236).

Insights gathered through observation of and direct interaction with participants have contributed to the research of influence, protest, and dissent within global environmental politics. This has deepened researchers’ understanding, particularly regarding how marginalized and less powerful actors may challenge or shape dominant approaches to addressing global environmental issues (Vadrot et al., 2022, p. 233). The ethnographic approach of CEE therefore allows researchers to get to the “heart of the struggles” (Vadrot, 2020, p. 234) over values and knowledge by focusing on moments in which contestation unfolds around particular phrases and positions within the draft text – so-called “structural moments” (Vadrot, 2020, p. 236). These instances make visible the significance that certain concepts or terms hold for different actors or the negotiations (Vadrot, 2020, p. 236). Of particular interest for this research are the strategies of dissent and protest employed by actors from the Global South to contest dominant narratives and hegemonic approaches to environmental governance. These actions take place within a setting that offers a limited set of possibilities: the negotiations are governed by specific rules of procedure, a shared diplomatic culture, and ritualized forms of interaction. A specific constraint in the BBNJ negotiations is that the predefined “package elements” of the Treaty narrow the scope for discussion beyond those topics (Vadrot et al., 2022, pp. 234-236).

MARIPOLDATABASE conducted both on-site and online CEE from IGC1 to 7. Digital ethnography was carried out when the team could only observe the negotiations online and could not be physically present. When attending in person, team members observed the participants of the negotiations at the United Nations headquarters in New York City (Vadrot et al., 2022, p. 234). Seven researchers from the MARIPOLDATABASE team participated in the six formal IGCs – each typically lasting two weeks – as well as the closing IGC where the Treaty was adopted, and in 45 intersessional meetings. MARIPOLDATABASE held the status of an NGO observer. These meetings took place in various formats: plenary sessions, working group sessions, side events, online intersessional meetings, and the confidential “informal informals”,

which were open only to registered participants (Vadrot et al., 2024, pp. 153-154). Working as a team ensured that parallel meetings could be covered by different team members, and the data collection process at lengthy and dynamic negotiations could be shared (Vadrot et al., 2025, p. 13). The central result of these studies is a systematic catalog of observations collected throughout the entire BBNJ negotiation process of five years, covering all IGCs as well as intersessional online work. However, particularly in the later IGCs, meetings increasingly were held “behind closed doors⁹”, which the team of MARIPOLDATA could not access (Vadrot et al., 2024, p. 153). As a result, these sessions are not included in the dataset, which was published in late 2024 as the MARIPOLDATAbase (see Langlet et al., 2024).

To collect data in the complex setting of global multilateral negotiations, the MARIPOLDATA team developed their own method and tool for field-note taking, enabling systematic and collaborative participant observation. While ethnographic research has become more prominent in the social sciences, the practice of field-note taking, which is a central part of participant observation, remains only marginally discussed in academic literature. MARIPOLDATA researchers argue that pragmatic approaches to field-note taking in environmental negotiations are underexplored. Their standardized approach deviates from more interpretive forms of ethnography that often allow for greater individual interpretation and reflection of the researchers’ positionality (Vadrot et al., 2025, pp. 2-3, 5). Although this method was effective in capturing the dynamics and events of the negotiation room, it offered limited opportunities for “knowing the world from the standpoint of its social relations” (Vadrot et al., 2025, p. 16). Nonetheless, members of the research team were able to include their own critical reflections (Vadrot et al., 2025, p. 16). They conducted interviews with delegates to improve ethnographic understanding and to gain further insight into processes outside the negotiation space (Vadrot et al., 2025, p. 9).

The researchers collaboratively took real-time field-notes using an Excel-based matrix – a field note-taking template – with predefined categories (Vadrot et al., 2024, pp. 153-154; Vadrot et al., 2025, p. 6). While this method and template was used by all researchers across all meetings, several factors influenced the practice of taking field-notes: the type of event and observation (online, hybrid, or on-site), the meeting format and its level of accessibility, and the negotiation phase (longer or shorter statements, specific text parts that were discussed). For instance, during meetings that were inaccessible to the public but where MARIPOLDATA was granted access, statements were typically shorter, and discussions were more fast-paced. Researchers had to adapt their note-taking practices accordingly (Vadrot et al., 2025, pp. 8, 12-13). The team views this collaborative field-note taking

⁹ These meetings include “president’s consultations” and bilateral meetings as well as informal dialogues (Vadrot et al., 2024, p. 153).

approach including the matrix as a “key methodological innovation” (Vadrot et al., 2025, p. 18) that can be useful for studying negotiations not only in global environmental politics but in a range of negotiation contexts.

The version of this matrix used as the primary data source for this thesis included the following variables: 1) IGC number, 2) date, 3) time, 4) type of statement (e.g. intervention, opening statement), 5) actor (or anonymized state number), 6) alliance (coalitions of states negotiating jointly), 7) observation, 8) interpretative comment, 9) negotiation format (e.g. informal informals), 10) addressed provision (including package, section, subsection, issue), 11) pro or contra position, and 12) the draft version of the Treaty text used at the time of the statement. More than a transcript of what was said in the negotiation room, the database captures systematic data on alliances, statement length, positions on the agreement text and specific provisions, concepts, and meeting formats (Vadrot et al., 2024, p. 172).

Access to this comprehensive primary data from the BBNJ negotiations allows for the examination of these complex global environmental meetings from multiple research perspectives and for different types of analysis (Vadrot et al., 2024, p. 153; Vadrot et al., 2025, p. 2). This is possible because, in MARIPOLDATA’s CEE approach, data collection and analysis have been separated, enabling researchers with different methodological backgrounds to analyze the participant observation data. The field notes consist of transcriptions of what was said by state actors, non-state actors, and secretariat staff, and are clearly distinguished from the researchers’ reflections and interpretative comments (Vadrot et al., 2024, pp. 153-155). Thanks to this clear separation between primary data and its interpretation, I can use the data for my thesis, “zooming in” on the specific issue of the struggle over the CHP. It is important to note that my analysis does not rely on the MARIPOLDATABase, the public version of the data that has undergone several stages of data cleaning and management, but rather on an earlier internal version of the database. This version included some typing errors from the initial field note documentation, which I corrected to present my results. Further details of this process will be provided in the results chapter.

4.2 Data Analysis

This chapter outlines the method I used to analyze the data collected within the framework of the MARIPOLDATA research project. I apply a category-based analysis approach inspired by qualitative content analysis as described by Kuckartz and Rädiker (2018). Rather than strictly following their proposed steps, I adapt the method to suit the specific needs of my research and provide a transparent account of my approach. Qualitative content analysis is well-suited for this thesis, as it enables a

structured and qualitative exploration of the arguments put forward by states advocating for the inclusion of the CHP in the Treaty.

4.2.1 Qualitative Content Analysis

Content analysis can be defined as an empirical method that systematically and transparently examines the content and formal characteristics of communications, typically aiming to draw interpretative conclusions about external contexts. While these communication contents can include e.g. imagery, film, and audio data, in social sciences this data analysis method is usually applied to analyze text or text transcripts (Kuckartz & Rädiker, 2018, p. 382). Content analysis can be both qualitative and quantitative. In political science projects, content analysis is frequently used for analyzing politician speeches or other public communication, as well as for analyzing political documents (Kuckartz & Rädiker, 2018, p. 384).

A crucial tool of qualitative content analysis is the generation of categories and the coding process. Categories are “classification schemes that are used to capture a subject area” (Kuckartz & Rädiker, 2018, p. 385, [translated by author]) and need to be defined as coding rules. The term coding refers to the process of assigning a category to a text passage. This can take two approaches: An inductive approach, where categories are derived from text passages, and a deductive approach, where text passages are identified and coded based on predefined categories (Kuckartz & Rädiker, 2018, p. 386).

There are different variants of qualitative content analysis, with the content-structuring approach being the most used. The goal of this approach is to organize the data by applying a coding frame, allowing for a systematic description and extraction of content relevant to the research question. This content-structuring form of qualitative content analysis, as described by Kuckartz & Rädiker (2018), follows a six-phase process (pp. 388-395).

The first phase is about getting familiar with the material. In this initiating text work, the texts are read thoroughly, important passages are highlighted, and initial thoughts are formulated. A systematic approach is crucial to identify relevant statements related to the research questions. Notes and memos help capture ideas and analyses. Afterward, in phase two, thematic main categories are developed to structure the data material. These categories are often theoretically based – a-priori, “concept-driven” or deductive categories – but can also be derived inductively from the texts themselves. Furthermore, mixed forms of deductive and inductive categorization occur. Main categories are precisely defined and supplemented with examples before being tested for applicability (Kuckartz & Rädiker, 2018, pp. 388-391).

The actual coding process occurs in several steps, where text passages are assigned to the main categories and later to subcategories. A text passage may contain various aspects relevant to the

research, so it may be assigned to several categories. Coding rules are defined in the first coding process to ensure consistent analysis. In the following phase, the coded segments are organized by themes and further differentiated. The analysis can involve simple content descriptions or more complex relationships between categories. To illustrate the results, representative quotes from the data and tables with summaries of the coded text segments can be used. Finally, a report is created that documents the research question, methodological approach, and key findings. A transparent presentation of category development and coding rules is essential to ensure the traceability and quality of the analysis (Kuckartz & Rädiker, 2018, pp. 391-395).

4.2.2 Data Analysis in this Thesis

In this research, the unit of analysis is the negotiation statement. I base my categories on those defined by Vadrot et al. (2022) but develop them further. Therefore, I use a mixed categorization approach, with concept-driven, deductive categories, and inductive categories created from the field notes.

Vadrot et al. have filtered all field notes of IGC1, 2, and 3 in the matrix for CHP-related entries. These were then classified “in favor”, “against” and “neutral or undefined” regarding the inclusion of the CHP in the Treaty and later analyzed with the help of creating substantive categories according to the diverse meaning states gave the CHP. The categories created are: 1) *normative*, 2) *legal*, 3) *economic*, 4) *scientific*, and 5) *other*, and “relate to the different orders within which the CHP is viewed as making a difference” (Vadrot et al., 2022, pp. 234-235).

For this paper, I filtered all field notes of IGC5, 6, and 7 for CHP-related entries with the help of a MARIPOLDATA team member. The government statements were selected with the search term “common heritage”, which was mentioned in 141 observations. These observations do not equate to the number of statements, since researchers had the flexibility to extend a statement across multiple rows to indicate shifts in the topic being addressed by the speaker, e.g. when different provisions or issues were discussed in the same statement (Vadrot et al., 2024, p. 156). “Common heritage” was referenced in 98 individual statements, which constitute this study’s data sample. In the data sample of statements including the mention of “common heritage”, 21 statements contained “freedom of [the] high seas”. “Freedom of” and “freedoms”, together, yielded 42 individual statements in IGC4, 5, 6, and 7. These statements were not studied, since the FOS was not the main focus.

To aid with coding, I used the computer-assisted qualitative data analysis software ATLAS.ti (ATLAS.ti, n.d.). I first gained an overview of the 98 individual statements. I marked which IGC each statement was delivered at by using the statements’ time stamp database, and paid attention to the actors and alliances of states or regions and the meeting formats. Keeping my research interest in mind, I read all statements, already noting and highlighting points of dissent and irregularities in the statements and

noting first impressions of the IGCs. I then coded and classified the CHP-related statements of IGC4, 5, 6, and 7 in an iterative process: In the first step, I distinguished between statements signaling a position “in favor” or “against” the inclusion of the CHP or “neutral or undefined”. This is the same approach that Vadrot et al. (2022) have used. Most delegate statements were clearly either in favor or against the CHP in the Treaty. Statements were categorized as neutral or undefined when delegates were ambiguous, which means that they were not clearly against or in favor of including the CHP.

In the second step, I attributed the text passages to the categories *normative*, *legal*, *economic*, *scientific*, and *other*. These categories correspond to those developed by Vadrot et al. (2022), they are concept-driven. However, in addition to this deductive category formation, I created categories inductively from the material. This is because new developments and arguments related to the CHP and my research question emerged as the BBNJ negotiations progressed, which led me to generate additional categories. When the content of a text passage was not adequately reflected in one of the five categories, I coded the relevant passages in vivo in the first step, and in the second step developed additional categories. This approach is a departure from the qualitative content analysis as proposed by Kuckartz & Rädiker (2018), where main categories are created first, which then undergo differentiation into subcategories. I chose a different path for two reasons: As Kuckartz & Rädiker (2018) point out, the level of abstraction should be as similar as possible for categories, and it is important to determine the required type of categories (p. 392). Furthermore, delegates often repeatedly made the same points, and the text passages that were assigned to different categories were often similar to other passages within the same categories. Therefore, the categories generated by Vadrot et al. (2022) and their level of abstraction seemed well-suited for the analysis of the data material. A circular process of systematizing, organizing, and grouping the in vivo codes resulted in three new categories: *effectiveness*, *support*, and *compromise*. Their descriptions will be provided in the following chapter. Each text passage was coded with one or more categories. All statements were coded, including when information was repeated by the same delegate later or in another meeting.

To ensure higher inter-coder reliability and to ensure that this analysis can draw on and carry forward the study by Vadrot et al. (2022), I consulted my former colleagues at MARIPOLDATA and discussed the different categories and which text passages they can be applied to. When a statement was unclear to me according to the category it could be assigned to, I discussed these cases with the team members. We also discussed the three new categories I have developed in the data analysis process.

In some instances, statements have been observed and noted by more than one researcher, which means that there are two different field note entries on the same statement. This approach was seen as a way to improve field-note quality (Vadrot et al., 2025, p. 13). Co-observations by two researchers were noticeable in the matrix when comparing the statement notes, the time, and other aspects such

as the section, subsection title, and the issue detail. When these aspects – time and actor (or the number of the anonymized state) – matched and the field notes were almost identical, it was clear that the statements had been coded twice. To account for this, I have in a first step coded all field note entries. In no instances were the codes I have assigned to the two noted statements different from each other; However, some entries were more detailed than others, which means that some entries have an additional code to the code(s) of the respective other entry on the same statement. In a second step, I therefore deleted the codes for the respective less detailed entry. This allows for a better analysis and juxtaposition of the different codes.

When analyzing the empirical data and studying the process of introducing the CHP in the BBNJ negotiations, I was looking for “events” in the understanding of Alice Vadrot, meaning moments of contestation and conflict in the negotiations (Hughes & Vadrot, 2023, p. 67). For the analysis of this thesis, the field-note data was complimented by the ENB) reports. These provide detailed summaries of each negotiation day, as well as summaries on the whole IGC, which I filtered for CHP-related information. I did not code these text segments in the way I coded the statements because of their different logic: The ENB text passages do not reveal the arguments used by delegates. Instead, I provided summaries of the CHP-related information in the ENB IGC reports.

In the result chapter, for each IGC I provide a qualitative analysis of the statements by describing the content within the categories of all statements in favor of, neutral or undefined towards and against the CHP. I illustrate these findings with representative quotes and point out moments of contestation. The frequency of the different categories is also of interest to see which arguments and topics were frequently mentioned or rarely discussed, though this does not correspond to any statistical distributions. I then discuss the relationships between the categories by providing a visualization of the co-occurrence of categories. This helps to recognize patterns in the combinations of arguments.

5. Results

After explaining the negotiation setting of the IGCs and the newly found categories, I present the results of my study within each IGC for each category and compare them across different IGCs. Structuring the results for each IGC allows to see changes between the IGCs with regard to arguments and positions, and structuring along the categories is important for ordering the content of the statements. At the end of the results chapter, I provide an overview of the statements in the form of a table.

In this chapter, there are direct quotations from the MARIPOLDATA field notes from the different BBNJ negotiations. As indicated above, I have corrected spelling mistakes such as “dont” instead of “don’t” or “provide solid pbasis” instead of “basis”. The changes made should not change the meaning of the statement or sentence.

5.1 Negotiation Site

IGC4 to 7, just as IGC1 to 3, consisted of different types of negotiations: plenaries, informal informals, and informal working group sessions. The conferences took place at the UN headquarters in New York, with a large number of attendees: IGC5, 6, and 7 were attended by 153 state representatives of UN member states and parties of the convention (United Nations, 2023b, Part IV). representatives of 30 organizations and entities who could participate as observers, and other interested international entities or bodies, including 42 NGOs.

The negotiations were based on the draft Treaty text. In the research by Vadrot et al. (2022) of IGC1 to 3, many statements were made in the framework of plenaries, which means that in those cases, the team could specify the state whose delegate has made a specific statement. However, the postponed negotiations of IGC4, reconvened at the UN headquarters in New York, were governed by the Chatham House Rule with a very limited number of observers and other rules in place due to COVID-19 (ENB, 2022b, p. 3). At the next IGCs, negotiations frequently were undertaken in the framework of informal informals. Furthermore, parallel meetings took place to accelerate progress on the draft text (Vadrot et al., 2025, p. 13). These “closed” meetings were held under the Chatham House Rule, stating that: “When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed” (Chatham House, 2024). Systemic anonymization in closed meetings took place at the level of the MARIPOLDATA database (Vadrot et al., 2024, pp. 156-157). In the analysis for this thesis with data stemming from negotiations that very frequently included informal informal discussions, the respective state can therefore mostly not be disclosed. Whenever a delegate delivered a statement in an open negotiation setting such as a plenary, the respective state that has sent the delegate to the negotiations can be named.

The negotiations happen within a highly organized framework, and delegates are, amongst others, limited by the following aspects: The four BBNJ package elements, the UN “rules relating to the procedure and the established practice of the General Assembly” (United Nations, 2018, Para. 18), and the resources a state has at its disposal discussed earlier. The multilateral negotiation rules of the UN include “consensus-based decision-making, the temporal and special organization of the process, the sitting and speaking order, and the issues addressed” (Vadrot et al., 2022, p. 236). To sum up, the negotiations happen in a highly organized and constrained way, with certain provisions being discussed line-by-line. Debating individual terms or principles is crucial for participants in multilateral negotiations, as demonstrated by the case of the CHP in the study by Vadrot et al. (2022) and this paper.

5.2 Categories

Categories in this study relate to what states contribute in order to advance their interests. As stated before, I have coded the data with the following categories: *normative*, *legal*, *economic*, *scientific*, and *other*, as well as the newly created categories *support*, *effectiveness*, and *compromise*. The new categories have been tested for suitability, modifying them when necessary.

Support is a category created when delegates supported the inclusion of the CHP but did not specify a reason or give an argumentation. An example of this is the “principle of common heritage of [hu]mankind should be there and brackets should be removed” (Informal Informal Discussions on Article 5 (General principles and approaches), Aug. 24, 2022) as the whole statement according to MARIPOLDATA field note data, or “retain reference to common heritage of [hu]mankind” (Informal Informal Discussions on Article 5 (General principles and approaches), Feb. 21, 2023), or “important that common heritage of [hu]mankind will be art of this agreement” (Informal Informal Discussions on Article 5 (General principles and approaches), Aug. 24, 2022). *Support* was therefore only found in statements that were made in favor of including the CHP in the Treaty text.

The category *effectiveness* means that arguments in favor of introducing the CHP in the Treaty are that the CHP would facilitate the implementation of the Treaty or that it would make the Treaty more effective because it would aid in reaching its goals. Examples of this are “the status of common heritage to all mgrs in abnj is an important step and facilitates compromise and protection” (Caribbean Community (CARICOM) in the Plenary, March 18, 2022), and:

I am very passionate about the common heritage of [hu]mankind and I want to contextualize a bit first and foremost is the biodiversity loss we are trying to address in that regard we don't see how the freedom of the high seas adds to that we recognize that freedoms exist but we do

not see the value this adds to conservation (Informal Informal Discussions, Article 5 (General principles and approaches), Feb. 21, 2023).

Several other statements coded as *effectiveness*, amongst other codes, have brought up the FOS. Examples are:

Let us begin with the topic of this which is conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction now having the enumerated freedoms in the preamble does acknowledge the legal relevance to the freedom of the high seas but for this agreement it is not equal with a common heritage of [hu]mankind which is much more simply suited for the goals of this agreement and as a tool (Informal Informal Discussions, Preamble, March 2, 2023).

And:

This particular instrument is about conservation and sustainable use and given that is the exact subject matter of this instrument in that instance as mentioned yesterday by our delegation the common heritage of [hu]mankind is a principle fully embedded with ideas of conservation and sustainable use (Informal Informal Discussions, Article 5 (General principles and approaches), Feb. 23, 2023).

To summarize, *effectiveness* was applied to those statements that argue including the CHP in the Treaty text would a) benefit the implementation of the Treaty, and/or b) benefit reaching the goals of the Treaty more effectively. To avoid creating a new category for arguments similar to any arguments that Vadrot et al. (2022) have assigned to their established categories, I discussed this new category with one of the authors of their study.

The category *compromise* was created to further investigate efforts by states to come to a compromise between the side advocating for including the CHP and the side that rejects it. Usually, a *compromise* statement includes reference to the FOS. An example is:

Given the continuing difference of views on the common heritage we'd like to just throw out two compromise ideas one is during our previous discussion when state mentioned that they could consider including the common heritage of mankind if a similar reference was included

for the freedom of the high seas and I know they just said they would consider they were not saying it was they were going to accept but given the suggestion offers a possible way forward (Informal Informal Discussions, Article 5 (General principles and approaches), Feb. 23, 2023).

This statement was not clearly in favor or against including the CHP, therefore it was categorized as “neutral and undefined”, and in an additional step as *compromise*. The effort to come to a compromise was found in statements in favor, against, and neutral or undefined regarding the inclusion of the CHP. For example, this delegate showed an objection to the CHP, but still aimed for a compromise:

We are not comfortable with the inclusion of CHP in the general principles so at this moment it is very hard for us to support the CHP principles mentioned in the current text however after having heard strong supports to maintain CHP somewhere in this agreement I think it is very important to find some sort of solutions which is acceptable for both sides (Informal Informal Discussions, Article 5 (General principles and approaches), Feb. 23, 2023).

It was therefore categorized *compromise* as a sub-category of “against” the CHP. The statement was not categorized as neutral or undefined regarding the inclusion of the CHP so that the differences in position (“in favor” or “against” the CHP) could be retained. This allows for a more differentiated analysis of the government statements that have tried to arrive at a compromise.

5.3 IGC4

At IGC4, which took place from 7 to 18 March 2022, multiple state actors shared their perspectives on the CHP in BBNJ. In the plenary, the African Group, the Caribbean Community (CARICOM), the Group of 77 and China (G77/China), and the Core Latin American Group (CLAM) referenced the CHP. In all meetings, including informal informals, only one statement was categorized as “against” including the CHP in the Treaty text, three statements were “neutral or undefined” and the remaining 28 statements were found to be “in favor” of its inclusion. Thus, states that were in favor of the CHP explicitly referred to the principle the most.

The first statements with a reference to the CHP were expressed at informal informals to discuss the modalities of CB&TT. The biggest discussions surrounding the CHP’s inclusion, including the statement expressed “against”, took place when the collection and access of MGRs were debated. The statement of state actors that showed a position “against” the CHP in the Treaty text was a *legal* argument.

5.3.1 Normative

In IGC4, a *normative* argument for the inclusion of the CHP used extensively contains equitableness and fairness, mostly calling for the benefits of BBNJ, specifically of MGRs, to be shared equitably. CHP should then “form [the] basis [of] fair and equitable sharing of benefits” (Sierra Leone - African Group, Plenary, March 8, 2022). Another reason advanced was that the agreement should protect biodiversity for current and future generations, which could only be reached by committing to an effective agreement to ensure sustainability, including the CHP. An alternative wording used was “intergenerational equity”.

An argument I categorized as *normative*, along with *legal*, was that MGRs must be under CHP because they could be considered “commodities of [hu]mankind” (Informal Informal Discussions on Article 1, March 9, 2022). On March 9, a delegate called for the inclusion of the CHP while disapproving of the FOS: “the freedom of the high seas has massive exploitation consequences it is not as golden as it is presented” (Informal Informal Discussions on Article 1, March 9, 2022). This was the first time the FOS was mentioned in IGC4.

Some state delegates used the strategy to call attention to their specific, vulnerable situation, such as the “special case of SIDS” (Small Island Developing States) (Informal Informal Discussions on Article 2, March 10, 2022) or the “special circumstances for archipelagic states” (Philippines - G77+China, Plenary, March 18, 2022).

Two similar arguments used by states of the Global South were that BBNJ is a global commons, and that the seas are the common heritage of humankind and the CHP should therefore be the “overarching principle of [the] BBNJ agreement” (Thailand - G77+China, Plenary, March 18, 2022). Lastly, a state delegate called for other states to strive for high ambition for this agreement.

5.3.2 Legal

The prevailing *legal* argument in IGC4 was that legally, MGRs are a common heritage of humankind. Pakistan, on behalf of the G77+China, stated: “MGRs are the common heritage of [hu]mankind and any proposal opposing this will be rejected by G77” (Plenary, March 8, 2022). A representative for China said in the same plenary: “We can make clear that this resource [MGRs] forms part of the common heritage of humankind”. Other state delegates reiterated that MGRs “must” be part of the CHP.

A delegate of El Salvador (alliance: CLAM) said “not only common heritage of humankind we go beyond that we want CB&TT to be functional and efficient” (Plenary, March 8, 2022). CB&TT was not brought up more often in this relationship.

In informal informal discussions, a state delegate delivered a statement opposing that MGRs are part of the CHP: “Marine genetic resources is unspecific in its definition in the high seas there are a number

of issues regarding the implications of this construct MGRs cannot be applied to the common heritage principle there are existing provisions in UNCLOS” (March 9, 2022). Reacting to this statement, state delegates reiterated that MGRs are or must be part of the CHP. The discussion of MGRs went on in IGC4, with pro-CHP delegates bringing up UNCLOS as well, interpreting it differently: “In UNCLOS it says the area and its resources are the common heritage of [hu]mankind not only its resources but the area is in itself too” (Informal Informal Discussions on MGRs, March 9, 2022). In the same discussions, a delegate stated that the “entire architecture is structured around the common heritage of humankind principle which must be the foundation of the use of MGRs”.

In discussions of EIAs, state delegates connected this issue with the CHP: “The EIAs we talk about is a tool as part of common heritage of humanity” (Informal Informal Discussions on EIAs, March 17, 2022).

In the plenary statements of the last day of IGC4, March 18, 2022, states of the Global South highlighted their support for the CHP in the Treaty text. Barbados, on behalf of CARICOM, said that “BBNJ are global common and therefore should be guided by common heritage of humankind principle”, while Thailand (affiliation: G77/China) found “seas are common heritage of [hu]mankind should be overarching principle of BBNJ agreement”.

5.3.3 *Economic*

Economic arguments for the inclusion of the CHP were mostly presented in connection with benefit sharing. For example, the first *economic* statement found was made by Pakistan in the plenary meeting on March 8, 2022: “benefit sharing is mandatory and must be equitable benefits must be monetary and nonmonetary” or Sierra Leone (affiliation: African Group) in the same meeting: “we are concerned in inequitable distribution of benefits as stated by [missing] and China common heritage of humankind should form basis fair and equitable sharing of benefits”. The discussion surrounded the collection of and access to MGRs. The CHP was thus presented as a “good base for future benefit sharing” in this discussion, as China (aligned with G77) adjudged. Similar *economic* arguments were made throughout IGC4.

A different argument that was categorized as *economic* was advanced at informal informal discussions on the collection of and access to MGRs on March 9, 2022: “whether MGRs are common heritage there is a fundamental difference between mineral resources and MGRs minerals have value in the time of finding MGRs have uncertain value at some point in time”. This statement shows once more that the legal status of MGRs – falling under the CHP or not – was highly contested and that in this case, this was also debated with *economic* arguments. Since it was not entirely clear whether this statement was made to show support or rejection of the CHP, this argument was categorized as “neutral or undefined”.

In informal informals about sharing of benefits on March 9, 2022, state delegates debated monetary and non-monetary benefits. One delegate specified: “MGRs as a global common heritage costs do not include monetary benefit sharing costs relate to the construction of the architecture and monetary benefit sharing relates to commercialization”. States that might have disagreed with this and with the inclusion of the CHP did not explicitly name the CHP; There were no arguments categorized as “against” in this discussion.

5.3.4 Scientific

Only three statements of IGC4 were found to contain a *scientific* argument, and all of them were in favor of including the CHP. A delegate brought up MSR in informal informal discussions on MGRs: “support common heritage of [hu]mankind principle the freedom of the high seas has massive exploitation consequences [...] on the issue of MSR UNCLOS is limited when we consider art[icle] we need to be aware that UNCLOS also places limits on MSR”. MSR was not debated further with an explicit reference to the CHP.

The second and third statements containing reference to “science” were made in connection with EIAs: “EIA as common heritage of [hu]mankind common management environmentally sound management based on scientific knowledge” (Informal Informal discussions, March 16, 2022) and “it is the common heritage of [hu]mankind so it should be duty to cooperate and share data and knowledge EIA is a powerful tool to identify environmental harm and we support it” (Informal Informal discussions, March 16, 2022).

5.3.5 Support, Effectiveness, Compromise

Support for the CHP with no further argumentation was shown by countries of the Global South, such as Pakistan: “BBNJ should be guided by common heritage of humankind principle” (Plenary on transparency issues, March 18, 2022).

The only statement categorized as *effectiveness* was made by Haiti (affiliation: CARICOM) in the plenary meeting of March 18: “this is of fundamental importance to us the status of common heritage to all MGRs in ABNJ is an important step and facilitates compromise and protection”.

In IGC4, state delegates have barely tried to find *compromise* between the position supporting or rejecting the CHP. The one statement categorized as “neutral or undefined: *compromise*” was made in informal informal discussions on sharing of benefits: “we believe the principles of common heritage and freedom of high seas will guide MGRs to monetary and non-monetary benefits” (March 9, 2022).

5.3.6 ENB

In their summary report of IGC4, the ENB found that the CHP was discussed in connection with the collection of MGRs in ABNJ and benefit-sharing, with EIAs, with CB&TT, and in general statements in

the plenaries; All from state delegates who were in favor of adding the CHP to the text. The ENB's "brief analysis" contained the CHP only concerning the first week of the negotiations: "During the first week of the session, entrenched positions on all the usual issues surfaced: [...] and overarching principles, including the precautionary principle and the common heritage of humankind" (Earth Negotiations Bulletin, 2022a, p. 20). There were no further elaborations on these "entrenched positions".

5.4 IGC5

IGC5 took place from 15 to 26 August 2022, and state actors who referenced the CHP in plenary meetings were part of the G77/China, the African Group, CLAM, and CARICOM. The same state groups named the CHP in IG4 in the plenaries.

In all meetings, including informal informals, the vast majority of statements with reference to the CHP were made – just as in IGC4 – by states supporting the introduction of the CHP in the Treaty. Only three statements showed a position disapproving of the CHP in the Treaty, while one statement was "neutral or undefined", and these four statements were all made in informal informals. All remaining 21 statements were "in favor" of the CHP and made in plenary as well as informal informal meetings. Again, predominantly states that were in favor of the CHP referred to the principle explicitly. These aspects were therefore again similar to IGC4.

The "Further 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", which was the draft Treaty version of this IGC, included the CHP in Article 5 (General principles and approaches) in brackets: "In order to achieve the objective of this Agreement, Parties shall be guided by the following: (a) The polluter-pays principle; [(b) The principle of the common heritage of mankind;]" (United Nations, 2022a, Art. 5).

5.4.1 Normative

The first statement including the CHP was delivered by a delegate who referred to UNCLOS on August 15, 2022, in informal informals: "MGRs are common heritage of [hu]mankind primary principle of equity is in UNCLOS". Next to presenting a *legal* argument, the delegate connected the CHP to "equity". Speaking out for improving equitableness and fairness were, as in IGC4, the dominant statements categorized as *normative*. Another example is: "area and its resources are the common heritage of [hu]mankind you cannot pick and choose the elements of UNCLOS let us be fair and equitable" (Informal Informal discussions on sharing of benefits, August 16, 2022).

Compared to IGC4, delegates did not mention "future generations" as often in IGC5, but on the last day of the conference, delegates of Namibia and the Dominican Republic brought up this issue in the plenary. The Dominican Republic's delegate also pointed out challenges for small delegations:

“challenge for our delegation small delegations for us this is more than historic agreement for future generations” (August 26, 2022).

Another *normative* argument called for the support of developing countries, for instance: “developing countries all think it should stay on as one of basic principles otherwise the implemented agreement will have no meaning for the countries” (Informal Informal discussions, August 24, 2022). Pakistan, on behalf of the G77/China, stated that “common heritage of [hu]mankind principle should guide the BBNJ agreement for access and utilization of MGRs for food security and sustainable use of MGRs of ABNJ” (August 26, 2022).

5.4.2 Legal

In IGC5, all *legal* arguments advanced by delegates pertained to MGRs being a common heritage of humankind versus those who rejected this interpretation. For example: “MGR in ABNJ constitute the atcommon heritage of [hu]mankind which serves as the legal basis for sharing of benefits” (Informal Informal Discussions on sharing of benefits, August 16, 2022). In the same discussions, a delegate directly brought up UNCLOS and the controversy around the applicable scope of the CHP, which other state delegates find should not encompass MGRs: “area and its resources are the common heritage of [hu]mankind area itself is common heritage of [hu]mankind you cannot pick and choose the elements of UNCLOS”. This argument was supported by other delegates and contested in other informal informals on August 18, 2022: “In UNCLOS resources that are common heritage are clearly mineral resources but this does not affect our discussion as we all agree that there will be benefit sharing”. This is interesting, as it might show a strategy: On the next day, August 19, a delegate said: “cooperate in ABNJ common heritage of [hu]mankind therefore redundant all parties take uniform approach” (Informal Informal Discussions). Both statements were found to reject the CHP in BBNJ. Another statement categorized as *against: legal*, is the following:

common heritage of [hu]mankind is a concept and applies only in respect to mineral resources we already discussed this to apply this to all resources is not appropriate it is not in line with UNCLOS principle of equity law of the sea ensure equitable solutions used for delimitation of maritime areas in continental shelf how this will apply under this agreement is questionable (Informal Informal Discussions, August 24, 2022).

This was again contested by state delegates fighting to include the CHP in the Treaty. They reiterated that the CHP is applicable and needs to be part of the Treaty.

5.4.3 *Economic*

Statements found to be in favor of the CHP and categorized as *economic* focused on the sharing of benefits. The status of MGRs falling under the CHP was presented, as one delegate formulated it, “as the legal basis for sharing of benefits” (Informal Informal Discussions on sharing of benefits, August 16, 2022). In the same meeting, another delegate stated: “common heritage of [hu]mankind principle crucial to strengthening the CB of parties leave room for COP to later determine additional forms of non-monetary and monetary forms of benefit-sharing”, therefore again viewing the CHP as a basis for benefit-sharing and capacity building (CB). Even though other delegates did not explicitly mention the COPs to negotiate the details of benefit-sharing, they did not specify – in statements including “common heritage” – the modalities of the sharing of benefits.

Multiple delegates emphasized the importance of monitoring benefit-sharing for it to be effective or be “in line with the interest of the global community as a whole” (Informal Informal Discussions, August 16, 2022).

The only statement in IGC5 that showed a position against the CHP with an *economic*, along with a *legal* argument, was the following: “Polluter pays principle is reflected in number of international treaty as one of core principles in it but as for what it specifically applies to not certain common heritage of [hu]mankind is a concept and applies only in respect to mineral resources [...]” (Informal Informal Discussions, August 24, 2022). It seems the delegate presented the CHP to be irrelevant, since the polluter pays principle, as they put it, was already part of international treaties.

In the plenary closing statements, Haiti (affiliation: CARICOM) and Pakistan, on behalf of the G77 and China, delivered statements including *economic* arguments for incorporating the CHP in the Treaty, again concerning benefit-sharing.

5.4.4 *Scientific, Other, Support, Compromise*

In IGC5, there were no statements categorized as *scientific* or *compromise*, neither in favor nor against including the CHP in the Treaty. There were four statements showing *support* for the CHP without further argumentation.

The following statement was categorized as “neutral or undefined: *other*”: “common heritage of [hu]mankind is like with game if it is blocked by single player it is over” (Informal Informal Discussions, August 24, 2022). It is not clear whether the delegate is in favor or against including the CHP. However, they seemed to share an observation showing the weight the CHP debate held for the negotiations.

5.4.5 *Effectiveness*

In its plenary closing statement, a delegate of Pakistan, speaking on behalf of G77 and China, presented the CHP as being crucial to tackle several issues. This was the only statement of IGC5 showing an *effectiveness* argument:

Thanks to those with whole hearted engagement maybe for most this is challenging but we are over delegations to coordinate organization of IGC one that slowed progress lessons learned for he resumed session from follows function group of G77 and China will lead to support for engagement common heritage of [hu]mankind principle should guide the BBNJ agreement for access and utilization of MGRs for food security and sustainable use of MGRs of ABNJ it is Friday night past pm all feel as if we have lived here [...] (Pakistan - G77+China, Plenary, August 26, 2022)

This statement was categorized as *effectiveness*, along with *normative*, since the delegate suggested the CHP was partly a remedy for “slowed progress” and showed higher engagement.

5.4.6 ENB

The ENB summary report of IGC5 mentioned that delegations considered the CHP in the General Principles and Approaches article (Article 5). In addition, it listed that in the closing statements, delegations of Pakistan, Mexico, Nepal, Thailand, Indonesia, and Ecuador called for its inclusion as an underpinning principle of the Treaty. The ENB report found that “further work is needed to bridge the chasm of opinions on funding sources and the funding mechanism, while further discussion, despite extensive debates, will be needed on how to include the common heritage of humankind principle” (Earth Negotiations Bulletin, 2022b, p. 12) as part of the general principles article.

5.5 IGC6

States came together to resume IGC5, in this thesis called IGC6, from 20 February to 3 March 2023. State actors who referred to the CHP in the plenaries included states that were part of CLAM, the G7/China, and CARICOM. All statements given in the plenaries were in favor of the CHP.

The majority of government statements that were part of the data sample, including those delivered in informal informals, showed – again – a position in favor of including the CHP in the Treaty. Nevertheless, in IGC6 the difference in numbers was not as stark: ten statements were against including the CHP, nine statements were neutral or undefined, and 23 statements were in favor concerning this. Thus, the CHP was contested more heavily in this IGC than in previous ones, which can also be seen from the number of statements in the data sample: Regardless of the positioning of state actors towards the CHP, this was the IGC with the most mentions of the CHP, with 42 statements in total, in contrast to 25 statements of IGC5 and 32 statements of IGC4 including “common heritage”. The debate intensified on February 23, and again on March 2, and it was the first time state actors tried to find a compromise between the FOS and the CHP. This also means that the FOS was mentioned more often

than in previous IGCs. Almost all statements delivered by state actors to reject the CHP were categorized as *legal* statements, with the remaining statements *against* showing an effort for *compromise*.

5.5.1 Normative

Normative arguments included intergenerational equity and sustainable development, for instance:

Common heritage of [hu]mankind must absolutely be retained should be guiding principle intergenerational equity sustainable development philosophy in the process for rule making and decision-making process meet the needs of current generations without compromising ability of future generations to meet their needs (Informal Informal Discussions, February 21, 2023).

A delegate addressed the meaning of the CHP for states of the Global South:

The equity we are looking for presuming that we are actually making progress but the CHP means so much more to us Global South it represents a hope that we can be better partners with colleagues from North in future [...] please see this hope as the best way forward (Informal Informal Discussions, February 21, 2023).

A similar statement was delivered again, on February 23, where a delegate highlighted what this principle means for the Global South, saying “as a hope for a future of correct balancing so that we can become the partners you need with tackling the issues” (Informal Informal Discussions). Fairness was an issue delegates trying to have the CHP in the Treaty repeatedly made a subject of discussion, reminding others of the “decades of exploitation of our common heritage” (Informal Informal Discussions, February 22, 2023) and that “we can not deny this principle in favor of a few” (Mexico – CLAM, Plenary, March 1, 2023). A delegate put it that way: “it’s got to be a little bit more of an uphill trend for the developing world” (Informal Informal Discussions, March 2, 2023). The statements categorized as *normative* seemed to contain stronger, more emotional language in this IGC.

Palestine pointed out the role of the ocean in tackling climate change, saying that “ocean health is climate health” (Plenary, February 22, 2023).

Interestingly, a delegate addressed that having the CHP in the text is “reflecting the actual balance in the room [...] when you start to count those numbers of the top most populous countries want to see the brackets opened up on the common heritage of [hu]mankind” (Informal Informal Discussions, February 23, 2023).

In IGC6, delegates that were in favor of the CHP in the Treaty made it clear, seemingly more firmly than in the previous IGCs, that the CHP needs to be in the Treaty, otherwise, it would not be “acceptable for all”, as Nicaragua (affiliation: G77/China) put it (Plenary, February 24, 2023). They also made it clear that the CHP shall be reflected throughout the agreement.

5.5.2 Legal

As mentioned above, in IGC6 there were significantly more references to the FOS in the data sample than in IGC4 and 5. An interesting statement was delivered by a delegate on the first day of negotiations, February 20: “We believe that these negotiations uphold the principles of common heritage of [hu]mankind and free access to the high seas in line with UNCLOS” (Informal Informal Discussions). This is interesting because it could be viewed as a strategy to say that the two principles – CHP and FOS – go well together.

Furthermore, a discussion took place around “opt-outs”, with a delegate cautioning against an opt-out as “it is extremely weakening the formulation can be interpreted as anything” (Informal Informal Discussions, February 20, 2023) and speaking out for retaining the CHP.

A delegate also made mention of the SDGs, saying that “we do not see CHP to be replaced by SDGs” (Informal Informal Discussions, February 21, 2023).

Statements containing *legal* elements were part of discussions on the CHP being an “established principle in international law” (Informal Informal Discussions, February 23, 2023) or whether it is a new principle that is not yet clear enough. These discussions did not only take place in IGC6 for the first time; They were held also in IGC5. In IGC6, a delegate fighting for the inclusion of the CHP said:

We understand that this is established principle in international law we’ve been listening to concerns about the delegations including your concern that the convention should not be agreement should not create new principles of international law but in the general assembly adopted resolution which adopted the declaration of principles governing seabed which states clearly that the area and its resources are common heritage of mankind this resolution was adopted by votes without any vote against and one might wonder if this is not enough evidence of the existence of a rule of customary international law this declaration which states that these resources shall be used to the benefit of humanity were endorsed in in the preamble of the convention we also understand that this principle is compatible with article of the convention (Informal Informal Discussions, February 23, 2023).

A similar strategy was used by a proponent of the CHP in reaction to suggestions of referencing the FOS as a principle in the Treaty: “Bringing in new ideas devoid of law I don’t think it should be allowed the freedom of high seas cannot be a principle as per article of the law of this convention it’s only a provision [...] so we do not support it rather we support the common it is a principle which is enshrined in the law book” (Informal Informal Discussions, February 23, 2023).

A state reasoned its negative stance towards including the CHP with it not being a legitimate legal principle, that the “alleged principles listed here unfortunately are not legally enshrined under the general norm in particular we would propose a way out of situation we need to consider these concepts in a well-defined and relevant section of the draft agreement”. In the same statement, the delegate further elaborated: “There’s the idea of common heritage of [hu]mankind it isn’t a principle it’s a concept and the others were all of these are not explained in a number of the international agreements that were listed further documents so I would be very cautious in defining these concepts as principles” (Informal Informal Discussions, February 23, 2023). Another statement against the CHP in discussions around Article 5 (general provisions and approaches) contained a reference to CHP in UNCLOS, namely that it would be a “very specific and narrow application which is not appropriate for [...] the entire BBNJ agreement so we would continue to insist on common heritage of [hu]mankind not being reflected in this section” (Informal Informal Discussions, February 23, 2023).

Substantive debate took place around the exact formulation and place of the CHP in the Treaty text. For example: “We are not comfortable with the inclusion of the CHP in the general principles so at this moment it is very hard for us to support the CHP principles mentioned in the current text (Informal Informal Discussions, February 23, 2023). Another delegate found “many of the proposals brought forth to be unnecessary and their excessive specificity which is consequently [...] limiting in the value that the article can provide” (Informal Informal Discussions, February 23, 2023), when debating the CHP in Article 5, General Principles and Approaches. The delegate then presented an idea for a compromise, which will be elaborated on below.

On more than one occasion did actors not specify why they did not support the CHP. For instance, in a longer statement from an anonymized state, a delegate said “we do not support the reference to common heritage of [hu]mankind to be or more broadly in the agreement” (Informal Informal Discussions, February 23, 2023), without giving further reasons. A state delegate struggling for the inclusion of the CHP said in light of the states wanting to remove the CHP that “we have to recall that the common heritage of [hu]mankind cannot be amended or downgraded from article six says this and it prohibits UNCLOS members from doing so” (Informal Informal Discussions, March 2, 2023).

In IGC6, the debate around MGRs falling under the CHP seemed to be less important in the beginning of the discussions and progressively got more frequent over the course of IGC6. However, when this

issue was brought up by state actors throughout IGC6, the language can be seen as stronger than in previous IGCs:

Ater five years of using the principle of common heritage of [hu]mankind let me draw their attention to the preamble of the UNCLOS and that's really important in the preamble it says conscious that the problems of the ocean space are closely interrelated and need to be considered as a whole that means there's no way we can divide this and that in essence is the goal [...] the very basic definition on which the UNCLOS was founded [...] in which the general assembly of the United Nations solemnly declared internally that the area of the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction as long as its resources and the common heritage of [hu]mankind the exploration and exploitation of which shall be carried out by for the benefit of [hu]mankind as a whole irrespective of the geographical location of states to my submission and humble request to all those countries that if you want to throw the book and clothes book into the dustbin then it is fine we don't have to discuss it today but if we say that that book is our constitution of the ocean that means this preamble has to be combined (Informal Informal Discussions, February 23, 2023).

An interesting argument in connection to this debate was brought forward by an anonymized state actor: "UNCLOS preparatory work shows that draft never intended to exclude living resources from article to conserve and sustainable use interconnected ecosystems it is vital seabed MGRs and water column and jars be subject to the same legal provisions" (Informal Informal Discussions, February 23, 2023). A state delegate that rejected the CHP argued that "the sole category of resources the BBNJ is expected to deal with is MGRs and thus excludes CHP" (Informal Informal Discussions, March 2, 2023).

The data sample of IGC6 ended with a state actor contrasting the CHP with the FOS and seemingly trying to take into account the concerns other state actors have shown regarding the CHP:

as we've said by the common heritage of [hu]mankind is not going to supersede that freedom of a high sea it is constrained by the [...] enumerated freedoms but in conservation and sustainable use they are not equivalent and that's why by putting in the preamble we believe strongly that were acknowledging the limitations of the common heritage of mankind and acknowledging the freedom of the high seas (Informal Informal Discussions, March 2, 2023).

The delegate then made clear that their state does not accept the interpretation of a limit of CHP only to minerals and suggested that the facilitator “might want to freeze this discussion [...] and move on to the rest of the preamble” (Informal Informal Discussions, March 2, 2023).

A new *legal* argument seemed to arise in IGC6, consisting of the claim that the CHP will be constrained by the FOS and that the FOS will still be reflected in the Treaty. In the following example, this was brought up in the preamble debate:

Common heritage of humankind is indeed limited to those preexisting freedoms that are enumerated and perhaps there might be space in the preamble to reflect the access issues that you seek but to put it in the operative articles of this agreement when it doesn't add to conservation sustainable use that's not balanced that is powerful asserting what they want and hoping that the weak accepted once again and there have already been too many compromises on the common heritage of [hu]mankind (Informal Informal Discussions, February 23, 2023).

5.5.2 *Economic*

In IGC6, *economic* statements in connection with the CHP were not very frequently delivered. A state in favor of including the CHP found that the voluntary contributions have “fallen short in the past” (Informal Informal Discussions, February 22, 2023) and that there was no reason to believe it would be different if monetary contributions were to stay voluntary. In the plenary on the same day, Palestine called for further funding of the BBNJ agreement from banks and companies, since the Global Environment Facility (GEF) loan “cannot finance the agreement and contributions won't suffice” and “all have duty to mobilize resources of private sector in ABNJ” (Palestine, Plenary, February 22, 2023).

This discussion was not continued in IGC6 from what can be seen in the data sample. Only on the second to last day of negotiations, in a long statement, a delegate mentioned that the Global South “want[s] the promises of the sustainable development goals” (Informal Informal Discussions, March 2, 2023).

Only three statements were coded *economic* in IGC6, which is substantively less than in IGC4 and 5. What is also interesting is that benefit-sharing was never mentioned in the data sample of IGC6, whereas this was a regularly used term in connection with the CHP in the previous IGC's. This might be because benefit-sharing was mentioned in other discussions, rather than in connection with the CHP.

5.5.3 *Scientific*

The only statement categorized as *scientific* was delivered by Indonesia (affiliation: G77/China), which criticized that the Intellectual Property Rights (IPR) article within the draft Treaty did not reflect the

CHP but should do so throughout the agreement. The delegate continued: “We believe that the IP rights encourage innovation but at the same time it could be a barrier that limits the benefit of research” (February 27, 2023). The CHP was therefore framed as positively influencing research. There were no other statements pertaining to this discussion in the data sample.

5.5.4 Effectiveness

In IGC6, the category *effectiveness* was found more often than in the other IGC’s. A strategy used by state actors throughout the conference was to compare the FOS and the CHP, emphasizing the strengths of the CHP in a) reaching the goals of the BBNJ agreement, and b) successfully implementing the agreement. Examples of that are:

first and foremost is the biodiversity loss we are trying to address in that regard we don’t see how the freedom of the high seas adds to that we recognize that freedoms exist but we do not see the value this adds to conservation whereas for common heritage [...] it represents a hope that we can be better partners with colleagues from North in future to conserve (Informal Informal Discussions, February 21, 2023).

And:

“The common heritage of [hu]mankind is fully a principle embedded with ideas of conservation and sustainable use”, and later in the same statement: “the freedom of the high seas which we assert do not have the conservation and sustainable use values” (Informal Informal Discussions, February 23, 2023).

In a plenary on March 1, 2023, Mexico’s (affiliation: CLAM) delegate advocated states to “speed up and reach agreement for Mexico it is important to include common heritage of [hu]mankind which is basis for sustainable use [...] Mexico alongside CLAM has shown much flexibility to seek solutions and compromises we urge thus others to show the same flexibility”.

In informal informal discussions in the last days of the conference, a delegate clearly emphasized the strength of the CHP for the BBNJ Treaty goals in two statements. One example part is:

Now having the enumerated freedoms in the preamble does acknowledge the legal relevance to the freedom of the high seas but for this agreement it is not equal with a common heritage of mankind which is much more simply suited this principle for the goals of disagreement and as a tool [...] I think the freedom of the high seas is lovely branding what actually what it ends

up if we don't constrain it it is the strong do what they want and the weak do what they can (Informal Informal Discussions, March 2, 2023).

5.5.5 Support, Compromise

State delegates expressed their *support* for the CHP in the document without substantive arguments. The language did seem stronger than in previous IGC's, with delegates clarifying that the CHP is "essential" for them, as CARICOM for instance said (Plenary, February 24, 2023).

In IGC6, several government statements showed ideas to compromise on the two positions regarding the CHP, in favor of its mentioning in the Treaty or not. It was the IGC with most of these statements categorized as *compromise*, and they came from both sides regarding the inclusion of the CHP, as well as from state delegates whose statement did not indicate a clear position ("neutral or undefined"). There were also statements supporting other states' ideas to compromise or consenting to a compromise.

The first proposal of a compromise between the FOS and the CHP from all IGCs studied in this thesis was made by an anonymized state actor on February 23, 2023, starting with the words: "given the continuing difference of views on the common heritage we'd like to just throw out two compromise ideas". One idea the delegate presented was that the FOS and the CHP should both be part of the Treaty text under Article 5 (General Principles and Approaches), which was intended to give a "slightly different context because it is allowing for both rights and obligations" (Informal Informal Discussions, February 23, 2023). The wording the delegate suggested was:

the oceans in areas beyond national jurisdiction are the common heritage of [hu]mankind [...], endowing states and their peoples with certain inalienable rights and obligations. As such, parties recognize the right of access and the freedom of the high seas as well as the concurrent obligations arising from such rights. Accordingly, parties agreed to be guided by the following principles and approaches (Informal Informal Discussions, February 23, 2023).

Apart from this option of combining the CHP and the FOS, the delegates' second suggestion was to put the CHP in the preamble instead of Article 5 (General Principles and Approaches), since "the phrase shall be guided by is to us legally non-binding or aspirational [...] so to us whether the common heritage of [hu]mankind principle appears in the preamble or in article five it makes no legal difference" (Informal Informal Discussions, February 23, 2023). This, "in other words it would frame our entire agreement to move on from the common heritage" (Informal Informal Discussions, February 23, 2023). This idea was likely presented since some states did not agree with listing the CHP under Article five.

Henceforth, the two *compromise* ideas will be called Option A (reference to both the CHP and the FOS in the Treaty text under Article 5) and Option B (reference to the CHP solely in the preamble).

The next government statement in the data sample is a statement coded “against” including the CHP, in which the anonymized state makes clear that it does not support reference to the CHP, neither in article five nor in the preamble. After a few statements delivered in favor of the CHP, the next *compromise* statement supported both suggestions, Option A and B, as outlined above. The reasoning for this was:

We are not comfortable with the inclusion of CHP in the general principles so at this moment it is very hard for us to support the CHP principles mentioned in the current text however after having heard strong supports to maintain CHP some somewhere in this agreement I think it is very important to find some sort of solutions which is acceptable for both sides of us so it's not acceptable for the proponent of CHP principle to delete from the agreement one of the options we see is to move the part stating CHP to preamble or otherwise it could be the second option that if we need to keep CHP in the operative article [...] [we would] like to propose also to include the freedom of high seas to in this article because [...] if even though we only have CHP here namely a concept derived from the provisions on on the area in the general provisions it is not well balanced I have to say so from the point of view of the well balanced BBNJ agreement which is a central one of the central concepts I would appreciate it very much if distinguished delegates and delegations could seriously consider to also include the freedom of high seas here (Informal Informal Discussions, February 23, 2023).

What is interesting here is that the delegate presented the option of including both the CHP and the FOS as “well balanced”. This view was explicitly contested by other states; Directly after this statement, another government statement found adding the FOS to the operative article of the BBNJ agreement “doesn't add to conservation sustainable use that's not balanced that is powerful asserting what they want and hoping that the weak accepted once again and there have already been too many compromises on the common heritage of [hu]mankind” (Informal Informal Discussions, February 23, 2023).

Compromise statements that followed were a support of Option B, putting the CHP in the preamble to refer to it in “aspirational terms and non-legally binding” (Informal Informal Discussions, February 23,

2023), which was made by a state delegate that showed rejection of including the CHP in the way its supporters struggled for. This delegate did not support Option B which would add the FOS to the text, since it may be “unnecessary” as both the CHP and the FOS “are comprehensively delineated in a convention of the law of the sea” (Informal Informal Discussions, February 23, 2023). Two different states’ government delegates rejected reference to the CHP without reference to the FOS, thus showing support for Option B.

On the second to last day of IGC6, on March 2, 2023, the debates surrounding the CHP and the FOS in the Treaty text intensified in negotiating the preamble of the Treaty. A state delegate insisted that its state government would not be able to accept the CHP in the preamble without reference to the FOS. This can be seen as another option, henceforth called Option C, which retains reference to CHP in the preamble but only in connection with the FOS. Other state delegates supported this option when negotiating the text of the Treaty’s preamble. In the same discussions, a state brought forward another *compromise* idea, which calls for neither referencing the CHP nor the FOS, from now onwards Option D. This was presented as “the most evident way to consensus”, “without seeking to undermine one or the other” (Informal Informal Discussions, March 2, 2024). A reason given for this view is that “as soon as we mentioned one [principle] it becomes very aggravating to two significant parts of the room and the same goes for the other one” (Informal Informal Discussions, March 2, 2024). This option was subsequently supported by three other states in the data sample. In their statements, these state actors repeated the claims for a more “balanced” Treaty text and for finding the “path of least resistance” (Informal Informal Discussions, March 2, 2024).

The last *compromise* statement delivered in IGC6 called for either Option D, meaning no reference to either principle or Option A, meaning reference to both principles. The delegate found that since they witnessed “appetite to including” (Informal Informal Discussions, March 2, 2024) the CHP, Option A would be best.

State actors did also support other options; Unfortunately, due to the anonymity of the states who presented their ideas for compromise, I cannot always identify which option states supported, as in some statements actors merely said they are content with an anonymized states’ idea.

The last statements advanced at IGC6 were all arguments in favor of the CHP without adding the FOS. The state actors reiterated with strong and emotional language that the CHP and the FOS are “not equal”, reinforcing *effectiveness* arguments explained above.

5.5.6 Conclusion

To summarize IGC6 from the viewpoint of finding a compromise between the two different sides of states in favor and against the CHP in the Treaty text, the first ideas that states presented aimed to

include both the CHP and the FOS in Article 5, General Principles and Approaches. There was also the idea of addressing the CHP in the preamble, not in the operative part of the Treaty such as Article 5. Another state rallied to add the CHP *and* the FOS to the preamble. These options were contested heavily by states in favor of adding the CHP to the General Principles and Approaches article and the debate intensified. Therefore, according to state actors, an option was presented to name neither the CHP nor the FOS anywhere in the Treaty text as a “path of least resistance”. This option was again rejected by states that struggled to include the CHP in Article 5.

From the ethnographic data I obtained, state actors agree on these different options. No favored option became apparent in the data. However, what seems to be obvious is that state actors who struggled for the inclusion of the CHP in Article 5 strongly rejected the compromise options presented by states who were hesitant or explicitly against including the CHP. The last draft version of the Treaty text from 12 December 2022, contains no reference to the CHP in the preamble, whereas Article 5 says: “In order to achieve the objective of this Agreement, Parties shall be guided by the following: (a) The polluter-pays principle; [(b) The principle of the common heritage of mankind;]” (United Nations, 2022b, Part I, Art. 5). The brackets show that no consensus has been reached before. The next draft Treaty document the UN publicly supplies is dated 12 June 2023, right before the document was adopted by states on June 19 and 20. There were minor changes made to parts irrelevant to this thesis, including changing the article numbers, resulting in the General Principles and Approaches article turning into Article 7. The final wording of this article is:

“Article 7

General principles and approaches

In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches:

- (a) [...]
- (b) The principle of the common heritage of humankind which is set out in the Convention;
- (c) The freedom of marine scientific research, together with other freedoms of the high seas;”
(United Nations, 2023a, Part I, Art. 7).

The final formulation and the inclusion of (c) cannot be retraced from the ethnographic data sample of this thesis¹⁰, because this was likely discussed “behind closed doors”. Additionally, the ENB report does

¹⁰ Based on conversations with MARIPOLDATA team members, the final formulation of the CHP in the Treaty document was not foreseeable from their perspective as observers of the IGCs at the UN New York headquarters.

not give further information on the negotiation process of this compromise. The specific phrasing was not discussed in the statements in the formal negotiations, although it does resemble Option A.

The process of negotiating the final wording of Article 7 is thus not comprehensible, which illustrates the limitations of researching multilateral negotiation sites. The limitations of the MARIPOLDATA CEE data of the BBNJ negotiations and this thesis will be disclosed and elaborated at the end of this thesis. At this point, it is important to highlight that the final negotiations and bi- or multilateral negotiations and consultations between states outside of the negotiation room in an informal setting stay opaque. Even though they are part of the negotiation process and relevant for research, as is apparent in this thesis, debates outside the negotiation setting with their access for researchers cannot be retraced and remain unknown.

5.5.7 ENB

Already in its introduction, the ENB summary report of IGC6 read that there was “considerable debate on the inclusion of the principle of the common heritage of humankind and whether it should be counter-balanced with a reference to the freedom of the high seas” (Earth Negotiations Bulletin, 2023a, p. 1). This summary report was structured so that for each part of the Treaty, a paragraph covered the discussions and negotiations of IGC6, followed by the wording of the final agreement. It mentioned that there were “charged” debates (Earth Negotiations Bulletin, 2023a, p. 3) on adding the CHP to the preamble and/or the FOS, while most delegations called for including the CHP in the operative part. In the General Principles and Approaches article, the ENB briefly concluded that many delegations were supporting the inclusion of the CHP here, with others calling for a more “balanced” text by adding the FOS. The authors of this ENB report saw “fundamentally different understandings” (Earth Negotiations Bulletin, 2023a, p. 18) concerning the overarching principles, especially the CHP versus the FOS, which “haunted the entire process” (Earth Negotiations Bulletin, 2023a, p. 18). Still, a compromise was agreed on.

5.6 IGC7

States met a final time to finalize and adopt the BBNJ agreement on June 19 and 20, 2023. All statements of IGC7 containing reference to the CHP were delivered in a plenary setting and departed from former IGCs’ statements by being longer. All 28 statements were categorized as being “in favor” of the CHP’s inclusion. States and state groups included Venezuela, Alliance of Small Island States (AOSIS), CARICOM, the Least Developed Countries (LDCs), Palestine, CLAM, the G77/China, and the African Group. No state or state group from the Global North referred to the CHP in their plenary statements. In other words, once the Treaty was agreed on, states solely from the Global South brought up the CHP in their closing statements.

In IGC7, the deliberations and struggles to include or omit the CHP and the *compromise* debates between adding the CHP and/or the FOS had already been finished. There were no statements categorized as *compromise* or *support*.

5.6.1 Normative

In their closing statements, states from the Global South expressed satisfaction with the inclusion of the CHP in the Treaty. For instance, as a delegate of Bangladesh put it: “We are delighted to witness the inclusion in the text of the principle of the common heritage of [hu]mankind [...] this principle holds immense significance as it acknowledges the global responsibility for preserving and equitably utilizing [BBNJ] [...] ensuring it remains a common heritage for all” (Bangladesh – LDCs, Plenary, June 19, 2023).

Normative arguments contained emphasis on the equitability, fairness, and inclusivity of the agreement through the adoption of the CHP as one of its guiding principles. According to Venezuela, this “takes into account the interests and needs of all of humanity without exclusion of any kind and in particular of developing countries” (Venezuela – Non-UNCLOS party, Plenary, June 19, 2023). Moreover, many states alluded to the protection of BBNJ for present and future generations. States also found the CHP and the sharing of benefits will contribute to the sustainable development of all nations. Many of these states reiterated the economic meaning of the Treaty and the CHP, which will be specified below.

Some delegates from the Global South interpreted the completion of the negotiations and the Treaty document as a “victory for multilateralism” (for instance: Philippines – G77/China, Plenary, June 19, 2023). Furthermore, the mention of the CHP in the Treaty document was by multiple states framed as an achievement and success of the hard work of developing countries. For instance: “It is to be credited to developing countries the intuition of the principle of common heritage of humankind and the final agreement which is a fundamental conception [...] developing countries had to struggle to introduce this notion” (Cuba – AOSIS and G77/China, Plenary, June 19, 2023).

Delegates’ statements showed the hope and significance developing countries ascribed to the CHP and the Treaty. This becomes apparent in statements such as the following, where a delegate for Pakistan found the CHP might hold several positive consequences:

It is heartening to see the reflection of the principle of common heritage of mankind specified in article seven paragraph b of this agreement for the Global South this principle provides a solid legal foundation for a fair and equitable regime that will allow all countries to benefit from the potential that marine biodiversity represents in terms of global food security and economic prosperity and to address the challenges of conservation and sustainable use of marine genetic resources of areas beyond national jurisdiction while giving special attention to the unique

circumstances and special needs of developing countries (Pakistan – G77/China, Plenary, June 19, 2023).

Other state actors pointed out the importance of the ocean for tackling global crises such as climate change. Delegates also argued that the CHP is important for justice reasons: “it is about justice underpinned by the common heritage of humankind adherence to it is a must” (Palestine, Plenary, June 19, 2023), and “the principle of the common heritage of human economy which is at the roots of the great revolution of the seas”(Peru – CLAM, Plenary, June 19, 2023).

To summarize the *normative* arguments state actors brought forward in IGC7, delegates of the Global South put emphasis on the CHP and ascribed significance to its inclusion in the Treaty text.

5.6.2 Legal

In IGC7, there were substantively fewer *legal* arguments than in previous IGCs. The statements that were categorized as *legal* included the view that the CHP “certainly represents progress in terms of international law”, as a spokesperson of Cuba on behalf of the G77/China put it (Plenary, June 19, 2023). This view was reproduced by Vietnam, Cuba, and Pakistan in the same plenary.

Two delegations spoke explicitly about the CHP concerning MGRs. Vietnam’s delegate said: “The adoption of the [...] agreement especially the formation of the principle marine genetic resources our common heritage of [hu]mankind is also encouraging” (Plenary, June 19, 2023). In its closing statement, Brazil found that:

[The] inclusion of this principle in the BBNJ agreement marks a new era in which humankind as a whole must benefit from resources of both the high seas and international seabed this is a historic expansion of the scope of the principle compared to the Montego Bay convention which considers only the resources of the international seabed as common heritage who in the BBNJ agreement the marine biodiversity of areas beyond national jurisdiction including the high seas is the common heritage of humankind (Brazil – CLAM, June 19, 2023).

Multiple state actors called for a thorough reflection of the CHP in “every action in the highest series including scientific research activity” (Cuba – AOSIS, on behalf of the G77/China, Plenary, June 19, 2023). Another example is: “We feel that this concept should be included broadly and accepted by all of the international community” (Bolivia, Plenary, June 20, 2023). Brazil stated that benefit-sharing from utilizing MGRs and CB&TT are “concrete application of this principle” (Brazil – CLAM, Plenary, June 19, 2023).

Interestingly, a delegate of Pakistan spoke about the limits of the scope of the “freedoms” that came to be part of the Treaty text:

I would also like to underscore that the scope and legal effects of the freedom of marine scientific research specified in article seven paragraph c of this agreement should be interpreted in light of the provisions of the united nations convention on the law of the sea concerning marine scientific research article of one clause is central to any such interpretation and accordingly marine scientific research cannot provide the legal basis for any claim to ownership or propriety rights in any part of the marine environment or its resources (Pakistan – G77/China, Plenary, June 19, 2023).

Other state actors did not explicitly speak about these “freedoms” named in the Treaty text. However, state actors did frame the CHP as the underlying principle, the “guiding and governing principle of the agreement” (Egypt – African Group, Plenary, June 19, 2023), which becomes apparent in statement parts such as the following: “The agreement creates the legal framework so that new opportunities offered by scientific and technological progress will work for the common good of present and future generations” (Peru – CLAM, Plenary, June 19, 2023). In connection with emphasizing the importance of the CHP, some state actors pointed out that no claims to sovereign rights can be made in ABNJ (Indonesia – G77/China, Plenary, June 19, 2023).

5.6.3 *Economic*

Most statements categorized as *economic* focused on the CHP’s role in a more just and equitable economic future which considers the needs of developing countries. For example, Venezuela’s spokesperson said: “[...] to consolidate a new international economic order of which is more just inclusive and equitable which actually takes into account the interests and needs of all of humanity without exclusion of any kind and in particular of developing countries” (Plenary, June 19, 2023). Many states highlighted the mechanism of CB&TT and the sharing of benefits derived from ocean resources in the Treaty as being beneficial and important for all states, especially those of the Global South. For instance: “The group of LLDCs [Landlocked Developing Countries] also attach great importance to the building and development of capacity [building] and the equitable sharing of benefits more so given the challenges that we face as developing countries” (Botswana – African Group, Plenary, June 19, 2023). The ocean was seen by different delegates as a vital source of prosperity or well-being (for instance: Madagascar – African Group, Plenary, June 20, 2023).

Some delegates said that CB&TT and financing are necessary for supporting states in the implementation of the Treaty (for instance: Antigua and Barbuda – CARICOM, June 19, 2023). Several

state actors spoke about sustainable development, finding that “these principles are the basis for a regime which will allow all countries to benefit from the potential of marine biodiversity in terms of sustainable development” (Venezuela, Plenary, June 19, 2023).

5.6.4 *Scientific*

There were merely two statements categorized as *scientific* in IGC7. In one statement delivered by Somalia, the delegate reminded states that the benefits from advancing scientific knowledge shall be shared equitably amongst all humanity (Somalia – African Group, Plenary, June 19, 2023). The second statement was issued by a delegate of Sri Lanka and included knowledge exchange through a CB&TT mechanism: “We eagerly anticipate the establishment of robust capacity building and transfer of marine technology committee during the implementation phase this committee will play a vital role in facilitating knowledge exchange” (Sri Lanka – G77/China, June 20, 2023).

5.6.5 *Effectiveness*

In IGC7, states highlighted that the CHP was beneficial for the implementation of the Treaty and, even more frequently, for reaching its specified goals, i.e. the conservation and sustainable use of marine biological diversity in ABNJ.

Examples of a view of the CHP being beneficial for reaching the goals of the BBNJ Treaty are the following: “this principle holds immense significance as it acknowledges the global responsibility for preserving and equitably utilizing marine biological diversity” (Bangladesh – LDCs, Plenary, June 19, 2023), and: “the common heritage of humankind [...] emphasizes the earth the ominous obligations to protect the environment of the high seas it is the universe and values flowing from the principle that secure the conservation and sustainable use of the global commons” (Palestine, Plenary, June 19, 2023). Another example is:

What we held most closely to our hearts [...] is the urgency of us to save our ocean and the planet this is an essence in the main thrust of the common heritage of humankind principle which the African Group was committed to ensure its forms and the governing principles of the BBNJ agreement this position is aligned to the global goal to secure ocean sustainability for the president and future generations consistent with goal of the agenda of sustainable development in this United Nations decade of ocean science for sustainable development (Somalia, African Group – Plenary, June 19, 2023).

The delegate continued by pointing out the importance of a “healthy ocean” as a tool for tackling climate change, however only “its effective equitable and fair implementation will determine its real impact” (Somalia – African Group, Plenary, June 19, 2023).

In connection with the calling to uphold the CHP, the Maldives urged states to “uphold their commitments to work collectively towards its effective implementation” (Maldives – AOSIS, Plenary, June 19, 2023). Several state delegates presented the CHP as being beneficial for the implementation of the Treaty through sharing benefits from the ocean among all states and CB&TT (for example Thailand – G77/China, June 20, 2023). These mechanisms were spoken about in close connection with the CHP:

This principle provides a solid legal foundation for a fair and equitable regime that will allow all countries to [...] address the challenges of conservation and sustainable use of marine genetic resources [...] while giving special attention to the unique circumstances and special needs of developing countries in terms of capacity building and the transfer of marine technology (Pakistan – G77/China, Plenary, June 19, 2023).

The very last statement of the data sample was not from a government but from the Third World Network. This statement is interesting because the spokesperson celebrated the finalization and adoption of the agreement but also raised concern over issues in the Treaty they regarded as problematic. In terms of the CHP, they were content with the principle’s inclusion in the Treaty, adding that the principle of equity and fair and equitable benefit-sharing are intertwined. However, they mentioned that Digital Sequence Information (DSI) is the common heritage of humankind and said that their organization is “concerned that article one allows parties to opt out of benefit sharing related to internet resources and DSI collected or generated before entry into force of the agreement” (Third World Network, Plenary, June 20, 2023). The spokesperson called upon states to exercise “in good faith and not opt out of this important part”.

5.6.6 ENB

The very last summary report of the BBNJ negotiations, that of IGC7, stated about the CHP that several delegations welcomed the CHP in the Treaty text (Earth Negotiations Bulletin, 2023b, p. 1). These included delegates from the Maldives, the Philippines, Mexico, Cuba, Somalia, Bangladesh, Botswana, Vietnam, Barbados, Greece, South Africa, Tunisia, Thailand, Sri Lanka, and Uganda. These members of the IGC lauded the CHP’s inclusion and underscored its meaning (Earth Negotiations Bulletin, 2023b, pp. 4-8). There were no further mentions of the CHP in this summary report. Table 1 gives an overview of government statements and the categories that were attributed to them in IGC4, 5, 6, and 7.

Table 1. Overview of government statements made during IGC-4, IGC-5, IGC-6, and IGC-7 regarding the CHP. (Source: MARIPOLDATA data, own overview). The alliance the respective state is part of is abbreviated "A.".

	Statements in favor of the CHP	Statements against the CHP	Statements neutral or undefined
Normative	• Conserve biodiversity for current and future generations (African Group; G77/China; CLAM; Venezuela; Maldives (A.: AOSIS); LLDCs) • Ocean is global commons (CARICOM; G77/China), MGRs as common concern of humankind • CHP acknowledges common responsibility for preserving and equitably utilizing BBNJ (African Group; Bangladesh (A.: LDCs); G77/China; CARICOM) • Fairness and equitableness of benefits (G77/China; African Group; Venezuela; Maldives (A.: AOSIS); CARICOM; LLDCs; CLAM); And in the international economic order (Venezuela; Ecuador (A.: G77/China)) • More equitableness should contribute to sustainable development (Venezuela; G77/China; African Group), especially for those nations most vulnerable to climate change and environmental degradation (Maldives (A.: AOSIS); African Group) • Ocean is a key to address climate change (African Group) • Ocean connects us (CLAM; G77/China) • Account for special situation of SIDS, archipelagic states (Philippines (A.: G77/China)) and LLDCs (African Group) • Means hope for developing countries (LLDCs), special situation for developing countries (G77/China; CLAM; CARICOM; African Group; Venezuela) • Developing states want the promises of the SDGs for a more equitable future • Strive for high ambition and commitment (African Group; G77/China) • BBNJ is a common heritage of humanity and not an exclusive right to a few countries with resources (African Group)		

	• Better cooperation between North and South • Solid basis for implementation by all parties • National ownership not in line with current resources in ABNJ; equity and change after decades of exploiting ocean • CHP for food security (G77/China; African Group) • Document needs to be acceptable for all (Nicaragua (A.: G77/China)) • Ocean health is climate health (Palestine) • Majority of states want CHP; majority of world population (CLAM) • Other states should also show flexibility, developing world has compromised a lot already (Mexico (A.: CLAM)) • Administrative issues should not hold us down (Mexico (A.: CLAM)) • Development and quality of life (El Salvador (A.: CLAM)) • Interests and needs of all of humanity without exclusion (Venezuela) • Peaceful use of ocean (Indonesia (A.: G77/China), solidarity and social justice (CLAM)) • Ocean justice, obligations towards humanity and earth (Palestine) • CHP is at the roots of revolution of the seas (Peru (A.: CLAM)) • Shows that multilateralism works (G77/China; CARICOM; LLDCs; African Group)		
Legal	• MGRs fall under/must fall under the CHP (G77/China; CARICOM; CLAM) • Problems of ocean space are closely interrelated, therefore MGRs need to be under CHP too, otherwise the CHP in UNCLOS will be undermined • MGRs as CHP is the legal basis for benefit-sharing (China (Aligns with G77)) • Entire architecture of the agreement we build is structured around the CHP	• CHP cannot be applied for MGRs; MGRs cannot be part of CHP • MGRs are unspecific in their definition • Common heritage of humankind applies only to mineral resources according to UNCLOS, to apply it to all resources is not in line with UNCLOS	• We believe the principles CHP and FOS will guide MGRs • We believe that these negotiations uphold the CHP and free access to the high seas in line with UNCLOS • Appropriate legal name is common heritage of mankind, not common heritage of humankind

	• BBNJ are global common and therefore should be guided by CHP (CARICOM) • UNCLOS needs additional regulations • EIAs are a tool as part of CHP • Authority of COP to establish ABMTs • CHP crucial to strengthen CB • Elements of UNCLOS cannot be picked and chosen individually – area and its resources are CHP; articles must be in relation to UNCLOS which has CHP in preamble and was endorsed • DSI can be suitable with CHP • CHP is an established principle of (customary) international law (Palestine) • CHP cannot be replaced by SDGs • Placement of CHP in Treaty is important to not dilute it • UNCLOS preparatory work shows drafters never intended to exclude MGRs from CHP • FOS cannot be a principle, it is only a provision • CHP needs to be reflected in article on IPRs (Indonesia (A.: G77/China)) • CHP will not supersede FOS but is constrained by FOS • CHP represents progress in international law (Cuba for G77/China (A.: AOSIS); CLAM; Vietnam (A.: G77/China)) • No sovereign rights shall be recognized in ABNJ (Indonesia (A.: G77/China)) • CHP in BBNJ further develops UNCLOS and international ocean governance framework (CLAM; G77/China) • CHP in BBNJ is an expansion of the scope of the principle (Brazil (A.: CLAM)) • Fair and equitable sharing of benefits and CB&TT as concrete applications of the CHP (Brazil (A.: CLAM)) • CHP as basis, CB&TT as pillar for the agreement	• CHP is redundant as states already cooperate in ABNJ • CHP is not necessary as there will be benefit-sharing • CHP is not a (legal) principle but an idea or a concept • CHP is not clearly defined and we do not accept text that requires definition • CHP should not be a general principle of the whole BBNJ agreement but only apply to specific and narrow topics; in UNCLOS it was a narrow application also • Reference to CHP and other proposals are unnecessary and excessively specific limiting the value of the article	
Economic	• Benefit-sharing (monetary and nonmonetary) is mandatory part of the agreement (G77/China; African Group; CARICOM; CLAM)	• Polluter pays principle is already reflected in a number of international treaties	• CHP and FOS will guide MGRs to monetary and non-monetary benefits

	• Developing states need funding to implement and benefit from the Treaty (Venezuela; African Group; LLDCs; CARICOM; G77/China) • Voluntary contributions have fallen short in the past, it will be the same without a mandatory benefit-sharing mechanism • Private sector has to mobilize resources for funds but will not be enough to finance agreement (Palestine) • CHP and sharing of benefits contribute to the sustainable development of all countries (Maldives (alliance: AO-SIS)) • Efforts to consolidate a new international economic order which is more just, inclusive and equitable after having had an economic predator system (Venezuela); treaty opens new era of building a more just and fair international economic order (Ecuador (Alliance: G77/China)) • CHP provides legal foundation for all countries to benefit from marine biodiversity in terms of economic prosperity (African Group; CARICOM; G77/China) • Oceans play important role for sustainable development and economic rights (Madagascar (Alliance: African Group))		• Fundamental difference between mineral resources and MGRs: Mineral resources have value in the time of finding, MGRs have uncertain value in the future
Scientific	• UNCLOS places limits on MSR • EIA is a tool as part of CHP and means environmentally sound management based on scientific knowledge • Sea is common heritage of humankind, therefore it should be a duty to share data and knowledge • Chapter on IPR should reflect CHP - IPR encourage innovation but simultaneously can be a barrier limiting the benefits of research (Indonesia (A.: G77/China)) • Robust CB&TT in Treaty with CHP to facilitate knowledge exchange and cooperation in technology development (Sri Lanka (A.: G77/China)) • DSI must be used for benefit of all humanity particularly in advancing scientific knowledge (African Group)		

Effectiveness	• CHP of MGRs facilitates compromise between states and protection (Haiti (A.: CARICOM)) • Include CHP to speed up negotiations, faster adoption of the Treaty, and for higher engagement and progress (G77/China; Mexico (A.: CLAM)) • FOS does not add any value to conservation, sustainable use or protection • CHP is embedded with ideas of conservation and sustainable use, therefore suited well for goals of BBNJ Treaty (Palestine; Pakistan (A.: G77/China)); CHP better suited for the Treaty's purpose than FOS • Urgency to save our ocean and planet is an essence of CHP, with CHP the agreement has the necessary tools for ocean sustainability (African Group) • CHP for effective implementation of Treaty (Maldives (A.: AOSIS); African Group; CARICOM; Thailand (A.: G77/China)) • For a robust, coherent and beneficial agreement (CARICOM); for progress and new opportunities (Peru (A.: CLAM)) • Treaty with CHP: preservation, sustainable use and protection of BBNJ (Bangladesh (A.: LDCs); Thailand (A.: G77/China); African Group)		
Support	• BBNJ should be guided by CHP; CHP needs to be in the Treaty to be acceptable (G77/China; African Group; CARICOM)		
Other			
Compromise		• Either have CHP in the preamble or if it stays in the operative article, FOS should be included to be more balanced • Reference to CHP but only in preamble • Add FOS as context for CHP	• Add both reference to CHP and FOS, giving the CHP a different context that allows for both rights and obligations • Leaving the deeper debate on CHP and FOS for later (facilitator) • Compromise for both sides is to delete reference to both the CHP and the FOS

5.7 Across all IGCs

5.7.1 Reference to FOS

As written above, in 20 statements of the data sample “freedom of [the] high seas” was mentioned along with “common heritage” in the same statement.

With the search function, I found these mentions with the search words “freedom of”. This showed that the FOS was mentioned only twice in IGC4 and 5. One statement delivered in IGC4 called out the FOS for having “massive exploitation consequences it is not as golden as it is presented” (Informal Informal Discussions, March 9, 2022) and showed support for the CHP. In another statement, a delegate mentioned the CHP and the FOS together in a way that does not clearly indicate a position for or against the CHP: “We believe the principles of common heritage and freedom of high seas will guide MGRs to monetary and non-monetary benefits” (Informal Informal Discussions, March 9, 2022). Hence, this statement was categorized as “neutral or undefined” and in a second step as *economic* and *compromise*.

In IGC6, the FOS was mentioned the most often, specifically in 18 statements, and generally in two ways: Either the FOS was presented as not having any advantages in reaching the Treaty goals in contrast to the CHP, or states tried to come to a compromise by, for example, including references to both the FOS and the CHP. A debate surrounding this compromise idea unfolded, where state actors in favor of adding the FOS if the CHP was also to be part of the Treaty text, mentioned the FOS explicitly, and those state actors who tried to fight against this option did so less frequently. The debate went on to another compromise idea, which consisted of neither naming the CHP nor the FOS explicitly. Here, again, states who were against mentioning either principle mentioned the FOS more frequently than those who were in favor of including the CHP.

In IGC7, “freedom of” was only mentioned once, specifically “freedom of marine scientific research” (Pakistan, Plenary, June 19, 2023). After showing gratitude for the inclusion of the CHP in the Treaty text, the delegate of Pakistan put this freedom into context and alluded to its limits by pointing to the relevant UNCLOS provisions. According to them, “marine scientific research cannot provide the legal basis for any claim to ownership or propriety rights in any part of the marine environment or its resources” (Pakistan, Plenary, June 19, 2023).

5.7.2 In Favor of the CHP

The predominant *legal* argument used by states was that MGRs are a common heritage and fall or should fall under the CHP. This was often accompanied by the assertion that MGRs as part of CHP form the legal basis for the sharing of benefits.

The vast majority of *economic* arguments in favor of the CHP in the Treaty included a demand for fair and equitable benefit-sharing. The argument here is that the benefits derived from the exploitation of MGRs shall be shared fairly and equitably with other states, especially those from the Global South. Besides monetary benefits, non-monetary benefits shall be shared. DSI is one other benefit that has been requested.

Figures 2, 3, and 4 display the co-occurrence of categories found in government statements during IGC4, 5, 6, and 7, presented as Sankey Diagrams generated with ATLAS.ti. A consistent color scheme is used across all three to facilitate comparison of the co-occurrence and overlap of the argument types used in supportive, opposing, and neutral or undefined positions regarding the CHP. The colored bands represent the categories, and the flow and width of the bands indicate how frequently these arguments were linked or appeared together in states' statements. The diagram also illustrates the number of times a particular type of argument was found in the data.

Figure 2 demonstrates that the most frequent category of statements delivered by states supporting the CHP's inclusion was *normative*. *Economic* arguments were most frequently intertwined with other arguments – particularly with *effectiveness*, *legal*, and *normative* reasoning. This suggests that many states tried to link the principle to practical implementation and benefit-sharing concerns. *Normative* arguments such as fairness and equity connect strongly with both *legal* and *economic* arguments. States therefore often underpinned their arguments with ethical considerations. *Effectiveness* appears relatively connected to other categories, and states developed the *effectiveness* narrative later in the process, likely to bridge diverging positions. *Scientific* arguments were less frequent and tended to stand alone or were only weakly connected with other categories. Arguments “In favor: *other*” and “In favor: *compromise*” were not found, while *support* was but did not co-occur.



Figure 2: In Favor of the CHP (Source: own data).

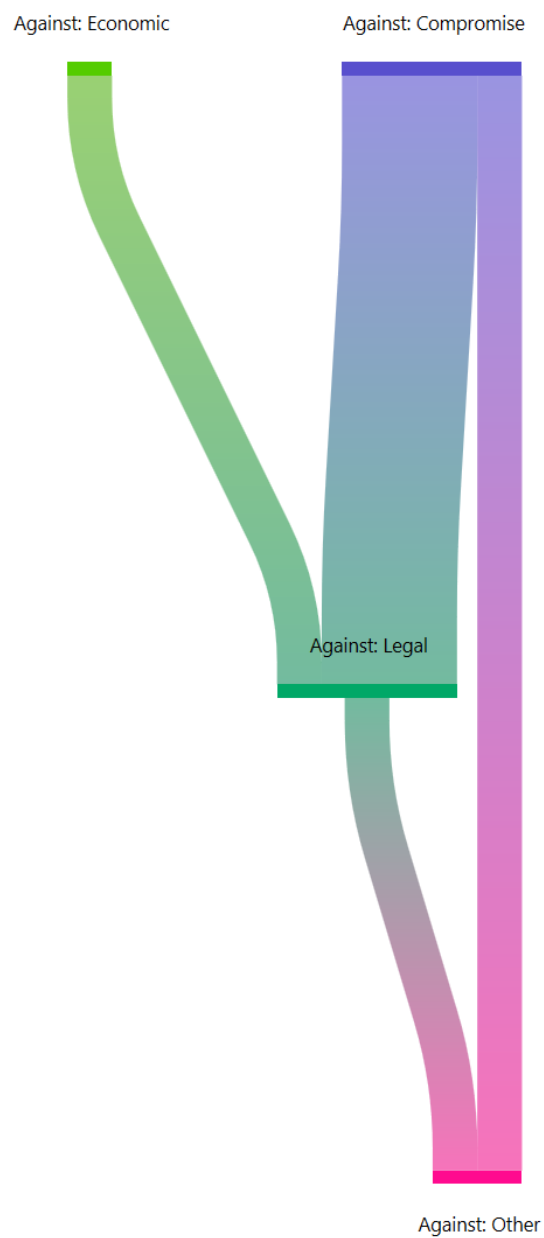


Figure 3: Against the CHP (Source: own data).

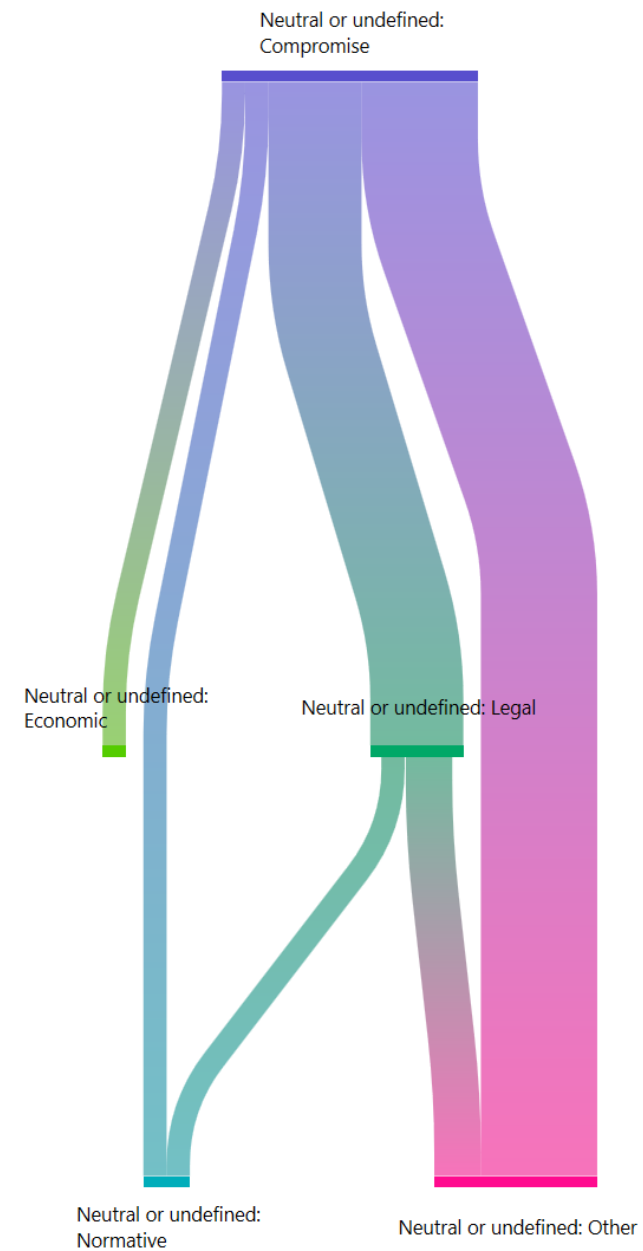


Figure 4: Neutral or Undefined (Source: own data).

5.7.3 Statements Against the CHP and Neutral or Undefined Statements

Remarkably, all statements of speakers categorized as “against the CHP” were made in the setting of informal informals. Since these meeting formats fall under the Chatham House Rules, the state names or state groups cannot be disclosed. In other words, no government statements that clearly show a position “against the CHP” were made in the plenary sessions. Also, the statements categorized as “neutral or undefined” regarding the inclusion of the CHP were made in informal informals. Only a summary made by the facilitator of the negotiations that was categorized as “neutral or undefined” took place in a plenary meeting.

The arguments against the CHP were predominantly *legal*, with only two *economic* arguments. The most frequent arguments against the CHP were made in connection with MGRs. States strongly rejected the interpretation that the CHP can be applied to MGRs. In IGC6, a few statements were found to show a position against the CHP but, since the pressure was increased, still tried to find a *compromise*.

Figure 3 illustrates the co-occurrence of categories found in government statements opposing the CHP. It reveals that *legal* objections were central to the opposition, frequently overlapping with *compromise*-related arguments. States opposing the CHP frequently challenged the legal grounding of the CHP. The few *economic* arguments were less connected to other categories; *Economic* reasoning played a minor role in opposing the CHP. The category *other* appeared marginal. There were no *normative* and *scientific* arguments put forward by states resisting the inclusion of the CHP.

Figure 4 visualizes the co-occurrence of neutral or undefined arguments related to the CHP. It shows that *compromise* emerges as the dominant subcategory, frequently intersecting with *legal*, *normative*, and *economic* arguments. The prominence of *legal* and *other* arguments and the fewer *normative* arguments within this neutral or undefined framing indicate that some statements were less ideologically charged. The *normative* argument that was found in a “neutral or undefined” position appeared alongside *compromise* and *legal*. There was no *scientific* argument found.

6. Discussion

This chapter discusses and interprets the results of the analysis and relates them to the theoretical lens of this thesis, namely the concept of epistemic selectivities. To repeat the central argument of this concept: “The idea of epistemic selectivities assumes that specific patterns of selectivity lead to the domination of specific forms of knowledge and the related contents, problem perceptions, and narratives over other knowledge and contents” (Vadrot, 2017, p. 69). This ability to define and shape knowledge reinforces the governance of how an issue is understood and assessed. A key factor in this stabilization process is the institutionalization of these dominant forms of knowledge, perceptions, and narratives, as well as the expectations actors attach to the creation of specific institutions (Vadrot, 2017, p. 69).

Before discussing my results with this theoretical lens, I first briefly lay out the findings by Vadrot et al. in their study of 2022. I then aim to juxtapose the findings of this study with those of the Vadrot et al. (2022) study.

6.1 Results in the Context of Findings by Vadrot et al. (2022)

Vadrot et al. found that in IGC1, 2, and 3, many states of the Global South pushed for the inclusion of the CHP, reviving a longstanding and profound divide that traces back to the initial UNCLOS negotiations. The division between countries of the Global North and countries of the Global South continuously structured the CHP debates throughout the IGCs. The number of countries supporting the CHP’s inclusion was much larger than the number of countries of the Global North opposing it, while only a very small number of countries had an ambiguous position, for instance, China and Bangladesh. The authors have studied the number of occasions a country’s delegate has brought up the CHP; The Russian Federation and the US have shown their rejection of the CHP most often, while CLAM, the G77 and China, the African Group, and the Pacific Small Island Developing States (PSIDS) have given most statements about the CHP and shown their support for its inclusion. Figure 5 shows governments’ positions regarding the CHP, where line thickness indicates the frequency of CHP-related statements made by government delegates (Vadrot et al., 2022, p. 235). Despite the number of countries advocating for the CHP was larger than that of countries in opposition, the draft text for IGC3 did not reference the CHP at all, possibly because of the deadlock situation. After much criticism and emotional statements calling for the CHP’s inclusion, the CHP was put back into the revised text (Vadrot et al., 2022, pp. 338-339).

In their paper, the authors demonstrate that the CHP has evolved into a “practice of contestation” (Vadrot et al., 2022, p. 226), functioning as a strategic mechanism in the BBNJ negotiations through which actors seek to challenge entrenched global inequalities in the world order.

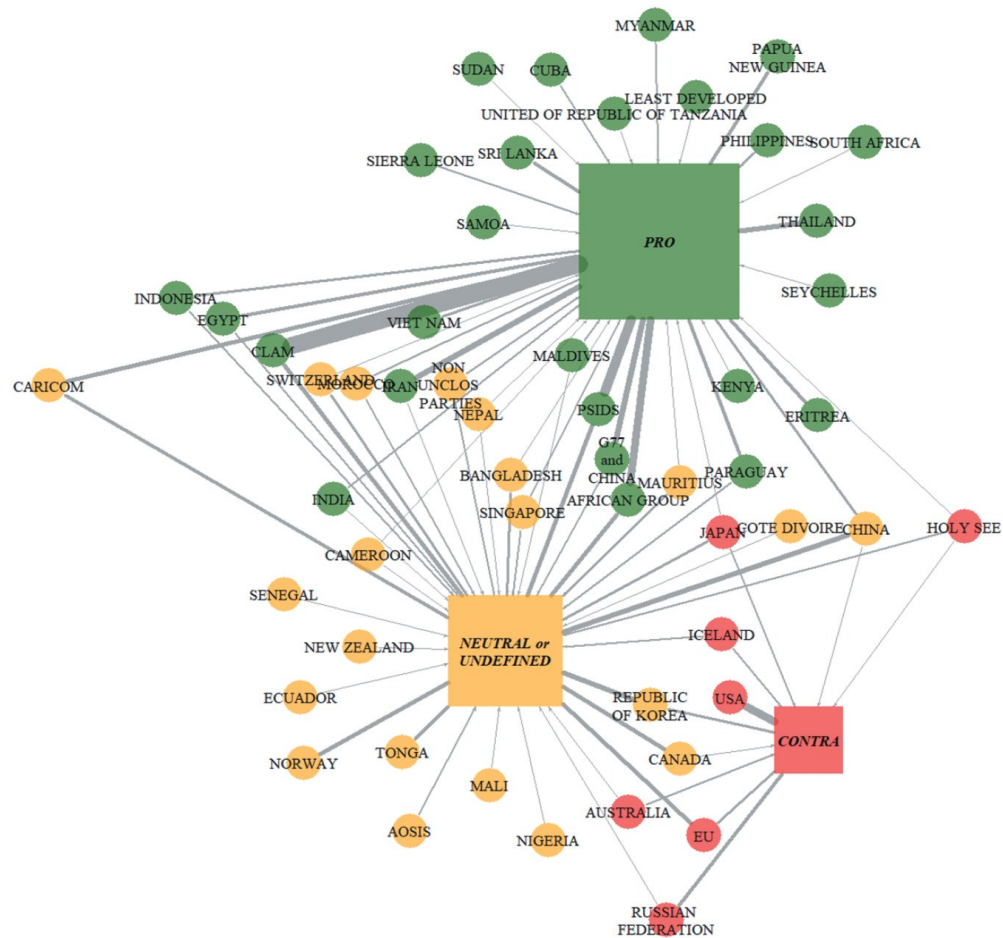


Figure 5 shows the government positions of IGC1, 2, and 3 regarding CHP inclusion. “Against” in red, “in favor” in green, “neutral or undefined” in yellow. From “Who owns marine biodiversity? Contesting the world order through the ‘common heritage of humankind’ principle” by Vadrot et al., 2022, p. 238.

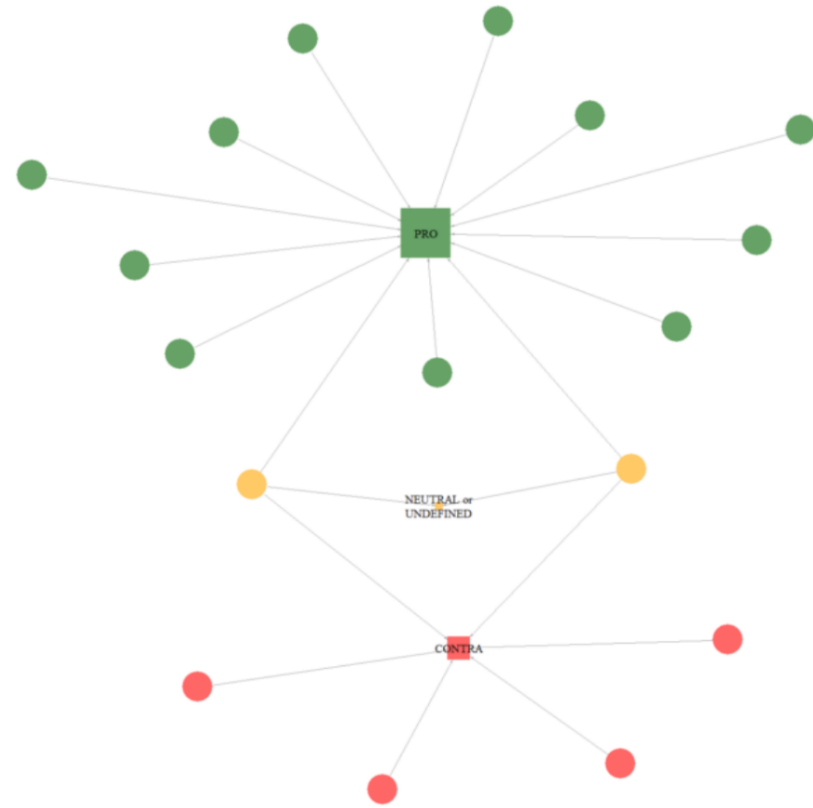


Figure 6 shows the anonymized government positions during IGC6 regarding CHP inclusion. “Against” in red, “in favor” in green, “neutral or undefined” in yellow. From “A new Marine Biodiversity Treaty in Sight” by MARIPOLDATA Team, 2023, MARIPOLDATA Blog (<https://www.maripoldata.eu/blog/page/4/>)

Vadrot et al. have researched IGC1, 2, and 3, while this study examined IGC4, 5, 6, and 7. While covering the formal negotiation process, the analysis does not cover informal discussions that were not accessible to the research team of MARIPOLDATA. A further crucial consideration is that the two studies deviate from each other in several aspects: While the study by Vadrot et al. (2022) uses the same database for their study of IGC1, 2, and 3, and also uses ENB reports as a complementary source, the data sample is different: They selected all statements containing the search terms “common heritage”, “freedom of the high seas” and “benefit-sharing”; I only selected government statements that included the term “common heritage”. I have used their coding frame and adapted it to my findings, meaning that I generated additional categories. An additional difference is that this study situated its findings within the theoretical concept of epistemic selectivities, whereas the 2022 study does not focus on a theoretical contextualization of its findings. The authors did, however, conceptualize the negotiation setting with a practice-sensitive approach to IR such as Adler (2019) and Adler and Pouliot (2011). They also alluded to the elements of drama and theater used by actors in international summit diplomacy (see: Death, 2011). These theoretical approaches are influenced by the thinking of Bourdieu and Foucault. Engaging with these theoretical approaches led the MARIPOLDATA team to the approach of CEE. In their study of the CHP-related statements, they do not frame their results theoretically. Embedding the results of the study in theory is therefore a supplementary of this study.

While detailed limitations to this study will be provided below, it is important to emphasize at this point that the anonymized nature of the studied IGCs prevents a definitive assessment of the division between the Global North and the Global South. It is, however, highly likely that the trend of the dividing line between the two regions remained central to how the CHP-related debate was structured. In addition to the reasons for this assumption provided below, there was no state from the Global North advocating for the CHP in plenary meetings.

Vadrot et al. have found that the “strong emphasis and emotional statements [...] was a successful negotiation technique” (2022, p. 239) of negotiators advocating for the CHP, guided by the aim to “impose meaning to contest the world order” (p. 239). This technique and its success were found to have proceeded in the following IGCs studied in this thesis. Especially in IGC6, the tone of delegates was emotional.

The arguments, which reflect the orders state actors attributed to the CHP, did not seem to change strongly over the negotiation process since IGC1, although they did evolve. *Effectiveness* is a new category and argument found in this study that was used by states, especially in the very latest IGCs, namely IGC6 and 7. In IGC7, which took place when the negotiation process had already come to an end, states highlighted that the CHP as the underlying principle of the Treaty would aid implementation and reach its goals. This

indicates a development in the narrative of the CHP, while other aspects, mainly found in *normative*, *legal*, and *economic* arguments, stayed very similar. In this study, it was found that *normative* reasoning often served as a foundation for *legal* and *economic* claims. *Economic* arguments usually did not stand alone but were combined with other arguments. States thus combined different arguments or discursive strategies to push for the CHP.

What is more, the new category *compromise* was likely found due to the state delegates' need to conclude the negotiations. Their effort to act in their interests when negotiating a compromise was evident from their statements. *Compromise* statements were not all categorized as being in favor of the CHP's inclusion to reflect this aim. State positions did not seem to have changed when negotiating the final Treaty text. While states who were in favor of the FOS framed its inclusion as "balancing" out the CHP, states in favor of the CHP rejected this notion heavily. Additional to other *compromise* options, one idea was to delete both references, brought forward by some delegations to circumvent the conflict, was also contested. This exemplifies the hardened position of many governments of the Global South. In a blog article, the MARIPOLDATA research team explained this with the mistrust these states have developed since UNCLOS, as issues such as CB&TT were not implemented since its entry into force many years ago (MARIPOLDATA Team, 2022).

Compared to the findings of Vadrot et al. (2022), in this study, the statements against the CHP were more focused on *legal* arguments. There were no *scientific* and few *economic* arguments of opposing states. In their study of IGC1 to 3, arguments against were found in all categories except *normative*. It seems that in the Vadrot et al. study, statements in favor of the CHP were most commonly made about MGRs. While MGRs remained the key aspect discussed in combination with the CHP, in the later IGCs the CHP was brought up in other debates as well, such as on EIAs and CB&TT. Furthermore, *scientific* arguments for the use of the CHP might have become more popular among government delegates. Since the privatization of MGRs takes place rapidly and marine genetic patents are distributed among those states that can afford expensive deep-sea science, the stakes are high for the Global South. Nowadays, digital genetic information of MGRs provides greater value than physical samples. Private research may actually hinder scientific innovation by restricting access to knowledge, while public scientific research stresses the importance of open access and public knowledge (Vadrot et al., 2022, pp. 243-244).

Despite these new developments, the question of whether the CHP applies to MGRs or not continued to be a central contentious point. In the Treaty, access to MGRs is still not regulated in the way that mineral resources of the Area are regulated under UNCLOS. Even though it stipulates an access and benefit-sharing committee, the exact utilization of profits from MGRs is not yet clear (United Nations, 2023a). This can be expected to be a major point for discussion at future COPs.

Vadrot et al. (2022) identified several neutral or undefined states in regard to the CHP. While I cannot disclose any state names, it might be assumed that in further IGCs, some of these states did position themselves. Due to the anonymization of the data, this cannot be claimed to be certain, but there were not many neutral or undefined arguments found in this study. However, a figure published by the MARIPOLDATA team in a blog article shows that during IGC6, there were fewer neutral or undefined state positions (Figure 6). It is important to note that normative or undefined arguments were not made outside of power dynamics but are instead equally shaped by selective legitimization of certain discourses. States might have chosen strategic ambiguity or efforts to keep options open. As the negotiation process was about to be finalized, states increasingly aimed to find compromise. Several of these statements do not indicate a clear stance for or against the CHP.

6.2 Contested Understandings of Marine Biodiversity

This thesis examined moments of contestation between different states. In the data analyzed, implicit conflicts over dominant understandings of the policy issue became visible and were made explicit. With regard to the CHP, a pronounced divide exists between the positions of states from the Global North and those from the Global South. Historically – and even more so in the case of marine science – the distribution of power between opponents and proponents of this principle has been unequal. Despite the less transparent nature of the negotiations during IGC4, 5, 6, and 7, this deep-rooted divide was reflected in all non-anonymized statements insofar as all statements in favor of the CHP's inclusion were made by Global South countries. But, as the ENB report of IGC6 points out, groups of countries apart from the divide between the Global North and Global South aimed to protect their interests in the negotiations on different issues. These include differences between state groups undertaking activities on the high seas versus those that do not (ENB, 2023a, p. 18). This means that there were more fields of interest beyond the North-South divide; However, concerning the CHP, this study found that there was a relatively clear-cut division into its opponents and proponents.

A fundamental question in the struggle over the CHP within the BBNJ negotiations is: who owns marine biodiversity? The principle applied to high seas resources reveals which narratives and forms of knowledge are accepted in the political setting of the BBNJ negotiations. The overarching principles, CHP and FOS, represent fundamentally different views on activities in and protection of the high seas. These different understandings are reflected in the problem perceptions and narratives surrounding the high seas and marine biodiversity, and the knowledge used to advocate for either principle. The FOS principle, which has long prevailed in marine governance, can be regarded as the dominant knowledge framing marine biodiversity in ABNJ. As a principle of UNCLOS, it was part of the setting and shaped the context in which marine governance has been negotiated. The FOS reflects an economic understanding of nature, closely

aligned with economic and security interests. In this understanding, nature and natural resources are seen as something to be exploited and profited from. The FOS grants states the freedom to pursue various activities and ways to use marine resources in the high seas. Through epistemic selectivities, this view of marine biodiversity became dominant, stabilizing the governance of how marine biodiversity is defined and assessed. This thesis explored the possibility of contesting this dominant understanding.

The theoretical concept of epistemic selectivities can also help explain why some states were able to successfully advocate for the inclusion of the CHP. Beyond highlighting why the FOS remained dominant in marine governance for so long, epistemic selectivities reveal how political, institutional, and discursive frameworks in which environmental issues are negotiated allow room for contestation and conflict (Hughes & Vadrot, 2023, p. 67). When delegates from the Global South challenged the FOS by introducing the CHP, other delegates sought to preserve existing structures. In the BBNJ negotiations, states attempted to uphold the FOS as the guiding principle. They did so by making claims to expert knowledge. For instance, a state actor's rejection of the CHP as a legitimate legal principle can be seen as an effort to delegitimize the arguments of those advocating for the CHP. The results chapter presented further examples of how knowledge was used strategically to discredit other actors' positions.

6.3 CHP: A Counter-Hegemonic Claim?

The concept of epistemic selectivities helps to explain *why* states of the Global South aimed to introduce the CHP in the Treaty. Answering this part of the research question therefore required combining my results with insights from existing literature. As Vadrot et al. (2022) have found in their analysis of IGC1, 2, and 3, states aimed to challenge deeply rooted global inequalities. This study confirms that states have continued to use the CHP as a practice of contestation. In *normative* statements especially, delegates referred to global inequalities and argued that the CHP would contribute to reducing them. However, pushing for the inclusion of the CHP in the Treaty text also seemed to be a strategic endeavor. In disputes over terminology, actors often use concepts and language strategically to shape the framing of an issue. While this study cannot identify the implicit motivations of state delegates advocating for the CHP, it is possible to hypothesize that they aimed to gain leverage for other negotiation issues. Perhaps, the inclusion of the CHP was part of an informal exchange – if one side secured the CHP in the Treaty, the other side might have gained something else in return. This cannot be verified from the data, but the possibility is worth noting.

The theoretical concept of epistemic selectivities understands selectivities as a political framework rooted in the global political economy of biodiversity governance. This framework gives rise to mechanisms that reflect a broader shift toward the commodification of nature, which is frequently regarded as a rational strategy for tackling environmental challenges (Vadrot, 2014, p. 363). In this study, the dominance of the

FOS principle illustrates this trend. Countries from the Global North, with historically greater industrial and economic power, supported retaining this principle. However, and this is a central argument of this thesis, the trend toward commodification was also reflected in how the CHP was more recently understood. A more radical understanding of the CHP demands environmental protection, preservation, and intergenerational justice. This would mean that the high seas would only be exploited when it benefits all humankind; If it does not, efforts would be put into preserving the marine ecosystem and its biodiversity.

In this study, these aspects were not found to be strongly reflected in the statements. While the CHP was indeed brought up in connection with EIAs as well, this was still significantly less frequent than in connection with MGRs. To achieve the aim of protecting marine biodiversity, ABMTs including MPAs and EIAs are important. Instead of debating the CHP in relation to the conservation of marine biodiversity, delegates thus referred to the CHP most frequently in connection with discussions around MGRs and the profits arising from them, as well as with CB&TT. They reiterated the economic meaning of the Treaty and argued that they needed financial support for the implementation of this Treaty. Even though *normative* was the strongest category found in the analysis, it was usually connected to *economic* or *effectiveness* arguments. The narrative of better implementation and a more effective Treaty might fit better with dominant epistemic orders. Moreover, resistance against a more progressive understanding of the CHP was strong. It is likely that with the CHP's original emphasis on conservation and environmental protection, it would not have made its way into the Treaty text. The economic aspects of the CHP were thus emphasized more strongly.

Remarkably, no discussions about the definition of the CHP were found in the data from IGC4, 5, 6, and 7. This might indicate a shared or accepted understanding of the term in the negotiation room, one that was no longer questioned. This evolving definition, which leaned more toward economic considerations, can be interpreted as a specific form of knowledge, problem perception, and narrative that was favored in the BBNJ negotiations. In this way, dominant knowledge linked to the commodification of nature was reinforced by highlighting "sustainable use" or exploitation of resources over the conservation goals associated with the agreement.

Despite the narrowing of its meaning, the successful inclusion of the CHP in the Treaty text is a notable achievement for the states that had fought for this outcome. Even though *normative* arguments were often tied to other arguments with references to expert knowledge, states persistently emphasized normative concerns and called for fairness and equitability for current and future generations. Many delegates from the Global South expressed their satisfaction during their final plenary statements on the last two negotiation days, emphasizing the symbolic and political importance they attribute to this outcome.

6.4 How did States Introduce the CHP in the Treaty?

The research question of this study was: “*How and why did states introduce the CHP in the BBNJ negotiations?*” The question of *how* states introduced the CHP can be answered based on the results of the analysis presented above.

The analysis showed that the states pushing for the inclusion of the CHP in the negotiations and ultimately in the Treaty text employed a range of strategies. They used various arguments strategically, some of which evolved over the course of the IGCs, revealing the different meanings or orders they attributed to the principle. The arguments identified in support of the CHP were *normative, legal, economic, scientific, support, effectiveness, and compromise*, along with a few that did not clearly fall into these categories. On the other hand, arguments against the CHP were primarily *legal, economic, and compromise*.

Throughout the negotiations, states often repeated their points and arguments. Proponents of the CHP consistently brought up the principle across different IGCs and in discussions on various topics (i.e. package elements), in spite of focusing on MGRs. Some states explicitly stated that they would not accept the Treaty unless the CHP was included. Thereby they increased pressure on CHP-opposing states. Interestingly, the strategy of repeatedly referencing a favored principle was not used by CHP opponents: In connection with naming the CHP, they did not for instance emphasize the importance of preserving the freedoms connected with the FOS. The FOS was usually mentioned by advocates of the CHP who contrasted the two principles, framing the CHP as being better superior.

At the same time, this analysis raised questions that could not be fully answered with the empirical data: Why and how exactly were states *successful* in securing the inclusion of the CHP? As the team did not have access to closed-door meetings, it remains unclear how the final formulation of the CHP in the Treaty was negotiated. Therefore, conclusions on this point can only be speculative. From the perspective of the chosen theoretical framework, it can be argued that states used different arguments because their knowledge about marine biodiversity was *selective*. Knowledge is influenced by actors’ expectations of which strategies are most promising in a given political setting. Accordingly, actors chose arguments and strategies they perceived as most suitable. This perceived suitability is not only based on their understanding of the political context of marine governance but also on their awareness of dominant patterns in this field.

As Vadrot (2017, pp. 68-69) notes, scientific and expert knowledge plays a central role in legitimizing facts and political claims. However, actors’ perceptions of these dominant patterns are always incomplete, and the use of science and expertise to support political claims is both strategic and selective. As a result, actors operate based on incomplete and selective knowledge, leading, among other factors, to divergent strategies and positions.

States advocating for the inclusion of the CHP seemed to have changed their approach during the Treaty negotiation process: As found in this study, delegates developed a new argument for including the CHP in the Treaty, which I named *effectiveness*. It seems that these delegates hoped to find more acceptance of the CHP among the opposing states. They potentially found this strategy could be more successful and suitable than other arguments. Actors using *effectiveness* arguments seemed to try to frame the inclusion of the CHP as being in the interest also of opposing states. They did this by arguing that the CHP helps to reach the goals of the Treaty and would make its implementation more effective. They also argued that if the CHP is accepted, the negotiations would be finalized sooner. This argument is presented as being informed by expert knowledge, specifically expert legal knowledge since actors claimed it is a “legitimate” principle of international law that “fits perfectly” to the Treaty goals. It is strategic and informed by selective and incomplete knowledge about both marine biodiversity and the hegemonic patterns of this policy field.

Whether state actors who were against the inclusion of the CHP in the Treaty were convinced by the arguments of advocates found in this study remains unknown but seems highly unlikely considering the strong opposition of these states during the entire negotiation process. I argue that including the CHP was successful because the pressure states from the Global South applied by insisting on including the CHP was high enough and because the number of states on the advocates’ side was much larger. Therefore, it was the majority of delegations that favored referencing CHP in the agreement. The strong and emotional wording used by state actors, frequently calling the CHP a “fundamental principle”, and the frequency of their voiced demands to see the CHP in the Treaty text expressed their unwillingness to give up their claim for the CHP. It was noticeable that the states that positioned themselves against the CHP’s inclusion did not explicitly mention it as much. As stated before, from the primary data the compromise found between opponents and proponents of the CHP cannot be traced. Furthermore, I argue that the shift of the CHP’s meaning made it closer to the dominant narrative and problem perception of marine biodiversity governance, which concentrates on its economic properties. A final point is that delegates advocating for the CHP were able to refer to UNCLOS and the fact that the CHP had made its way into this convention.

6.5 The Final Treaty

What remains uncertain are the consequences of the inclusion of “freedom of marine scientific research, together with other freedoms of the high seas” in the Treaty (United Nations, 2023a, Part I, Art. 7). In addition, why this exact phrasing was chosen stays unclear. What is interesting is that states opposing the CHP’s inclusion were not found to use any *scientific* arguments in their statements. Yet, the Treaty text highlights the freedoms of marine science. This might indicate the role of marine science in using marine resources such as MGRs and in their increasing privatization. As outlined above, private research interests

often prioritize patents and economic gains. At the same time, MSR is important for protecting marine biodiversity by conducting EIAs or establishing MPAs, which leads to its ambivalent character.

The formulation of Article 7 – including both the CHP and *freedoms* – while seeming contradictory, constitutes the effort for compromise between these two principles. I argue that this solution to the conflict surrounding the CHP in the BBNJ negotiations will lead to its continuation in upcoming COPs, where these issues will probably become more concrete. The relationship between the two principles – CHP and FOS – will presumably be a significant topic of debate at these future conferences. Nevertheless, while the freedoms mentioned in the Treaty can weaken the meaning and applicability of the CHP even further, the final inclusion of the CHP can still be considered a success of states of the Global South. Vadrot et al. (2022) find that it can also serve as both a symbolic stance against the privatization of marine biodiversity and as a guiding norm for conservation (p. 245). As a general principle, the CHP can remind states to protect marine biodiversity beyond its commercial value. This could strengthen obligations to establish MPAs, conduct EIAs and monitoring, promote equitable benefit-sharing from MGRs, and ensure CB&TT especially for economically weaker states to reduce Global North-South disparities (Vadrot et al., 2022, p. 245). But if obligations and rules for states in these regards are not ambitious, the CHP's potential will be limited.

The integration of the CHP in the Treaty text was considered very powerful, which becomes apparent from the entrenched divide that has been present since the early UNCLOS negotiation days (Vadrot et al., 2022, p. 238). In future COPs, it can be expected that discussions surrounding the CHP will not easily be dismissed, since the basis of the negotiations, the BBNJ Treaty, reflects the CHP. Actors will likely continue to use the CHP to challenge the hegemony of sea powers of the Global North in the world order. Indeed, as Vadrot et al. (2022) state, “the ordering effects of this principle should not be neglected” (p. 244).

7. Limitations of the Study

It is important to highlight limitations to aid the interpretation of the findings of this study. These limitations are tied to the methods of studying negotiation sites as well as to the analysis.

As mentioned before, the database I relied on for this study covered all meetings in the formal negotiation rooms but did not contain field notes on all discussions and negotiations at the IGCs. Especially at later IGCs, meetings took place “behind closed doors”, meaning they were not open to outside observers such as the MARIPOLDATA team. These meetings consisted of bilateral negotiations, informal dialogues, small working groups, and consultations with the president. Especially for this study of the debates and processes surrounding the CHP, the very finale of the negotiations would have been relevant: These last 36 hours of continued negotiations (United Nations Press Releases, 2023) are likely to have determined the final formulation of Article 7 with the section on the CHP and remain non-transparent. This inaccessibility thus constitutes a significant limitation of this study, which does not assert to provide a comprehensive account of all discussions related to the CHP.

What is more, the negotiations themselves make up a limitation for tracing the CHP-related negotiation process: Many of the studied negotiations took place in formats applying the Chatham House Rules. This limits the ability to assign state positions to specific states or even world regions. However, plenary statements did not fall under this confidentiality agreement, and in the study by Vadrot et al. (2022) of IGC1, 2, and 3, statements could mostly be attributed to specific state or state groups. Therefore, they could measure the state positions’ strength by counting the number of CHP-related statements per state. Since many statements were anonymized in this data sample, this approach would not have been insightful. In plenary statements of this study, positions were clearly divided between the Global North and the Global South. Hence, the distribution of government statements in informal informal discussions is likely to follow the same pattern, though this cannot be assumed as being entirely certain. The anonymization of statements due to the applied Chatham House Rules prevents any clear assessment of whether, and if so which, states changed their stance. This forms a significant limitation to the analysis of this study.

A final limitation lies in the data sample which has been found with the search term “common heritage”. While this includes the versions “of humankind” as well as “of mankind”, potential spelling mistakes in the field notes, and “common heritage” without naming the full principle, other speech acts about topics connected to the CHP might not be included. This is especially conceivable in reactions to statements calling for or rejecting the CHP. However, this study investigates statements with direct references to the CHP, and the chosen search term is the most adequate for finding those statements.

Despite these limitations, this research could enhance the understanding of the negotiation process of the CHP. The aim of this study was not to investigate how state positions regarding the CHP were formed within states, but rather to better understand negotiation dynamics and how states struggle to contest hegemonic orders. By analyzing government positions, this thesis could give insights into the different arguments that were used to fight for or reject the CHP in the Treaty. Looking at the outcome in the form of the Treaty text alone would not have explained the inclusion of both the CHP and “other freedoms” under the principles article. By studying moments of contestation during the negotiations, the final formulation can be interpreted as reflecting these disputes. Furthermore, this study contributes to explaining why the CHP proved to be such a “bone of contestation” (Vadrot et al., 2022, p. 235) and therefore to studying negotiation sites as sites where hegemonic orders are challenged.

8. Conclusion

The research question this thesis addressed was how and why states introduced the CHP in the BBNJ negotiations. Despite certain limitations, this question could be answered through empirical analysis in connection with relevant literature. I analyzed state positions and rationales of government statements related to the CHP using a qualitative content analysis approach influenced by Kuckartz and Rädiker (2018). To interpret the findings and embed them theoretically, I drew on Alice Vadrot's concept of "epistemic selectivities," which offers a lens to examine the role of knowledge and power in the BBNJ negotiations. This helped me better understand the framings, problem perceptions, and narratives associated with the CHP, as well as the different meanings ascribed to it.

Vadrot et al. (2022) showed how the CHP was introduced, contested, and used to challenge the world order. This study demonstrated that the divide between Global South countries advocating for the CHP and resistance, presumably from Global North states, remained a central feature of the debate. Throughout the negotiations, the CHP served as a tool to contest global power structures. This study found that states employed a range of arguments regarding the CHP and developed a new argument of *effectiveness* in later IGCs. Both advocates and opponents of the CHP ultimately sought compromise, recognizing that the principle could not be removed from the Treaty text.

In its original framing, the CHP assumed that the Earth's limited resources should be shared equitably among all people and that the ocean should be both a shared resource and a protected space (Payne, 2018, p. 120). Over time, especially in the context of early UNCLOS and BBNJ negotiations, this meaning has shifted toward a more market-oriented understanding, focusing on the benefit-sharing from MGRs. This shift has limited the CHP's radical and counter-hegemonic potential. Nevertheless, its inclusion in the final Treaty text represents an achievement for the coalition of Global South states, who succeeded in embedding their priorities into the agreement.

Following the Treaty's ratification and its entry into force, future COPs will further develop and operationalize its content. I argue that the struggle over the CHP – reflecting deeper contestations over world order and global inequality – will continue in these COPs. The coexistence of references to both the CHP and the Freedom of the Seas (FOS) introduces ambiguity, leaving room for competing interpretations. While the CHP was used to challenge dominant structures, its full transformative potential was not exhausted. Still, its presence in the Treaty offers a foundation for states to continue pushing for a vision of the ocean as a global common, managed, and protected for the benefit of all.

This study contributes to filling research gaps in the political science literature on marine biodiversity governance. It provides insight into the negotiation dynamics and the development of the general

principles of the BBNJ Treaty. Understanding these processes is valuable for interpreting the final Treaty text and anticipating potential conflicts in upcoming COPs. Identifying the arguments and positions of states can inform academic analyses and technically even support future diplomatic practice. In this way, the study adds to the broader field of global environmental politics.

The structured and constrained nature of international environmental negotiations also creates opportunities for researchers to investigate how knowledge is shaped by structural conditions and the forms of agency deemed legitimate. Conferences often privilege certain narratives and strategies (Vadrot, 2022, pp. 235-236). The CEE approach developed by MARIPOLDATA provides a useful tool for understanding these dynamics and identifying dominant discourses, as well as how they are contested. This study highlights both the potential and limitations of using MARIPOLDATA's fieldnote database to analyze negotiations, especially for scholars who could not attend the IGCs in person.

Finally, this research raises several questions for further study. Future research could examine how the role of the CHP evolves in marine biodiversity politics, particularly within the BBNJ COPs. It would be valuable to explore how both the CHP and FOS are interpreted in practice, which could be studied from legal, political, and ethnographic perspectives. Further attention should be paid to unresolved issues, such as the distribution of economic benefits from the use of MGRs, which will continue to be negotiated.

9. References

- Adler, E. (2019). *World Ordering: A Social Theory of Cognitive Evolution*. Cambridge University Press.
- Adler, E. & Pouliot, V. (Eds.). (2011). *International Practices*. Cambridge University Press.
- ATLAS.ti. (n.d.). <https://atlasti.com/>
- Becker-Weinberg, V. (2017). Preliminary Thoughts on Marine Spatial Planning in Areas beyond National Jurisdiction. *The International Journal of Marine and Coastal Law*, 32(3), 570–588. <https://doi.org/10.1163/15718085-12323029>
- Bourdieu, P. & Wacquant, L. J. D. (1992). *An Invitation to Reflective Sociology*. Blackwell Publishers.
- Bourdieu, P. (1991). *Language and Symbolic Power* (J. B. Thompson, Ed.; G. Raymond & M. Adamson, Trans.). Harvard University Press. (Original work published 1982)
- Chatham House. (n.d.). *Chatham House Rule*. Retrieved June 5, 2024, from <https://www.chathamhouse.org/about-us/chatham-house-rule>
- Death, C. (2011). Summit theatre: exemplary governmentality and environmental diplomacy in Johannesburg and Copenhagen. *Environmental Politics*, 20(1), 1–19. <https://doi.org/10.1080/09644016.2011.538161>
- de Sousa Santos, B., & Rodríguez-Garavito, C. A. (Eds.). (2005). *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge University Press.
- Earth Negotiations Bulletin. (2022a). *Summary of the Fourth Session of the Intergovernmental Conference on an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 7–18 March 2022*. International Institute for Sustainable Development, 25(225). <https://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc4-summary>
- Earth Negotiations Bulletin. (2022b). *Summary of the Fifth Session of the Intergovernmental Conference on an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 15–26 August 2022*. International Institute for Sustainable Development, 25(240). <https://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc5-summary>
- Earth Negotiations Bulletin. (2023a). *Summary of the Resumed Fifth Session of the Intergovernmental Conference on an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National*

- Jurisdiction: 20 February–4 March 2023*. International Institute for Sustainable Development, 25(250). <https://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc5-resumed-summary>
- Earth Negotiations Bulletin. (2023b). *Summary of the Further Resumed Fifth Session of the Intergovernmental Conference to Adopt an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 19–20 June 2023*. International Institute for Sustainable Development, 25(252). <https://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc5-further-resumed-summary>
- Graffy, C. (2022, June 24). *Who will own the oceans? Current shifts in the global geopolitical order could influence how unresolved maritime disputes evolve*. GIS. <https://www.gisreportsonline.com/r/maritime-law/>
- Hardin, G. (1968). The Tragedy of the Commons. *Science*, 162(3859), 1243–1248. <https://doi.org/10.1126/science.162.3859.1243>
- Hartmann, Christian. (2015). Nord-Süd-Beziehungen. In W. Woyke & J. Varwick (Eds.), *Handwörterbuch Internationale Politik* (pp. 358–348). Verlag Barbara Budrich.
- Hughes, H., & Vadrot, A. B. M. (2019). Weighting the World: IPBES and the Struggle over Biocultural Diversity. *Global Environmental Politics*, 19(2), 14–37. https://doi.org/10.1162/glep_a_00503
- Hughes, H., & Vadrot, A. B. M. (2023). Selecting, Applying and Innovating Concepts. In H. Hughes & A. B. M. Vadrot (Eds.), *Conducting Research on Global Environmental Agreement-Making* (pp. 58–73). Cambridge University Press. <https://doi.org/10.1017/9781009179454>
- IPBES. (n.d.). *Ecosystem service*. <https://www.ipbes.net/glossary-tag/ecosystem-service>
- Kuckartz, U. & Rädiker, S. (2018). Inhaltsanalyse, insbesondere qualitative Inhaltsanalyse. In B. Westle (Ed.), *Methoden der Politikwissenschaft* (pp. 382–395). Nomos. <https://doi.org/10.5771/9783845282701-1>
- Langlet, A., Vadrot, A. B. M., Fellingner, S., Dunshirn, P., C. Ruiz-Rodríguez, S., & Tessnow-von Wysocki, I. (2024). MARIPOLDATAbase (SUF Edition). <https://doi.org/10.11587/0XXZ0V>, AUSSDA, V1
- Marciniak, K. (2020). The Legal Status of Marine Genetic Resources in the Context of BBNJ Negotiations: Diverse Legal Regimes and Related Problems. In T. Heidar (Ed.), *New Knowledge and Changing Circumstances in the Law of the Sea* (pp. 40–64). Brill Nijhoff. https://doi.org/10.1163/9789004437753_005

- MARIPOLDATA. (n.d.). *About. Overview*. <https://www.maripoldata.eu/about/>
- MARIPOLDATA Team (2019, April 1). *Impressions from the first week of negotiations on marine biodiversity*. <https://www.maripoldata.eu/blog/page/16/>
- MARIPOLDATA Team (2022, March 14). *Light on the Horizon? Negotiations to complete a new Marine Biodiversity Treaty resume*. <https://www.maripoldata.eu/blog/page/9/>
- MARIPOLDATA TEAM (2023, February 27). *A new Marine Biodiversity Treaty in Sight*. <https://www.maripoldata.eu/blog/page/4/>
- Payne, C. (2018). Introduction to the Symposium on Governing High Seas Biodiversity. *AJIL Unbound*, 112, 118–122. <https://doi.org/10.1017/aju.2018.49>
- Pureza, J. M. (2005). Defensive and oppositional counter-hegemonic uses of international law: From the international criminal court to the common heritage of humankind. In B. de Sousa Santos & C. A. Rodríguez-Garavito (Eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (pp. 267–280). Cambridge University Press. <https://doi.org/10.1017/CBO9780511494093.011>
- Taylor, P. (2019). The Common Heritage of Mankind: Expanding the Oceanic Circle. In D. Werle, P. R. Boudreau, M. R. Brooks, M. J. A. Butler, A. Charles, S. Coffen-Smout, D. Griffiths, I. McAllister, M. L. McConnell, I. Porter, S. J. Rolston, & P. G. Wells (Eds.), *The Future of Ocean Governance and Capacity Development: Essays in Honor of Elisabeth Mann Borgese (1918-2002)* (pp. 142–150). Brill. https://doi.org/10.1163/9789004380271_025.
- Tessnow-von Wysocki, I., & Vadrot, A. B. M. (2020). The Voice of Science on Marine Biodiversity Negotiations: A Systematic Literature Review. *Frontiers in Marine Science*, 7, 1–26. <https://doi.org/10.3389/fmars.2020.614282>
- Tessnow-von Wysocki, I. (2023, February 20). *Life in the Ocean – a common heritage of the planet: Do we have a responsibility in the High Seas?* MARIPOLDATA. <https://www.maripoldata.eu/blog/page/4/>
- UNESCO. (2020). *IOC/BRO/2020/4: The Science we need for the ocean we want: the United Nations Decade of Ocean Science for Sustainable Development (2021–2030)*. <https://unesdoc.unesco.org/ark:/48223/pf0000265198>
- United Nations. (n.d.). *Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction*. <https://www.un.org/bbnj/>

- United Nations Press Releases. (2023, March 3). *'The Ship Has Reached the Shore', President Announces, as Intergovernmental Conference Concludes Historic New Maritime Biodiversity Treaty.* <https://press.un.org/en/2023/sea2175.doc.htm>
- United Nations. (2015a, March 13). *Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.* <https://www.un.org/Depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm>
- United Nations. (2015b). *A/RES/69/292: Resolution adopted by the General Assembly on 19 June 2015. 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.* <https://docs.un.org/en/A/RES/69/292>
- United Nations. (2018). *A/RES/72/249: Resolution adopted by the General Assembly on 24 December 2017. 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.* <https://docs.un.org/en/A/Res/72/249>
- United Nations. (2022a). *A/CONF.232/2022/5: Further 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.* <https://documents.un.org/doc/undoc/gen/n22/368/56/pdf/n2236856.pdf>
- United Nations (2022b). *A/CONF.232/2023/2: Further refreshed 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.* <https://docs.un.org/en/a/conf.232/2023/2>
- United Nations. (2023a). *A/CONF.232/2023/4: 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.* <https://docs.un.org/en/a/conf.232/2023/4>
- United Nations (2023b). *A/CONF.232/2023/L.25: Draft report of the intergovernmental conference on 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 at its fifth session.* <https://www.un.org/bbnj/sites/www.un.org.bbnj/files/20230627icg5reportfinalcirc.pdf>

- United Nations. (2018). *A/RES/72/249: Resolution adopted by the General Assembly on 24 December 2017. 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*. <https://documents.un.org/doc/undoc/gen/n17/468/77/pdf/n1746877.pdf>
- United Nations. (1982). *United Nations Convention on the Law of the Sea (with annexes, final act and procès-verbaux of rectification of the final act dated 3 March 1986 and 26 July 1993). Concluded at Montego Bay on 10 December 1982*. <https://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf>
- Vadrot, A. B. M., Dunshirn, P., Langlet, A., Fellingner, S. J., Ruiz-Rodríguez, S. C., & Wysocki, I. T. (2025). Writing negotiations: Collaborative field note-taking during global environmental meetings. *Qualitative Research*, 0(0), 1–22. <https://doi.org/10.1177/14687941251341984>
- Vadrot, A. B. M., Langlet, A., Dunshirn, P., Fellingner, S., Ruiz-Rodríguez, S. C., & Wysocki, I. T. (2024). Zooming In on Agreement-Making: Tracing the BBNJ Negotiations with the MARIPOLDataBase. *Global Environmental Politics*, 24(4), 152–178. https://doi.org/10.1162/glep_a_00767
- Vadrot, A. B. M., Langlet, A., & Tessnow-von Wysocki, I. (2022). Who owns marine biodiversity? Contesting the world order through the ‘common heritage of humankind’ principle. *Environmental Politics*, 31(2), 226–250. <https://doi.org/10.1080/09644016.2021.1911442>
- Vadrot, A. B. M. (2013). Epistemische Selektivitäten im Institutionalierungsprozess der Intergovernmental Platform for Biodiversity and Ecosystem Services: Die Rolle von Wissen und Wissenschaft. In J. Friedrich, A. Halsband & L. Minkmar (Eds.), *Biodiversität und Gesellschaft: Gesellschaftliche Dimensionen von Schutz und Nutzung biologischer Vielfalt* (pp. 99–119). Universitätsverlag Göttingen. <https://doi.org/10.17875/gup2013-516>
- Vadrot, A. B. M. (2014). The epistemic and strategic dimension of the establishment of the IPBES: “epistemic selectivities” at work. *Innovation: The European Journal of Social Science Research*, 27(4), 361–378. <https://doi.org/10.1080/13511610.2014.962014>
- Vadrot, A. B. M. (2017). Knowledge, International Relations and the structure–agency debate: towards the concept of “epistemic selectivities”, *Innovation: The European Journal of Social Science Research*, 30(1), 61–72. <https://doi.org/10.1080/13511610.2016.1226787>
- Vadrot, A. B. M. (2019, April 15). *Impressions from the second week of BBNJ negotiations and why they became political in the end*. MARIPOLData. <https://www.maripoldata.eu/blog/page/16/>

- Vadrot, A. B. M. (2020). Multilateralism as a 'site' of struggle over environmental knowledge: the North-South divide. *Critical Policy Studies*, 14(2), 233–245. <https://doi.org/10.1080/19460171.2020.1768131>
- Wacquant, L. J. D. (1989). Towards a reflexive sociology: A workshop with Pierre Bourdieu. *Sociological Theory*, 7(1), 26–63. <https://doi.org/10.2307/202061>
- Wullweber, J., Graf, A. & Behrens, M. (2013). Theorien der Internationalen Politischen Ökonomie. In J. Wullweber, G. Graf & M. Behrens (Eds.), *Theorien der Internationalen Politischen Ökonomie* (pp. 7–30). VS Verlag. <https://doi.org/10.1007/978-3-658-02527-4>
- WWF. (2019). *Hintergrunddokument Schutz der "Hohen See". UN-Verhandlungen über ein Abkommen zum Schutz der Hohen See*. https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/WWF-Hintergrundpapier_Schutz_der_Hohen_See_2019.pdf