

Beyond Global, Regional, and Hybrid: Institutional Arrangements for the new BBNJ Treaty

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One Ocean Symposium
24 August 2019

Outline

- Overview: “Global”, “Hybrid”, “Regional”
 - Spectrum of options
- Analytical framework
- Regional model
- Hybrid model
- Global model
- Institutional Arrangements in Draft Text



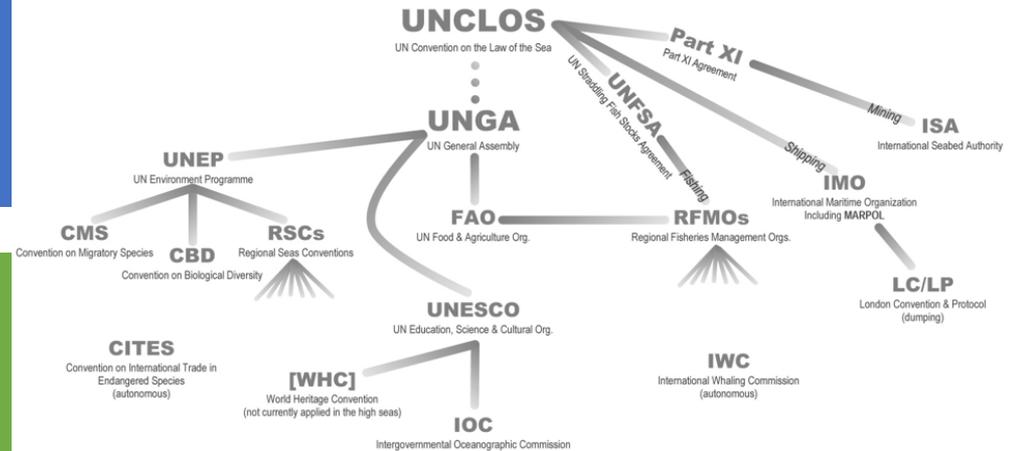
Inst. Arrangements = Components + Relationship to other Agreements

Conference of Parties (COP)

Scientific body

Secretariat

Other

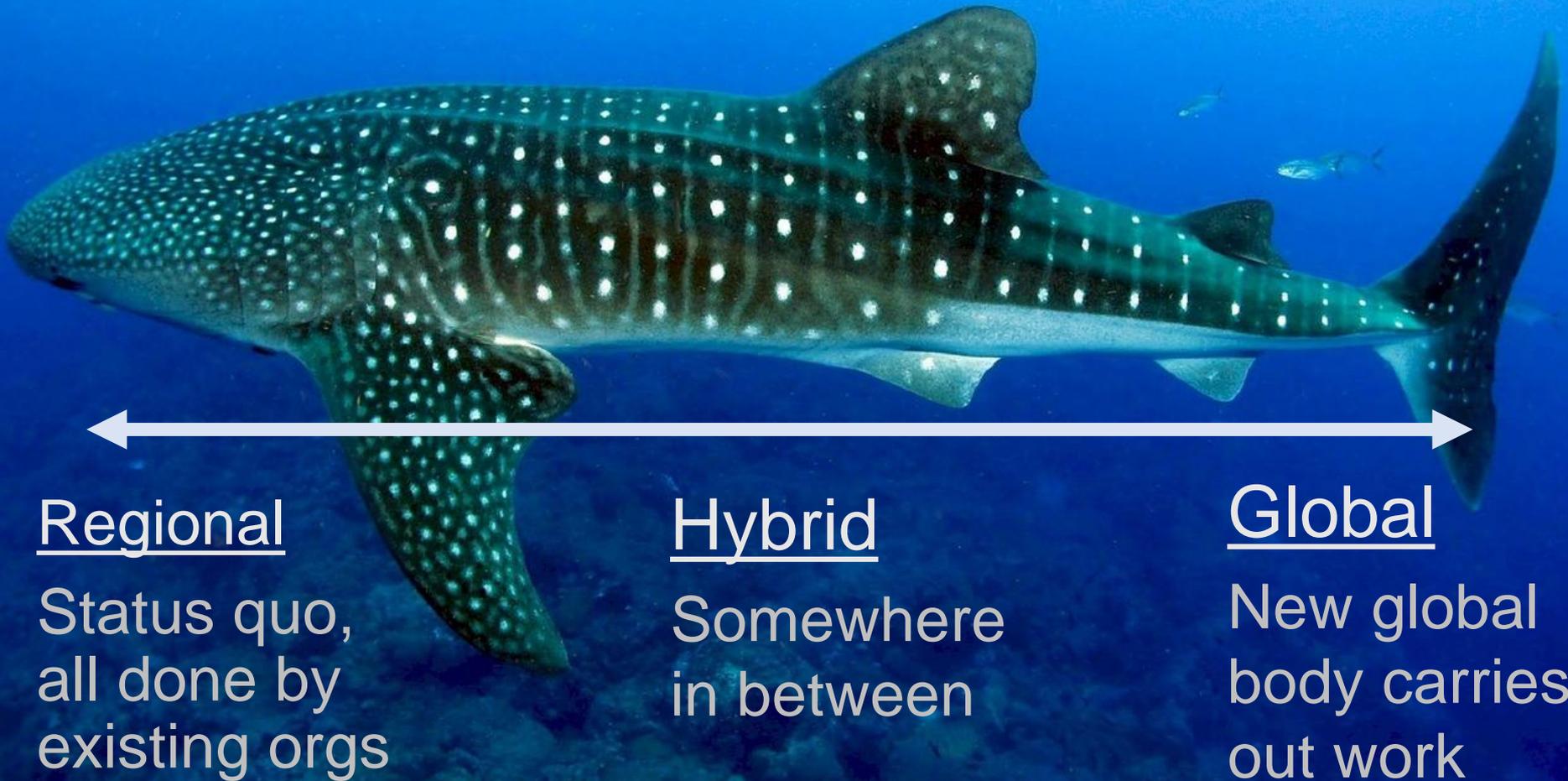


Ardron J & Warner, R. (2015) Handbook of Ocean Resources, Routledge Earthcan Book

- CBTT Committee
- ABS mechanism
- Implementation committee
- Compliance committee
- Monitoring and review committee

Spectrum of Institutional Arrangements

Regional – Hybrid – Global



Institutional Arrangements in UNCLOS-related orgs

The International Seabed Authority

Principal organs

Article 158(3) - "Each principal organ of the Authority and the Enterprise shall be responsible for exercising those powers and functions which are conferred on it"

166 States and the European Union
Article 160 – Supreme organ of the Authority with the power to establish general policies on any question or matter within the competence of

Finance Committee
1994 Agreement (Section 9) – Composed of 15 members, which must include 5 largest contributors for as long as the Authority relies on contributions

Assembly

Council

Secretariat

The Enterprise

33 Professional and technical staff

Article 170 – The Enterprise shall be the organ of the Authority which shall carry out activities in the Area directly.
1994 Agreement (Section 2) – The Secretariat shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. Interim Director-General to be appointed from within the staff of the Authority

Legal and Technical Commission
Articles 163 & 165 – composed of 15 members, currently enlarged to 25

Economic Planning Commission
Articles 163 & 164, 1994 Agreement, (Section 1)
 Not currently operational. Functions carried out by Legal and Technical Commission

Global Model

Source: Johnson *et al.* (2016)

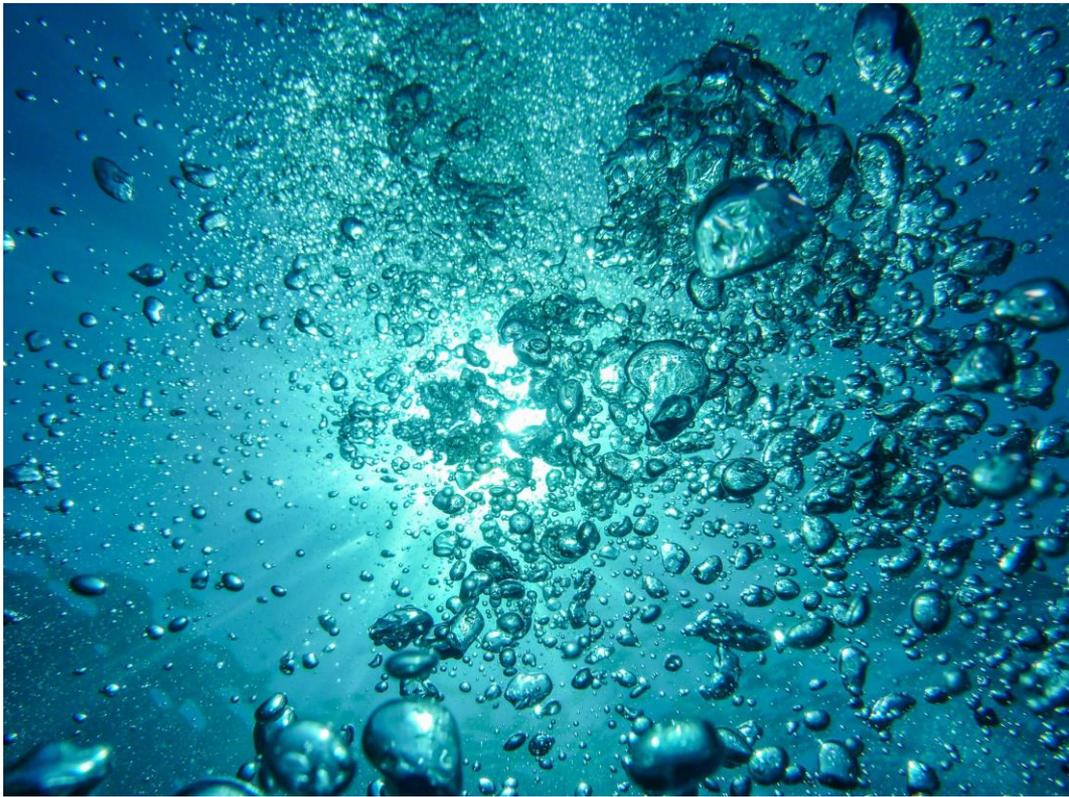
Institutional Arrangements in UNCLOS-related orgs

UNFSA



Source: IISD (2016)

Analytical framework for Institutional Arrangements



1. Does it create a new body?
2. What is that body empowered to do?
3. Do new organizations need to be created to carry out the objectives of the agreement?
4. What happens when there's another organization?

Regional model

1. New body? **No, does not create new body**
2. Empowered to? **Provide general guidance; have States report on implementation**
3. Would new orgs need to be established to carry out work? **Yes**
4. What happens when there's another body? **Relied upon to carry out work (via general guidance)**

Hybrid model

1. New body? **Yes; creates COP, Secretariat, Science body**
2. Empowered to? **Provide guidance; have States report on implementation; actively coordinate with other relevant organizations**
3. Would new orgs need to be established to carry out work? **Yes**
4. What happens when there's another body? **Deferred to to carry out work**

Global model

1. New body? **Yes; creates COP, Secretariat, Science body**
2. Empowered to? **Directly adopt binding measures; have States report on implementation; actively coordinate with other relevant organizations**
3. Would new orgs need to be established to carry out work? **Not necessary, but not precluded**
4. What happens when there's another body? **Complementary measures pursued via common Parties**

Institutional Arrangements in President's Draft Text

Article 48: Conference of the Parties

Key provisions

- **48.1:** Establishes COP as decision-making body
- **48.4(a):** *“Make, within its mandate, decisions and recommendations related to the implementation of this Agreement;”*
- **48.4(d):** *“Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement;”*
- **48.4(f):** *“Undertake other functions identified in this Agreement or as may be required for its implementation.”*
- **[48.5: COP to undertake a review of the adequacy and effectiveness of the Agreement's provisions and propose means of strengthening them if necessary]**



Institutional Arrangements in President's Draft Text

Article 48: Conference of the Parties

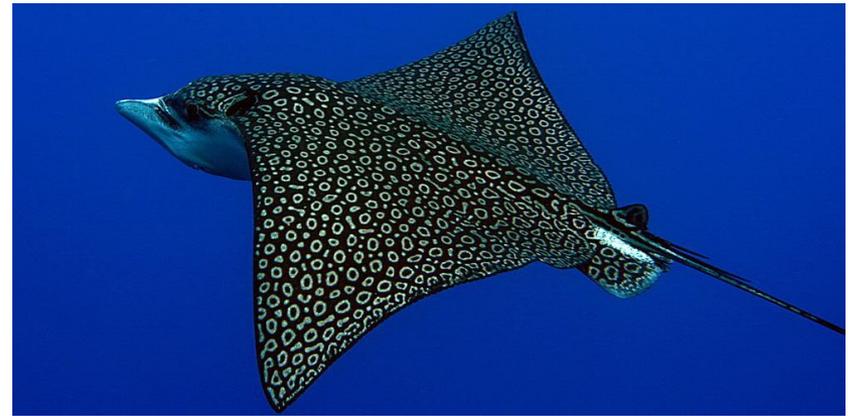
Key to consider adding: Voting

- **Currently in draft text (48.3):** COP “shall agree upon and adopt rules of procedure for itself and for any subsidiary body that it may establish.”
- Creates ambiguity with regards to voting procedures, leaves decision-making modalities to a later stage.
Possible examples:
 - **UNGA Res. 72/249:** strive for consensus, but if it cannot be reached, “decisions of the conference on substantive matters shall be taken by a two-thirds majority.” Alternatively, UNGA Rules of Procedure on voting provides for 2/3 majority for important questions and a majority for other issues.
 - **SPRFMO's** enables decisions to be taken by consensus and, if that fails, to take decisions by vote (procedural questions require a simple majority; substantive questions require a $\frac{3}{4}$ majority).
(SPRFMO Convention, Article 16)

Institutional Arrangements in President's Draft Text

Article 49. Scientific and Technical [Body][Network]

- **Ambiguity** on name, form, and function of the scientific/ technical body
- **Body > Network**
- **Establish subsidiary bodies**
 - Currently in brackets: 49.[4 (Alt 1) [(n)]]
- Will need clear **Terms of Reference** as well as **flexibility**
- Empower Scientific Body to perform such other functions as may be determined by the COP or assigned to it under the Agreement
 - Currently in brackets: 49.[4 (Alt 1) (o)]



Institutional Arrangements in President's Draft Text

Article 50. Secretariat

- Having a well-funded Secretariat will be critical
- Challenges with utilizing existing Secretariats:
 - Not designed to administer BBNJ Agreement
 - Potential challenges with different sets of Member States
 - Any dysfunctions or problems would be inherited



Important to retain 50.2 sub- paras [d], [e], and [f]

- Facilitate coordination
- Assist with implementation
- Prepare reports on performance

Take-aways

- Global, hybrid, and regional models exist on a spectrum, with no universally understood definition
- Shifting away from this nomenclature in favor of framework that focuses on form and function will be critical in progressing the negotiations

Thank you! Questions?



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