



# The Institutional Structure of the CBD – room for improving regime effectiveness?

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## My research

- 1) What are the institutional bodies of the CBD and what do they do?
- 2) How are the Aichi targets implemented at the national level?  
(UK case study).



## The Institutional Structure of the CBD.

- 1) The Conference of the Parties (COP) serving as the Meeting of the Parties (MOP) and MOP of Protocols.
- 2) Other subsidiary bodies (eg. SSBSTA, SBI)
- 3) Secretariat



## The COP

- Legal status is not clear academically
- Solely diplomatic conferences?
- International Organisations (IOs)? (Churchill and Ulfstein)
- Legal significance of IOs
  - a) express powers from the Treaty and
  - b) implied powers (COP can change the scope of the original agreement if fulfilling purpose of the Convention and effectiveness without express state consent).

**IOs have a level of independence from states to make their decisions.**

## Autonomy

Operational independence of COP from the state.

CBD Art 23(4)(i) confers powers to the COP to:

*“Consider and undertake any additional action that might be required for the achievement of the purposes of this Convention in the light of experience gained in operation.”*

- Wide permission for COP activity
- Legally by consensus voting and pragmatically by involvement of non-state actors.



“Complete state autonomy, may have been acceptable in the past when no state could take actions that would threaten the international community as a whole. Today, the enormous destructive potential of some activities and the precarious condition of some objects of international concern make full autonomy undesirable, if not potentially catastrophic.” (Charney, 1993).



## Legal Status of COP decisions?

- Legitimacy
- Soft law?
- Legal norms? Focus on effect rather than bindingness (Bodansky)
- Is COP a “global legislature”? (Jutta Brunnée)
- How best to understand legal norms produced by COPs? (Participants involved, effect they have, how best to make legitimate).



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“To the extent that COP resolutions and decisions deepen and thicken the treaty obligations, it is no longer possible to argue that the treaty obligation stands at a hierarchically superior position than the COP obligation. They are inextricably intertwined”.

(Wiersema, 2009)

## Compliance

- CBD Art 27 Voluntary dispute mechanism.
- COP established SBI (2014)
  - (a) review of progress in implementation;
  - (b) strategic actions to enhance implementation;
  - (c) strengthening means of implementation; and
  - (d) operations of the convention and the Protocols.
- COP role in developing effective compliance procedures (facilitative vs enforcement).
- There is no feedback mechanism calling upon parties to do or not to do something
- Enhanced role of the COP and/or CBD Secretariat?
- CITES Secretariat given powers by the Treaty to “review national reports, communicate problems on implementation to parties and make recommendations”. Secretariat can trigger non-compliance procedure.

## The Secretariat

The CBD Secretariat's role:

- Sets and drafts agenda for COP and other meetings
- First draft of decisions
- Compiles and analyses information from countries (national reports and NBSAPs) and reports to COP on progress towards implementation.
- Guides parties during negotiations
- Key point of co-ordination between other Treaties (overlap management)

Autonomous activity?



## Gap in Research?

Research has been done on institutional bodies (in particular COPs) but more is needed.

My research uses socio-legal methods to explore the workings of the CBD COP and Subsidiary bodies and Secretariat. In understanding the processes occurring within these bodies we can better understand how to improve regime effectiveness through these institutional bodies.

Further it explores the effect of their activities at the national level which unravels how implementation is working at the state level and how it can be improved.

## Research Questions

1. Does the CBD COP and secretariat show elements of autonomous activity?
2. How are the decisions made at the CBD COP influenced by different actors?
3. How can autonomous activity be seen as legitimate?
4. What effect does the 2020 Strategic Plan and Aichi targets have at the UK level?



- **Methodology**

- Doctrinal analysis (CBD, COP decisions and other guidance, European laws, UK laws and country policies, strategies).
- Literature Review
- 'Mini-ethnography/participant-observation' (SBBSTA 20, SBI1. COP13)
- Semi-structured interviews
- COP 13 Delegates (15 interviews)
- Actors in biodiversity governance at state level (In progress 6 to date)
- UK case study. Environment a devolved issue.
- England, Wales, Scotland, N. Ireland.
- Representatives from national government, national agencies, Sub-national eg. LBAP officers, local wildlife NGOs).

## Analytical strategy for interview data.

- Thematic analysis to identify, analyse, and report themes within the data.
- No random quotes!
- 6 step thematic analysis (Braun & Clarke, 2006)
- Theory driven?

### Phases of thematic analysis

1. **Familiarizing yourself with your data:** Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. **Generating initial codes:** Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. **Searching for themes:** Collating codes into potential themes, gathering all data relevant to each potential theme.
4. **Reviewing themes:** Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic 'map' of the analysis.
5. **Defining and naming themes:** Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6. **Producing the report:** The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.



## Relevant Theories from International Law and International Relations

### 1. Global Administrative Space (GAS) and Global Administrative Law (GAL). (B. Kingsbury)

- COP as a global public administration creating global administrative law.
- Domestic administrative action regarding global regimes comes under Kingsbury's definition of GAL.
- Not enshrined in domestic law. Accountability?

“Some non-standard forms of rule-making become so influential, and indeed prevalent in some areas, it is unsatisfactory to have no better analysis than ‘non-law’. (Kingsbury & Kirsch).



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## 2. Constructivism.

- Theories from other disciplines (IR, Politics) valuable to dialogue in IL

**Rationalist.** Role institutions play to enhance the ability of states to cooperate in matters that will be of mutual benefit. Key actors = states.

**Constructivist institutionalists.** What social interactions form structures and institutions.

a) institutions reflect shared understandings of actors

b) provide a structure where understandings can be developed/shaped by actors

c) institution plays a role in shaping the identities of actors and this can be seen as a dynamic process.

- Patterns of behavior can be reconstructed through learning and persuasion

- Legitimacy found through relatively stable shared understandings.



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## Research progress

- Next step of my research is to complete interviews and conduct thematic analysis. Results!
- PHD due for submission September 2018
- Comments and Feedback very welcome!

