

MAPPING A HIDDEN WORLD OF INTERNATIONAL REGULATORY COOPERATION

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I

INTRODUCTION

Almost exactly one decade ago, *Law and Contemporary Problems* published a highly influential symposium entitled *The Emergence of Global Administrative Law*.¹ The articles in that issue described rapidly changing patterns of transnational regulation, identified an emerging “global administrative space,” and explored normative questions raised by shifts in authority to transnational administrative processes. At roughly the same time, network scholars described a “new world order,” in which transnational governance networks increasingly conducted regulatory functions across a wide variety of issue areas.² Both literatures introduced new conceptualizations of trends in international cooperation and standard-setting.

This symposium’s focus on “international regulatory cooperation” revisits themes explored in the global administrative law and networks literatures. Broadly conceived, international regulatory cooperation consists of arrangements to promote cooperation in the design, monitoring, and enforcement or ex post management of regulation, with a view to supporting the consistency of rules across national borders. The topic has returned to the center of the diplomatic and scholarly agenda, in part as a result of the regulatory failures that contributed to the global recession. Indeed, as this symposium goes to press, the European Union (EU) and the United States are engaged in EU–U.S. Transatlantic Trade and Investment Partnership negotiations, which are focused on promoting regulatory coherence,³ and a

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1. Symposium, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 3 & 4 (Summer & Autumn 2005).

2. See, e.g., ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004).

3. C. Boyden Gray, *Upgrading Existing Regulatory Mechanisms for Transatlantic Regulatory Cooperation*, 78 LAW & CONTEMP. PROBS., no. 4, 2015; Fernanda G. Nicola, *The Politicization of Legal Expertise in the TTIP Negotiation*, 78 LAW & CONTEMP. PROBS., no. 4, 2015. For a provocative view of

lively debate has emerged over how best to implement an executive order promoting international regulatory cooperation.⁴ Thus, this symposium could not be more timely.

The contributions to this symposium substantially advance scholarly understanding of the strategies governments use to promote more consistent and coordinated rules. Notably, although the articles diverge on a number of critical issues, they share a common understanding of the phenomena under investigation. International regulatory cooperation, under this shared view, involves domestic officials from different jurisdictions jointly addressing issues of mutual concern. This activity is characterized as *international* because it involves activities between or among officials from different states.

Despite the important insights found in these articles, the focus on interactions among *domestic* regulators from different jurisdictions has the unintended and unfortunate effect of obscuring other important forms of international regulatory cooperation, including, specifically, regulatory interactions among actors from different *international* organizations and legal regimes. These activities, analyzed in more detail below, are “regulatory” in the sense that they involve sustained and organized efforts to modify the behavior of target actors to advance social or collective ends, through rules or norms and, often, mechanisms of implementation and enforcement. Moreover, these regulatory activities result from “interactions,” meaning they are a product of the myriad ways that international actors and institutions engage with and react to one another.

To be sure, international organizations also interact with firms, nongovernmental organizations, and other civil society actors in ways that produce novel and important forms of regulation. However, in recent years, a large and sophisticated literature has analyzed both hybrid public–private bodies and private transnational regulation.⁵ Ironically, the same amount of scholarly attention has not been devoted to regulation resulting from interactions involving more familiar international actors, namely international

the potential costs of regulatory cooperation and the potential benefits of regulatory variation, see Jonathan B. Wiener & Alberto Alemanno, *The Future of International Regulatory Cooperation: TTIP as a Learning Process toward a Global Policy Laboratory*, 78 LAW & CONTEMP. PROBS., no. 4, 2015, at 122–32.

4. Exec. Order No. 13,609, 77 Fed. Reg. 26,413 (May 1, 2012). See, e.g., Reeve T. Bull, *Developing a Domestic Framework for International Regulatory Cooperation*, 78 LAW & CONTEMP. PROBS., no. 4, 2015.

5. See, e.g., INTERNATIONAL ORGANIZATIONS AS ORCHESTRATORS (Kenneth Abbott et al. eds., 2015); TIM BÜTHE & WALTER MATTLI, THE NEW GLOBAL RULERS: THE PRIVATIZATION OF REGULATION IN THE WORLD ECONOMY (2011); Peer Zumbansen, *Transnational Private Regulatory Governance: Ambiguities of Public Authority and Private Power*, 76 LAW & CONTEMP. PROBS. 117 (2013). Indeed, as private and hybrid public–private regulatory efforts proliferate, scholars have even begun to analyze their interactions with each other. See, e.g., Burkard Eberlein et al., *Transnational Business Governance Interactions: Conceptualization and Framework for Analysis*, 8 REG. & GOVERNANCE (SPECIAL ISSUE: TRANSNATIONAL BUSINESS GOVERNANCE INTERACTIONS) 1 (2014) (analyzing implications of interactions in transnational business governance across numerous issue areas for regulatory capacity and performance).

organizations. The inattention to *international* regulatory cooperation, however, is particularly significant for several reasons.

First, international regulatory cooperation is commonly used to address a wide variety of issues. In areas as disparate as peacekeeping, fighting HIV/AIDS, monitoring trade in dangerous chemicals, offering debt relief, protecting endangered species, coordinating international criminal enforcement, and providing humanitarian assistance, actors from different international organizations and regimes routinely collaborate to jointly address issues of common concern.⁶ As a result, the failure to attend to this activity compromises dominant approaches to conceptualizing international regulatory cooperation. Conversely, attention to the variety, number, and importance of these forms of coordination, collaboration, and, at times, competition among international bodies is essential to understanding the promise and limits of international regulatory cooperation.

Second, the quantity and significance of these forms of international regulatory cooperation will increase, as traditional forms of cooperation—prominently including efforts to create general rules via multilateral treaty—are seen as increasingly cumbersome and ineffective.⁷ The rapid rise of new powers has rendered multilateral negotiations more difficult. Moreover, existing international bodies—frequently designed in light of very different distributions of power—are often paralyzed by dysfunctional but difficult-to-change decisionmaking processes.⁸ Together, these difficulties contribute to a growing sense that traditional legislative and regulatory mechanisms are unable to meet current needs.⁹ As a result, new forms of multi-stakeholder and nontreaty governance are emerging. The impact and reach of the nontraditional mechanisms highlighted here will only increase over time.

Third, the emergence of new forms of international regulatory cooperation raises challenging conceptual, doctrinal, and normative issues. As an analytic matter, what are the drivers, mechanisms, and pathways that determine the frequency and intensity of regulatory interactions? Under what circumstances are interactions likely to lead to cooperative behavior, and when do they lead to competition? How should we characterize, measure, and evaluate the outputs and impacts of regulatory interactions? As a doctrinal matter, what rules govern the production of legal norms through interactions among actors from different international bodies? Are these activities subject to judicial review or to other institutional checks and balances? Finally, as a normative matter, in what sense

6. See *infra* Part III.

7. See, e.g., THOMAS HALE, DAVID HELD & KEVIN YOUNG, *GRIDLOCK: WHY GLOBAL COOPERATION IS FAILING WHEN WE NEED IT MOST* (2013) (arguing that treaties and other forms of legal cooperation are increasingly inadequate).

8. See, e.g., Shawn Donnan, *WTO Begins Talks to Break Deadlock Over 'Consensus' Principle*, FINANCIAL TIMES, Oct. 12, 2014, <http://www.ft.com/cms/s/0/a289ba90-51e7-11e4-b55e-00144feab7de.html#axzz3SgXZoD00> (detailing efforts to circumvent the founding principle that all decisions are made by consensus in light of ongoing negotiation deadlock).

9. HALE, HELD & YOUNG, *supra* note 7.

are norms produced by international bureaucrats legitimate? To whom are actors in different international organizations accountable? What role do power and inequality play in determining whether and how international regulatory cooperation takes place?¹⁰

Fourth, international regulatory cooperation has not been systematically explored in the scholarly literature.¹¹ For example, although network theorists have illuminated the informal arrangements created when regulatory officials cooperate with counterparts in other jurisdictions, to date, they have not addressed the network-style interactions that take place among officials from different international bodies.¹² Although some global administrative law writings usefully address interactions among international organizations,¹³ this literature rarely, if ever, foregrounds the dynamic, ongoing, relational regulatory interactions detailed below. And, although the literature on regime complexes helpfully describes the institutionally dense environment within which international organizations exist,¹⁴ it has not developed an analytic typology to clarify the various types of interactions that take place. As a result, scholars know little about these actions and their role in contemporary global governance.

This article seeks to extend the existing literature, provide greater analytical traction to the study of international regulatory cooperation than existing approaches do, and advance understandings of how, why, and when international regulatory cooperation occurs. To do so, this article maps the various ways international organizations cooperate, collaborate, and at times, compete in the design, interpretation, and implementation of international rules, regulations, standards, and guidelines. The analysis proceeds in three parts, followed by a brief conclusion.

10. Of course, similar questions can be asked of the transnational regulatory efforts explored elsewhere in this issue. However, these questions are even more pressing regarding the forms of cooperation highlighted here. The actors and institutions in the processes described below lack the legal and political controls that apply to parallel domestic processes, and the norms they produce lack the foundation in state consent that more traditional forms of international regulatory cooperation possess.

11. Rare exceptions that adopt broader perspectives on interactions among international bodies similar to those developed here include INSTITUTIONAL INTERACTION IN GLOBAL ENVIRONMENTAL GOVERNANCE: SYNERGY AND CONFLICT AMONG INTERNATIONAL AND EU POLICIES (Sebastian Oberthür & Thomas Gehring eds., 2006); MARGARET A. YOUNG, TRADING FISH, SAVING FISH: THE INTERACTION BETWEEN REGIMES IN INTERNATIONAL LAW (2011); Claire R. Kelly, *Institutional Alliances and Derivative Legitimacy*, 29 MICH. J. INT'L L. 605 (2008).

12. Abraham L. Newman & David Zaring, *Regulatory Networks: Power, Legitimacy, and Compliance*, in INTERDISCIPLINARY PERSPECTIVE ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 244 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013) (reviewing scholarship on regulatory networks).

13. See, e.g., Richard B. Stewart & Michelle Ratton Sanchez Badin, *The World Trade Organization and Global Administrative Law*, in CONSTITUTIONALISM, MULTILEVEL TRADE GOVERNANCE AND INTERNATIONAL ECONOMIC LAW 457 (Christian Joerges & Ernst-Ulrich Petersmann eds., 2011).

14. See, e.g., Kal Raustiala, *Institutional Proliferation and the International Legal Order*, in INTERDISCIPLINARY PERSPECTIVE ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 293 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013).

Part II provides a very short overview of the structural factors that give rise to interactions among international organizations. The article briefly describes a decentralized and fragmented international order consisting of multiple international legal regimes with functional, and at times overlapping, responsibilities. This material will be familiar to many readers, but it provides a necessary background and context for the analysis that follows.

Part III, the heart of the article, develops a preliminary typology of the various ways actors from different international organizations engage in regulatory cooperation. In particular, the article identifies two different axes to categorize these interactions. One axis focuses on the various *forms* interactions can take, which centers on the activity or function being coordinated. The second axis focuses on the *nature* of the interaction, which spans a continuum from rationalization of parallel or overlapping efforts, to expansions of powers or jurisdiction, to competitive and conflictual interactions. Considered together, these axes can be conceptualized as a three-by-three matrix that captures much of the universe of international regulatory cooperation.

The purpose of illuminating and mapping this world of international regulatory cooperation is not simply to clarify systematically the different modes of interaction. Just as importantly, it is intended to open up a fruitful new research agenda for those who wish to understand and critique this activity. Thus, part IV, identifies some of the positive and normative issues raised by international regulatory cooperation. As a positive matter, future studies can do much to identify patterns in international organization interactions, including the factors that contribute to successful or unsuccessful international regulatory outcomes and whether they differ across different issue areas. Future research should also explore normative concerns raised by international regulatory cooperation, including issues of accountability and legitimacy, as well as the role of power in shaping the frequency and content of international regulatory cooperation.

II

STRUCTURAL FACTORS BEHIND INTERNATIONAL REGULATORY COOPERATION: INSTITUTIONAL PROLIFERATION AND OVERLAP

International regulatory cooperation takes place within the context of an international legal order that took shape during the remarkable period of treaty-drafting and institution-building following the end of World War II. These postwar efforts clustered, broadly, around three different domains—security and warfare, human rights, and international economic relations. In the area of security and armed conflict, states created the United Nations in the summer of 1945,¹⁵ crystallizing in law the modern rules governing the use of force and, shortly thereafter, the four Geneva Conventions on the law of armed conflict.¹⁶ The UN Charter's skeletal human rights provisions¹⁷ marked the start

15. See U.N. Charter.

16. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in

of what has evolved into an institutionally dense human rights system. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights,¹⁸ which in turn led to the covenants on civil and political rights and on economic and social rights; a series of regional human rights agreements; and treaties addressing specific human rights concerns such as genocide, torture, and gender discrimination.¹⁹ Developments in the economic field were equally substantial: the 1944 Bretton Woods Agreements created the World Bank and the International Monetary Fund. In 1948, an agreement was reached on the General Agreement on Tariffs and Trade (GATT), the precursor to today's World Trade Organization (WTO), which oversees some \$23 trillion in international trade in goods and services per year.

As this thumbnail account suggests, during the postwar era, international cooperation has increasingly been structured within the framework of international organizations. Today, hundreds of these bodies—intergovernmental entities established by treaty and governed by international law—populate the international landscape, addressing aviation, commerce, culture, development, environment, intellectual property, investment, oceans, trade, and virtually every other field of human endeavor. This institutional order can claim many important successes. Although the UN obviously has not eliminated global conflict, it has facilitated the settlement of many regional conflicts, played a central role in the decolonization process, and greatly elevated the prominence of human rights in international legal and political discourse. The GATT–WTO and Bretton Woods institutions spearheaded an enormous expansion of the global economy that helped to lift millions out of poverty; the World Health Organization (WHO) was instrumental in virtually eliminating polio and smallpox and reducing infant mortality; and the Office of the United Nations High Commissioner for Refugees (UNHCR) has assisted over thirty million refugees fleeing war, persecution, and famine. Additionally, technically oriented bodies, like the International Civil Aviation Organization (ICAO) and the International Telecommunications Union (ITU), help make the conveniences of modern life possible. Overall, it is fair to conclude that “these special-purpose global bodies . . . make vast contributions to aggregate

Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516.

17. See U.N. Charter pmbl. (recognizing “fundamental human rights” and the “dignity and worth of the human person”); *id.* at art. 1, para. 3 (declaring one of the purposes of the charter is to “promot[e] and encourag[e] respect for human rights”).

18. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/RES/217(III) (Dec. 10, 1948).

19. See, e.g., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10 1984, 1465 U.N.T.S. 85; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

human welfare and promote important moral concerns in fields such as human rights and environmental protection.”²⁰

At the same time, the proliferation of organizations is potentially problematic. International organizations and regimes are typically created in response to specific problems and hence have been formed at different times by different actors for different purposes. Thus, each international organization comes with its own constitutive text, legal rules and principles, subsidiary bodies, and expertise, all designed to pursue specific tasks and advance certain values. These bodies operate in a highly decentralized and largely nonhierarchical environment. Activities and decisions in one regime are often taken with little knowledge of or regard for decisions in neighboring regimes, and there are few formal rules to govern their relations or mechanisms to promote accountability or coordination.

To be sure, many domestic legal systems contain large numbers of specialized administrative and regulatory bodies. These bodies, however, are typically subject to compulsory judicial review as well as legislative and executive oversight that can prioritize objectives, coordinate activities, and resolve conflicts. These authorities and mechanisms are largely lacking on the global level.²¹

In the highly fragmented international legal order, two or more international bodies or legal regimes frequently purport to govern the same individuals, activities, or policy domains. For example, at least a half-dozen international bodies currently address international financial issues, no less than ten international bodies claim regulatory authority over Internet infrastructure, and roughly two dozen international bodies address climate change.²² Moreover, although recourse to courts is still considerably less common on the international plane than the domestic, the proliferation of international tribunals means it is increasingly possible for the same dispute to be considered by multiple courts that use different procedures and apply different law. In this densely populated international legal landscape, global and regional regulatory bodies continuously interact in complex patterns of regulatory cooperation and competition.

III

A TYPOLOGY OF INTERNATIONAL REGULATORY COOPERATION

This part begins the task of mapping the complex terrain of international regulatory cooperation. For expository purposes it is useful to distinguish between two different axes. One highlights the *form* of the interaction, focusing

20. Richard B. Stewart, *Remediating Disregard in Global Regulatory Governance: Accountability, Participation, and Responsiveness*, 108 AM. J. INT’L L. 211, 214 (2014).

21. *Id.* at 218.

22. See Vint Cerf et al., *Internet Governance is Our Shared Responsibility*, 10 J. L. & POL’Y INFO. SOC. 1 (2014) (discussing the international efforts to regulate the internet); Robert O. Keohane & David G. Victor, *The Regime Complex for Climate Change*, 9 PERSP. ON POL. 7 (2011) (describing the international regulatory regime for global climate change efforts).

on the activity or function being coordinated. A second axis highlights the *nature* of the interaction, which covers a continuum from rationalization of overlapping efforts, to expansions of jurisdiction, to competitive and conflictual interactions. This is by no means intended as an exhaustive list or the only way to conceptualize the interactions resulting in regulatory cooperation. Nor should the categories be understood as mutually exclusive, as interactions often migrate from one form to another (that is, operational interactions produce regulatory interactions) or reflect mixed motives (because international organizations often simultaneously cooperate and compete). The categories are a useful heuristic device to organize a wide array of international practice and help render visible the under-studied phenomena of global regulatory cooperation.

A. Forms of International Regulatory Cooperation

Many interactions produce new regulatory norms and instruments. Sometimes, actors from different international organizations interact with the express intention of generating new standards; this article labels these “regulatory interactions.” Other times, actors from multiple bodies interact on operational issues, with new regulatory norms as an incidental byproduct of these “operational interactions.” And sometimes, actors from different bodies engage in “conceptual interactions,” which are not themselves intended directly to produce regulatory outcomes but instead to lay the analytic and conceptual underpinnings for future regulatory efforts.

1. Regulatory Interactions: Creating and Navigating Shared Regulatory Space

Across a wide variety of policy domains, actors from multiple international bodies systematically interact with each other to navigate or create shared regulatory space. In so doing, they regularly and continuously generate new international legal rules, regulations, standards, and guidelines.

a. Interactions to address coordination problems. Perhaps the most common and most straightforward form of international regulatory cooperation occurs when two or more international bodies jointly produce legal norms and other regulatory instruments. This is a particularly attractive means to solve coordination problems, such as when mutual gains are available when parties coalesce around common positions.

Consider, for example, international efforts to control environmentally hazardous substances and activities. In the 1980s and 1990s, a number of uncoordinated efforts to classify and label dangerous chemicals emerged, including an International Labour Organization (ILO) Convention, an Organisation for Economic Co-operation and Development (OECD) Chemicals Programme, a Food and Agriculture Organization (FAO) recommendation on pesticides, UN recommendations, and various EU

directives.²³ This fragmented approach proved unsatisfactory and, in 1992, states formally recognized the need for “a globally harmonized hazard classification system and compatible labelling system.”²⁴ To advance this goal, in 1995, the WHO, the OECD, the FAO, the ILO, the United Nations Environment Programme (UNEP), and the United Nations Industrial Development Organization (UNIDO) jointly formed the Inter-Organization for the Sound Management of Chemicals (IOMC).²⁵ Among other responsibilities, the IOMC was charged with developing a harmonized classification and labelling system.²⁶ To do so, different tasks were allocated to different agencies. For example, the IOMC designated the OECD as the lead agency for the harmonization of classification criteria for health and environmental hazards, a UN Sub-Committee of Experts on the Transport of Dangerous Goods served as the focal point for work on physical hazards, and the ILO managed work on the harmonization of chemical-hazard communication. An IOMC coordinating and drafting group, including members of all IOMC agencies, oversaw these various efforts. Once the IOMC group combined and harmonized the various efforts into one comprehensive document, it was submitted to the UN for global implementation as the “Globally Harmonized System for the Classification and Labelling of Chemicals” (GHS). The GHS was first published in 2003, with revisions in 2005 and 2007.²⁷ Although the GHS is extremely ambitious—it covers all chemicals—it has been implemented, in whole or in part, by approximately sixty-seven states, including the United States and the EU.²⁸

23. See, e.g., ILO, Convention Concerning Safety in the Use of Chemicals at Work, No. C170 (June 25, 1990); OECD, Decision-Recommendation of the Council on the Systematic Investigation of Existing Chemicals, C(87)90/Final (June 26, 1987); FAO, *Revised Guidelines on Environmental Criteria for the Registration of Pesticides* (1989); European Econ. Cmty., *On the Evaluation and Control of the Risks of Existing Substances*, Council Regulation No. 793/93, Off. J. Eur. Comm. L. 84 (Mar. 23, 1993).

24. UN Conference on Environment & Development, Rio de Janeiro, Braz., June 3–14, 1992, *Agenda 21*, ¶ 19.27.

25. FAO-ILO-OECD-UNEP-UNIDO-WHO: Memorandum of Understanding Concerning Establishment of the Inter-Organization Programme for the Sound Management of Chemicals, Mar. 13, 1995, 34 I.L.M. 1311.

26. IOMC, *Coordinating Group for the Harmonization of Chemical Classification Systems, Revised Terms of Reference and Work Program*, at Annex 1, ¶¶ 7–8, Doc. IOMC/HCS/95 (Jan. 14, 1996).

27. U.N. ECON. COMM’N FOR EUR. GLOBALLY HARMONIZED SYSTEM OF CLASSIFICATION AND LABELLING OF CHEMICALS, U.N. Doc. ST/SG/AC.10/30, U.N. Sales No. E.03.II.E.25 (Aug. 2003); U.N. ECON. COMM’N FOR EUR. GLOBALLY HARMONIZED SYSTEM OF CLASSIFICATION AND LABELLING OF CHEMICALS (GHS), U.N. Doc. ST/SG/AC.10/30/Rev.4, U.N. Sales No. E.11.II.E.6 (2011); U.N. ECON. COMM’N FOR EUR. GLOBALLY HARMONIZED SYSTEM OF CLASSIFICATION AND LABELLING OF CHEMICALS (GHS) U.N. Doc. ST/SG/AC.10/30/Rev.5, U.N. Sales No. E.13.II.E.1 (2013).

28. In February 2006, IMOC, UNEP, and the Intergovernmental Forum on Chemical Safety (IFCS) convened the International Conference on Chemicals Management. The Global Environment Facility, the United Nations Development Programme, and the World Bank joined the coconvenors in adopting a Strategic Approach to International Chemicals management (SAICM). This initiative is designed to “strengthen the coherence and [the] synergies that exist” between existing efforts to manage dangerous chemicals and to address “existing gaps in the framework of international chemicals policy.” See UNEP, Strategic Approach to International Chemicals Management: Dubai Declaration on International Chemicals Management (2006), <http://www.fao.org/fileadmin/templates/agphome/>

Similar efforts by actors from different international organizations to jointly navigate shared regulatory space are found in other issue areas. For example, the ICAO, which sets standards for aviation safety, and the ITU, which allocates global radio spectrum and satellite orbits, have collaborated on issues of mutual concern, including standards to avoid interference with aeronautical communication and navigation systems. These two organizations recently started to work on regulatory issues raised by civilian automated pilotless aircraft, or drones.²⁹

Note that in both examples of regulatory cooperation the regulatory interactions were initiated by the organizations themselves. In other cases, interactions are “rule-based” in the sense that a treaty or other legal instrument requires actors from one body to consult with another body whose mission is implicated in the first body’s decisionmaking. This article examines below examples of such “rule-based” interactions.

b. Interactions to address collective action problems. Many collective action problems are considerably more difficult to solve than the coordination problems mentioned above. In these cases, states often face mixed motives, and cooperation is therefore harder to maintain. Protecting endangered marine species is an example of a collective action problem, and the interactions between the FAO and the Convention on International Trade in Endangered Species (CITES) Secretariat provide an example of how international regulatory cooperation can address such problems.

The FAO seeks to eradicate hunger and food insecurity and promote sustainable agriculture. In 1995, the FAO produced a Code of Conduct for Responsible Fisheries to address concerns over fisheries management. Implementation of FAO norms, however, has historically been weak, and, over time, pressures grew to address endangered marine species through other mechanisms, including CITES.

In 2002, several marine species were added to CITES listings.³⁰ However, the decision was controversial, given questions about the scope of CITES’s jurisdiction over marine species, its expertise, a supposed bias in favor of conservation and against economic development, and concerns over creating conflicts with FAO norms.³¹ CITES includes a provision requiring, in connection with proposals to list marine species, consultation with “inter-governmental bodies having a function in relation to those species,”³² and the

documents/Pests_Pesticides/Code/SAICMdeclaration.pdf.

29. See, e.g., ICAO, Unmanned Aircraft Systems (UAS), Cir 328 AN/190 (2011) (noting consultations between agencies).

30. See, e.g., Convention on International Trade in Endangered Species of Wild Fauna and Flora, Amendments to Appendices I and II of the Convention, Nov. 15, 2002, http://www.cites.org/sites/default/files/eng/cop/12/Adopted_Amendments.pdf.

31. Margaret A. Young, *Protecting Endangered Marine Species: Collaboration Between the Food and Agriculture Organization and the CITES Regime*, 11 MELB. J. INT’L L. 441, 452–59 (2010).

32. Convention on International Trade in Endangered Species of Wild Fauna and Flora, art. XV(2)(b), March 3, 1973, 27 U.S.T. 1087.

FAO Code of Conduct encourages states to cooperate in complying with treaties that regulate the trade of endangered species.³³ Despite significant disagreement among FAO members regarding the appropriate relationship between FAO and CITES, the two secretariats attempted to formalize their interactions, including through lengthy and contentious negotiations over a memorandum of understanding.³⁴ These negotiations eventually produced such a memorandum providing that CITES is to notify the FAO whenever it considers listing a marine species.³⁵ The FAO is thereafter to carry out a scientific review of the proposal in accordance with CITES biological listing criteria, taking account of any recommendations CITES submits to the FAO.³⁶ After receiving the FAO review, the memorandum of understanding requires the CITES Secretariat to “respect, to the greatest extent possible, the results of the FAO [review]” when communicating its recommendations to CITES parties.³⁷

The consultation process has proved highly influential. For example, in 2007, Germany proposed the listing of two shark species. The CITES Secretariat notified the FAO, and an FAO expert panel concluded that the available scientific evidence did not support the proposed listing.³⁸ The CITES parties did not approve the German proposals.³⁹ In 2013, several proposals to list various marine species were submitted to CITES.⁴⁰ FAO expert panels recommended some of these proposals be adopted, including the shark species rejected in 2007, and others rejected.⁴¹ In each case, the CITES parties followed the FAO’s recommendations. Thereafter, the CITES Secretariat and the FAO developed a joint plan of action regarding listed species, and delegations from the two bodies have begun to collaborate on the implementation of shark protection projects.

33. FAO, *Code of Conduct for Responsible Fisheries*, at art. 11.2.9, <http://www.fao.org/docrep/005/v9878e/v9878e00.htm#11> (Oct. 31, 1995).

34. For a detailed account of FAO–CITES negotiations, see Young, *supra* note 31, at 464–73.

35. See *id.*, at 484 (describing the memorandum of understanding’s process for altering the listing of species).

36. *Id.*

37. FAO & CITES, *Memorandum of Understanding Between the Food and Agriculture Organization of the United Nations (FAO) and the Secretariat of the Convention on International Trade in Endangered Species*, at para. 6 [hereinafter FAO–CITES MOU], <http://www.cites.org/sites/default/files/eng/disc/sec/FAO-CITES-e.pdf>.

38. See FAO, Fisheries Report No. 833: Report of the Second FAO Ad Hoc Expert Advisory Panel for the Assessment of Proposals to Amend Appendices I and II of *CITES* concerning Commercially-Exploited Aquatic Species, at 19–28, FIMF/R833 (Mar. 2007) (stating the proposal of the porbeagle shark was not supported by available evidence); *id.* at 37–49 (stating the proposal of the spiny dogfish was not supported by available evidence).

39. INT’L INST. FOR SUSTAINABLE DEV., *Summary of the Fourteenth Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora: 3–15 June 2007*, 21 EARTH NEGOTIATIONS BULLETIN (No. 61) 1, 16 (2007).

40. See, e.g., INT’L INST. FOR SUSTAINABLE DEV., *Summary of the Sixteenth Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora: 3–14 March 2013*, 21 EARTH NEGOTIATIONS BULLETIN (No. 83) 1, 23 (2013).

41. *Id.*

Significantly, the CITES Secretariat is not required to accept the conclusions of the FAO review. Although the consultation requirement does not dictate outcomes, it de facto obliges the CITES Secretariat to engage seriously with the FAO's views and develop a persuasive rationale for pursuing an alternative course of action. In practice, CITES listing decisions have largely followed the FAO recommendations.

c. Interactions to address distribution problems. Distribution problems pose particularly difficult problems for international law. Given a lack of enforcement mechanisms and a general inability to tax and redistribute resources, issues with strong distributional features often require other mechanisms—such as side payments—otherwise resist solution. Such is the case, for example, with current efforts to craft a climate-change treaty. Perhaps not surprisingly, interactions to address distributional problems have met mixed success.

Developments under the Stockholm Convention on Persistent Organic Pollutants (POPs Convention), which bans the use of certain pesticides and chemicals, provides a useful illustration of interactions regarding issues with strong distributional elements. Perhaps the most controversial issue during the POPs negotiations was whether to ban use of the pesticide DDT. A coalition of environmental groups advocated for a ban, emphasizing the chemical's potential health effects, including reduced fertility, birth defects, and cancer.⁴² On the other hand, many developing states, supported by the WHO (a formal participant in the negotiations), argued DDT was highly effective in controlling the spread of malaria and that no economically feasible alternative existed.⁴³ In effect, the environmental benefits of a ban would impose significant public health costs upon developing states. The WHO position ultimately prevailed, and the POPs Convention restricts, but does not ban, the continued use of DDT.⁴⁴

The treaty negotiators contemplated that the list of covered substances would change over time.⁴⁵ In particular, the POPs Convention expressly

42. See, e.g., Kathleen R. Walker, et al., *Developing an International Consensus on DDT: A Balance of Environmental Protection and Disease Control*, 206 INT'L J. HYG. ENVIRON. HEALTH 423 (2003); Erin Perkins, *The Stockholm Convention on Persistent Organic Pollutants: A Step Toward the Vision of Rachel Carson*, 2001 COLO. J. INT'L ENV. L. & POL'Y 191 (2001); Sheryl Gay Stolberg, *DDT, Target of Global Ban, Finds Defenders in Experts on Malaria*, N.Y. TIMES, Aug. 29, 1999, <http://www.nytimes.com/1999/08/29/world/ddt-target-of-global-ban-finds-defenders-in-experts-on-malaria.html>.

43. See, e.g., INT'L INST. FOR SUSTAINABLE DEV., *The Second Session of the International Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPS): 25–29 January 1999*, 15 EARTH NEGOTIATIONS BULLETIN (No. 18) 1 (1999) at 2, 4, 9; INT'L INST. FOR SUSTAINABLE DEV., *Report on the First Session of the INC for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPS): 29 June–3 July 1998*, 15 EARTH NEGOTIATIONS BULLETIN (No. 10) 1 (1998), at 6.

44. Stockholm Convention on Persistent Organic Pollutants, Annex B, pt. I, May 22, 2001, 40 I.L.M. 532 (entered into force May 17, 2004).

45. See *id.*, at art. 8 (detailing process for listing new chemicals), art. 16 (detailing process for

provides that at least every three years the treaty parties “shall, in consultation with the [WHO], evaluate the continued need for DDT for disease vector control.”⁴⁶ The clear expectation is that if and when the WHO determines that DDT is no longer needed for malaria control, the treaty will be amended to ban DDT. Thus, the treaty explicitly structures an ongoing series of interactions between the POPs Secretariat and the WHO over global efforts to regulate DDT.

The POPs Convention also illustrates a much more common form of regulatory cooperation; namely, when treaties expressly incorporate by reference standards created by another international body. Although the treaty does not ban use of DDT, it provides that parties may produce and use DDT only in accordance with WHO recommendations and guidelines.⁴⁷ Thus any changes in WHO guidelines expanding or restricting rules for DDT use automatically produce changes in the permissible uses of DDT for purposes of the POPs Convention. This approach has the effect of generating parallel rules in the chemicals and public health regimes, producing harmonized approaches to the issue.

Distributional issues are likewise central to many efforts to regulate employment and workplace safety, in which the interests of workers are often in tension with those of their employers. For example, issues involving seafarers have given rise to much interaction between the International Maritime Organization (IMO) and the ILO, perhaps in part because of unclear and overlapping jurisdictions. The IMO is responsible for the safety and security of shipping and the prevention of marine pollution by ships. The ILO promotes and realizes international standards related to employment. The two organizations have collaborated to establish a series of joint working groups and expert groups on issues involving seafarers. These groups produced a variety of guidelines,⁴⁸ which by their terms are not legally binding. Nevertheless, in practice, they strongly influence domestic legislation and demonstrate how international regulatory cooperation can address international problems with strong distributional implications.

evaluating effectiveness of treaty).

46. *Id.* at Annex B, Part II, para. 6.

47. *Id.* at Annex B, Part II, para. 2.

48. For a sampling, see IMO & ILO, *Code of Practice on Security in Ports*, MESSHP/2003/14 (2003), <http://www.imo.org/OurWork/Security/Instruments/Documents/ILOIMOCODEofPracticeEnglish.pdf>; IMO, *Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers*, A 22/Res.930 (Dec. 17, 2001) (adopted Nov. 29, 2001), [http://www.imo.org/blast/blastDataHelper.asp?data_id=24584&filename=A930\(22\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=24584&filename=A930(22).pdf); IMO, *Guidelines on Shipowners' Responsibilities in Respect to Contractual Claims for Personal Injury to or Death of Seafarers*, A 22/Res.931 (Dec. 17, 2001) (adopted Nov. 29, 2001), [http://www.imo.org/blast/blastDataHelper.asp?data_id=24557&filename=A931\(22\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=24557&filename=A931(22).pdf); IMO & ILO, *Adoption of Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident*, Res. LEG.3(91), [http://www.imo.org/OurWork/Legal/JointIMOILOWorkingGroupsOnSeafarerIssues/Documents/LEG3\(91\).pdf](http://www.imo.org/OurWork/Legal/JointIMOILOWorkingGroupsOnSeafarerIssues/Documents/LEG3(91).pdf) (adopted by the IMO Legal Committee in April 2006 and the ILO Governing Body in June 2006); IMO & ILO, *Guidelines on the Medical Examinations of Seafarers* (Sept. 30, 2011), http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/normativeinstrument/wcms_174794.pdf.

Other times, interactions on issues with strong distributional considerations have proven less productive. For example, overfishing threatens many of the world's fisheries, and fisheries subsidies are increasingly seen as promoting overfishing. As a result, the WTO, CITES, the United Nations Convention on the Law of the Sea (UNCLOS), the FAO, and regional fisheries organizations, along with numerous other actors, have engaged in intensive interactions over WTO negotiating texts on fisheries subsidies.⁴⁹ These negotiations, however, have largely stalled. Still other times, issues with strong distributional consequences generate conflict between international bodies, as explained more fully in the discussion below of efforts to regulate ship recycling.

Numerous other examples could be offered, but the general point should be clear. Across numerous areas of law and policy, collaborative efforts by officials from different international organizations and bodies constitute an important, if underappreciated, form of international regulatory cooperation.

2. Operational Interactions

International organizations undertake a wide variety of operational activities, including high-visibility efforts involving issues of high political salience. For example, the Organization for the Prohibition of Chemical Weapons (OPCW) is currently overseeing and verifying the destruction of chemical weapons in Syria. Less well publicized is that simultaneously, a wide variety of international organizations—including the International Organization for Migration (IOM), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the UNHCR, the World Food Program (WFP), and the WHO—are partnering to provide humanitarian assistance in Syria. The example is illustrative; studies of operational activities typically focus on a single body and, to date, have not explored how actors from different international bodies interact in the course of operational activities.⁵⁰

A handful of examples from an array of issue areas provide a sense of the scale and range of these operational activities. In the public health field, perhaps the best known example is the Joint United Nations Programme on HIV/AIDS (UNAIDS), a joint venture involving ten cosponsors from a broad spectrum of international agencies, including UNHCR, UNICEF, the WFP, UNDP, the United Nations Population Fund (UNPF), the United Nations Office on Drugs and Crime (UNODC), the ILO, UNESCO, the WHO, and the World Bank. Although each organization had developed its own AIDS program, donor states pressed to consolidate all of these activities under a

49. See Olay Schram Stokke & Clare Coffey, *Institutional Interplay and Responsible Fisheries: Combatting Subsidies, Developing Precaution*, in INSTITUTIONAL INTERACTION IN GLOBAL ENVIRONMENTAL GOVERNANCE, *supra* note 11, at 127 (discussing institutional interactions).

50. See, e.g., UNITED NATIONS PEACEKEEPING OPERATIONS: AD HOC MISSIONS, PERMANENT ENGAGEMENT (Ramesh Thakur & Albrecht Schnabel, eds. 2001).

single, new international organization to minimize duplication and maximize the impact of finite resources. Officials at the existing institutions balked, triggering “an intricate power struggle between wealthy donor states and the international bureaucrats.”⁵¹ Perhaps surprisingly, the bureaucrats largely prevailed. Through UNAIDS, the agencies with existing programs entered into both a partnership and an agreed-upon “division of labour.”⁵² Through its partners, UNAIDS oversees and coordinates a wide variety of operational activities, ranging from the distribution of AIDS medications to programs to eliminate HIV infections in newborns.

Similar collaborations are found in virtually every issue area. In the environmental domain, the Collaborative Partnership on Forests is an informal arrangement among fourteen international organizations with substantial programs on forests that collaborate to streamline and coordinate their work.⁵³ Another example is the Global Environment Facility, which was formed as a partnership among UNDP, UNEP, and the World Bank and was designed to capitalize on the expertise and comparative advantages of each agency. In the trade area, the WTO has joined with the United Nations Conference on Trade and Development (UNCTAD), the OECD, the International Trade Center (ITC) and a half-dozen other international bodies to assist WTO members in implementing their commitments under the recent Trade Facilitation Agreement. In addition, the WTO has partnered with the International Monetary Fund (IMF), the ITC, UNCTAD, UNDP, and the World Bank to create the Enhanced Integrated Framework, which assists least-developed states to build trade capacity. In international criminal enforcement, the Green Customs Initiative brings together the secretariats of six multilateral environmental treaties with officials from Interpol, the OPCW, UNEP, UNODC, and the World Customs Organization (WCO) to jointly enhance the ability of domestic officials to detect and prevent illegal trade in products covered by relevant environmental agreements. In the area of international finance, the World Bank, the IMF, and other international financial institutions have partnered to reduce debt burdens of developing states through the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative.⁵⁴

51. Tana Johnson & Johannes Urpelainen, *International Bureaucrats and the Formation of Intergovernmental Organizations*, 68 INT'L ORG. 177, 192 (2014).

52. UNAIDS, Summary Division of Labour Guidance Note 2010, http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/document/2011/20110304_DoL_GuidanceNote_Summary_en.pdf.

53. Members include the Center for International Forestry Research, the Secretariat of the Convention on Biological Diversity, the FAO, the Global Environment Facility, the International Tropical Timber Organization, the International Union for the Conservation of Nature (IUCN), the Secretariat of the Convention to Combat Desertification, UNDP, UNEP, the United Nations Forum on Forests, the Secretariat of the Framework Convention on Climate Change, the World Agroforestry Centre, and the World Bank.

54. See generally IMF, *Factsheet: Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative* (Sept. 30, 2014), <https://www.imf.org/external/np/exr/facts/hipc.htm>; IMF, *Factsheet: The Multilateral Debt Relief Initiative* (Sept. 30, 2014), <https://www.imf.org/external/np/exr/facts/mdri.htm>.

Operational interactions even occur in the security domain. For example, in 2008, an African Union peacekeeping mission in Sudan was replaced by a joint African Union–United Nations Hybrid mission in Darfur, which is currently the largest peacekeeping mission in the world.⁵⁵ These forces protect civilians, provide security for humanitarian assistance, and monitor and verify the implementation of agreements. Their mandate has been extended on several occasions.

In short, inter-regime operational partnerships are increasingly common across a range of issues. However, apart from a handful of well-known examples, like UNAIDS, these initiatives constitute sites of international governance that are hidden in plain sight, and whose significance has been understudied and undertheorized. Several aspects of these interactions are of particular interest.

First, operational interactions frequently generate normative standards.⁵⁶ Consider, by way of example, UNAIDS. When it was founded, the different partner agencies had different procurement policies. Some, like UNICEF, emphasized supplier compliance with the Convention on the Rights of the Child; others, like UNHCR, had certain preferences for local suppliers; and virtually all employed different rules depending on the size of the purchase. Collaboration among the agencies required extensive negotiations to coordinate the standards applicable to procurement. Similarly, the cosponsoring agencies all had their own policies regarding integrity in the use of funds and eventually negotiated and adopted a common “zero tolerance” approach to corruption in the use of financial resources.⁵⁷

Notably, many operational interactions involve efforts to implement and enforce international norms—efforts that, in turn, often lead to new norms. The ongoing interactions between the WCO and several multilateral environmental agreements illustrate this dynamic. The WCO developed and updates the Harmonized Commodity Description and Coding System (HS). The HS comprises over 5,200 commodity groups, each identified by a six-digit code. Virtually every state uses the HS “as a basis for their [c]ustoms tariffs and for the collection of international trade statistics.”⁵⁸

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), controls production and trade in ozone-depleting

55. For the resolution authorizing this mission, see generally S.C. Res. 1769 (July 31, 2007), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769%282007%29.

56. See Ian Johnstone, *Law-Making Through the Operational Activities of International Organizations*, 40 GEO. WASH. INT'L L. REV. 87 (2008) (providing an analysis of how operational activities by a single international organization can generate normative standards). The dynamics Johnstone identifies are only heightened when actors from multiple regimes collaborate.

57. Press Release, UNAIDS, UNAIDS Supports the Global Fund in Efforts to Ensure Countries Reach Their Universal Access Goals Towards HIV Prevention, Treatment, Care and Support (Feb. 4, 2011), <http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2011/february/20110204psgfatm>.

58. WCO, *What is the Harmonized System (HS)?*, <http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx> (last visited Dec. 23, 2014).

substances.⁵⁹ Because many developing states do not produce ozone-depleting substances, the success of the treaty turns largely on efforts by customs officials to monitor their lawful, and control their unlawful, trade. When the Montreal Protocol came into force, however, the collection of import and export data proved to be difficult, particularly for many developing states, because the HS combined ozone-depleting substances and non-ozone-depleting substances in a single category.

At the request of the Montreal Protocol parties, UNEP's Executive Director asked the WCO to create separate HS codes for ozone-depleting substances controlled by the Montreal Protocol.⁶⁰ Initially, the WCO resisted on the grounds that trade in these substances would soon be phased out.⁶¹ Eventually, however, the WCO created new codes,⁶² which greatly facilitated enforcement of the Montreal Protocol. In contrast, the WCO rejected a subsequent UNEP request to create HS codes for substances newly controlled by the Montreal Protocol on the grounds that the trade impact was too slight to warrant separate classification.⁶³ As a compromise, the WCO recommended that states amend their customs codes along the lines requested by UNEP.⁶⁴ After further communications from UNEP, the WCO Secretariat decided to revise—and strengthen—the WCO recommendation. This example demonstrates how interactions motivated by enforcement concerns—here, enforcement of Montreal Protocol rules—can lead to the production of new international norms.⁶⁵

3. Conceptual Interactions

The most intriguing interactions are conceptual. International bodies do not simply produce rules and standards; they also create knowledge. They do so by, for example, “defin[ing] shared international tasks (like ‘development’), creat[ing] and defin[ing] new categories of actors (like ‘refugee’), creat[ing] new

59. UNEP, HANDBOOK FOR THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER (9th ed., 2012), http://ozone.unep.org/Publications/MP_Handbook/MP-Handbook-2012.pdf.

60. STEPHEN O. ANDERSEN & K. MADHAVA SARMA, PROTECTING THE OZONE LAYER: THE UNITED NATIONS HISTORY 277 (Lani Sinclair ed., 2002). See generally U.N. Secretariat, Comm. of Experts on the Transp. of Dangerous Goods and on the Globally Harmonized Sys. of Classification and Labelling of Chemicals, Subcomm. of Experts on Globally Harmonized Sys. of Classification and Labelling of Chemicals, *Cooperation with Other International Organizations*, ST/SG/AC.10/C.4/2003/3 (May 2, 2003) (reviewing history or interactions between Montreal Protocol and WCO).

61. UNEP, *Report of the Workshop on Codes, Contraband and Cooperation: Working with Customs Authorities to Implement Environmental Treaties*, ¶ 20, UNEP/(DEC)/WCO/GVA/3 (June 29, 2001).

62. Andersen & Sarma, *supra* note 60, at 277.

63. *Id.*

64. *Id.*

65. Similar developments have taken place with respect to other MEAs. For example, upon request of the CITES Secretariat, the WCO Council has approved the amendment of tariff headings for some live animals, meat, and skins controlled by CITES. Similarly, upon request, the HS has also been amended from time to time to reflect new subheadings for specific chemicals controlled under the Rotterdam Convention and for specific categories of waste controlled by the Basel Convention.

interests for actors (like ‘promoting human rights’), and transfer[ing] models of organization around the world (like markets and democracy).”⁶⁶

Scholarship exploring these issues has tended to focus on developments in specific regimes, such as international trade or international humanitarian law.⁶⁷ It is time to expand this focus and examine how knowledge production results from interactions *among*, as opposed to *within*, international legal regimes.

The WTO has been particularly active on this front. For example, in 2009 the WTO and UNEP jointly issued a report addressing linkages between trade and climate change.⁶⁸ Issued at a critical point in the ongoing negotiations over a post-Kyoto climate change treaty, the report challenges the widespread belief that trade rules are in tension with efforts to combat climate change.⁶⁹ The report discusses the WTO-compatibility of border taxes and emissions trading systems, two controversial pricing mechanisms that can be used to control greenhouse gas emissions.⁷⁰ Like other joint studies on controversial topics,⁷¹ the joint WTO–UNEP report does not purport to dispense policy advice. Rather, it is explicitly intended to introduce new concepts and shift the debate over the relationship between trade and climate change. In the report’s own words, its “aim is to promote greater understanding of [the interaction between trade and climate change policies] and to assist policymakers in this complex policy area.”⁷²

Another conceptual interaction with potentially far-reaching consequences is a joint WTO–OECD initiative that seeks to reconfigure how to measure, if not understand, international trade. Trade statistics currently attribute the full commercial value of a product to the country of export. Thus, as widely reported, when a U.S. buyer imports an iPod from China at a cost of \$144,⁷³ current statistical methods would increase the value of U.S. imports from China by \$144—even though much of the iPod’s value is licensed from U.S. firms and the value-added operations in China total less than four dollars.⁷⁴ Thus, current statistical methods can generate misleading figures on trade balances and

66. Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT’L ORG. 699, 699 (1999).

67. See DAVID KENNEDY, *THE DARK SIDE OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004) (focusing on international humanitarian law); William J. Drake & Kalypso Nicolaidis, *Ideas, Interests and Institutionalization: “Trade in Services” and the Uruguay Round*, 46 INT’L ORG. 37 (1992) (focusing on international trade).

68. See UNEP & WTO, *Trade and Climate Change*, at 47–66 (2009) [hereinafter *Climate Report*], http://www.wto.org/english/res_e/booksp_e/trade_climate_change_e.pdf.

69. See generally *id.*

70. *Id.* at 81 (discussing border taxes); *id.* at 91–95 (discussing emissions trading schemes).

71. See, e.g., WTO & ILO, *Trade and Employment: Challenges for Policy Research* (2007), http://www.wto.org/english/res_e/booksp_e/ilo_e.pdf (addressing globalization’s impact on employment and wages).

72. *Climate Report*, *supra* note 68, at v.

73. Jason Dedrick et al., *Who Profits from Innovation in Global Value Chains? A Study of the iPod and Notebook PCs*, SLOAN INDUSTRY STUDIES ANN. CONF. 16 (2008), http://web.mit.edu/is08/pdf/Dedrick_Kraemer_Linden.pdf.

74. *Id.* at 31.

thereby distort debates over trade policy. In response, the OECD and the WTO are jointly developing new ways to more accurately measure trade flows. Again, this initiative is not intended to produce new rules or regulations. Rather, it is intended to “help policymakers, academics and the public at large better understand trade in the 21st century,”⁷⁵ in the belief that “better statistics today will contribute to better policies tomorrow.”⁷⁶

The WTO–UNEP and WTO–OECD collaborations focus on relatively well-defined topics. Other conceptual interactions address more diffuse issues. Consider, for example, the evolving relationship between climate change and human rights. For nearly two decades, the climate debate has focused on the nature, causes, and consequences of climate change. In recent years, however, human rights bodies have initiated a series of conceptual interactions designed to change the terms of climate discourse.

For example, in an address to the Bali Climate Conference in 2007, the UN Deputy High Commissioner for Human Rights urged the use of a human rights perspective when discussing climate issues.⁷⁷ At roughly the same time, a diverse range of international actors, including UNDP and the Organization of American States (OAS), began to explore the interface between climate change and human rights. In 2008, the Human Rights Council asked the Office of the High Commissioner for Human Rights to prepare a “detailed analytical study of the relationship between climate change and human rights.”⁷⁸ In undertaking the study, the Office of the High Commissioner opened up a dialogue with a variety of other UN bodies, international organizations, national human rights institutes, and nongovernmental organizations.⁷⁹ The study, released in January 2009, concludes that climate change interferes with a wide range of human rights and that states have an obligation under international human rights law to protect those rights from the adverse effects of climate change, including in particular through international cooperation.⁸⁰

The study triggered an extended dialogue on the relationships between the two regimes. For example, in 2009 alone, the Special Rapporteur on adequate housing issued a report on the impact of climate change on the right to

75. WTO, *Annual Report 2013*, 130 (2013), http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep13_e.pdf.

76. Pascal Lamy, Director-General, WTO, Address at the OECD: “New Steps in Measuring Trade in Value Added” (Jan. 16, 2013) (transcript available at http://www.wto.org/english/news_e/sppl_e/sppl261_e.htm).

77. Kyung-wha Kang, Deputy High Commissioner for Human Rights, UNHCR, Address to Conference of the Parties to the United Nations Framework Convention on Climate Change and its Kyoto Protocol: Climate Change and Human Rights (Dec. 3–14, 2007) (transcript available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=200&LangID=E>).

78. HRC, *Annual Report of the United Nations High Commissioner for Human Rights and the Reports of the Office of the High Commissioner and the Secretary-General: Report of the Office of the High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, 10th Sess., ¶ 1, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

79. See *id.* ¶ 2 (noting the comments and input from various organizations).

80. *Id.* ¶ 92–99.

adequate housing, the Representative of the Secretary General on the human rights of internally displaced people issued a report on the nexus between climate change and internal displacement, and twenty Special Procedures mandate holders issued a joint statement to encourage the inclusion of human rights in the Copenhagen Climate Change Conference.⁸¹ More recently, the United Nations High Commissioner for Human Rights appointed an Independent Expert on Human Rights and the Environment.⁸²

The purpose of these initiatives is, in the words of a prominent human rights advocate, to transform “how climate change is perceived.”⁸³ To date, climate change “has been viewed as a scientific projection, ‘a kind of line graph stretching into the future with abstract measurements based on parts per million, degrees centigrade or centimetres.’”⁸⁴ But the introduction of “human rights thinking” is intended to change this conceptualization by “supplying a set of internationally agreed values around which policy responses can be negotiated and motivated” and hence “contribute, qualitatively, to the construction of better policy responses at both the national and international level.”⁸⁵ In short, actors in the human rights community have provoked an ongoing set of conceptual interactions intended to change social understandings of climate change, the problems it poses, and the range of appropriate responses to it.

B. Nature of International Regulatory Interactions

In addition to distinguishing various *forms* of regulatory cooperation, it is useful to categorize the *nature* of these interactions. For current purposes, international regulatory interactions can be characterized as focused on the “rationalization” of rules or operations, on the “expansion” of jurisdiction or authority, or as involving political and legal “conflict” between two or more bodies. Notably, interactions are quite fluid and these categories are highly permeable; as any particular interaction proceeds, it may migrate from one category to another.

1. Rationalization Interactions

As noted above, many operational interactions are triggered by the practical reality that multiple international bodies often exercise concurrent jurisdiction over the same set of individuals or activities and are designed to rationalize these efforts. UNAIDS is a representative example. By the early 1990s, a

81. *Joint Statement of the Special Procedure Mandate Holders of the Human Rights Council on the UN Climate Change Conference* (Dec. 7, 2009), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9667&LangID=E>.

82. Human Rights Council Res. 19/10, Human Rights and the Environment, 19th Sess., U.N. Doc A/HRC/RES/19/10, at 2–3 (Apr. 19, 2012).

83. Marc Limon, *Human Rights and Climate Change: Constructing a Case for Political Action*, 33 HARV. ENVTL. L. REV. 439, 451 (2009) (citation omitted).

84. *Id.*

85. *Id.* at 451–52.

number of international organizations had developed AIDs programs. Donors soon complained that a lack of coordination among UN agencies resulted in duplicative efforts and turf battles, which lessened the effectiveness of the global fight against AIDS.⁸⁶ Thus, the original motivation behind UNAIDS was the desire to streamline disparate yet overlapping efforts and to address policy gaps. One notable accomplishment of UNAIDS was the development of a detailed “division of labour” among the partner agencies.

Similar dynamics can be seen in the area of humanitarian aid. Due to the ad hoc and unpredictable nature of emergencies, international responses were traditionally highly disorganized. In 2005, the United Nations Emergency Response Coordinator introduced an Agenda for Reform, which eventually led to the formation of groups of organizations organized by “cluster.”⁸⁷ The WFP, the world’s largest humanitarian agency, is designated lead agency of the “logistics cluster,” meaning it is responsible for coordination, information management, and, when necessary, logistics service provision to ensure effective and efficient operational logistics.⁸⁸ In this role, the WFP is working with the WHO, the IOM, and other international organizations in Syria and has facilitated cargo operations on behalf of thirty-two different international organizations in the Philippines in the aftermath of Typhoon Haiyan.⁸⁹

As this example suggests, relief operations frequently give rise to complex cooperation issues. For example, the WFP has developed a complex set of policies, guidelines, and standards for its emergency field operations, as have other international organizations such as UNHCR, UNICEF, and the FAO.⁹⁰ When two or more of these organizations collaborate in joint activities, it becomes necessary to address differences in rules and standards. Often, the agencies do so through procedural approaches, such as identifying one agency as the lead actor in a certain area. For example, when the WFP works with UNHCR, UNHCR is generally responsible for distribution;⁹¹ in contrast, when the WFP works with UNICEF, the WFP is generally responsible for distribution.⁹² These agreed-upon divisions of labor are often memorialized in

86. LINDSAY KNIGHT, UNAIDS: THE FIRST TEN YEARS 20 (2008), http://data.unaids.org/pub/report/2008/jc1579_first_10_years_en.pdf.

87. See *Cluster Coordination*, UN OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, <http://www.unocha.org/what-we-do/coordination-tools/cluster-coordination> (last visited Mar. 10, 2015); *About the Logistics Cluster*, LOGISTICS CLUSTER, <http://www.logcluster.org/logistics-cluster> (last visited Mar. 10, 2015).

88. *Our Work*, WFP, <http://www.wfp.org/logistics> (last visited Mar. 10, 2015).

89. See WFP, *The Year after the Storm: The WFP Haiyan Report 24* (Nov. 2014), http://fi.wfp.org/sites/default/files/fi/file/a_year_after_the_storm_-_the_wfp_haiyan_report.pdf; see generally WFP & LOGISTICS CLUSTER, *Syria Response May 2014 Report*, http://www.logcluster.org/sites/default/files/logistics_cluster_syria_monthly_report_may_140612.pdf.

90. See, e.g., WFP, EMERGENCY FIELD OPERATIONS POCKETBOOK (2002), http://www.unicef.org/emerg/files/WFP_manual.pdf.

91. *Id.* at 243–44.

92. *Id.* at 248–49.

agreements negotiated by the relevant secretariats.⁹³

Rationalization logics are also prominent in many regulatory interactions. For example, both CITES and the FAO asserted authority to protect endangered marine species. Numerous states expressed concern that, absent coordination, the risk of inconsistent norms was unacceptably high, and many FAO members asserted that the FAO should have a veto over CITES listing decisions. Thereafter, officials from the two agencies negotiated an agreement clarifying how responsibilities for deciding which species should be protected would be divided between the two agencies.⁹⁴

Rationalization logics are found in conceptual interactions as well. For example, the WTO–UNEP report on trade and climate devotes significant attention to strengthening cooperation between “the trade and climate change regimes . . . in a mutually supportive manner, within their respective spheres of competence.”⁹⁵ Notably, international bodies do not invariably seek to expand their mandates. For example, in the trade–climate context, the WTO Director-General argued that the trade issues raised by efforts to combat climate change were better addressed within the climate regime than by the WTO.⁹⁶

2. Expansion Interactions

Some interactions provide opportunities for international bodies to expand their regulatory footprint. For example, the POPs–WHO interactions provide public health officials direct and ongoing influence in the chemicals regime. Given the structure of the POPs Convention, decisions made by the WHO, on the basis of international public health norms, will lead to changes in an environmental treaty’s rules governing the use of dangerous chemicals.

Similar dynamics can be seen on the operational side. Consider ongoing interactions between the United Nations Relief and World Agency (UNRWA) and UNHCR. UNRWA was created to provide humanitarian relief to refugees and displaced persons forced to flee the British Mandate for Palestine as a result of the 1948 Arab–Israeli war.⁹⁷ When founded, UNRWA’s geographic ambit was limited to Jordan, Lebanon, Syria, the Gaza Strip, and the West Bank.⁹⁸ UNHCR’s geographic ambit is worldwide; however, its statute provides its competence shall not extend to a person “[w]ho continues to receive from other organs or agencies of the United Nations protection or assistance.”⁹⁹

93. See, e.g., UNHCR & WFP, *Memorandum of Understanding between the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP)* (July 1, 2002), <http://www.refworld.org/docid/3d357f502.html>.

94. See FAO–CITES MOU, *supra* note 37.

95. *Climate Report*, *supra* note 68, at 83.

96. Pascal Lamy, Director-General, WTO, Speech at the Informal Trade Ministers’ Dialogue on Climate Change: Doha Could Deliver Double-win for Environment and Trade (Dec. 9, 2007), https://www.wto.org/english/news_e/sppl_e/sppl83_e.htm.

97. G.A. Res. 302 (IV), ¶ 5–7, U.N. Doc. A/RES/302 (IV) (Dec. 8, 1949).

98. UNRWA & UNHCR, THE UNITED NATIONS AND PALESTINIAN REFUGEES, at 4 (2007) [hereinafter PALESTINIAN REFUGEES], <http://www.unrwa.org/userfiles/2010011791015.pdf>.

99. Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428

These provisions raise questions as to whether and when Palestinian refugees fall within UNHCR's mandate.¹⁰⁰

Despite apparent textual limitations, over time, UNRWA and UNHCR have increasingly collaborated in ways that push the boundaries of their respective mandates. Examples include joint activities after Libya expelled Palestinians in 1995 and, more recently, in the aftermath of attacks on Palestinians in Iraq, when UNRWA and UNHCR coordinated on the provision of assistance.¹⁰¹ Moreover, in recent years, UNRWA and UNHCR have acted in coordination to provide assistance to Palestinian refugees in Jordan and Syria.¹⁰² Through these joint activities, UNRWA has acted in areas arguably outside its geographic mandate, and UNHCR has been active on behalf of individuals who arguably fall outside of its mandate. Although the various operational interactions between UNRWA and UNHCR have historically had a strongly ad hoc nature, in 2010, the two organizations established a joint expert working group to address issues related to the overlapping legal regimes in this area.¹⁰³

Finally, conceptual interactions often lead international actors into areas traditionally considered outside their ambit. The efforts by the UN High Commissioner for Human Rights to engage with officials from the climate regime is one prominent example of an international actor moving into areas not traditionally considered near the core of his expertise. A more recent example is a joint study prepared by the World Intellectual Property Organization (WIPO), the WTO, and the WHO on "Promoting Access to Medical Technologies: Intersections between Public Health, Intellectual Property and Trade."¹⁰⁴ Like other conceptual interactions discussed above, it does not prescribe how to address particular public health problems, but rather, it examines how to tailor systems to encourage innovation and ensure sustainable and equitable access to innovations. Notably, the focus on innovation, accessibility, and trade pulls each of the three partners outside of its core areas of expertise.

3. Conflictual Interactions

Not surprisingly, interactions among international bodies are not always cooperative. By way of example, consider recent efforts to address shipbreaking. This practice poses a number of environmental risks. It is heavily regulated in developed states, but regulation is substantially less stringent in

(V), Annex, ¶ 7, pt. c (Dec. 14, 1950).

100. UNHCR, *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, (Oct. 2009), <http://www.refworld.org/docid/4add77d42.html>.

101. Noura Erakat, *Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement*, 26 INT'L J. REFUGEE L. 581(2014).

102. PALESTINIAN REFUGEES, *supra* note 98, at 12.

103. Erakat, *supra* note 101, at 595.

104. WHO, WIPO & WTO, *Promoting Access to Medical Technologies and Innovation: Intersections between Public Health, Intellectual Property and Trade* (2012), http://www.wto.org/english/res_e/booksp_e/pamtihowipowtoweb13_e.pdf.

many developing states.¹⁰⁵ A number of international legal instruments—all adopted within months of each other—address this activity, including IMO Guidelines on Ship Recycling;¹⁰⁶ ILO Guidelines on Safety and Health in Shipbreaking;¹⁰⁷ and Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships, adopted by the Conference of Parties to the Basel Convention.¹⁰⁸ This highly fragmented approach quickly raised concerns over regulatory gaps, overlaps, and potential inconsistencies. Therefore, the IMO, ILO, and Basel Secretariats formed a joint working group to study the relationship among the various instruments.¹⁰⁹ The three bodies agreed to collaborate on the drafting of a new treaty to be concluded under IMO auspices.

Thereafter, the three organizations—along with other key actors, including major shipping states like Norway—became deeply involved in negotiating and drafting what eventually became the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships.¹¹⁰ The Hong Kong Convention, adopted in 2009, clearly shows the results of interagency cooperation; it expressly incorporates principles set forth in instruments prepared by the three institutions, and its annex creates a process of continuing interactions among the three agencies in the promulgation of regulations under the treaty.¹¹¹ Although the treaty has not yet entered into force, the ILO and

105. See generally Tony George Puthucherril, *From Shipbreaking to Sustainable Ship Recycling: Evolution of a Legal Regime*, in 5 LEGAL ASPECTS OF SUSTAINABLE DEVELOPMENT, 26–51 (David Freestone ed., 2010) (detailing the differences in shipbreaking regulations in developed nations as compared to developing nations).

106. IMO, Assemb. Res. A.962(23), A 23/Res.962 (Mar. 4, 2004) (amended by IMO, Assemb. Res. A.980(24), A 24/Res.980 (Feb. 3, 2006)).

107. ILO, *Safety and Health in Shipbreaking: Guidelines for Asian Countries and Turkey*, MESHS/2003/1 (Oct. 7–14, 2003).

108. Conference of Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Decision VI/24 (2012) (adopting the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships).

109. See Joint ILO–IMO–BC Working Group on Ship Scrapping, 1st Sess., Feb. 15–17, 2005, *Report of the First Session of the Joint Working Group on Ship Scrapping*, at ¶ 3.8, Doc. ILO/IMO/BC WG 1/8 (Feb. 18, 2005) (acknowledging the conflict between the IMO Guidelines and the Basel Convention guidelines).

110. Specifically, representatives of the IMO, Basel Convention, and ILO participated in three joint meetings between 2005 and 2008 of the Working Group on Ship Scrapping. Joint ILO/IMO/BC Working Group on Ship Scrapping, Report of the Working Group, 1st Sess., Feb. 15–17, 2005, ILO/IMO/BC WG 1/8 (Feb. 18, 2005); Joint ILO/IMO/BC Working Group on Ship Scrapping, Report of the Joint Working Group, 2nd Sess., Dec. 12–14, 2005, ILO/IMO/BC WG 2/11 (Dec. 14, 2005); Joint ILO/IMO/BC Working Group on Ship Scrapping, Final Report, 3rd Sess., Oct. 29–31, 2008, ILO/IMO/BC WG 3/6 (Oct. 31, 2008). Resolution 2 adopted at the conclusion of the 2009 International Conference for the Safe and Environmentally Sound Recycling of Ships acknowledged the contribution of the ILO and the Basel Convention to the development of the Convention. See *Recycling of Ships: The Development of the Hong Kong Convention*, IMO, <http://www.imo.org/ourwork/environment/shiprecycling> (last visited Mar. 10, 2015).

111. IMO, International Conference on the Safe and Environmentally Sound Recycling of Ships, IMO Doc. SR/CONF/45 (May 19, 2009) (not in force) (opened for signature Sept. 1, 2009).

Basel Secretariats have been involved in the development of draft regulations under the treaty.

The Hong Kong Convention, however, has also given rise to controversy. In particular, critics claim it is weaker than the Basel Convention in several respects.¹¹² Against this backdrop, the Basel Convention parties formally examined whether the Hong Kong Convention provides “an equivalent level of control and enforcement as that established under the Basel Convention.”¹¹³ An Open Ended Working Group provided an assessment to the Conference of the Parties,¹¹⁴ which debated the issue at an October 2011 meeting. The discussion revealed a sharp split among Basel parties and, despite extensive dialogue, consensus could not be reached. The Conference of the Parties adopted a decision explicitly noting this ongoing disagreement.¹¹⁵ The decision also encouraged states to ratify the Hong Kong Convention, suggesting equivalence, but at the same time acknowledged that the Basel Convention Secretariat should continue to assist countries in applying the Basel Convention as it relates to ships, suggesting a lack of equivalence.¹¹⁶ The unresolved debate over whether the Hong Kong Convention supports or undermines the Basel Convention has likely contributed to the very low number of ratifications—currently, three.¹¹⁷

In another example, after a high-profile oil spill off the Spanish coast, a number of nongovernmental organizations lobbied the UN Secretary General to organize a process to discuss improving implementation of maritime safety standards. In response, in 2003 the Secretary General convened a Consultative Group on Flag State Implementation, including officials from the IMO, the ILO, the FAO, UNEP, UNCTAD, and the OECD.¹¹⁸ Substantial differences of

112. Critics note that the Basel Convention covers a broader range of ships and recycling facilities, and also that the Basel Convention’s technical guidelines rejects “beaching” as a dismantlement method, whereas the dismantlement question is open under the Hong Kong Convention—at least until the IMO adopts guidelines. For an analysis of these, and other differences, see *Communication from the European Commission to the Council*, COM (2010) 88 final (Dec. 3, 2010).

113. UNEP, Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on its Ninth Meeting, June 23–27, 2008, at Dec. IX/30, pt. I, UNUNEP/CHW.9/39 (June 27, 2008).

114. UNEP, Open-ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Cooperation between the Basel Convention and the International Maritime Organization, UNEP/CHW/OEWG/7/12 (Apr. 14, 2010).

115. Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Cartagena, Columbia, Oct. 17–21, 2011, Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal on its Tenth Meeting, UNEP/CHW.10/28, at para. 130–35 (Nov. 1, 2011).

116. *Id.* at Annex I, BC-10/17, para. 2–3. The decision also underscored the importance of continued cooperation between the ILO, IMO, and the Basel Convention on the issue of ship recycling. *Id.* at para. 129.

117. IMO, Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or its Secretary-General Performs Depositary or Other Functions 509 (Mar. 10, 2015).

118. See G.A. Res. 57/141, ¶ 73, U.N. Doc. A/RES/57/141 (Feb. 21, 2003) (requesting the Secretary-

opinion quickly emerged. The IMO observed that, with respect to flag state implementation of safety and antipollution standards, “[t]he role of the IMO in this regard should be seen as pre-eminent.”¹¹⁹ In a letter to the UN Secretary General, the IMO’s Secretary General tartly observed that issues related to state compliance with “IMO Conventions and regulations are not subjects which need additional coordination at inter-agency meetings,” and that the “IMO does not see the need for any further meetings of the inter-agency Consultative Group.”¹²⁰

Operational interactions can likewise be conflictual. As noted above, the impetus for various UNAIDS partners to work together came from donor states and not from the agencies themselves. The different international agencies, however, had very different ideas of how best to address the AIDS epidemic; early efforts to collaborate sparked intense debates about how to prioritize and allocate resources.¹²¹

C. The Multi-dimensional Nature of International Regulatory Cooperation

For those unfamiliar with the interactions described above, the highly compressed descriptions might seem a blur of acronyms. To summarize this material graphically, the two axes discussed above are juxtaposed to create a three-by-three matrix in table 1 below. The matrix provides a synoptic overview of different modes of international regulatory cooperation between and among international organizations. At the same time, it highlights the multidimensional nature of contemporary international regulatory cooperation.

General provide a report “on the implementation of the present resolution”); U.N. Secretary-General, *Oceans and the Law of the Sea*, at para. 85–91, U.N. Doc. A/58/65 (Mar. 3, 2003) (discussing “[f]lag state implementation and enforcement”).

119. U.N. Secretary-General, *Oceans and the Law of the Sea*, ¶ 12, U.N. Doc. A/59/63 (Mar. 5, 2004).

120. *Id.* at Annex III.

121. *See, e.g.*, TANA JOHNSON, *ORGANIZATIONAL PROGENY: WHY GOVERNMENTS ARE LOSING CONTROL OVER THE PROLIFERATING STRUCTURES OF GLOBAL GOVERNANCE* (2014).

Table 1

	Regulatory	Operational	Conceptual
Rationalization	IOMC–GHS IMO–ILO ICAO–ITU FAO–CITES	UNAIDS “Logistics Cluster” in humanitarian assistance Collaborative Partnership on Forests	WTO–UNEP report
Expansion	ILO–IMO guidelines on liability and compensation (fills legal void) CITES–WCO POPs–WHO	CITES–WCO ICCWC UNRWA–UNHCR	OHCHR–United Nations Framework Convention on Climate Change (UNFCCC) WTO–WIPO–WHO
Conflictual	ILO–IMO–Basel (Hong Kong Convention) WTO–CITES–UNCLOS–FAO talks on fisheries subsidies Montreal Protocol–WCO (sometimes)	UNAIDS (early years) UN–IMO –Flag State Implementation	Climate and human rights (sometimes)

IV

AN AGENDA FOR FUTURE RESEARCH ON INTERNATIONAL REGULATORY COOPERATION

Regulatory cooperation involving actors from different international organizations and regimes occurs across a wide variety of issue areas and operates across the full spectrum of lawmaking, implementation, and enforcement. A primary goal of this article is to provide analytic tools to clarify systematically the different modes of interaction leading to regulatory cooperation. This analysis, however, immediately raises challenging questions regarding the empirical determinants and the normative implications of this activity. Although a thorough analysis of these issues is well beyond the scope of this article, it is useful to identify topics that future scholarship might address, including a number of empirical and descriptive research projects that would substantially advance our understanding of the factors that drive interactions among international organizations. In addition, this section identifies normative concerns raised by international regulatory cooperation, including issues of accountability, legitimacy, and power. Both individually and together, these lines of inquiry suggest the outlines of a research agenda intended to

substantially advance our understanding of international regulatory cooperation.

A. Positive Inquiry into International Regulatory Cooperation

The typology set out in part III highlights variation in the form and purpose of international regulatory cooperation. This variation invites inquiry into the factors driving or shaping the interactions among international bodies, including relevant actors, the nature of the underlying cooperation problem structure, substantive issue areas, and change over time.

1. Who Are the Relevant Actors?

The examples set out above demonstrate that interactions occur among actors found in a range of issue areas. It would be useful to investigate how structural relationships between the relevant actors shape interactions. For example, are there systematic differences in regulatory outcomes depending on whether the interacting entities (1) are located within “nested regimes,” such as actors from the WTO and a regional trade body; (2) are from “parallel regimes,” such as actors from two of the international financial institutions; or (3) are from “unrelated regimes,” such as actors from an international trade body and an international labor body? Another line of inquiry might explore whether an increase in the number of relevant actors makes cooperation more difficult, as more interests need to be satisfied, or easier, as the set of mutually beneficial tradeoffs expands.

2. Problem Structure

The examples in part III reveal that international regulatory efforts address a wide variety of international problems including coordination, cooperation, distribution, and enforcement problems. Just as problem structure helps explain the design and functioning of individual international organizations,¹²² problem structure might help explain the nature and form of interactions among international organizations. For example, do distributional problems more frequently lead to conflictual interactions than enforcement problems? Do coordination problems lend themselves more easily to operational interactions, because parties have little reason to defect?

3. Issue Area

The international system is marked by uneven legalization and institutionalization across issue areas. For example, regulatory regimes in the economic realm are more numerous and more legalized than they are in the security realm. And in the economic domain, both institutionalization and legalization are much higher in the area of trade than in finance. The highly variable distribution of international regulatory bodies suggests that efforts at

122. Barbara Koremenos et al., *The Rational Design of International Institutions*, 55 INT'L ORG. 761 (2001).

international regulatory cooperation will be both more common and more frequently successful in some issue areas than in others, and identifying these patterns would enhance our understanding of both the possibilities and limits of regulatory cooperation.

4. Sequencing and Change over Time

The survey in part III emphasizes that interactions are often fluid and dynamic. Thus, the interactions among the ILO, IMO, and Basel Secretariats concerning the Hong Kong Convention shifted over time from cooperative to conflictual;¹²³ the interactions among the six international organizations involved in the creation of UNAIDS evolved from cooperative to conflictual to cooperative;¹²⁴ and the regulatory interactions between UNEP and the WCO have vacillated between cooperative and conflictual.¹²⁵ The variation over time invites inquiry into why some interactions are relatively stable while others migrate along either of the axes identified in part III. The variation also invites inquiry into the features that push interactions towards or away from cooperative outcomes.

B. Normative Analysis of International Regulatory Cooperation

A complementary set of inquiries could examine the normative implications of international regulatory cooperation. Specifically, future research could explore whether the normative critiques lodged against traditional forms of international lawmaking are equally applicable to international regulatory cooperation. For example, some critics note that international processes are insufficiently transparent, increasingly detached from popular or representative politics, and are no longer sufficiently rooted in state consent.¹²⁶ Others claim that international law systematically privileges the interests of powerful states and well-organized political actors and gives lesser regard to more weakly organized and less powerful groups and vulnerable individuals.¹²⁷ These and related critiques lead to frequent claims that much international law is unaccountable and illegitimate. These critiques arguably apply with greater force to the phenomena of international bodies and secretariats initiating international regulatory interactions and also developing new international norms, often without explicit state consent.

For current purposes, a few lines of argument can be outlined and several research inquiries identified. First, many of the interactions outlined above are designed to permit international organizations to achieve their objectives more

123. *See supra*, Part III.B.3.

124. *See supra*, Part III A.1.c. & Part III.B.1.

125. *See supra*, Part III.A.2.

126. For analyses of the various critiques of international law, *see, e.g.*, JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005); JENS DAVID OHLIN, *THE ASSAULT ON INTERNATIONAL LAW* (2015); STEVEN WHEATLEY, *THE DEMOCRATIC LEGITIMACY OF INTERNATIONAL LAW* (2010).

127. Stewart, *supra* note 20, at 211.

effectively. For example, when the WTO collaborates with other organizations to help poorer states participate more fully in the international trade system, these efforts are intended to promote the WTO's trade liberalization objectives. Those who object to these objectives would likely find the WTO's interactions with other bodies similarly problematic. In cases like this, positions on the normative desirability of regulatory cooperation will be derivative of normative positions regarding the goals of the underlying legal regimes, raising issues well beyond the scope of this symposium.

More importantly, whether interactions among different international organizations reduce or enhance international law's supposed deficiencies and whether they entrench, or challenge, powerful actors and interests should be treated as open questions that require analysis rather than assertions. Consider, for example, the IMO–ILO interactions producing norms on the safety of seafarers. Prior to these interactions, the IMO had long been active on maritime safety issues. IMO instruments, were traditionally “not [driven by] concern for the lives of sailors, slaves, or emigrants, but concern for the security of maritime investment.”¹²⁸ Shifting from an IMO to a joint IMO–ILO process might plausibly be viewed as adding an institutional voice that represents a previously underrepresented set of interests directly impacted by global maritime safety norms. Claims along these lines, in turn, invite inquiry into whether the interactive process between the IMO and ILO is more or less subject to “capture” than IMO processes—as well as inquiry into whether entities that represent other arguably relevant interests, such as environmental or human rights bodies, adequately participated in these regulatory interactions. For current purposes, the point is not to resolve whether the IMO–ILO interactions were sufficiently inclusive, but rather to suggest that normative evaluation of international regulatory cooperation should proceed on the basis of highly detailed accounts of specific interactions, accounts that have not yet been developed.

Thus, international regulatory cooperation offers a rich research agenda to those troubled by international law's supposed legitimacy and accountability deficits. Here, the discussion is limited to a few conceptual points and possibilities regarding these issues. When two international bodies collaborate on issues of mutual concern, their interactions effectively reaffirm the stature and legitimacy of each agency to operate in the area under consideration. Thus, joint IMO–ILO efforts on maritime safety reinforce claims that this issue comfortably falls within each body's jurisdiction.

Other times, interactions can challenge or undermine the legitimacy of claims to authority in particular domains. For example, unsuccessful efforts to collaborate, or exclusion of a particular body from an international partnership, can signal substantial concerns over whether the agency is a legitimate participant in a particular policy domain. Hence, the IMO's sharp rejection of

128. JOHN BRAITHWAITE & PETER DRAHOS, *GLOBAL BUSINESS REGULATION* 436 (2000).

efforts to create a multiagency consortium to discuss flag-state implementation of maritime safety standards can be seen as a challenge to the legitimacy of other organizations' involvement in these issues. This interaction can be usefully contrasted with the conflictual interactions related to the Hong Kong Convention. In that case, the Basel Secretariat's concern over the treaty's environmental stringency did not reflect concerns over the legitimacy of IMO and ILO participation in this policy area, but rather over the substantive merits of competing policy approaches.

To be sure, those who critique international organizations' lack of accountability might suggest that regulation via interactions between two or more of these bodies simply compounds the problem. But this claim would need to address some salient features of regulatory interactions among international organizations. For example, virtually every exchange among two or more international bodies *de facto* calls for a reasoned elaboration for or against a proposed action, with each body reviewing the positions and activities of the other. Thus, for example, structured dialogues between the WHO and the POPs Secretariat over whether and how to regulate dangerous chemicals, between the FAO and CITES over whether an appropriate scientific basis exists to list a marine species as endangered, and between the ICAO and the ITU over how best to protect air navigation systems can be seen as introducing requirements of reasoned decisionmaking and review mechanisms in areas where they might otherwise be lacking.

Finally, future research can do much to illuminate the power dynamics that motivate efforts at international regulatory cooperation and shape their outcomes. Do international organizations led by powerful states or economic interests dominate or crowd out "weaker" international bodies? Do regulatory interactions operate to give voice to those typically marginalized by international processes, and if so, under what conditions? There is likely no "global" answer to these questions—international regulatory efforts come in too many varieties and in too many different contexts to permit broad generalizations. But a few observations might help inform future inquiries in these areas.

One observation is that "stronger" international organizations do not invariably use interactions to expand their jurisdiction or to impose their views on "weaker" organizations. For example, as noted above, a joint report by the WTO and UNEP defended the use of certain trade instruments to address climate change and the WTO deferred to the climate regime on technology transfer issues.¹²⁹ So the relevant question is whether interactions like these serve to entrench asymmetries or create avenues for change.

Perhaps more importantly, studying international regulatory cooperation can serve as a reminder that power in international affairs comes in many

129. *See supra* Part III.A.3.

varieties.¹³⁰ To be sure, international regulatory efforts provide ample examples of “power as influence”—in which more powerful international bodies, or bodies dominated by more powerful actors, are able to influence the timing and content of regulatory outcomes. But other forms of power are on display in international regulatory interactions as well. For example, some unsuccessful efforts at international regulatory cooperation illustrate what one might call “power as autonomy,”¹³¹ which is the ability to exercise policy independence free of the pressures or constraints imposed by other international actors. The IMO’s rejection of collaboration with other international bodies, notwithstanding efforts by the UN Secretary General and others to forge a collaborative partnership, is but one example of how power as autonomy manifests in the context of international regulatory efforts. Moreover, international regulatory efforts often involve “discursive power,” that is, “the social processes and the systems of knowledge through which meaning is produced, fixed, lived, experienced, and transformed.”¹³² Conceptual interactions, such as the interactions between the human rights and climate change communities, are the most prominent examples of the working of discursive power, as they are centrally concerned with the contestation and production of social meaning. But the iterative dialogic interactions that mark other forms of regulatory interaction—such as the exchanges between UNEP and the WCO over ozone-depleting substances and between the ICAO and the ITU over aircraft communication systems—can likewise be approached as opportunities to study the workings of discursive power.

In short, co-governance by actors from different international regimes gives rise to new sites of power, where the issue is less the autonomy of any particular international organization than it is the various forms of cooperative and uncooperative relationships that emerge from ongoing interactions between officials from different regimes. Thus, too sharp a focus on whether “weaker” regimes gain or lose from regulatory cooperation risks valorizing one form of power while ignoring others that are more fluid, contingent, and contested.

As should be clear, although international regulatory cooperation holds much promise, there is no reason to think that every instance of institutional interaction is necessarily benign, or that the pathologies that mark some international governance disappear through interaction. One goal of future research should be to identify the factors that lead to interactions that reduce, rather than strengthen, deficiencies in international lawmaking. Future inquiries can explore when interactions favor well-organized interests that have the resources and expertise to participate effectively in inter-institutional

130. See generally *POWER IN GLOBAL GOVERNANCE* (Michael Barnett & Raymond Duvall eds., 2005).

131. This phrase comes from Benjamin J. Cohen, *The Macrofoundations of Monetary Power*, in *INTERNATIONAL MONETARY POWER* 31, 32 (David M. Andrews ed., 2006).

132. Michael Barnett & Raymond Duvall, *Power in International Politics*, 59 *INT’L. ORG.* 39, 55 (2005).

interactions and when they empower those left out of traditional processes. Future scholarship can explore questions such as under what circumstances do interactions permit international organizations to pursue their own institutional agendas and when do such interactions promote advancement of broader public interests? When will interactions expand the domain of international politics and contestation—and when will they offer technocratic expertise in their place? These questions are hardly exhaustive. But they do suggest that there is fertile ground for future research, both theoretical and empirical, on international regulatory cooperation.

V

CONCLUSION

The central goals of this article are to illustrate a largely hidden landscape of international regulatory cooperation, to raise issues for further analysis and development, and thereby to demonstrate the value of sustained study of this activity. The survey presented above reveals that the terrain of international regulatory cooperation is highly variegated, yet it consists of a dense network of collaboration increasingly important to the management of contemporary international affairs. Understanding the nature and quality of these relationships is essential to understanding the range and the reach—the possibilities and the limits—of modern international regulatory cooperation.