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Title:
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Date:
2023-01-01

Citation:
Young, M. A. (2023). Implementing international law: capacitybuilding, coordination and control. Cambridge International Law Journal, 12 (1), pp.4-23. <https://doi.org/10.4337/cilj.2023.01.01>.

Persistent Link:
<https://hdl.handle.net/11343/356041>

Implementing international law: capacity-building, coordination and control

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The implementation of international law requires State capacity, including knowledge of treaties and institutions by domestic officials. The training of State officials is often delivered by an international organisation, agency or secretariat as part of the capacity-building programmes required by the treaty that each administers. Yet, of the increasingly urgent calls for international cooperation to address climate change, biodiversity crises, public health threats and plastic pollution, among other issues, not one can be addressed by a single treaty or international organisation. The practical, operational and theoretical challenges of coordination deserve more attention by international lawyers. This is especially important given the development of pandemic-era remote learning technologies and the proliferation of e-learning opportunities. Disparities in resources, and the categorisation of developing and developed countries, further complicates the production and dissemination of knowledge. This article focuses on capacity-building, technical assistance and training, and includes the author's experience with collaborative training initiatives in ocean governance, to which United Nations agencies, the World Bank and academic partners contribute. The article describes the high stakes of integrative initiatives, the outreach by international organisations and the interaction between regimes. It seeks to account for collaborative capacity-building activities and the adaptive role of participants within the system of international law.

Keywords: *capacity-building, technical assistance, training programmes, regime interaction, systemic integration, implementation of international law*

1 INTRODUCTION

The training of State officials in international law is more important than ever. Multiple treaties, each a hard-won expression of State agreement, overlap with each other,¹ giving rise to a complex set of obligations that are difficult to understand and implement. Numerous supporting international organisations intersect in their activities at the international and national level.² Unequal resources between States, as commonly depicted through categories of 'developed' and 'developing countries', give rise to disparities in capabilities.³ Ongoing gaps in the implementation of

1. See United Nations, *Our Common Agenda: Report of the Secretary-General* (2021) 66–68 <www.un.org/en/content/common-agenda-report/> accessed 21 April 2023. See also ILC, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission, Finalized by Mr Martti Koskenniemi' (13 April 2006) UN Doc A/CN.4/L.682 12.

2. For examples, see Section 3.2 below.

3. This inequality can be evidenced through different measures, as described and critiqued in Sam Adelman and Abdul Paliwala, 'Beyond Law and Development?' in Sam Adelman and Abdul Paliwala (eds), *The Limits of Law and Development: Neoliberalism, Governance and*

international law, the existential consequences of which are vividly depicted,⁴ reflect a mounting need for international cooperation to address urgent global crises.⁵ The situation is further complicated by concerns about the influence of experts,⁶ and growing conflict over internet governance.⁷ The question of how those who are charged with implementing international law are supported to do so, and why the answer matters, demands scholarly attention.

The research question underpinning this article can be framed in very general terms: how do State officials learn from international organisations about international law in situations of normative and institutional pluralism? Yet the article's focus on capacity-building and technical assistance is confined by a vastly changing context of the inquiry, which looks very different from just five years ago. The article advances from the observation that new pandemic-era-inspired digital technologies have altered the training programmes and capacity-building efforts of international organisations. An explosion of e-learning methods and an adapted set of skills of trainers and learners has made the content of international law apparently more transmittable. The United Nations (UN), for example, responded to the COVID-19 pandemic with hundreds of available online courses, from sustainable development to human rights, and from climate change to nuclear safety.⁸ State officials (indeed any individual with a computer and internet connection) can sign up for a course from the Food and Agriculture Organization (FAO), complete a training module with the UN Environment Programme (UNEP), surf the World Trade Organization's (WTO) YouTube channel, binge from the UN Audio Visual Library or log into the World Bank's Open Learning Campus. International organisations generate training content from parent treaties and institutional frameworks. Like the broader leap of internet communications, internet-supported capacity-building efforts are erupting.

This growth in learning opportunities goes far wider than international law. Education and training in policy and governance is one of several areas of training that include scientific and research capacity. Innovations are not limited to e-learning: the popular and

Social Justice (Routledge, Abingdon 2021) 15. Many treaties, including the Paris Agreement, the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea, use the concept of developing countries when referring to beneficiaries of training, technical assistance or capacity development.

4. See eg the annual publication of the United Nations Environment Programme (UNEP), the latest of which is UNEP, 'Emissions Gap Report 2022: The Closing Window – Climate Crisis Calls for Rapid Transformation of Societies' (2022).

5. Of the many crises, countries recognise that climate change 'is an unprecedented challenge of civilizational proportions' ('Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change' UNGA Res 77/276 (4 April 2023) UN Doc A/RES/77/276 para 1). They stress the 'urgent need to halt the global decline of biodiversity, which is unprecedented in human history' ('Implementation of the Convention on Biological Diversity and its Contribution to Sustainable Development' UNGA Res 77/167 (28 December 2022) UN Doc A/RES/77/167 para 35). The UN Secretary-General has concluded that the global ocean is in a state of emergency (see 'Oceans and the Law of the Sea' UNGA Res 77/331 (9 September 2022) UN Doc A/77/331 para 101).

6. David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton UP, Princeton 2016).

7. Aziz Z Huq, 'International Institutions and Platform-Mediated Misinformation' (2022) 23 *Chicago Journal of International Law* 116.

8. United Nations Regional Information Centre for Western Europe, 'Sharpen Your Skills with UN E-Learning Courses' <unric.org/en/sharpen-your-skills-during-lockdown-with-united-nations-e-learning-courses/> accessed 25 March 2023.

inventive French model of climate change education, ‘Climate Fresk’, allows participants (including State officials) to build a ‘fresco’ of causes and effects of climate change from cards based on scientific reports of the Intergovernmental Panel on Climate Change. Moreover, treaties increasingly include knowledge dissemination as an express part of implementation efforts. An example is found in the latest new international agreement, which relates to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). The agreement’s orientation towards technological cooperation is demonstrated in its efforts to ensure that the benefits from resources of the oceans are shared fairly and equitably through the transfer of ‘marine technology’ (broadly defined).⁹ The new treaty recognises that gaps in knowledge exist and that efforts are needed to fill them: it aims to ‘[i]ncrease, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction’.¹⁰

The subject matter explored by this article is limited to the small subset of capacity-building and technical assistance that comprises training programmes in law and governance. From a pragmatic standpoint, building such capacity helps States to meet obligations, the expression of which has resulted from long negotiations and careful jurisprudential development. Indeed, the recognition that capacity is connected to compliance has led to the development of ongoing facilitative support networks within treaty regimes, which rest on the iterative model of learning and State consent, now famously described as ‘the new sovereignty’.¹¹ A major theme in the celebratory social media responses from those who have been a part of the BBNJ negotiations for the past two decades is that the real test will be implementation.¹² Even apart from this instrumentalist attitude, bringing attention to knowledge (co)production, sharing and dissemination in international law helps expose assumptions, silent voices and biases.¹³ It calls attention to the goals advanced by international organisations, especially when those goals rest on stories of ‘development’.¹⁴ It is especially important (and

9. UNGA, ‘Draft Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction’ (4 March 2023) pt V (Capacity-Building and Transfer of Marine Technology) <www.un.org/bbnj/sites/www.un.org/bbnj/files/draft_agreement_advanced_unedited_for_posting_v1.pdf> accessed 13 April 2023. Note also Annex II, which refers to education and training in, inter alia, ‘(e)(ii) a. The natural and social sciences, both basic and applied, to develop scientific and research capacity; b. Technology, and the application of marine science and technology, to develop scientific and research capacities; c. Policy and governance; d. The relevance and application of traditional knowledge’.

10. Ibid art 42(d).

11. Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard UP, Cambridge MA 1998).

12. See eg David Leary, Professor of Law, University Technology Sydney, LinkedIn Post (7 March 2023) <https://www.linkedin.com/posts/david-leary-1494a7140_draftagreementadvandedunitedforpostingv1-activity-7038613889202221056-4po9/> accessed 13 April 2023; Andrew Friedman, International environmental advisor and advocate, LinkedIn Post (8 March 2023) <https://www.linkedin.com/posts/andrew-friedman-43009155_nations-agree-on-language-for-historic-treaty-activity-7038697441042268160-7uyuc/> accessed 13 April 2023.

13. Andrew T F Lang, ‘Legal Regimes and Professional Knowledges: The Internal Politics of Regime Definition’ in Margaret A Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (CUP, Cambridge UK 2012) 113.

14. Isabel Feichtner, ‘International Organizations and Stories of Development’ in Jan Klabbbers (ed), *The Cambridge Companion to International Organizations Law* (CUP, Cambridge UK 2022) 336.

complicated) to do so when multiple international legal regimes are in play.¹⁵ Situations of overlapping and sometimes conflicting norms, differing State membership of regimes, dissimilar institutional cultures and asymmetries in resources across organisations complicate responses at the domestic level. Understanding this context also helps augment the legal study of interorganisational interactions, an area that is seen as neglected within international law.¹⁶

As such, the animating question of this article, of how State officials learn about laws addressing specific issue-areas where there are multiple international organisations and norms, deserves our attention. The question is not limited to shared resources and environmental protection, although the main examples are offered from this area. It is limited, however, to situations of training, technical assistance and capacity-building, noting that State officials do far more than learn and share their experiences with each other when implementing international law, and that innovations in their methods have attracted scholarly engagement.¹⁷ Also outside the scope of the article is an investigation of the implications of hosting e-learning on a general worldwide web that is rife with ‘influence operations’, which include misinformation, disinformation and distorted information.¹⁸ In answering the more contained research question, I draw on specific sources of international law (particularly provisions relating to technical assistance, capacity-building and training), as well as international institutional law, theories of new governance, fragmentation and regime interaction, approaches to legal pluralism and literature on law and development. In setting out the context for training programmes, I also draw on limited empirical work based on one training programme in ocean governance.¹⁹ As noted above, the article is intended to open and redirect discussion among international lawyers about the implementation of international law in the current era of digital communications and expansions in technological capacity.

The article is structured in five parts. After this introduction, Section 2 provides greater context to the terms of capacity-building, technical assistance and training, and it points to the general need for learning and capacity-building in international law in the situation of normative and institutional fragmentation. Section 3 discusses capacity-building and coordinating strategies, which depend on collaboration between

15. See eg, for marine biodiversity, UNGA, ‘Draft Agreement’ (n 9) art 4(2). See further Vito de Lucia, ‘Regime Interaction Through Concepts: The BBNJ Process as a Critical Juncture in the Relation Between the Convention on Biological Diversity and the Convention on the Law of the Sea’ in Nele Matz-Lück, Øystein Jensen and Elise Johansen (eds), *The Law of the Sea: Normative Context and Interactions with Other Legal Regimes* (Routledge, London 2022) 44.

16. See Henner Gött, *The Law of Interactions Between International Organizations: A Framework for Multi-Institutional Labour Governance* (Springer, Berlin 2020) 4.

17. Fleur Johns, ‘From Planning to Prototypes: New Ways of Seeing Like a State’ (2019) 82 *Modern Law Review* 833; Deval Desai and Andrew Lang, ‘From Mock-Up to Module: Development Practice Between Planning and Prototype’ (2022) 33 *Law and Critique* 299.

18. See Dale Stephens, ‘Influence Operations and International Law’ (2020) 19(4) *Journal of Information Warfare* 1.

19. See ‘Oceans and the Law of the Sea’ UNGA Res 77/248 (9 January 2023) UN Doc A/RES/77/248 para 52; see also ‘Oceans and the Law of the Sea’ UNGA Res 77/331 (n 5) para 96, and the UN Ocean Conference side event, which took place on 29 June 2022, and can be viewed here: World Bank, ‘Managing the Oceans: Strengthening Capacity for Ocean Governance’ (29 June 2022) <www.worldbank.org/en/events/2022/05/26/managing-the-oceans-strengthening-capacity-for-ocean-governance> accessed 23 March 2023 (UN Ocean Conference side event on 29 June 2022). The example is described more extensively in Margaret A Young, ‘Strengthening Capacity in Ocean Governance’ (2023) 8 *Asia-Pacific Journal of Ocean Law and Policy* 5.

international organisations, and which often seek to systematise conflicting norms and institutions. Section 4 moves to the implications of these activities for international organisations, States and other actors, before the final section concludes.

2 CAPACITY-BUILDING, TECHNICAL ASSISTANCE AND TRAINING

2.1 Legal provisions for training programmes

As set out above, this article focuses on training programmes in law and governance that fall within a wider set of activities comprising capacity-building and technical assistance. The term ‘capacity-building’, though ‘rarely well defined’,²⁰ can be generally understood as encompassing a ‘range of formal and informal activities, actors, institutions and policy sectors, and a potentially wide variety of issues, including government legitimacy, political stability, public participation and community empowerment’.²¹ By and large, it is addressed to developing countries, as a reflection of their specific needs, special circumstances and more general global economic disparities.²² It covers, for example, the ‘readiness’ funds that have been prominent in climate change mitigation projects.²³ The term ‘technical assistance’ is also open to different uses, including ‘international transfer of know-how through training and coaching’.²⁴ Aiming at assistance to developing countries, the term evolved to ‘technical cooperation’ in an effort to emphasise and cultivate a cooperative undertaking.²⁵ It is linked with ‘technology transfer and deployment’ and ‘finance’,²⁶ terms that are also dependent on power relations within specific regimes.²⁷

20. Christian Bueger, Timothy Edmunds and Robert McCabe, ‘Into the Sea: Capacity-Building Innovations and the Maritime Security Challenge’ (2020) 41 *Third World Quarterly* 228, 230.

21. *Ibid.*

22. See eg the preferential treatment for developing States in United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS) arts 203, 207 and 266, amongst a plethora of such treaties. The rationale that conceives of developing countries as subjects that follow the growth trajectory of developed countries is the subject of vigorous and sustained critique, particularly on environmental and historical grounds, as summarised by Adelman and Paliwala (n 3).

23. See further Maureen F Tehan, Lee C Godden, Margaret A Young and Kirsty A Gover, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (CUP, Cambridge UK 2017).

24. Claudio Dordi and Michel Kostecki, ‘Technical Assistance’, *Max Planck Encyclopedia of Public International Law* (February 2010) para 1.

25. *Ibid* para 14.

26. See eg United Nations Framework Convention on Climate Change (UNFCCC), ‘Decision -/CP.27: Sharm el-Sheik Implementation Plan’ (20 November 2022) (AUV) UN Doc FCCC/CP/2022/L.19 pt IX, para 39 (‘Urges developed country Parties to provide enhanced support, including through financial resources, technology transfer and capacity-building, to assist developing country Parties with respect to both mitigation and adaptation, in continuation of their existing obligations under the Convention, and encourages other Parties to provide or continue to provide such support voluntarily’) and pt X, para 45 (‘Highlights the importance of cooperation on technology development and transfer and innovation in implementing the joint work programme activities’) (emphases original).

27. Stephen Humphreys, ‘Structural Ambiguity: Technology Transfer in Three Regimes’ in Margaret A Young (ed), *Regime Interaction in International Law: Facing Fragmentation*

Training programmes of this nature are supported in a range of new and proposed international treaties and other legal instruments. In the BBNJ example noted above, States have sought to meet their objectives on marine biodiversity by increasing, disseminating and sharing knowledge.²⁸ The new WTO Agreement on Fisheries Subsidies, which was agreed in 2022,²⁹ established a new voluntary funding mechanism in cooperation with the FAO and the International Fund for Agricultural Development (IFAD) in order to deliver targeted technical and capacity-building assistance to developing country members.³⁰

Current negotiations for new agreements reflect this trend. The zero draft of the proposed pandemic treaty also refers to training and capacity-building in several provisions, including a draft obligation for each party to ‘safeguard, protect, invest in and sustain a skilled, trained, competent and committed health and care workforce’.³¹ The resolution supporting the negotiation of a new agreement on plastics pollution ‘[a]cknowledges that some legal obligations arising out of a new international legally binding instrument will require capacity building and technical and financial assistance in order to be effectively implemented by developing countries and countries with economies in transition’.³² In an ambitious shift, the Conference of the Parties to the Paris Agreement (COP) at the last COP meeting in Sharm el-Sheikh noted ‘the importance of pursuing an approach to education that promotes a shift in lifestyles while fostering patterns of development and sustainability based on care, community and cooperation’.³³

These new provisions stand alongside existing instruments that support training and capacity-building by a broad range of international organisations, including the FAO, UNEP, WTO and the World Bank’s e-learning activities outlined at the beginning of this article. The FAO training modules accord with the FAO’s mandate to provide legal information and tools for strengthening national legal frameworks for sustainable production in food and agriculture. UNEP’s activities are part of a long tradition of

(CUP, Cambridge UK 2012) 175; Nina Araneta-Alana, ‘Climate Finance and Governance in International Law and Development’ in Ruth Buchanan, Luis Eslava and Sundhya Pahuja (eds), *Handbook of International Law and Development* (OUP, Oxford 2023) (forthcoming).

28. UNGA, ‘Draft Agreement’ (n 9) art 42(d).

29. WTO Agreement on Fisheries Subsidies (adopted 17 June 2022, not yet entered into force) WT/MIN(22)/33.

30. Ibid art 7 (‘Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources’).

31. WHO, ‘Zero Draft of the WHO CA+ for the Consideration of the Intergovernmental Negotiating Body at its Fourth Meeting’ (1 February 2023) UN Doc A/INB/4/3 art 12(1).

32. UN Environment Assembly of the UNEP, ‘Draft Resolution: End Plastic Pollution: Towards an International Legally Binding Instrument’ (2 March 2022) UN Doc UNEP/EA.5/L.23/Rev.1 2.

33. UNFCCC (n 26) preamble. This may signal an approach to development that addresses the critiques addressed in Sam Adelman, ‘Beyond Development: Towards Sustainability and Climate Justice in the Anthropocene’ in Sam Adelman and Abdul Paliwala (eds), *The Limits of Law and Development: Neoliberalism, Governance and Social Justice* (Routledge, Abingdon 2021) 54.

capacity-building identified during Agenda 21.³⁴ The WTO's YouTube channel operates in the context of WTO members' support for technical assistance and capacity-building;³⁵ the WTO Secretariat's outreach efforts are summarised in a 'Global Trade-Related Technical Assistance Database'.³⁶ The World Bank runs a live stream of events and an Open Learning Campus for staff and external users.³⁷ The UN also turns inward to highlight the environmental impact of its over 300,000 UN personnel in 53 reporting entities, reporting on the environmental training opportunities provided to staff.³⁸ In the UN Convention on the Law of the Sea (UNCLOS), there is an obligation for parties to provide technical assistance, directly or through a competent international organisation, including for the protection and preservation of the marine environment.³⁹

All the above activities are supported by constitutive documents and treaties in addition to pledges of resources and support by countries. The legal provisions for capacity-building sit alongside political realities of resource constraints and the changing priorities of States. As noted by the Organisation for Economic Co-operation and Development (OECD), the funding for the activities of UN bodies has been strained in recent decades, while international financial institutions have expanded their activities.⁴⁰ UN core budgets have fallen, and earmarked activities have instead proliferated, with an increased risk of 'fragmentation and overlap' due to the creation of new bodies to address emerging issues such as environmental threats.⁴¹ I describe these regime-specific activities in the next section.

2.2 Regime-specific learning and its limitations

Legal provisions and funding for capacity-building, technical assistance and training are likely to originate within specific regimes. At this point, another definition is useful: my use of 'regimes' draws from international relations and international law scholarship that delineates the multilateral treaties, international organisations and fields of

34. United Nations Statistics Division, 'United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992: Agenda 21' <[sustainabledevelopment.un.org/content/documents/Agenda21.pdf](https://www.un.org/content/documents/Agenda21.pdf)> accessed 24 March 2023.

35. See eg WTO, 'WTO Technical Assistance and Training' <www.wto.org/English/tratop_e/devel_e/teccop_e/tct_e.htm> accessed 24 March 2023 ('In the Ministerial Declaration issued at the end of the WTO's Ministerial Conference in December 2015, ministers said: "We note the substantial progress in WTO's technical assistance and capacity building, which focus on the needs and priorities of beneficiary Members"').

36. WTO, 'Global Trade-Related Technical Assistance Database' <gtad.wto.org/> accessed 24 March 2023.

37. World Bank, 'Open Learning Campus' <<https://live.worldbank.org/open-learning-campus/>> accessed 13 April 2023.

38. UNEP, 'Greening the Blue Report 2022' (2022) <https://wedocs.unep.org/bitstream/handle/20.500.11822/41373/Greening_the_blue_2022.pdf> accessed 24 March 2023.

39. UNCLOS (n 22) art 202. See also, on marine matters, United Nations Statistics Division (n 34) para 17.122. See UN, 'Enhancing Ocean Capacity: Capacity-Building Programme of the Division for Ocean Affairs and the Law of the Sea' (October 2022) <www.un.org/oceancapacity/sites/www.un.org.oceancapacity/files/images/Publication/21-19392-ola-doa-los_capacity-building-web_2dec22.pdf> accessed 23 March 2023.

40. OECD, 'Development Co-operation Report' (2005) 121, cited in Dordi and Kostecki (n 24) para 26.

41. Ibid.

professional specialisation that coalesce around specific issue-areas, such as trade liberalisation, climate change and the law of the sea. While definitions of ‘regimes’ differ, I favour the one that recognises the sociological as well as legal aspects: regimes are ‘sets of norms, decision-making procedures and organisations coalescing around functional issue-areas and dominated by particular modes of behaviour, assumptions and biases’.⁴²

Capacity-building, technical assistance and training are likely to be delivered by international organisations and other actors within specific regimes, for operational and strategic reasons. The treaties are not only sources of law but evidence of the importance and value that State Parties have placed on particular goals, and it is clear that State Parties wish to support capacity development that is instrumental to those goals. The international organisations, secretariats and related agencies that support those treaties are best placed to develop the capacity that is specific to the relevant issue-area. This idea of mandates and restricted service delivery has conceptual parallels with the views of the International Court of Justice (ICJ) on the competence of specialised organs to initiate requests for advisory opinions: the implied powers of international organisations are subject to the principle of speciality.⁴³ Moreover, each regime can be said to generate an ‘epistemic community’ of professionals and experts, who will have ‘strong incentives to work towards the achievements of their regime’s goals’.⁴⁴

Trying to rationalise and understand the legal order in situations of fragmentation incurs high transaction costs for international bodies.⁴⁵ Taken to the extreme, an inward-orientation by international organisations will result in regime-specific training that focuses on parent treaties and associated mechanisms. Yet the limitations of this approach can be demonstrated by the oceans example introduced above. UNCLOS recognised at its inception that ‘the problems of ocean space are closely interrelated and need to be considered as a whole’.⁴⁶ The issue is reflected in the new BBNJ text noted above, which provides that this treaty:

shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies.⁴⁷

This provision makes clear that the implementation of State obligations to conserve and sustainably use marine biological diversity in areas beyond national jurisdiction will require knowledge and capacity about a range of legal instruments and bodies⁴⁸

42. Margaret A Young, ‘Introduction: The Productive Friction Between Regimes’ in Margaret A Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (CUP, Cambridge UK 2012) 1, 11.

43. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* [1996] ICJ Rep 66, 78–81.

44. Michael Waibel, ‘Interpretive Communities in International Law’ in Andrea Bianchi, Daniel Peat and Matthew Windsor (eds), *Interpretation in International Law* (OUP, Oxford 2015) 147, 149 and 160 (drawing on Peter Haas and John Ruggie).

45. Eyal Benvenisti and George W Downs, ‘The Empire’s New Clothes: Political Economy and the Fragmentation of International Law’ (2007) 60 *Stanford Law Review* 595.

46. UNCLOS (n 22) preamble.

47. UNGA, ‘Draft Agreement’ (n 9) art 4(2).

48. See further Nilufer Oral, ‘The Institutional Schizophrenia of Ocean Governance Through the Lens of the Conservation of Biological Diversity in Areas Beyond National Jurisdiction’ in Seline Trevisanut, Nikolaos Giannopoulos and Rozemarijn Roland Holst (eds), *Regime*

that go beyond the supporting secretariat established by the agreement.⁴⁹ Learning about and building capacity in marine biodiversity requires an understanding of UNCLOS, the Convention on Biological Diversity (CBD), FAO and Regional Fisheries Management Organisations, to name just a few. Moreover, ‘tunnel vision’ may prevent broader perspectives on societal issues.⁵⁰ While it may seem nonsensical that international organisations would ignore the legal and other requirements of other regimes when they deliver training programmes and capacity-building to States,⁵¹ it is worth noting the varying degrees of transparency and openness, and the risks of institutional blind spots.⁵² The following section considers efforts to address the risks and improve training programmes through partnerships and collaborative activities.

3 COORDINATING APPROACHES BETWEEN INTERNATIONAL ORGANISATIONS

3.1 Integrative initiatives

The notion that actors within regimes must reach outwards to implement States’ commitments is expressed in many ways. At the highest level of the UN, a dedicated UN Chief Executives Board seeks to improve policy coherence and coordination across institutions. At its most recent meeting, for example, the global peace and security environment was a topic for discussion, and the Secretary-General highlighted the need for an integrated approach to ‘peace, development and human rights’, including through capacity-building in this context.⁵³ Inter-agency bodies, such as the UN Inter-Agency Network on Women and Gender Equality, also work to provide coordination, in this case through gender mainstreaming.⁵⁴

Interaction in Ocean Governance: Problems, Theories and Methods (Brill Nijhoff, Leiden 2020) 52; Arne Langlet and Alice B M Vadrot, ‘Not “Undermining” Who? Unpacking the Emerging BBNJ Regime Complex’ (2023) 147 *Marine Policy* 105372, 8.

49. UNGA, ‘Draft Agreement’ (n 9) art 50. Note also the interim work of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs (DOALOS) at art 50(1 bis).

50. Gunther Teubner and Peter Korth, ‘Two Kinds of Legal Pluralism: Collision of Transnational Regimes in the Double Fragmentation of World Society’ in Margaret A Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (CUP, Cambridge UK 2012) 23; see also Rene Urueña, ‘Interaction Between International Organizations’ in Jan Klabbers (ed), *The Cambridge Companion to International Organizations Law* (CUP, Cambridge UK 2022) 222.

51. Indeed, international organisations often represent a broader stakeholder community as opposed to their members’ position: see eg Cymie R Payne, ‘Responsibility to the International Community for Marine Biodiversity Beyond National Jurisdiction’ (2022) 11 *Cambridge International Law Journal* 24, 47.

52. See eg the limited accessibility of records detailing the development of regulations on deep-seabed mining, as discussed in Catherine Blanchard, Ellycia Harrould-Kolieb, Emily Jones and Michelle L Taylor, ‘The Current Status of Deep-Sea Mining Governance at the International Seabed Authority’ (2023) 147 *Marine Policy* 105396. On blind spots in the context of dispute settlement, see Oren Perez, *Ecological Sensitivity and Global Legal Pluralism: Rethinking the Trade and Environment Debate* (Hart Publishing, Oxford 2003).

53. UN System Chief Executives Board for Coordination, ‘Second Regular Session of 2022: Summary of Deliberations’ (27–28 October 2022) UN Doc CEB/2022/2 para 15.

54. See further UN Women, ‘Global Coordination’ <www.unwomen.org/en/how-we-work/un-system-coordination/global-coordination> accessed 23 March 2023.

Country declarations also make clear the imperative of coordinated action. The Sustainable Development Goals (SDGs) are based on agreed goals rather than institutional competences. SDG Goal 13 ‘Climate Action’, for example, acknowledges that the UN Framework Convention on Climate Change (UNFCCC) is the ‘primary international, inter-governmental forum for negotiating the global response to climate change’, but expresses its targets in a broad way. These include, for example, Target 13.3 to ‘[i]mprove education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning’.⁵⁵ SDG Goal 17 ‘Partnership for the Goals’ expresses the goal of revitalising the ‘global partnership for sustainable development’.⁵⁶ Against published facts relating to access to digital technologies, the goals seek to enhance ‘multi-stakeholder partnerships’ and achieve enhanced ‘international support for implementing effective and targeted capacity-building’.⁵⁷

While the imperative for coordinated action is clear, the way in which this is to be achieved is not. A 2022 UN General Assembly declaration on climate change, for example, was put forward by Pakistan (on behalf of the Group of 77 and China) and passed with a paragraph stating that the Assembly: ‘*Emphasizes* the need for collective efforts to promote sustainable development in its three dimensions in an innovative, coordinated, environmentally sound, open and shared manner’.⁵⁸ An earlier proposed amendment by the United States had sought to amend this paragraph so that the Assembly instead: ‘*Reaffirm[s]* ... its commitment to achieving sustainable development in its three dimensions – economic, social and environmental – in a balanced and integrated manner’.⁵⁹ The factors behind this difference in language are a topic for another day,⁶⁰ but for present purposes it is sufficient to observe the political wrangling between developing and developed countries over the means for achieving ‘coherence’ in the shared approach to sustainable development.

Agreements by international organisations are a further source for joint capacity-building. For example, the Memorandum of Understanding (MOU) between the FAO and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat agreed in 2006 was developed after the proposed listing of commercially exploited marine species required scientific and other expertise gathered within the FAO.⁶¹ The MOU recognises that many of the States importing or exporting

55. UN, ‘Goal 13: Take Urgent Action to Combat Climate Change and its Impacts’ <www.un.org/sustainabledevelopment/climate-change/> accessed 23 March 2023.

56. UN, ‘Goal 17: Revitalize the Global Partnership for Sustainable Development’ <www.un.org/sustainabledevelopment/globalpartnerships/> accessed 23 March 2023.

57. *Ibid* (see especially goals 17.9 and 17.16).

58. ‘Protection of Global Climate for Present and Future Generations of Humankind’ UNGA Res 77/165 (21 December 2022) UN Doc A/RES/77/165 para 13 (emphasis original).

59. See UNGA, ‘Draft Resolution: Protection of Global Climate for Present and Future Generations of Humankind’ (15 November 2022) UN Doc A/C.2/77/L.69, referenced in UNGA, ‘Report of the Second Committee’ (1 December 2022) UN Doc A/77/443/Add.4 4–5 (emphasis original).

60. The Committee rejected the proposed amendment by a recorded vote of 111 to 55, with two abstentions, which split largely along lines of developing and developed countries: see UNGA, ‘Amendment to A/C.2/77/L.69 – Protection of Global Climate for Present and Future Generations of Humankind [18(d)], 25th Meeting’ (23 November 2022) UN Doc A/C.2/77/L.77 <<https://www.un.org/en/ga/second/77/docs/voting/L.77.pdf>> accessed 13 April 2023.

61. See further Margaret A Young, ‘Protecting Endangered Marine Species: Collaboration Between the Food and Agriculture Organization and the CITES Regime’ (2010) 11 *Melbourne Journal of International Law* 441.

marine species that might benefit from a threatened species listing would require training and capacity-building in both CITES and the FAO fisheries management structures.⁶²

Integrative approaches can also be developed at the project level. At the 2022 UN Ocean Conference, for example, side events presented examples of a range of collaborative capacity-building programmes.⁶³ These included the Ocean Governance Capacity Building Programme arising from a partnership between the World Bank, the Division for Ocean Affairs and the Law of the Sea of the UN Office for Legal Affairs (DOALOS), the FAO, the International Seabed Authority (ISA), the University of Melbourne and the University of Nantes, which was noted at the beginning of this article.⁶⁴ Given my experience as one of the trainers in this programme, the following subsection discusses its practical aspects.

3.2 Joint training and capacity-building in practice

In 2020, PROBLUE, a multi-donor trust fund administered by the World Bank that aims to support the development of integrated, sustainable and healthy marine and coastal resources,⁶⁵ allocated funds for a specific training initiative in ocean governance. At first, this led to the World Bank engaging consultants who were experts in the relevant areas of law and who were to deliver in-person training workshops for State officials and staff of international organisations as well as other stakeholders.⁶⁶

62. As agreed by CITES and FAO. Reproduced at CITES, 'Strategic and Administrative Matters: Cooperation with the Food and Agriculture Organization of the United Nations' (27 June–1 July 2005) SC53 Doc 10.1 para 2 and FAO, 'CITES Issues with Respect to International Fish Trade and the CITES/FAO MOU' (30 May–2 June 2006) COFI:FT/X/2006/3 9 ('The signatories will cooperate as appropriate to facilitate capacity building in developing countries and countries with economies in transition on issues relating to commercially-exploited aquatic species listed on the CITES Appendices').

63. See eg International Ocean Institute, United Nations Conference on Trade and Development (UNCTAD), United Nations Institute for Training and Research, One Ocean Hub and GOAL Global, 'Concept Note: From Ocean Knowledge to Action – Developing Capacity to Create a Sustainable Ocean Economy' (30 June 2022) <unctad.org/meeting/2022-united-nations-ocean-conference-side-event-ocean-knowledge-action-developing-capacity> accessed 24 March 2023; Scientific Committee on Oceanic Research, Partnership for the Observation of the Global Ocean, International Oceanographic Data Exchange of the Intergovernmental Oceanographic Commission (IOC) of UNESCO and International Science Council, 'Summary: Developing the Capacity We Need for the Ocean We Want' (29 June 2022) <sdgs.un.org/sites/default/files/2022-07/V_Developing%20the%20capacity%20we%20need%20for%20the%20ocean%20we%20want.pdf> 24 March 2023. See further UN, 'UN Ocean Conference Lisbon, Portugal: Side Events' <www.un.org/en/conferences/ocean2022/events/side> accessed 23 March 2023.

64. As set out above, this programme is discussed in detail in Young (n 19) and surrounding text.

65. See World Bank, 'PROBLUE' <www.worldbank.org/en/programs/problue> accessed 24 March 2023. Contributions come from Australia, Canada, Denmark, the European Commission, France, Germany, Iceland, Ireland, Norway, Sweden, the United Kingdom and the United States, in an amount of just over US\$200 million: World Bank, 'PROBLUE: Healthy Oceans, Healthy Economies, Healthy Communities' <www.worldbank.org/en/programs/problue/donors-and-supporters> accessed 23 March 2023.

66. These were my Melbourne Law School colleague, Senior Fellow Sam Johnston, and me. The World Bank team included Christina Leb and Remi Moncel, both Senior Counsel at the Environment and International Law Practice Group of the World Bank; see further UN Ocean Conference side event on 29 June 2022 (n 19).

As the COVID-19 pandemic progressed, the training programme transitioned to a virtual mode. Through online meetings and preparatory discussions, a broader network was established, which led to a partnership between the World Bank, DOALOS, the FAO, the ISA and the University of Melbourne.⁶⁷ Open calls for participation led to applications from people working in government ministries, regional environmental organisations, port authorities, fishing operations, tourism and other sectors.⁶⁸ In the Asia-Pacific, the programme was delivered in blocks of seminars and tasks conducted over a six-week period. After this iteration, the partnership delivered a second training programme in French as well as English to the Africa region over a six-week period in 2021, bringing in the University of Nantes as an additional partner.⁶⁹ More programmes are planned under this extended partnership, and online resources are now available to a broader audience.⁷⁰ A self-paced e-learning module is also being prepared.

As I have described elsewhere, a training programme of this kind in ocean affairs is not new in itself. Rather, the novelty lies in the integrated and collaborative nature, involving multiple international organisations as well as academic institutions and funding bodies.⁷¹ The activities are supported by the duty to cooperate, a fundamental principle within the law of the sea and general international law,⁷² which obliges States to have regard for an understanding of each other's interests as well as the collective interest.⁷³ The activities can also be supported by duties of international organisations and the recognition that they serve States and people. These duties accord with the understanding within international institutional law that an international organisation has 'many constituencies, all of which can make justifiable demands concerning both the everyday guidance of the organization and its accountability'.⁷⁴ Coordinating the joint delivery of training programmes is an expected activity of international organisations in the context of complex ocean challenges.

The content of the training programme was decided by the partners, based on factual context (including scientific assessments of the state of the world's oceans),⁷⁵

67. See further World Bank, 'Strengthening Capacity on Ocean Governance' (27 January 2022) <www.worldbank.org/en/topic/environment/brief/strengthening-capacity-on-ocean-governance> accessed 23 March 2023.

68. There has been a total of 150 participants, out of 480 applications, from 47 countries, with a gender balance of 57 per cent women. 70 per cent of participants worked in national government, 16 per cent in international organisations, 7 per cent in non-governmental organisations, 4 per cent in the private sector and 2 per cent in academia. See further comments from Remi Moncel, World Bank, at UN Ocean Conference side event on 29 June 2022 (n 19).

69. Professor Martin Ndende, Professor of Law and Director of the Maritime and Oceanic Law Centre (CDMO) at the University of Nantes, France; see further UN Ocean Conference side event on 29 June 2022 (n 19).

70. For resources of the Ocean Governance Capacity Building Programme, see World Bank (n 67).

71. See Young (n 19) 9.

72. *MOX Plant (Ireland v United Kingdom)* (Provisional Measures, Order of 3 December 2001) ITLOS Reports 2001, 95 [82].

73. See further Young (n 19) 14–16.

74. Jan Klabbers, 'The EJIL Foreword: The Transformation of International Organizations Law' (2015) 26 *European Journal of International Law* 9, 81, cited in Young (n 19) 13.

75. See eg UNGA, 'Summary of the Second *World Ocean Assessment*' (4 November 2020) UN Doc A/75/232/Rev.1. The Second World Ocean Assessment is the major output of the second cycle of the regular process for global reporting and assessment of the States of the marine environment, including socio-economic aspects (see further UN DOALOS, 'Second Cycle of the

international law and legal developments. Many of the modules were championed by the UN agencies and World Bank officials working on the ground in countries, especially those countries that were seeking to develop their own ocean strategies. The core curriculum led with UNCLOS, including maritime zones and core principles, and then moved to cover as separate topics the law governing climate change, fisheries, trade, marine pollution, marine conservation and biodiversity and activities in the deep seabed. For elective modules (participants chose three out of ten to complete), topics covered dispute settlement, marine scientific research, advanced marine pollution, threatened species, maritime transport, blue finance, SDGs, BBNJ, ‘illegal, unreported and unregulated’ (IUU) fishing, and emerging issues. The last topic, in particular, enabled a more flexible and forward-looking orientation. It featured, for example, a discussion of ‘One Health’. The notion that the health of humans must be assessed alongside the health of non-human animals and the planet is by no means an accepted area of international law and is only starting to emerge within the World Health Organization’s (WHO) sought-for pandemic treaty. The topic also covered human rights issues, which the Human Rights Committee’s recent finding on marine climate adaptation confirms to be of increasing importance in ocean governance.⁷⁶

As one of the contributors from the academy, I was keen to understand how the balance between the many elements of ocean governance⁷⁷ was to be agreed upon by the international organisations within different regimes. In particular, I was alert to whether there would be guarding of mandates, or inflexibility, in the decisions about the content of the training. This did not eventuate. The discussions between the partners (conducted over multiple online meetings) led to an agreed position, with different organisations devising learning outcomes and recording lectures for their allocated topics, while commenting on the package as a whole. The partners also agreed upon the inclusion in the training of norms of customary international law that operate universally and outside regimes, like State responsibility for trans-boundary harm. Ocean governance challenges that are yet to be championed by a dedicated international organisation, such as ocean acidification,⁷⁸ labour rights on fishing vessels⁷⁹ and marine debris and plastics pollution,⁸⁰ were also included.

Regular Process’ <www.un.org/regularprocess/content/second-cycle-regular-process> accessed 23 March 2023). There is also a lack of scientific knowledge, including in the deep sea, as described in comments from Talatu Akindolire, ISA, at UN Ocean Conference side event on 29 June 2022 (n 19).

76. *Daniel Billy et al v Australia* (22 September 2022) Human Rights Committee, Communication No 3624/2019 UN Doc CCPR/C/135/D/3624/2019 (finding that Australia’s failure to achieve adequate coastal and marine climate adaptation in the Torres Strait Islands amounts to violations of the International Covenant on Civil and Political Rights).

77. This balance is far from straightforward: Yoshinobu Takei, ‘Demystifying Ocean Governance’ in Seline Trevisanut, Nikolaos Giannopoulos and Rozemarijn Roland Holst (eds), *Regime Interaction in Ocean Governance: Problems, Theories and Methods* (Brill Nijhoff, Leiden 2020) 22.

78. Nilufer Oral, ‘Ocean Acidification: Falling Between the Legal Cracks of UNCLOS and the UNFCCC?’ (2018) 45 *Ecology Law Quarterly* 9.

79. Penelope J Ridings, ‘Labour Standards on Fishing Vessels: A Problem in Search of a Home?’ (2021) 22 *Melbourne Journal of International Law* 308.

80. Rosemary Rayfuse, ‘Informal International Lawmaking as a Panacea in the Absence of Regime Focus? Marine Debris, Plastics, and Microplastics’ in Natalie Klein (ed), *Unconventional Lawmaking in the Law of the Sea* (OUP, Oxford 2022) 290.

The delivery of the programme combined pre-recorded video lectures and sets of preparatory readings (including summaries of treaties), with live sessions and participant-led presentations on selected topics (often pre-recorded as videos by participants and uploaded) and discussion. In this way, participants could draw on professional and on-the-ground experience with ocean governance and share this with each other and with the trainers.⁸¹ This feature was mentioned in the positive feedback from attendees, who also commented on the usefulness of learning about multiple international regimes relevant to the oceans.⁸²

While it is too early to evaluate the training programme or to consider its long-term contributions, I am highly supportive of the learning objectives and appreciative of the attitude within the partnership and attendees that welcomed a diversity of content. I would identify the conditions of careful and collaborative planning, coordinated and participatory delivery, and ongoing engagement between partners and alumni as essential to successful outcomes for ocean governance. Yet I am also conscious of some differences between this training programme and my university classes. Obviously, the curriculum was more constrained in time and materials than a semester-length university subject. Wider issues of history and theory could not be covered; learners remained focused on a functional account of ocean governance. For example, my University of Melbourne class on the Law of the Sea devotes a full seminar to whales, notwithstanding that the attitude by States to ‘make possible the orderly development of the whaling industry’, agreed in 1946,⁸³ was superseded in 1982 by an agreed ban.⁸⁴ The partnership saw insufficient functional reason to include the topic in a training programme for State officials on ocean governance. For broader reasons, however, the topic of whales might be seen as foundational to ocean governance, and the evolution of law relating to whales is relevant to many of the environmental emergencies I noted at the beginning of this article (climate, oceans and biodiversity).⁸⁵ In the ICJ litigation brought by Australia against Japan,⁸⁶ there were glimpses of an ethics of care towards whales,⁸⁷

81. See eg relevance of the domestic law context emphasised by Blaise Kuemlangan, FAO, at the UN Ocean Conference side event on 29 June 2022 (n 19). The learning gained by the trainers and wider partnership from the participants’ perspectives was also discussed by Christina Leb, World Bank, at the side event.

82. See UN Ocean Conference side event on 29 June 2022 (n 19), including comments from alumni from Nigeria (Tantoh K Rowland, Projects Manager, Ports Management Association of West and Central Africa and Haruna Syntyche Baba, Nigerian Maritime Administration and Safety Agency), Fiji (Teri Tuxson, Assistant Coordinator for the locally managed marine area network (community-based fisheries management)), the Philippines (Cheryl Marine Natividad-Caballero, Undersecretary for Agri-Industrialization and for Fisheries, Department of Fisheries), Federated States of Micronesia (Leonito Bacalando, Assistant Attorney-General, Justice Department), Marshall Islands (Francisco Blaha, Off-Shore Fisheries Advisor, Marshall Islands Marine Resources Authority) and Sierra Leone (William Dauda, Social Safeguards Specialist, Sierra Leone Economic Diversification Project).

83. International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72 preamble.

84. The International Whaling Commission amended the Schedule to the Convention to adopt a moratorium on commercial whaling in 1982, as described in *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (Merits) [2014] ICJ Rep 226 (*Whaling in the Antarctic*) 261 [100].

85. See n 5.

86. *Whaling in the Antarctic* (n 84).

87. See further Margaret A Young, ‘International Adjudication and the Commons’ (2019) 41 *University of Hawai‘i Law Review* 353, 368–369.

which provide alternatives to the dominant conception of extractivist-oriented national interests. Within the narrow confines of a capacity-building programme, however, such conceptual and ethical issues were not discussed.⁸⁸

Conveying the complexity of case law and the jurisprudential method to a group of State officials, some of whom are new to legal education, presents special difficulties. For example, the provisions in public international law that allow for evolution and an exercise of discretion on proportionality, reasonableness and even systemic integration arise through adjudication, such as when a tribunal engages in treaty interpretation.⁸⁹ These provisions have quotidian application for international lawyers, but for government officials and civil servants, they seem esoteric and complicated. Yet leaving them out of the training programme risks imparting a rigid conception of the state of the law and its ability to adapt to changing conditions.

A final reflection on the training programme relates to ontological and epistemological tensions. The goals of PROBLUE and the international organisations within the partnership were broadly to assist States in achieving sustainability in their uses of the oceans, including in the context of ‘the Blue Economy’.⁹⁰ Yet the question of whether the Blue Economy can adequately value and protect environmental and social imperatives and global public goods is an open one.⁹¹ Missteps in technical assistance in the past in other contexts have included overly narrow conceptions of national interests.⁹² That said, many of the participants attending the training programme did not approach the training in a narrow way, and during seminars sought to articulate shared common interests in the oceans, particularly at the regional level. They were also forthcoming in their own experiences and conceptions of the oceans. For example, during the module on climate-change adaptation, one of the participants from Fiji discussed the traditional practices that have allowed her society to adapt to stabilising shorelines.⁹³ These ‘nature-based solutions’ did not depend on knowledge of the UNFCCC or the Paris Agreement. In reflecting on what I had learned from her examples, I was reminded of cross-cultural and quantitative studies of the United Kingdom, India and Indonesia, which argued that as gross domestic product rose, ecological knowledge was lost.⁹⁴ While the framing of those studies risks eliding the differences that exist between different communities within a State, the overriding point about a loss of

88. This is not to say that university classes always have sufficient critical engagement: for a discussion, see Margaret A Young, ‘Climate Change and Law: A Global Challenge for Legal Education’ (2021) 40 *University of Queensland Law Journal* 351, 366–368.

89. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331; see further Campbell McLachlan, ‘The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention’ (2005) 54 *International and Comparative Law Quarterly* 279.

90. See n 66 and surrounding text.

91. See the author’s upcoming project supported by the Australian Research Council (ARC) Future Fellowship 2023–2026 ‘The Blue Economy and International Law’ (ARC FT220100418).

92. On the technical assistance by the World Bank and other financial institutions in the lead-up to the global financial crisis, see Feichtner (n 14) 342.

93. This supports analyses of atoll societies: see Jon Barnett, Sergio Jarillo, Stephen E Swearer et al, ‘Nature-Based Solutions for Atoll Habitability’ (2022) 377(1854) *Philosophical Transactions Royal Society* 20210124, 4.

94. Sarah E Pilgrim, Leanne C Cullen, David J Smith and Jules Pretty, ‘Ecological Knowledge is Lost in Wealthier Communities and Countries’ (2008) 42 *Environmental Science and Technology* 1004.

connection to local environments through urbanisation and ‘development’ is relevant. Could it be that accumulated knowledge about nature, which is necessary to confront the crises facing the oceans, is diminishing by the practices of State building and economic development that the training programme sought to facilitate? While a fuller treatment of this question is left for another day, at the very least the point demonstrates the value of technical cooperation rather than technical assistance, and a fuller conception of the ‘beneficiaries’.⁹⁵ On this, and the delivery of joint capacity-building training programmes, there are more implications, some of which the next section attempts to distil.

4 COORDINATION AND CONTROL

4.1 International organisations and international financial institutions

International organisations are the key actors that collaborate on joint capacity-building and training programmes, as they enter into MOUs or partnership agreements as set out above. In practice, the training programme in ocean governance described in the previous section demonstrated conditions for effective learning and adaptability. Yet, conceptually, such joint capacity-building efforts can either pre-empt conditions of fragmentation or succumb to them: though clichéd, one can imagine a particular actor seeming to ‘control the narrative’. As such, it is useful to explore broader implications for international organisations and other relevant actors.

The capacity-building and technical assistance described in this article can be set against the claim that international organisations ‘teach statehood’.⁹⁶ International organisations ‘contribute towards the construction of a kind of distributed global knowledge’⁹⁷ on what it means to be a State, often collaborating between multiple organisations in the process,⁹⁸ and thus agree upon and deliver an integrated account of international law.

In occupying a special role in building epistemic and interpretative communities that are adaptive and open to other regimes, international organisations wield influence in shaping dominant accounts of international law. It is thus important to ask about their legitimacy, especially when their work in coordinating joint activities strays from their express powers and mandates, and when the collaborating organisations have different State ‘masters’, different agendas and different mandates. Literature on regime interaction is useful in exploring frameworks that ensure legitimacy and depend less on direct State consent and more on institutional arrangements that emphasise inter-regime scrutiny, accountability, openness and transparency.⁹⁹ Theories of pluralist global governance that point to peer reviews by international organisations

95. See n 25 and surrounding text.

96. Guy Fiti Sinclair, ‘Teaching Statehood’ in Jan Klabbers (ed), *The Cambridge Companion to International Organizations Law* (CUP, Cambridge UK 2022) 199, 207–208 (describing technical assistance alongside a range of other activities including standard-setting and complaint procedures). See also 220 (‘A feature of these and other statehood-teaching techniques ... has been the extent to which they involve interactions among multiple organizations’).

97. Ibid 209; see also Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (OUP, Oxford 2017).

98. Sinclair (n 96) 210.

99. See further Young (n 19) 13. See also Langlet and Vadrot (n 48) 8.

of each other's activities are also relevant,¹⁰⁰ and regular meetings within partnerships can assist in developing relationships, sharing information and building communities of practice.¹⁰¹ The openness and general availability of the proposed 'e-learning' module on ocean governance, in addition to other examples I described at the beginning of the article, are a good start in democratising knowledge on international law.

By contrast, commentators who doubt that efforts at international cooperation can overcome structural power imbalances might show less optimism. Regime complexes that extend the notion of regimes to include a broad range of affected stakeholders, including private interests, have been criticised as expropriating less powerful actors and depriving them of already scarce resources.¹⁰² Moreover, the collaborative activities of international organisations described in this article fall short of calls for social solidarity and a postcolonial sensibility, which have emerged as a 'third wave constitutional theory for international organisations'.¹⁰³ Such constitutionalist ambitions are not currently observable in the ocean governance training programme, for example, but some of the elements that are encompassed in those theories, including the need for international organisations to confront social welfare questions, were clearly important for the partners in deciding on content and approach.

There remains an unanswered boundary question about which international organisations should be involved in collaborative capacity-building according to these ideals. By way of illustration from the oceans context, 40 contributions from UN agencies, programmes and bodies, as well as other intergovernmental organisations, were provided to the Secretary-General for the latest annual report.¹⁰⁴ The FAO, the International Maritime Organization, the ISA, the International Tribunal for the Law of the Sea (ITLOS), the Secretariat for the CBD, the UNEP, the World Meteorological Organization, the International Labour Organization and the UN High Commissioner for Refugees are just a few of the organisations to assist in reporting, but not necessarily through collaborative activities; in his report, the Secretary-General refers to the recognised under-resourcing of inter-agency cooperation.¹⁰⁵ While provision of more resources will assist, it is clear from the earlier discussion that a substantive inquiry about goals and integrative content (such as gender mainstreaming, ocean health, human rights, SDGs and others) will be central in answering the boundary question.¹⁰⁶

100. See the global experimental governance discussed in Gráinne de Búrca, Robert O Keohane and Charles Sabel, 'New Modes of Pluralist Global Governance' (2013) 45 *New York University Journal of International Law and Politics* 723.

101. On the importance of iterative processes, see Uruña (n 50).

102. Thomas R Eimer, 'Expropriation by Definition? Regime Complexes, Structural Power, and Global Public Goods' in Samuel Cogolati and Jan Wouters (eds), *The Commons and a New Global Governance* (Edward Elgar Publishing, Cheltenham 2018) 160, 161.

103. Anne Peters, 'Constitutional Theories of International Organisations: Beyond the West' (2022) 20 *Chinese Journal of International Law* 649, 693.

104. See UN DOALOS, 'Full Texts of Contributions from United Nations Agencies, Programmes and Bodies, as well as Other Intergovernmental Organizations to the Report of the Secretary-General on Oceans and the Law of the Sea to the Seventy-Seventh Session of the General Assembly' (11 August 2022) <www.un.org/depts/los/general_assembly/contributions77.htm>; 'Oceans and the Law of the Sea' UNGA Res 77/331 (n 5).

105. 'Oceans and the Law of the Sea' UNGA Res 77/331 (n 5) para 87 (referring also to UN-Oceans, 'UN-Oceans Activities' <www.unoceans.org/activities/en> accessed 25 March 2023).

106. In the human rights context, a simplified and harmonised set of working methods have been recommended for the different human rights treaty bodies, including in coordinating

It is also pertinent to recall that it was the PROBLUE trust fund, rather than a core and ongoing fund, that provided standalone resources for the ocean governance training programme to which this article referred. This relates to the spearheading of capacity-building efforts by international financial institutions.¹⁰⁷ In the more general context of international human rights law and development policy, there are calls for international financial institutions to act consistently with international human rights law, even without specific monitoring or enforcement roles, due to the *lex generalis* of that area of law.¹⁰⁸ Bringing conceptual synergy to development and human rights allows for these fields to be ‘viewed as converging in shared principles such as equality, participation, accountability, transparency, and voice, as well as in attention to vulnerable groups, all of which are principles that have become hallmarks of good development practice’.¹⁰⁹ Although outside the scope of the present article, these arguments clearly resonate with the backing for an inclusive, participatory and open approach to capacity-building and technical assistance described above.

4.2 States, citizens and other actors

States are another set of key actors in collaborative capacity-building both as the ‘masters’ of international organisations, and as the main recipients of the training programmes. Their actions are set against a framework of rights and duties. As I have described elsewhere, support for collaborative capacity-building can be linked to State obligations in international law, including, in the ocean governance context, the duty to cooperate, the duty to give due regard to others’ interests and the duty of due diligence.¹¹⁰

Aside from States’ horizontal relations with other States, vertical relations between States, citizens and other actors are relevant to the question of capacity and training programmes in international law,¹¹¹ as they are to broader questions of education and information-sharing at a societal level. While the scope to develop these ideas is not available here, it is pertinent to point out the relevance of citizens’ fundamental rights to information, guaranteed in constitutions or statutes around the world. Literacy and engagement in science and ecological knowledge is fundamental, requiring broad and open discussions about development, economic growth and environmental crises. A healthy civil society is important to the advancement of education, including in ocean governance and environmental advocacy,¹¹² and non-governmental

their reports: see UNGA, ‘Annex to the Letter Dated 14 September 2020 from the Permanent Representatives of Morocco and Switzerland Addressed to the President of the General Assembly’ (17 November 2020) UN Doc A/75/601 paras 31–49.

107. Dordi and Kostecki (n 24) para 26.

108. Siobhán McInerney-Lankford and Aaron Fellmeth, ‘International Human Rights Law, Normative Hierarchy, and Development Policy’ (2022) 54 *New York University Journal of International Law and Politics* 311, 364.

109. Siobhán McInerney-Lankford, ‘Human Rights and Development: Regime Interaction and the Fragmentation of International Law’ (2013) 4 *World Bank Legal Review* 123, 126.

110. Young (n 19) 14–16.

111. See McInerney-Lankford and Fellmeth (n 108) 364 (human rights law applies ‘when states are engaged in development activities, whether as donors, borrowers, or as members of development organizations or international financial institutions’).

112. For domestic law ramifications, see Juliet Chevalier-Watts, ‘Advocating for the Environment, Charity Law and Greenpeace: A New Zealand Perspective’ (2022) 34 *Journal of Environmental Law* 441.

organisations are likely to seek to shape capacity and training through participating in existing programmes or conducting independent activities.

Special representative and deliberative bodies also deserve mention. For example, legal developments in the rights of nature and the rights for non-human species have led to calls for the establishment of a new body, a ‘Council of Ocean Custodians’, to provide a voice for the ocean.¹¹³ Such a body could be charged with representing the interests of the ocean in areas beyond national jurisdiction, by, for example, serving as a ‘guardian’ to manage or supervise marine protective areas.¹¹⁴ One could imagine this guardian having a key role in training and education in ocean governance, and in occupying a place in partnerships, such as the one described in this article.

For academics too there is an ongoing role in conveying complexity, conflicting norms and critique, which come more readily than for functionally oriented international organisations. Engaging in collaborative efforts where possible, while maintaining a critical perspective and some detachment, is a fraught but important activity.¹¹⁵ Moreover, just as legal academia is reflexive in its own knowledge production (investigating, for example, whether the teaching and research of international law ‘is international’),¹¹⁶ it is important to monitor, participate in and even advance training and capacity-building by international organisations where possible. Academic involvement has been seen as central in capacity-building in ocean governance, as have the alumni networks that have developed from training programmes.¹¹⁷ There is much that the academy can gain in the ongoing exchanges with local participants and international organisations,¹¹⁸ such as ocean affairs where scientific, management and participatory approaches have often themselves been siloed within academic disciplines.¹¹⁹

5 CONCLUSION

This article has considered capacity-building, technical assistance and training programmes in situations of normative and institutional pluralism. The fragmentation of international law dramatically reduces the opportunities for State officials to learn and understand the content of the law, due to ambiguous boundaries and overlapping activities of international organisations. Economic disparities between countries, the urgent need for international cooperation to address crises and the growing use of remote learning technologies lead to further complications. The article described integrative initiatives by UN organs, international organisations and project-level partnerships,

113. Harriet Harden-Davies, Fran Humphries, Michelle Maloney et al, ‘Rights of Nature: Perspectives for Global Ocean Stewardship’ (2020) 122 *Marine Policy* 104059, 8–9.

114. Ibid 8. Christopher D Stone made a similar call in his foundational work *Should Trees Have Standing? Law, Morality, and the Environment* (3rd edn, OUP, Oxford 2010) 107.

115. See generally Sol Picciotto, ‘Academia, Activism and the New Global Governance’ in Sam Adelman and Abdul Paliwala (eds), *The Limits of Law and Development: Neoliberalism, Governance and Social Justice* (Routledge, Abingdon 2021) 125.

116. See generally Anthea Roberts, *Is International Law International?* (OUP, Oxford 2017).

117. See comments from Francois Bailet, DOALOS, at UN Ocean Conference side event on 29 June 2022 (n 19).

118. See n 93 and surrounding text.

119. As innovatively depicted in graphic novel form in Olivier Thébaud, Jason S Link, Bas Kohler et al, ‘Managing Marine Socio-Ecological Systems: Picturing the Future’ (2017) 74 *ICES Journal of Marine Science* 1965.

and provided the example of an ocean governance training programme for developing countries in the Asia-Pacific and Africa. This programme resulted from a novel partnership between the World Bank, DOALOS, FAO, ISA, the University of Melbourne and the University of Nantes.

An important finding in the literature on international law's fragmentation is that the path towards 'systemic integration' differs according to legal, institutional and political factors. In dispute settlement, for example, efforts at systemic integration are tightly controlled through treaty interpretative tools that prioritise the intentions of States Parties.¹²⁰ In capacity-building, training and technical assistance, the question of what is taught (which capacity to 'build') will depend upon the values, goals and processes of the actors within the interacting regimes. Fidelity to the law (and thus sovereign control) is important, but international organisations that work with one another are also accountable to broader constituencies and to their ongoing interactions. Similarly, current reforms within the UN seek a more networked and inclusive multilateral system.¹²¹

It is conceptually possible that State officials are trained to understand an 'integrated' account of the law that minimises or hides contested versions. In contrast, the article's example training programme in ocean governance was well-coordinated and balanced, under conditions that included committed, expert and open-minded individuals from international organisations and academia who collaborated over a relatively long time frame.¹²² The article described choices about the content of the training programme that, though focused on existing law, included ocean issues that are not adequately addressed by an existing regime, such as plastics, ocean acidification and seafarer labour rights. Although the programme did not extend to deeper education and critique (such as reflection of the history of States' interests in exploitation and protection), the participants gained an overview of ocean governance that was not limited to sector or regime-specific approaches and brought their own understanding of scientific and social imperatives to the group. The article did not venture to predict whether such conditions are replicable or whether the health of the ocean will be improved through these efforts. Yet it supports an inclusive, participatory and open approach to technical assistance and training by international organisations, States, citizens and other actors. International law's implementation will benefit from closer attention to who is involved, and what is delivered, when State officials are trained in international law.

120. See n 89 and surrounding text.

121. United Nations, *Our Common Agenda* (n 1).

122. This confirms that 'relational' interactions in the implementation of international law possess features that distinguish them from the transactional interactions at issue in most litigation: Jeffrey L Dunoff, 'A New Approach to Regime Interaction' in Margaret A Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (CUP, Cambridge UK 2012) 136, 166.