

## BOOK REVIEWS

*Trading Fish, Saving Fish: The Interaction Between Regimes in International Law*, by Margaret A. Young  
Cambridge University Press, 2011, 406 pp, £60 hb, ISBN 9780521765725

*Regime Interaction in International Law: Facing Fragmentation*, edited by Margaret A. Young  
Cambridge University Press, 2012, 346 pp, £65 hb, ISBN 9781107010482

In recent years, the ‘fragmentation’ of international law has received increasing attention from international lawyers, political scientists, institutional theorists and the United Nations (UN) itself. The notion that international law is inherently incapable of forming a homogeneous or hierarchical whole has long been observed to be a potentially problematic reality, and one that has become increasingly acute with the continued proliferation of sub-disciplines, institutions and dispute resolution fora. Thus far, the literature – and, indeed, institutional attempts to get to grips with this issue, notably in the form of an International Law Commission (ILC) Study Group that reported on fragmentation in 2006<sup>1</sup> – has largely focused on conflict resolution and primacy between treaties. However, transnational environmental law neatly demonstrates the limitations inherent in this approach. For instance, to take the example of a single species such as the endangered grey whale, a distinct group of treaties will be applicable to conservation efforts. However, they each seek not to extinguish or trump each other, but to address a differing range of anthropogenic threats to the species based on their individual specializations. When treaties of a wider application – such as those governing marine space generally, and pollution, fisheries, habitats, and even climate change specifically – are necessarily added to the equation, it becomes clear that the framework for addressing in full the conservation status of even a single species becomes vast and disparate. Thus far, the legal literature has proved slow to respond to the exigent question of how individual regimes function together and address their working relationships. In these two outstanding volumes, Margaret Young sheds considerable light on these issues and lays a robust foundation for future evaluation.

*Trading Fish, Saving Fish* examines the difficulties inherent in the practical interaction between regimes through the lens of fisheries governance, demonstrating that, despite their seemingly specialist application, fisheries provisions are reliant upon a considerable array of unrelated actors for their effective implementation and enforcement. Following an introductory chapter outlining the limitations of the debate thus far, Young opens her discussion with an overview of the laws and institutions pertinent to fisheries management. This extensive survey – helpful in its own right for anyone seeking a concise and highly informative immersion into the mechanics of fisheries management – encompasses

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<sup>1</sup> Available at: <http://untreaty.un.org/ilc/reports/2006/2006report.htm>.

the ‘enclosure’ approach of the UN Convention on the Law of the Sea<sup>2</sup> and the position of specialist treaties, alongside consideration of the role of biodiversity accords and the impact of world trade law on fisheries principles. This leads Young to a series of case studies, which both highlight key problems and evaluate the scope for collaborative engagement between regimes.

The first survey – which focuses on the negotiation of World Trade Organization (WTO) rules on fisheries subsidies – deftly demonstrates the opportunity for forum shopping for principles governing the vexed issue of state aid, highlighting the roles of the UN Food and Agriculture Organization (FAO) and the WTO, and the inherent tension in determining which is the more appropriate avenue for effective regulation. Young also examines the intriguing question of ‘inter-regime learning’, the ability of expert bodies to share vital information, and concludes that the WTO has undermined its role as a potential conduit of data by excluding external observers – in a converse manner to the more successful environmental bodies, such as the UN Environment Programme (UNEP), where a greater value appears to have been placed on the role of epistemic communities in shaping policies. Young moves to examine the vexed issue of the trade in endangered marine species, an issue that has long proved controversial within the auspices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>3</sup> The precise role for CITES in marine governance has traditionally been a question of considerable political and legal difficulty, both within the convention and in other fora, where it has often been suggested that the trade convention should defer to the perceived primacy of other treaties. Young argues – convincingly – that the traditional perception that CITES considerations are largely addressed through successive treaties is erroneous and constitutes a case of normative overlap that requires the application of a more subtle interpretive toolkit than has been previously applied. To this end, in a highly illuminating chapter, she demonstrates the difficulties created by the formation of a memorandum of understanding with the FAO within the context of popular moves to restrict a role for CITES within marine governance. The final survey examines the adjudication of fisheries import bans at the WTO, examining some of the difficult fisheries-orientated litigation before this forum, arguing for a more expansive interpretation of applicable rules and the need for enhanced dialogue and interaction between regulatory actors.

This brings Young to the crux of her argument: that international law needs to move – and, to an extent, is moving – from a forum-shopping arrangement between static and isolated bodies, to a more fluid form of regime interaction. To this end, Young suggests that three key developments are driving this phenomenon: a desire for domestic agencies to better coordinate their implementation of their various international commitments; a process of greater collaboration between regimes, both in terms of their institutional structures and their participants; and the allocation, at least to some extent, of resources that are ring-fenced for cooperative interactions. Balanced against this, from Young’s perspective is the entrenched mentality towards

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<sup>2</sup> Montego Bay (Jamaica), 10 Dec. 1982, in force 16 Nov. 1994, available at: <http://www.un.org/depts/los>.

<sup>3</sup> Washington, DC (US), 3 Mar. 1973, in force 1 July 1975, available at: <http://www.cites.org>.

compartmentalized fora, a lack of transparency and inclusiveness in some key bodies, and a bias towards accepting alternative sources only when they are endorsed by all parties in discussion of a particular issue. Young ends this highly insightful review with a clarion call for an alternative view of the fragmentation debate, away from the rhetoric of conflict and primacy and towards a greater focus on how regimes should interact and advance their international relations in a coherent and harmonious manner.

Many of these tributaries of the debate are charted in *Regime Interaction in International Law*, which constitutes a lively collection of papers contributed by a number of leading thinkers on the future trajectories of international law. Following an editor's introduction by Young, which reacquaints the reader with the wider problems of the fragmentation debate, this volume comprises ten substantive chapters addressing aspects of regime interaction. In an intriguing opening chapter, Gunter Teubner and Peter Korth use a variety of private law issues to demonstrate fragmentation impacts that occur when there are collisions between transnational, national and indigenous-based laws. This theme is continued by Cheryl Saunders, who examines fragmentation issues on a domestic level, using Australia as a case study, and highlighting the impact of international issues on national courts. Young then provides an outline of her key arguments in a fisheries context, expanding on the practical mechanics of regime interactions. The book then proceeds to examine the notion of regime communities, opening with an insightful chapter by Andrew Lang on technical expertise within particular regimes, using the WTO as a case study. This is followed by an extensive appraisal of practical interactions by Jeffrey Dunoff, who argues that an excessive emphasis has been placed on conflict and litigation in framing regime interaction and that the true state of collaboration is to be found in examining the more subtle inter-relationships between allied bodies. This section closes with a thought-provoking paper by Stephen Humphries, which examines common terms used across multiple treaties and demonstrates that disparate interpretations of these concepts within individual treaties has considerable implications for the prospects of future interactions.

The final collection of chapters examines how regime interactions may ultimately be 'controlled', or at least made subject to certain guiding principles. Nele Matz-Lück examines the role of norm interpretation across regimes in the context of systemic integration, demonstrating the value of cross-fertilizing principles between treaties, but counsels that legitimacy problems remain. James Crawford and Penelope Nevill examine the vexed issue of relationships between international courts, which have been exposed in numerous recent disputes, arguing that conflict principles – such that they exist – are undergoing a fascinating process of maturation, and suggest a series of guiding approaches. James Flett then comprehensively outlines the impact of alternative regimes within WTO litigation, arguing that while this body has long been open to the interpretive value of external principles, this practice should be regulated to maintain normative and conceptual coherence. The volume closes with an erudite and thought-provoking appraisal of hegemony in regime interaction by Martti Koskeniemi, cautioning against the rise of managerialism associated with these practices.

Both volumes clearly demonstrate that the notion of fragmentation – and its reinterpretation to address contemporary interactions between regimes – will remain at

the forefront of any meaningful attempts to improve and re-order international governance, whether as an overarching system or within the proliferating and disparate strands of multilateral activities. *Trading Fish, Saving Fish* is an extremely insightful book and will reward careful reading, whether for a wider view of current fragmentation problems or for a highly specific consideration of aspects of fisheries law. On both counts the book represents scholarship of the most accomplished order and posits a valuable contribution to the emerging reconsideration of regimes and their functions within a fragmented international order, alongside important insights into the practical mechanics of fisheries governance. Similarly, *Regime Interaction in International Law* provides substantial food for thought on emerging practical and conceptual issues in the inter-relationship between multilateral actors. Well-thumbed copies of both books should reside on the shelves of any serious scholar concerned with the present and future development of the international system and the ongoing evolution of the fragmentation debate.

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*Environmental Integration in the EU's External Relations: Beyond Multilateral Dimensions*,  
by Gracia Marín Durán and Elisa Morgera  
Hart Publishing, 2012, *lix* + 320 pp, £50 hb, ISBN 9781849461870

The principle of environmental integration is a popular topic in European Union (EU) environmental law research. In their new book, Gracia Marín Durán and Elisa Morgera approach this familiar theme from a novel perspective – that of EU external relations with an emphasis on bilateral and inter-regional dimensions. This focus makes the book of particular interest from the perspective of *Transnational Environmental Law*: the rich variety of examples in the book illustrate how transnational environmental cooperation increasingly takes place beyond multilateral environmental processes. Looking into environmental integration in the EU's external trade policy and cooperation policies, the book sheds light on relatively unexplored legal, quasi-legal and institutional forms of cooperation, from trade agreements and their sustainability impact assessments to external assistance, EU support for the implementation of multilateral environmental agreements (MEAs) in developing countries, and institutionalized dialogues with third countries.

The book proceeds from the insight that the EU attempts to advance environmental protection objectives not only through its participation in multilateral environmental cooperation but also through its bilateral and regional relations. According to the authors, the latter aspect 'is becoming an increasingly important factor in the shaping of