

**FRAGMENTATION OF THE MODERN SYSTEM OF INTERNATIONAL LAW:
THEORETICAL AND PRACTICAL ISSUES**

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Abstract: *This article investigates whether the concept of public international law fragmentation is a real or hypothetical issue in the modern world. This is due to the self-contained regimes' independence. Public international law underpins the existence and development of several regimes, such as the Law of the Seas, Trade Law, and International Human Rights, e.t. The fragmentation of public international law is subject to a critical review in this thesis. It addresses the worry that, whereas public international law was formerly thought of as a unified system, the emergence of various independent regimes has caused it to become fragmented. The article goes on to discuss fragmentation-related concerns such forum shopping, the potential for competing rules and overlapping authorities, and the impact these have on the coherence, consistency, and clarity of international law. The question being investigated is whether the emergence of conflicting standards as a result of the growth of many autonomous international legal systems, including "trade law," "the law of the sea," "environmental law," and "human rights law," might lead to the fragmentation of international law.*

Key words: *Fragmentation, Public International Law, Law of the Seas, Trade Law, International Human Rights Law.*

Introduction

The international legal system has been increasingly fragmented, particularly since the Cold War's conclusion. In general, the topic of fragmentation in international law does not have a straightforward description due to its multiple elements.¹ The fragmentation of international law, on the other hand, signifies the split of the international legal system induced by the growth of specialized functional regimes of international law. Several causes are to blame for the rising fragmentation:

- International legislation is proliferating;
- Increasing political fragmentation (in contrast to expanding regional and global interconnectedness in sectors such as economics, the environment, energy, resources, health, and the spread of weapons of mass destruction);
- The regionalization of international law as a result of an increase in the number of regional fora involved in the development of international laws;

¹ Cheng Tai-Heng, *Making International Law without Knowing What It Is*, Washington Univ. Glob. Stud. L. Rev. 1 (2011), pp 6-9. Available at <https://journals.library.wustl.edu/globalstudies/article/id/723/>

- Individuals' emancipation from states; and
- International rules are becoming more specialized.²

1. There is currently no unified system of international law.³ International law is made up of random blocks and components, various incomplete systems, and global, regional, or even bilateral subsystems and sub subsystems with varying levels of legal integration.⁴ All of these pieces interacting with one another generate an "unorganized system"⁵ filled of intra-systematic tensions, contradictions, and frictions.

Theoretically, fragmentation can have both positive and negative consequences for the rule of law in international relations:

- On the one hand, fragmentation may have the beneficial effect⁶ of encouraging states to adhere to international law more tightly. States would be more likely to comply with regional rules that better represent the specific political condition of the states in that region.

- On the other hand, fragmentation may have a negative impact by revealing the frictions and inconsistencies between multiple legal laws and placing mutually incompatible responsibilities on states.

Methodology

This study uses a qualitative research approach to investigate the theoretical and practical difficulties surrounding the fragmentation of the current international legal system. The primary method of data collecting is a systematic study and analysis of relevant literature, which includes academic publications, books, reports, and legal documents. Thematic analysis is used to discover patterns and themes in the literature in order to acquire insights into the causes and effects of fragmentation in today's international legal system. It is crucial to note that the availability and extent of current literature on the issue restrict the scope of this study, and the conclusions are interpretative and may be influenced by the authors' viewpoints.

Causes

² Kristen E. Boon, *The Law of Responsibility: A Response to Fragmentation?* 25 Pac. McGeorge Global Bus. & Dev. L.J. 395 (2012). Available at: <https://scholarlycommons.pacific.edu/globe/vol25/iss1/16>

³ Raza Mooms, "Citizens of a Wounded Earth in a Fragmented World", in: Gangrade K.D., Misra R.P. (ed.), *Conflict Resolution through Non-Violence*, New Delhi, 1990, vol. 2, pp. 11-23 (22)

⁴ Camilleri Joseph A., "Fragmentation and Integration: The Future of World Politics", REPORT OF THE WORKING GROUP ON LONG-TERM PROGRAMME OF WORK, pp. 45-63 (45). Available at <https://doi.org/10.18356/fbf0f979-en>

⁵ Karl Zemanek, *The Legal Foundations of the International System: General Course on Public International Law*, 266 RECUEIL DES COURS: COLLECTED COURSES OF THE HAGUE ACADEMY OF INT'L L. 62 (1997).

⁶ Stefan Kirchner, *Relative Normativity and the Constitutional Dimension of International Law: A Place for Values in the International Legal System*, 5 GERMAN L.J. (2004). Available at <http://www.germanlawjournal.com/article.php?id=361#edn1>.

Most legal systems provide legal tools and instruments for resolving potential normative conflicts⁷ disputes and ensuring their harmonious application. However, because there is no clear legal guideline for resolving normative conflicts, the international legal system cannot avoid conflicts of norms and inhomogeneous implementation. This condition jeopardizes the international legal system's unity.

The absence of such guidelines for conflicting regulations can be attributed to:

- The absence of centralized organs. The members of the decentralized system of international law are individually liable for the enforcement of international law, making it hard to ensure the uniform implementation of international law.⁸
- Regulations are becoming more specialized. Various laws are implemented in various contexts due to a decentralized approach of norm formation. Using different mechanisms to regulate the same circumstance may result in contradictory consequences.

Specialization also implies diverse secondary rule frameworks, including enforcement and compliance mechanisms.⁹

- Different legal norm frameworks;
- Classical international law is made up of reciprocal norms of a synallagmatic type, that is, norms that establish bilateral reciprocal rights and duties between states;
- New developments in international law set duties on states that are due to citizens, such as human rights principles;
- Further developments produced obligations owed to the community of states participating in a specific legal system.

These various frameworks encourage the development of distinct normative regimes, which may impose conflicting legal responsibilities on individual players. Among these regimes are:

- Parallel universal or regional legislation¹⁰ on the same subject that require a normative solution to potential disputes;

⁷W. Karl, Conflict Between Treaties, 4 ENCYCLOPAEDIA OF PUBLIC INTERNATIONAL LAW 467 (Rudolf Bernhardt ed., Instalment 1 (1981) p 467.

⁸ Brownlie, Ian. International Law and the Use of Force by States. Oxford: Clarendon Press, 1963. Available at DOI: 10.1093/acprof:oso/9780198251583.001.0001

⁹ G. Hafner, "Should One Fear the Proliferation of Mechanisms for the Peaceful Settlement of Disputes?", in L. Caflisch (ed.), The Settlement of Disputes between States: Universal and European Perspectives, 1998, pp. 25-41.

¹⁰ United Nations Convention on the Non-Navigational Use of International Watercourses of 1998.

- Competing regulations¹¹ in which multiple rules may apply to the same events or facts;
- Expansion of the reach of international law,¹² which favors specialized rules with more divergent compliance procedures; and
- Different secondary rule regimes.¹³

The Effects of Fragmentation

The breakdown of the legal order jeopardizes the credibility, reliability, and, as a result, authority of international law.

Substantive Law (Primary Rules)

In terms of substantive law (in the context of primary rules), we now have various regimes dealing with the same subject. In this manner, universal legal regimes compete with more specific regimes, needing norms such as *lex specialis* to resolve contradictions.

Growing sectionalism and regionalism across the world have resulted in the establishment of new regional legal regimes, which are frequently more particular than global regimes, geographically and otherwise, and more general than national regimes. These new legal frameworks raise the possibility of conflict. Thus, while sectionalism and regionalism are important agents of international cooperation, they are not always unqualified benefits for the advancement of international law.¹⁴

As seen above, a given circumstance may be subject to various sets of international rules. This variety of relevant rules needs complex discussions over which regulation to apply, which may result in more disputes than the development of each separate legal system.¹⁵ Diversity of the primary rules may address specific problems more effectively than a few global, universal rules, leading to stronger compliance efforts by states if they believe compliance will yield results. However, regardless matter how good a state's judgment of multiplicity is, it necessarily risks conflicts of interest.

Secondary Rules

Fragmentation in international procedural law regimes, which are meant to assure the respect of basic international law, is even more visible than

¹¹ United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Draught and/or Desertification, particularly in Africa, June 17, 1994; United Nations Framework Convention on Climate Change, May 9, 1992; Vienna Convention for the Protection of the Ozone Layer, March 22, 1985, 1513 U.N.T.S. 293.

¹²D., Pierre-Marie, *The danger of fragmentation or unification of the international legal system and the International Court of Justice*, International Court of Justice. Cheltenham, UK; Edward Elgar Publishing, (2020) pp 246-262; Sh,, Malcolm N. *International Law*, (9th edn, University of Cambridge) pp 318-320.

¹³ Malcolm N. *International Law*, (9th edn, University of Cambridge) pp 415-416

¹⁴ William Elliott Butler, *Regional and Sectional Diversities in International Law*, in *INTERNATIONAL LAW: TEACHING AND PRACTICE* (Bin Cheng ed., 1982).

¹⁵ Secretary General's Bulletin, *Observance by United Nations Forces of International Humanitarian Law*, U.N. Secretariat, 54th Sess., Available at 1-3, U.N. Doc. STISGB/1999/13 (1999); de Wet, *supra* note 9, at 8; Reinisch, *supra* note 19, at 854.



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fragmentation in primary international law. The emphasis of international law has shifted away from the development of general substantive law and toward the development special regimes and means of enforcement (dispute avoidance and dispute settlement procedures). Dispute resolution organizations have proliferated.¹⁶ Unfortunately, serious issues develop when a state attempts to address a situation by using various enforcement mechanisms (ranging from dispute resolution to compliance mechanisms).

Each enforcement mechanism regards itself as first and foremost devoted to enforcing just its own system or subsystem of standards. Because most organs, particularly treaty bodies, may only apply their own substantive law to disputes or situations brought before them (with the exception of the ICJ), states may participate in forum shopping, choosing the mechanism that best serves their national interests.¹⁷ Classic examples of forum shopping include the Matthews case before the European Court of Human Rights,¹⁸ the Richard Waite and Terry Kennedy cases before the same court,¹⁹ and the Tadic and Nicaragua cases and the debate that they prompted.²⁰

Furthermore, a settlement achieved by one organ resolves a problem within that system and is not always for the benefit of another or the universal system. As a result, any tendency toward a homogenous international law and system may be undermined, and the criteria to be used in a specific situation may become even more ambiguous.

The fragmented structure of judicial action is further exacerbated by a lack of information sharing between and among dispute resolution authorities. It is difficult for one institution to get acquainted with all of the implications of another body's judicial reasoning, especially if the activity is not made public.

As a result of the recent growth of secondary norms, there is a risk of different solutions undermining the authority and credibility of such organizations, as well as international law in general. While the system of secondary norms that underpins the primary norms of international law has a common core that helps define the normative nature of international law,²¹ the system's diversity tends to maintain or exacerbate the disintegrated nature of international law and the international system as a whole.

¹⁶ Jonathan I. Charney, *The Impact on the International Legal System of the Growth of International Courts and Tribunals*, 31 N.Y.U. J. INT'L L. & POL. 697 (1999)

¹⁷ Roger M. Baron, *Child Custody Jurisdiction*, 38 S.D. L. REV. 479, 492 (1993); Patrick J. Borchers, *Forum Selection Agreements in the Federal Courts After Carnival Cruise: A Proposal for Congressional Reform*, 67 WASH. L. REV. 55, 96 (1992).

¹⁸ *Matthews v. United Kingdom*, 28 Eur. Ct. H.R. 361 (1999).

¹⁹ *Waite v. Germany*, 6 Eur. Ct. H.R. 499, para. 73 (1999).

²⁰ *Nicaragua v. U.S.*, 1986 I.C.J. 14; *Prosecutor v. Tadic*, 38 I.L.M. 1518, 1540-46 (Int'l Crim. Trib. for Former Yugo. 1999).

²¹ *Ibid* at 17

Conclusion

Finally, it is observed that the fragmentation of international law is a pressing and difficult issue with important implications for global relations and international cooperation. The absence of a uniform and comprehensive international legal framework leads to inconsistencies, conflicts, and disputes among states, making world order and conflict resolution difficult. Progressive international fragmentation can be used to specialize and improve international law, as well as to accommodate for the diversity of interests and demands across states. The presence of a substantial number of unconnected and dissimilar legal systems, on the other hand, causes a variety of issues, including vagueness and ambiguity of normative actions, inconsistencies in legal regimes, and difficulties in the execution of judicial proceedings and mutual enforcement of decisions.

The international community's collaboration and conversation are required to overcome this situation. Consideration of the causes and consequences of international law fragmentation, analysis of the benefits and drawbacks of specialized legal regimes, and development of mechanisms for coordination and harmonization of various regulations are critical steps toward achieving a more balanced and uniform global legal order. Furthermore, structural changes in international organizations and states, as well as an increase in the global community's level of legal literacy and education, can help overcome the fragmentation of international law and create mechanisms for effective conflict resolution and ensuring justice and respect for human rights at the international level.

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