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Alleged Fragmentation of International Law: Magnitude of the Problem and Available Solution

Shakeel Ahmad and Ishtiaq Ahmad Choudhry

Abstract

Alleged fragmentation of international law is a phenomenon that is developing due to increased legal activities at international level. A sliced up international legal reflects the reality of conflicting rules and jurisdiction of various disputing bodies over one issue. Even the decision of one court seems to contradict the decision of a different (specialized) court. This is evident in comparison of the Nicaragua case and the Tadic case. The first decided by the International Court of Justice (ICJ) and the second decided by International Criminal Tribunal for former Yugoslavia (ICTY). This paper concludes that such conflicts are the natural consequences resulting from a complex interplay among various factors playing a role in shaping contemporary international law. The authors acknowledge such an alleged fragmentation and related problems and suggest the need to develop a framework which can resolve such technical problems.

Key words: International Law, human rights, legal, community, reforms

Introduction

The issue of fragmentation of international law first appeared to surface by highlighting the missing component of an international legislative body at the global level? (Maclachlan, April 2005) Neither the UN nor any of its specialized agencies is conceived as an international legislative body; however the legislation rests on widespread law making treaties, varied in subject matters and objectives. In this regard, multilateral institutions are of prime importance in international law making (A. Boyle). Similarly, Wilfred Jenks pointed out that the legislative process of international law rested on various treaties which are mostly based on regional requirements and each region presents a separate system of municipal law. He indicated the potential conflict of laws as international law is being sliced up into regional and functional regimes (Jenks, 1953). As observed by him

> "the conflict of law making treaties ... must be accepted as being in certain circumstances an inevitable incident of growth of international law" .

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*Authors are Assistant Professor at Center of International Law, Faculty of Contemporary Studies, and Professor/Head of Department of Peace & Conflict Studies, NDU Islamabad – Pakistan.

He urged the international lawyer "to formulate principles for resolving such conflict when it arises (Jenks, 1953)."

The present body of international law consists of various bits and compartments; for example, environmental law, human rights, armed conflict, maritime issues, and economic issues. Traditionally, all the areas used to be treated under general international law and are now governed by various institutions (treaty regimes) and their sub-systems, and sometime a separate mechanism of dispute resolution at the transnational, regional or even bilateral level. All these heterogeneous bits of international law interact with each other and sometime result in a paradoxical situation. Example is of international humanitarian law and human rights law where one regulates killings during war and the other completely prohibits it. The application and overlapping of various regimes and norms, sometimes result in contradictions, termed as fragmentation of international law. The issues which were traditionally part of general international law now fall into the domain of specialized autonomous regimes. For example, environmental law, trade law, human rights law, law of the sea, European law and international refugees' law. Thus aspects of fragmentation are of legislative and institutional form.

The alleged fragmentation of international law is multifaceted. On the one hand, it has a legal significance attached with specialization and relative autonomous, rules-based various institutions and legal practice (Jenks, 1953). On the other hand it demonstrates the emergence and operation of structural biases ("Report of the Study Group of the International Law Commission,").

> "…the structural biases that move from doctrinal analysis to a discussion of institutional practices, the way in which patterns of fixed preferences are formed and operate inside international institution" (Koskenniemi, 2009a).

These structural biases are the product of a *managerial* approach that envisages international law as an instrument for particular values, interests and preferences (Koskenniemi, 2009a). Different autonomous actors (national, regional and international) pursue their interests and solutions to their problems in a way which is contradicting to general international law, instead of a coherent approach.

The community of legal scholars seems divided on these issues; for some it is a serious problem and for a majority it is merely a technical problem that has emerged naturally with the increase of international legal activity. To them the proliferation of the international courts and tribunals is a systematic step forward towards an international legal system. The problems of jurisdiction

and jurisprudence can be controlled by the use of technical streamlining and coordination.

Fragmentation is an ontological issue and the seriousness of the problem depends how one takes international law. Some scholars tend to view international law from top to bottom as a single coherent body; for them fragmentation seems to be a serious problem. To them horizontality of international law distinguishes it from other legal systems.

The contents of international law change and develop continuously. It provides constantly a shifting canvas against which individual acts, including various treaties, fall to be judged (Koskenniemi, 2009a). This dynamic character of international law has been envisaged by most legal scholars as a positive trend. According to them customs are negotiated, for example in 1982 UNCLOS. Furthermore, international customs, directly or indirectly, are subject to withdrawn by entering into an opting out treaty via persistent objection doctrine. The traditional language of international law also came under a challenge for example the Article 38 of the Statute of the ICJ has been described as "outdated and increasingly misleading (A. Boyle)." Reforming of statute of ICJ and the UN Charter is a daunting task and sometimes considered as almost an impossible mission. The countervailing forces of *law* and *real politics* have resulted in hindrances towards reforming the UN as a uniform international legal system based on a coherent international legislative body. Despite the hope of effective law making through a single (reformed) legislative body, the law making continued through various other instrument evolved in international law. Thus contemporary international law is the product of multiple actors along with a complex interplay of *politics* and *law.* The *soft laws* are the consequent product of hindrances in a system based on *real politics*. Consequently, the role of international organizations through multilateralism led to a process of specialized institutionalization (at regional and international level); it has caused fragmentation of international law which is a natural consequence of the politics of international law and merely a technical problem. Thus, at present globalized world international law making is occurring through a reciprocal process including various actors at various levels.

The prominent features of alleged fragmentation are parallel and competing regulations on universal or the regional level and structural biases are of issue. On the basis of the above portrait of the international legal system alleged fragmentation is mostly about Institutional practices and the emergence and operation of structural biases and legal practice sliced up into institutional projects (Koskenniemi, 2009a). Examples include whether a problem about pollution from a nuclear reprocessing plant is dealt with under a

general law of the sea regime or a regional economic integration scheme; whether the management of fishery stocks is directed to food and agricultural officials (FAO), trade experts (WTO), or conservationists (CITES); or whether the activities of military officials in conflict-zones ought to be assessed through the prism of human rights or humanitarian law (Koskenniemi, 2009b). Consequently, jurisdictional conflict, conflict of interpretation, and conflict of applicable law are evident.

For some legal scholars fragmentation could have a positive outcome by enhancing the states' interest to comply more strictly with international law. States would be more inclined to comply with norms of a regional nature that better reflect the particular political situation of the states in that region. To others, fragmentation could generate negative effects by exposing the frictions and contradictions between the various legal regulations and imposing on states mutually exclusive obligations.

An Assessment of Alleged Fragmentation

There are various narratives of alleged fragmentation of international law; however, the pith of the matter is question of its disintegrated legal system; whether it has undermined the credibility, reliability, and the authority of international law.

The proliferation of international courts and tribunals has increased the overlapping jurisdiction of various bodies. The various established adjudicating bodies with a system of compulsory jurisdiction have improved co-ordination and co-operation between international actors. This selection of forum is also termed forum shopping. For some critics such wide spread growth of adjudicating bodies have increased the risk of the conflict on the basis of interpretation, application and enforcement of international law. Like the overall the issue of fragmentation, the opinion over the proliferation of courts and tribunals is both cynical (Adede, 1975; Guillaume, 1995) as well as positive. The increase of courts and tribunals has increased the application of international law and for most scholars it is not only a quantitative but also a qualitative change. A common narrative of tribunalization is that it signifies a shift from a power-based to a rules-based international system because Tribunalization is also coupled with de-politicization of the international system.

It is worth to mention here that the concern over tribunalization was provoked at the time of establishment of the International Tribunal for the Law of the Sea (ITLOS) which was viewed with much skepticism, and some legal scholars have raised the serious concern of jurisdictional inconsistencies

because of the proliferation of courts. Judge Oda remarked that the idea of establishing ITLOS was the brainchild of the Preparatory Commission and some jurists whose' personal motives were to obtain posts in the new international judicial organ (Oda, 1995). Guillaume to some extent in the same direction did not appreciate its establishment. He remained reluctant to support the idea of ITLOS while Judge Oda considered it a "regrettable act to establish ITLOS (Oda, 1995)." However, this criticism is viewed by Boyle as an effort towards an integrated approach for the international legal system (A. E. Boyle, 1997) rather than fragmentation as criticized by Judge Oda (Oda, 1995) who argued that ITLOS is a futile institution which has also deprived the ICJ of its traditional role of dealing with ocean disputes. One of the most common reasons for the inclusion of compulsory dispute settlement provisions in UNCLOS has been the need for a mechanism that could guarantee the "integrity" of the text (A. E. Boyle, 1997). It depends on the parties' consideration on the basis of their advisors and lawyers to opt for ITLOS, the ICJ or an arbitration or regional forums; nothing in the Convention stops the parties from opting for the ICJ.

Yuval Shany has written of a "greater commitment to the rule of law in international relations, at the expense of power-oriented diplomacy (Reinisch, 2008)." Contrary to this, for some scholars such a proliferation of courts has weakened both the coherence and credibility of international law (Reinisch, 2008). So this debate over alleged fragmentation is a continued process of criticism. To determine the seriousness of the alleged fragmentation and to answer the question that has fragmented international legal order undermined the integrity, coherence, and legitimacy of the international legal order? The alleged fragmentation has been assessed through prominent cases. The best case which sparked such a debate is the MOX Plant case ("ECJ, Case C-459/03 Report of the Study Group of the International Law Commission,"). In the following cases of alleged fragmentation some prominent drawbacks have been highlighted.

MOX Plant Case

The MOX Plant case is the best illustration of fragmentation happening in public international law. The way it is being sliced up in regional or functional regimes that cater to special audiences with special interests and special ethos. In this case the arbitral tribunal was set up under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS).

Table – 1 MOX Plant Case

Institutional Jurisdiction	Applicable law	Potential conflict
An Arbitral Tribunal set up under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS)	The (universal) rules of the UNCLOS, and	Is the problem principally about the law of the sea or
The compulsory dispute settlement procedure under the Convention on the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)	The (regional) rules of the OSPAR Convention	Is the problem of the Pollution of the North Sea Or
As well as under the European Community and Euratom Treaties within the European Court of Justice (ECJ).	The (regional) rules of EC/EURATOM.	As the European Commission raised the claim in European court and condemned the Ireland for its failure to comply with the article 10 of the EU treaty.

The jurisdiction of the court might also be maintained by the compulsory dispute settlement procedure under the Convention on the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention). Similarly, the conflict might also be tried at the European Court of Justice (ECJ). The question raised in the MOX Plant case was the problem of whether the conflict about the law of the sea, about pollution of the North Sea, or an issue related to inter-European Community relationships. The case can be analyzed by three different rules and different regimes; the (universal) rules of UNCLOS, the (regional) rules of the OSPAR Convention, and the (regional) rules of EC/EURATOM. Each forum may come up with different decision and implications ("Report of the Study Group of the International Law Commission,"). The tribunal then held that the application of even the same rules by different institutions might be different owing to the "differences in the respective context, object and purposed, subsequent practice of parties and *travaux preparatoires ("MOX Plant case, request for provisional measures order (Ireland v. the United Kingdom) ", 3 December 2001)."* The case raised the question including: What principles should be used in order to decide a potential conflict between them? What are the substantive effects of such

specialization? How should the relationship between such "boxes" be conceived? In terms of the above example: what is the relationship between UNCLOS, an environmental treaty, and a regional integration instrument?

The Legality of Nuclear Weapons (1996) Case

The existence of special regimes is a commonplace of international practice. In the *Legality of Nuclear Weapons Case* (1996), the ICJ structured its opinion by successively examining human rights law, environmental law, humanitarian law and the law on the use of force.

Table – 2 Nuclear Weapons (1996) Case

Institutional Jurisdiction	Applicable law	Potential conflict	Structural bias
ICJ	Human rights law, the International Covenant on Civil and Political Rights	"Arbitrary deprivation of life" under Article 6 (1) of the Covenant, this fell "to be determined by the applicable *lex specialis*, namely the law applicable to armed conflict". In this respect, the two fields of law applied concurrently, or within each other.	Human rights perspective is different from looking it from a laws of war perspective; under to create deterrence possession Nuclear weapon is legal
	Humanitarian law: the laws of armed conflict		
	The law on the use of Force		
	Environmental law: set aside by court		

Here the ICJ observed that both human rights law (namely the International Covenant on Civil and Political Rights) and the laws of armed conflict applied "in times of war". Nevertheless, when it came to determine what was an "arbitrary deprivation of life" under Article 6 (1) of the Covenant, this fell "to be determined by the applicable *lex specialis*, namely the law applicable to armed conflict" ("MOX Plant case, request for provisional measures order (Ireland v. the United Kingdom) ", 3 December 2001). In this case, the two fields of law applied concurrently, or within each other. From another perspective, however, the law of armed conflict - and in particular its more relaxed standard of killing - set aside whatever standard might have been provided under the practice of the Covenant. From the perspective of human rights law the

advisory opinion was expected to come against the possession of Nuclear weapons. However from *jus in bello* perspective, and the rule of deterrence the possession of nuclear weapons is legal. The principle of *lex specialis* played to reach in this context. This has been discussed in last section.

Palestine Wall (2004) Case

In the Palestine Wall case (2004), the relationship between human rights law and International Humanitarian Law came under discussion. These rules come under different compartments. One prohibited killing, while other permitted but also regulate it. But precedence is needed to be determined.

Table – 3 Palestine Wall (2004) Case

Institutional Jurisdiction	Applicable Law	Potential conflict	Structural bias
ICJ	International Human Rights Law, Or International Humanitarian Law:	Which should have precedence?	Human rights perspective is different from looking at it from a laws of war perspective; one prohibited killing, one permitted and regulated it.

It is not only that the boxes have different rules. Even if they had the same rules, they would be applied differently because each box has a different objective and a different ethos, a different structural bias ("Report of the Study Group of the International Law Commission,"). Is the principle of *lex specialis* relevant in this context? This has been discussed in the last section.

Al-Jedda v. UK Case

The Grand Chamber the European Court of Human Rights delivered the judgment in *Al-Jedda V. UK* case on 7 July 2011. The applicant, Mr. Al-Jedda who was a joint Iraqi/British national complained that he had been detained by British troops in Iraq in breach of Article 5 of the Convention. The UK government acknowledged that it could not lawfully detain him under Article 5 of the convention. It argued that his detention was authorized by the UNSC resolution 1546, which displaced the application of article 5 of the convention (v, 7 July 2011).

Table – 4, Al-Jedda v. UK Case

Institutional Jurisdiction	Applicable law	Potential Conflict	Direction by regional court to UNSC
The Grand Chamber the European Court of Human Rights	EU Human Rights Law, The 1951 European Convention on Human Rights and Fundamental Freedoms.	The Interpretation of UNSC resolution 1546, which displaced the application of article 5 of the convention. UK Goverment maintained A primacy of the UNSC Resolutions over the European Convention	The UNSC must act in accordance with the purposes and the princiles of the UN Charter: the UN security council resolutions cannot be interpreted in a way to allow the violation of the foudamental principles of human rights.

The House of Lords maintained that the UK is responsible for detention as it was required under article 103 of the UN Charter. (A primacy of the UNSC resolutions over the European Convention. However UK government was held responsible for the detention. The court rejected the UK government's argument that under the UNSC resolution 1546 it was justified to detain the suspected individulas in Iraq even if such a detention was in violation of the European Cotwention. The European court directed the UNSC act in accorance with the purposes and the princiles of the UN Charter. (pursuant to the article 24(2) of the UN Charter). Thus the UNSC resolutions cannot be interpreted in a way that allows the violation of the foudamental principles of human rights.

In all of the above mentioned cases *the Palestine Wall (2004) case*, The Legality of *Nuclear Weapons (1996) case*, the *MOX Plant case* and *Al-Jedda V. UK case*, the issues and problem related to alleged fragmentation have been highlighted. At first the problem seems to be because of overlapping rules.

The importance of choosing the right box was highlighted by the Arbitral Tribunal set up under the UN Convention on the Law of the Sea in the *MOX Plant case*. Three different treaty-regimes were applicable. The Tribunal states

> “even if the OSPAR Convention, the EC Treaty and the Euratom treaty contain rights or obligations similar to or identical with the rights set out in [the UNCLOS], the rights and obligations under these agreements have a separate existence from those under [the UNCLOS] ("MOX Plant case, request for provisional measures order (Ireland v. the United Kingdom) ", 3 December 2001).”

In the MOX Plant case Ireland’s appeal against the UK deemed to as a violation of regional European laws. For Koskenniemi this is a stunning situation because it reflects the ECJ imagining the European Union as a sovereign entity whose laws override any other legal structure; he termed it the “most conservative trajectory of European thinking about the role of international law and its relations with national law ("Report of the Study Group of the International Law Commission,").” Such a marginal approach envisages international law as an instrument for particular values, interests and preferences. The marginalization of international law by the ECJ in the MOX Plant case is an example of a special legal regime, a special ethos and structural biases. To put it another way these are the European regime, the European ethos – claiming priority over anything general, even less universal. The *MOX Plant case* reflects the institutional bias by overruling and negating universal jurisdiction.

Some differences are due to the nature of the subject matter for example *the* differences concerning the territorial application as highlighted in *the MOX Plant case*. These are differences because of the different structure of performance. The differences concerning the application of treaties to third parties and the relationship between successive treaties covering the same subject matter can be mentioned in this context. Secondly, some differences are due to the structure of the relevant field of law as highlighted in *Palestine Wall* (2004) *case*, the *Legality of Nuclear Weapons* (1996) *case*, and *the MOX Plant case*. More specifically jurisdictional conflict on the basis of the powers conferred to different dispute settlement bodies can also termed as institutional biases. Legal regimes of a general nature compete with regimes of a more specific nature. Such a situation requires rules such as *lex specialis* to resolve the conflict. This has been discussed in detail in the next section.

To examine nuclear weapons from human rights perspective is different from the perspective of law of war; a free trade perspective on chemical transports does not render the same result as an environmental perspective, *whatever the rules may be*. Similarly the objective and the ethos of a regime are not just some incidental aspect of it. What is significant about projects such as trade, human rights, or indeed “Europe”, is precisely the set of values or purposes

that we link with them. To be doing “trade law” or “human rights law”, or “environmental law” or “European law” – as the representatives of those projects repeatedly tell us – is not just to operate some technical rules but to participate in a culture, to share preferences and inclinations shared with colleagues and institutions who identify themselves with that “box”.

A settlement reached by one organ will only resolve a dispute within that system, and not necessarily for the purpose of another or the universal system. For example in the Nicaragua case the United States had not been held responsible for the acts of the Nicaraguan *contras* merely on account of organizing, financing, training and equipping them. On the other hand, in *the Tadic* case the standard to measure the intervention was *replaced* altogether. Two institutions (the ICJ and the ICTY) were faced with analogous facts but concluded in differing ways ("Report of the Study Group of the International Law Commission,"). Such a decision resolves the conflict on the basis of regional rules, yet raises differences of the general nature of international law. This fact can, therefore, undermine any tendency towards a homogeneous international law.

Growing sectionalism and regionalism around the globe has led to the creation of new regional legal regimes, often more specific than global regimes. Such new legal regimes increase the opportunities for friction or conflict. Thus, sectionalism and regionalism are powerful agents of international cooperation but are not necessarily unmitigated blessings for the development of international law. However, there are multiple sets of international regulations that may apply to a given situation

Cross Application and Available Solutions

As observed in the above mentioned cases there are overlapping rules and cross application on various treaty rules. The absence of a centralized legal system has made it quite complicated to determine which rule is applicable. However, International Law Commission (ILC), whose main purpose is the codification and progressive development has drafted conventions which have been productive and guiding principles to find the solution of conflicting rules, for example the draft on state responsibility and the Vienna Convention of laws of treaties (VCLT). In the process for adjudication, VCLT provides the solution of two types of conflicting issues; first, conflicting rules over same subject, second, conflicting rules over two different treaties.

Conflicting Rules over the Same Subject

The relationship between two successive treaties binding upon the same parties seems to be conflicting when a successive treaty supplements or clarifies the pre-existing rules. For example Article 6 (1) of the Second Optional Protocol to the International Covenant on Civil and Political Rights says "…the provisions of the present Protocol shall apply as additional provisions to the Covenant ("Optional protocol to the international covenant on civil and political rights,")."

To be more specific, the conflict of rules may seems to appear when the agreements which are not expressly intended to replace each other rather clarify other pre-existing rules. For example the Art. 2 of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of December 10, 1982 states: "The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail."

Solutions for such conflicting rules are implanted within treaties. The apparent fragmentation is in fact a positive development in specific situations. Instead of revising the already existing treaty regimes it is convenient to annex the additional protocols/optional protocols. VCLT provides the solution of *lex posterior* the various conflicting rules on the same subject. Article 30 of the VCLT contains a residual clause for the relationship between successive treaties relating to the same subject matter. It is based on the *lex posterior* principle, the equality of all treaties with the exception of the United Nations Charter and the *pacta tertiis* principle.

Thus, Article 30 (2) of the VCLT states that when a treaty specifies that it is subject to, or that is not to be considered as inconsistent with an earlier or later treaty, the provisions of that other treaty prevail. Article 30 (3) affirms the *lex posterior* principle and paragraph. 4 combines the *lex posterior* with the *pacta tertiis* principle for the case when the parties to the later treaty do not include all the parties to the earlier one.

The relationship between successive treaties relating to the same subject matter differs according to the subject matter. The relationship between the various humanitarian law conventions is not as homogenous as that between the various human rights treaties. However, many humanitarian conventions contain a conflict clause stating that the relevant convention shall not be interpreted as detracting from other obligations imposed upon the contracting parties by international humanitarian law conventions ("Convention on

prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects,"). Moreover, the Geneva Conventions prohibit further agreements resulting in a lower protection to the respective protected persons ("Third Geneva convention relating to the treatment of prisoners of war,"). Furthermore, the problem of how to apply humanitarian agreements binding upon different parties is resolved in favour of a strict application of the *pacta tertiis* principle. Thus, many humanitarian conventions contain a clause expressly stating that the respective treaty does not apply for third party states ("Third Geneva convention relating to the treatment of prisoners of war,"), and moreover they expressly allow the contracting parties not to apply the relevant convention in relation to third parties for the case that the other party does not apply and accept the provisions of the relevant convention ("First additional protocol of 1977,"). The result is that a humanitarian law convention is always applied on a mutual basis ("First additional protocol of 1977,").

Relationship between Treaties Covering Different Subject Matters

The second type of conflicting rules emerges when two treaties on different subjects are binding upon conflicting parties. Unlike the relationship between treaties covering the same subject matter, the relationship between treaties relating to different fields of law is not expressly regulated in the VCLT but it contains three provisions which govern the relationship between agreements covering different subject matter. These provisions are Article 53, stating the invalidity of treaties inconsistent with peremptory norms; Article 30 (1) stating the priority of the UNC and Article 31 (3) (e) of the VCL T. Nevertheless, humanitarian, economic, environmental, human rights and law of the sea conventions share two general common features.

Firstly, among various multilateral treaty regimes, an indirect relation is maintained between the different fields of law. There are cross-references between treaties covering different subject matters. Thus, the preamble of the international Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) recognizes “in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of human Rights and the International Covenant on Civil and Political Rights (ILM, 1988).”

Moreover, treaty bodies refer to conventions relating to other subject matters while interpreting a treaty. "[T]he court recalls that the principles underlying the Convention cannot be interpreted and applied in a vacuum. The Court must also take into account any relevant rules of international law... (ECHR, 2001)"

Finally, the strongest tie exists between human rights and humanitarian law treaties. It is undisputed that international humanitarian law is *lex specialis* to human rights treaties in the case of an armed conflict. In the case *Legality of the Threat or Use of Nuclear Weapons,* the ICJ applied this principle: ("ICJ; legality of the threat or use of nuclear weapons," 1996)

> "In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The rest of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis,* namely the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary of Art. 6 of the Covenant can only be decided by reference to the law applicable in armed conflicts and not deduced from the terms of the Covenant itself ("ICJ; legality of the threat or use of nuclear weapons," 1996)."

The second common point is that many treaties embody the presumption of a conflict-free relationship between various subject matters. Article 2 (3) Cartagena Protocol on Biodiversity says:

> "Nothing in this protocol shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of ail States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments ("ICJ; legality of the threat or use of nuclear weapons," 1996)."

The Preamble of the Cartagena Protocol on Biodiversity also says: "… this Protocol shall not be interpreted as implying a change in the rights and obligations of a Party under existing international agreements, understanding that the above recital is not intended to subordinate this Protocol to other international agreements."

Therefore, the relationship between treaties covering the various subject-matters seems to reflect the customary law principle embodied in Article 31 (3) (c) of the VCLT, namely that any relevant rules of international law applicable in the relationship between the parties shall be taken into account while

interpreting a treaty and its underlying presumption, and that all fields of law shape a uniform system of international law.

Various potential conflicts due to fragmentation have already been addressed, for example almost all present law making treaties are exemplified by maintaining the principles laid down in the VCLT. Accordingly, the VCLT applies to all kind of treaties. In other words, the evolution of environmental, humanitarian, economic, human rights, and law of the sea conventions takes place against the background of the general residual rules embodied in the VCLT.

Conclusion

in the light of the above discussion it can safely be concluded that fragmentation is a technical problem and can be tackled by applying various techniques. Alleged fragmentation reveals that there is less inner homogeneity among various treaty regimes. It is because of the fact that every subject matter in international law is composed of a variety of international treaties, concluded at different times and with different objects. Nevertheless, every subject matter has special features.

The fragmentation is not a new issue and is a natural consequence of multiple factors that contribute to the development of international law. International politics, the interest of international bureaucracy, interest groups, and regional dynamics and interests contribute in framing the legal system. Fragmentation is an ontological problem, a challenge to our most deeply held assumptions about the nature of international law. The legal activities occurring through various tribunals and the courts should not be halted because of the fear of fragmentation. The need is to develop a framework which can technically resolve the problem.

The notion of a self-contained regime seems exacerbated; ("The ILC Study Group actually preferred the term 'special' regimes rather than 'self-contained' to underline that these regimes or 'branches of international law' were all linked to general international law and were part of the international legal system," 2007) every field of law falls back upon the general rules of international law. The specialized regimes, on the one hand, contribute to the dynamic environment of general international law. On the other hand, they can lead to the crystallization of some individual rules for a particular subject matter.

Those legal scholars who approach international law from bottom to top believe that the law making at international level occurs through multiple

actors. For them fragmentation is an academic debate and a coherent system can be established within a disintegrated system. Widespread tribunalization is a sign of the strength of international law as a whole. The conflicting rules have been resolved by applying various principles. Yet there is need to have a coherent framework (other than the VCLT) to resolve this issue permanently.

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