

The New International Law

Polycentric decision-making structures and fragmented spheres of law: What implications for the new generation of international legal discourse?

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1. *Introduction*

Sovereignty is transformed. Governmental authority is horizontally and vertically dispersed. The legal situation of individuals and private entities is no longer solely dependent on municipal law. States have accepted treaty regimes whereby international authorities exercise regulatory power that interferes with domestic authority. New dispute-settling bodies proliferate on the international plane, and we are increasingly aware of the considerable influence exercised by the private sector on international decision-making processes. Today's international law, in short, is constituted by polycentric decision-making structures and fragmented spheres of law. This has to come to constitute what can properly be termed a 'new international law' emerging as a patch-work of norms, institutions and actors on various overlapping levels.

Current international legal discourse is already grappling with the enormity of challenges posed by rapid restructuring of domestic and international governance to conventional outlooks, theories and practices of international law. Indeed, the avant-garde of today's research thrives on scholarship that analyze and discuss the shift from a world made up of sovereign nation-states to today's inter-, supra- and transnational arrangements. The aim of the Oslo conference on The New International Law is to contribute to the study of complexities of contemporary decision-making structures and spheres of law.² During three conference days, a near 100 participants, academics in various fields as well as legal practitioners, will present, share and contest each other's views on current trends in international law and legal discourse in key-note lectures, round-table discussions and a number of work-shops. Both in their previous work and in their submissions to the

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² <http://www.jus.uio.no/forskning/grupper/intrel/nil-conference/>

conference, our participants represent different perspectives and outlooks on a broad range of diverse international legal phenomena. This diversity illustrates the wide scope typical for the new international law and legal discourse. Perhaps, this plurality is among the qualities constituting it as “new”?

The aim of this introductory paper is to explore certain facets of the richness in contemporary international law and legal discourse, in order to elucidate elements of the background and some common reference points for the submissions to the conference. Hopefully this will contribute to the interaction and exchange of ideas essential for developing increased academic sensitivity and comprehension of the complexities of contemporary decision-making structures and spheres of law. We begin with an attempt to identify the main developments that we believe may be perceived as a movement from “old” to “new international law,” before describing what we see as the main tendencies with which international legal discourse is currently occupied. Finally, in the last section we attempt to provide some examples of how new international legal discourse is grappling with these tensions and other challenges to its central theoretical schemes.

2. *Sovereignty in Change – From Old to New International Law*

To posit something as a representation of the old or the traditional and thereby contrast it with the new or the modern is inherently perilous. It inevitably compels a fixed and static one-dimensional image of what in the past was a complex and multifaceted lived present, as a contrast to the dynamic complexity of the contemporary. Nevertheless, to portray something as “new international law”, as this conference attempts to do, begs the question of what the “old” is that it compares with, and how “old international law” turned into new. In this first section we attempt briefly to elucidate our image of new as compared to old international law, though incessantly bearing in mind that our image will inevitably fail to do justice to the full complexity of past legal realities and doctrinal thinking.

A traditional image of international law will by most accounts be inextricably linked to the concept of sovereignty, this being in a sense both constitutive of, and the central legal attribute of statehood. As we see it, this has two central features in relation to the structure of traditional international law, if only as a starting point: on the one hand, exclusivity of power conceptualized as *jurisdiction* (i.e. legitimate power and authority); on the other hand, exclusivity of subjectivity conceptualized as *personality* (i.e. capacity to be a subject of legal rights and obligations). Arguably, this conception of sovereignty constitutes the dominant

structural premise of international law up until the present, constituting a paradigm tacitly presumed by legal discourse, and its central premises and controversies alike.³ This has a central methodological aspect in that sovereignty traditionally is the central basis of *legitimacy* in international law, as present in the methodological premise that *state consent or consensus* in some form, sometimes tacit and hypothetical, but always plausibly present, presents the main basis of legal obligation. It also has a central *substantive* aspect in that traditional international law is mainly perceived as being concerned with the conditions of statehood and the *rights and obligations* of states in relation to other states. This is perhaps best reflected in how public international law traditionally neglects any substantive conceptualization of states' internal competence or authority in relation to individuals, simply presuming this to exist by virtue of sovereignty as the premise of municipal law.

While this conceptual framework has long been under stress by alternative ambitions and prospects for international law, such tendencies have only in more recent times materialized in the development of actual legal processes. A number of diverse historical, cultural and economic factors and long term processes underlie this development, without it being our ambition to pinpoint its more exact causal factors here. Suffice it to say that beneath these legal processes usually lie the new or awakened political perceptions of states of certain common interests and challenges requiring an international response. These and other changes in the factual premises and conditions of sovereignty have contributed to the extension of international law to *new concerns and interests* that were previously considered the domain of national sovereignty. As discussed below, the new legal processes facilitated by such developments are often characterized by their centre of gravity being at least partly beyond the separate confines of nation states, but at the same time beneath the level of inter-state relationships. Perhaps more than anything else, this is the central aspect of what merits perception as a move from old to new forms of international law. It is present in the increasingly institutionalized regulation and decision-making processes on the international plane concerning various aspects of trade and economic activity, as well as environmental concerns and human rights, together with the beginning internationalisation of criminal law and the abandonment of exclusive national jurisdiction in this field. This manifold of new legal processes has provided a whole new set of focal points for contemporary international legal discourse, as we attempt to explicate more fully below.

³ *Inter alia* this is a central theme of Koskenniemi: From Apology to Utopia (Cambridge, 2006), esp. p. 224 et seq.

3. Main Topics of the New International Legal Discourse

3.1 New processes

Among the many central topics in the contemporary international legal landscape, a focal point is the processes by which new international legal norms are produced. As alluded to above, a main element of the new international law is precisely the comparatively new and developing legal processes or regimes managed by international institutions, such as the EU, the WTO or complex environmental regimes. Arguably, what deserve recognition as international legal norms in a contemporary perspective are not only the products of inter-governmental negotiations, but equally decision-making practices and rules created by more or less formalized *transnational* networks of national authorities and policy makers, supranational and semi-international bodies, as well as various private actors. Such developments of legal processes affect a number of central premises in traditional international law, including conceptions of prevalent structures of authority, relevant subjects or actors in international legal processes, and its underlying premise of unity and coherence, confronted with a fragmentation of norm-systems and the development of separate practices of interpretation by international tribunals.

3.2 New Structures of Authority

The legal norms governing how public authority is exercised appear as complex structures in the new international legal context. While these structures previously were conceived as largely hierarchical within the constitutional systems of nation-states, they are currently conceived as being also of a heterarchical configuration, stretching beyond and across the borders of nation states. These new structures are conceptualized by a number of different but entangled perspectives, including governance, multi-level, constitutional and administrative perspectives, in addition to perceptions focusing on social rationalities and arrangements in various societal sectors.

In strict terms, governance perspectives conceptualize authority established by distinctive methods/mechanisms for resolving conflicts and solving problems, comprising actors and activities that do not fit into a traditional legal framework.⁴ In this perspective authority is seen as something which arises out of self-stabilizing networks, and not a

⁴ See Christian Joerges: 'Constitutionalism and Transnational Governance: Exploring a Magic Triangle' in Joerges et al (ed.): *Transnational Governance and Constitutionalism* (Hart,2004)

phenomenon established by states, international or supranational organizations alone. In effect, the focus of law-making is shifted from state institutions to private regimes and their interaction with national and international public institutions, including but not limited to binding agreements among global actors, private market regulation, multinational enterprises, internal rule-making within international organizations, inter-organizational negotiating systems, and worldwide standardization processes.

Multi-level perspectives focus on dispersed authority, both vertically and horizontally. The vertical dimension here reflects the observation that aspects of states' central governmental authority are increasingly delegated to regional and supranational bodies. In contrast, the horizontal dimension reflects the tendency of dispersion of authority from public agencies to private and non-state actors. Central enquiries within this perspective address the adaptation of political actors to the dispersion of authority, the possibility of identifying authority in dispersed structures, and the impact that such structures have on the legitimacy of political authority.

The constitutionalism perspective seeks to conceptualize the development of arrangements beyond or beneath nation states in which authority is limited under the rule of law, and fundamental rights enjoy primacy. These perspectives are variegated, describing a variety of processes and products of authority. Various approaches track processes leading towards a world constitution, the constitutionalisation of international political processes (e.g. a state-community), the constitutionalisation of regimes and international organizations, horizontal constitutionalisation (entailing rights not only vis-à-vis states, but also for social entities), and societal constitutionalisation.⁵

The administrative legal perspective looks at embryonic forms of administrative law beyond nation states as an emerging facet of global governance. Elements of these new administrative legal structures may be identified, shaped and even constituted by the administrative practices of a variety of international and transnational actors, including international organizations, cooperative networks of national regulatory officials, whether based on collective action or distributed through a cooperative such as treaty, private institutions with regulatory functions, and hybrid intergovernmental/private arrangements. In

⁵ For a general overview, see Gunther Teubner: 'Societal Constitutionalism: Alternative to State-Centered Constitutional Theory?' in Joerges et al (ed.): *Transnational Governance and Constitutionalism* (Hart, 2004).

sum, these practices and other sources may constitute nascent forms of a global administrative law.⁶

The legal norms governing how public authority is exercised are also observed in perspectives seeing these norms as products of social rationalities and arrangements in different societal sectors. This provides a picture in which new norms governing how authority is exercised can be seen as responses to changes in rationalities, economic activity transgressing borders of nation states, environmental degradation and an increased need to control various forms of risks.

3.3 New Actors

While “old” international law was almost exclusively concerned with the relations between states in their capacity as such, a dominant feature of the evolving “new” international law and legal discourse is its recognition and inclusion of non-state actors as a matter of course. This is particularly apparent in the decreasing importance of the concept of personality, formerly thought critical and a conceptual prerequisite, now increasingly perceived merely as a function of whatever rights and obligations an entity can either invoke or be held to under international law.

While this does not mean that the concept of *statehood* has lost any of its significance, this still being the crucial criterion of independence in relation to other states, it may be seen to reflect instead an extension of scope, and the increased sophistication of international law towards constituting a more truly ‘common law of mankind’ or universal *jus gentium*. Three more distinct tendencies can be singled out as part of this movement, as also reflected in the multitude of papers submitted on this topic.

A first tendency is the direct *recognition of non-state interests* under the law. This has both to do with a certain *reconstitution* of international law to address the legitimacy of state power and authority in relation to individuals, and with a closer *interaction* between municipal and international legal norms in certain areas previously confined to the domestic sphere. Aside from the most obvious and prominent example of human rights, the tendency is perhaps most strongly reflected in the development and strengthening of regimes concerned with promoting international trade and general economic growth and development, such as

⁶ See http://www.iilj.org/global_adlaw/index.htm. Essential contributions include: Law and Contemporary Problems, vol 68, no. 3-4: The Emergence of Global Administrative Law; European Journal of International Law, Volume 17, Number 1, February 2006 - Symposium: Global Governance and Global Administrative Law in the International Legal Order; New York Univ. Journal of International Law & Politics, Vol 37 (2005), No. 4

especially seen in the fields of international investment law and international trade law (e.g. EC and WTO law).

A second tendency is the occurrence of new powerful non-state actors *influencing and shaping* international law, as already touched upon in regard to the emergence of new forms and perceptions of authority. Most important is the proliferation of new governmental organizations taking over functions previously confined to the municipal sphere of state sovereignty, and even developing new functions and forms of government. It is, however, also possible to see a comparable development taking place in relation to non-governmental organisations (NGOs) and multinational corporations (MNCs), which demand and exercise influence in global politics. While the power and influence of private NGOs and MNCs may not be clearly conceptualized within the law, international law is increasingly dealing with its manifestations and effects, and is probably to an even greater extent being shaped by such influences.

A third, and in many ways complementary tendency to the two already mentioned is the increasingly manifested demand for *accountability* of individuals and juridical persons under international law. This takes the consequence of the *factual influence* of individuals and other private entities on events or interests of international significance. It is especially seen in the developing field of international criminal law, but also in the more peripheral efforts to hold MNCs to converging international soft law standards on corporate conduct.

3.4 Fragmentation

The new international law encapsulates new structures of authority and new actors and interests. As such it is a product of a multiplicity of processes addressing increasingly technical and complex fields, usually supported by a massive body of regulation managed by specific institutional frameworks. This stands in some contrast to the older and more traditional depiction of international law, as based on a relatively limited number of rules and principles governing relationships between states in high politics, peace and war. A main facet is the increasing generation of specialized theory and language developed in interaction between practitioners and scholars working within area-specific fields, which may have little to do with traditional international law. This *fragmentation* of international law into specialized regimes gives rise to a number of particular problems from the perspective of a

presumed or hypothetical image of a *unitary and coherent* international legal order.⁷ In broad strokes, it would seem that current international legal discourse has occupied itself with two main categories of problems in this regard. The first may be seen to concern the relationship between specific regimes and the general framework of international law, while the second concerns the relationship between specific regimes *within* this presumed framework.

As to the first perspective, it is inspired by specialized regimes disconnecting themselves *substantially* and *institutionally* from the tradition of public international law. The best example may be the EC, where the ECJ has held on more than one occasion that the EC is a regime *sui generis*, where general rules and principles of international law cannot be presumed to apply.⁸ This and other examples, such as the WTO or specific human rights and environmental regimes, has spurred a debate about whether such regimes are, or can become, *self-contained*, in the sense that general rules and principles of international law are displaced *in principle* from application within the regime.⁹ A frail and converging consensus seems to be that international law is never wholly displaced, but may be reduced to rules of last resort and little actual relevance by regime-specific rules operating as *lex specialis*, and even by a general *lex specialis* presumption applicable to ordinary intra-regime affairs.¹⁰ This still leaves several questions unresolved however: *when* do intra-regime rules operate as *lex specialis* in relation to general international law, *what* rules and principles of international law *may* properly be considered to apply to highly specialized and sophisticated regimes, and to that extent, *how* will they apply in such cases? These are all questions with which doctrine and scholarship are currently struggling, and have been for some time.

While apparent conflicts between general and special international law, at least in principle, is readily resolved by a general *lex specialis* rule of interpretation, the situation is more complex in relation to conflicts *between* specialized regimes. This kind of conflict may occur on different levels; specifically, it may be *institutional* or *substantive*. Here the former depicts the possibility of conflicting decisions from regime-specific organs and institutions, while the latter depicts the situation of apparently conflicting substantive norms. In principle, and from a dogmatic, doctrinal perspective of general international law, at least the latter

⁷ See generally the extensive study conducted by the International Law Commission and headed by Martti Koskenniemi on this topic, as finalized in 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission, Fifty-Eight session (A/CN.4/L.682).

⁸ Cf. e.g. *Commission v. Luxembourg and Belgium*, Cases 90/63 and 91/63, ECR [1964] 625.

⁹ Cf. e.g. Simma and Pulkowski: *Of Planets and the Universe: Self Contained Regimes in International Law*, 17 EJIL (2006) No. 3 p. 483.

¹⁰ Cf. e.g. the ILC Draft Articles on State Responsibility Article 55.

raises problems of interpretation that must be resolved through the help of legal-interpretative methods of harmonization.¹¹

However, no established interpretative method resolves by itself how conflicting norms and decisions may, or ought to be resolved. Moreover, to posit the problem solely as one of interpretation glosses over the power-struggles between regimes and specialized interests that are in fact involved. From a dogmatic perspective, the problem of fragmentation may be held to require new ideas and approaches to the interpretation and implementation of treaties where there is *overlapping and conflicting consensus* on fundamental value-questions in different social and political sectors. Thus, states may agree in isolation *both* on the desirability of trade and economic growth, *and* on the need to promote human rights and the environment, without any established consensus on the *balancing* of such potentially conflicting values and priorities. Fragmentation means that new approaches are increasingly required for *choosing* between conflicting values and interests espoused by different treaties and regimes. A number of approaches have been suggested in this regard, such as establishing a clearer hierarchy of values through denoting certain norms *jus cogens* or *erga omnes*, and the recourse to certain general principles of integration such as that constituted by the concept of *sustainable development*. This nevertheless continues to be a controversial topic in legal discourse, where conflicting views have been voiced *inter alia* on both the possibility and the need for a coherent normative framework.

3.5 New Practices of Interpretation

Today's international lawyers are thus confronted with a complex web of transformed and diversified international legal norms, institutions, processes and discourses. Yet, the "new international lawyer" still needs to relate to one of law's perennial challenges: how can normative meaning be legitimately construed from chaotic social practice? The lawyer-as-interpreter faces great challenges when seeking to engage with this "new international law". International legal norms proliferate at accelerating speed. Treaties are concluded in new areas previously uncharted by international law. The fragmentation of international law has entailed a number of treaty-making nucleuses with their own tailored agendas, policies and perspectives. This poses certain central interpretative challenges for legal decision-making within this new international law.

First, if treaties shall be interpreted in light of their "object and purpose",¹² we need to define where the object and purpose of one treaty ends and where that of another begins.

¹¹ Cf. e.g. the Vienna Convention on the Law of Treaties Article 31.3.

Such issues have been debated already in the fields of WTO, and in relation to the interpretation of investment treaties. Is it evident what the objects and purposes of treaties on free trade and investment protection are when authoritative decision-makers are confronted with demands from, say environmentalists or human rights advocates? What is the extent to which the core object and purpose of a treaty may legitimately be stretched in a process of interpretation, whereby supplemental or even marginal concerns are addressed and sought accommodated through interpretation?

Second, the new world order includes other actors than the sovereign state to an extent that may also have repercussions on treaty interpretation practice. As mentioned above, the “old” depiction of sources of authoritative international legal argumentation typically expresses derivation from the sovereign authority of nation-states. Today, a host of actors, private as well as public, contribute to the development of international norms in various direct or indirect ways. Is this, or should this, be reflected in the material on which the interpreter attempts to establish the meaning of international treaty norms, or even customary rules?

Finally, as the areas addressed by legal norms become increasingly complex, so too does the legal discourse. The present academic production tends to engage in cross-disciplinary studies more than before. It is yet too early to indicate what ramifications this may have on interpretative processes: today’s students of interdisciplinary and cross-disciplinary aspects of international law have yet to enter in great numbers into international tribunals and other decision-making bodies. Perhaps this could change interpretative practices and legal decision-making and make it more “enlightened.” But then the question is of course whether and how legal practice, traditionally marked by the tension between pragmatism and positivism, indeed is susceptible to inspiration from international law’s disciplinary siblings.

4. *New Perspectives and Challenges*

Contemporary international legal discourse is an expansive and manifold field. Central contributions are continually submitted in monographs, anthologies, journals and conferences.

¹² Vienna Convention on the Law of Treaties, Article 31.1

The yearly production is overwhelming. The breadth of legal phenomena at issue, and the rich variety of approaches, contexts and methodologies to which they are subjected, is evident from our rather limited overview of some typical international legal journals published over the last years. A superficial survey reveals a number of general enquires into subjects as diverse as the interaction between international law and religious norm-systems; effects of soft law-regulations; modalities and procedures for the architecture and design of legal regimes; as well as a number of comparative legal studies on practices in specific fields. Many studies share a tendency to employ methodologies external to traditional legal doctrine. Analytical approaches such as governance studies, social constructivism, regime theory and critical examinations of legitimacy abound, and attest to the considerable influence on legal discourse of disciplines such as sociology, political and social philosophy, and economics. It may be readily observed that today's international law affects a number of different policy sectors, including, but not limited to concerns over protection of border-crossing investments; legal structures within post-conflict communities; the legal problems associated with asylum and migration; the role of international criminal law; security and terrorism as challenges to international law; and international legal principles for management of natural resources. Similar diversities are confirmed by the more than 120 abstracts submitted to this conference.

The new processes in international law have certainly occupied a central place in new international legal discourse. That these processes have already been thoroughly explored and identified is, however, far from saying that the academic debate is over or even converging towards consensus. While grappling with the new phenomena, the 'new' discourse has nevertheless largely been based on theoretical schemes that were central to traditional conceptions of international law. But to what extent is the meaning and function of these schemes, designed and employed to approach 'older' forms international law, challenged when facing the new international law? What implications do the new decision-making structures and the fragmented spheres of law have for the new generation of international legal discourse? These are the central questions of the conference, as presented in the call for papers. In an attempt to move the discussions at the conference in this direction, we provide below four examples of central tensions in the theoretical schemes, seen in the new international legal discourse and also reflected in the submissions to this conference.

First, the new international legal context challenges established conceptions of legitimacy. Partly, the challenge to legitimacy may be an effect of a general post-metaphysical perception. But the new international legal context also produces its own particular threats to established models of legitimacy. Dispersion of authority destabilizes the established

centralized model of legitimacy traditionally conceptualized by international law through the notion of internal sovereignty. Such dispersion means that legal norms cannot be justified by reference to one decision-making system only – the new international legal norms are products of a variety of decision-making systems. New tendencies of discourse have been intensely occupied with the task of constructing new models and concepts of legitimacy, encapsulating a number of reconstructed models and sources for normative ideals potentially applicable to international law. Those ideals include, but are not limited to, various concepts of democracy, constitutionalism, efficiency, and protection of human rights and the environment. Central questions are whether international law actually conforms to relevant normative ideals or whether it suffers from a legitimacy deficit, and whether particular normative ideals, such as democracy and constitutionalism can reach beyond the confines of nation states as these traditionally have been institutionalized and conceived.

Second, new international legal discourse increasingly challenges the national/international dichotomy affiliated with the prevailing idea of sovereignty. An example of this is the dissolution and reorientation of the formerly strict division between public and private international law, where only the former, being concerned with the direct interaction of sovereignties in their external manifestation, were considered real international law. In contrast to this, contemporary discourse emphasizes how new legal processes requires abandoning the traditional public/private and national/international dichotomy. What is substituted is an evolving concept of transnational legal process involving both private and public actors, and domestic and international rules and sources in singular and integrated decision-making processes, conspicuously straddling the traditional divide between private and public international law. We see this reflected in the proliferation of decision-making practices involving private actors and concerning issues traditionally thought to belong to private law, now increasingly dealt with by courts or arbitral tribunals beyond the institutional confines of municipal law. It is also reflected in the corresponding practice of joint application of municipal and international law directly concerning individuals and private actors in municipal courts.

Third, it may be observed how traditional schemes of international law and legal discourse are increasingly challenged by shifting epistemic perspectives, leading to an increased awareness of, or sensitivity to, *the identity* of international legal actors. A traditional depiction of international legal argument was, arguably, influenced by universalistic theories of knowledge. Although this universalism recognizes the diversity of subjective experience, at least since Kant's Critique of Pure Reason it has been frequently claimed that human subjects

share certain schemes and categories in which the world is perceived and conceptualized. In line with this thinking, human subjects share an inter-subjective basis on which knowledge of both natural and social phenomena can build. In its strongest and most universalistic form, this inter-subjectivity could provide a basis for a purely formal theory of law, as outlined most famously by Hans Kelsen. In addition to this universalistic perspective, the new international legal discourse is supplemented by approaches which see inter-subjectivity as reference to a set of shared beliefs within a community (i.e. not as a universal phenomenon). This provides a basis for theory which takes greater account of the impact of cultural beliefs, historical perceptions and so forth within international legal communities. In addition, new international legal discourse is influenced by new theories focusing on how shared assumptions in language contribute to shape and *constitute* the human subject. This provides a basis for analysing the assumptions underlying the language of international law, and how these impact on and constitute its subjects. First and foremost in this tendency stands the expansion of the critical legal studies movement into international law, but it is also found in specific fields such as in the increasing number of studies on colonial and imperialistic influences on international law, as well as studies on gender and international law.

Fourth and finally, a particular challenge affiliated with the increasing complexity of new international law, is the appreciation of how the traditional focus of legal doctrine suddenly appears too narrow in endeavours to understand this new complexity. In order to explore how new structures of norms govern and constitute authority, how new and diverse actors take part in and influence the processes shaping international law, and how or whether international law may be both diverse and *coherent* at the same time, an approach based solely on strict legal method appears increasingly inadequate. These questions transcend the focus of traditional legal doctrine, namely the extent to which states and other actors are bound by certain obligations or may assert certain rights or claims. Similarly, traditional legal doctrine seems singularly unsuitable, quite naturally, to provide sufficient knowledge of the challenges facing it, such as those mentioned above; the need to reconceptualise legitimacy, the reorientation of systemic perspectives, and new epistemic perspectives of subjectivity and identity. Thus, the emerging multi-disciplinarity has a sound functional basis. International legal doctrine needs the aid of new disciplines to understand the complexity and depth of perspectives affiliated with new international legal phenomena. This could be an isolated phenomenon only appearing in the field of new international law. But it may also be that the emerging multi-disciplinarity in this field is a part of broader general tendency in modernity, towards increasing complexity, also in respect of disciplinary traditions. In other words it is

not necessarily only the phenomenon (of international law) that becomes fragmented, it may be that also the *approaches* to the phenomenon are fragmenting under the influence of post-modern sensitivities.