XX међународни научни скуп „Правнички дани –
Проф. др Славко Царић“
„ДВЕ ДЕЦЕНИЈЕ РАЗВОЈА ПРАВНЕ МИСЛИ“

20th International Scientific Conference „Legal days –
Prof. Slavko Carić, PhD”
“TWO DECADES OF THE DEVELOPMENT
OF LEGAL THOUGHT”

Универзитет Привредна академија у Новом Саду
Правни факултет за привреду и правосуђе у Новом Саду
University Business Academy Novi Sad
Faculty of Law in Novi Sad

Нови Сад, 06. и 07. октобар 2023.

Зборник радова са XX међународног научног скупа
„Правнички дани – Проф. др Славко Царић“
„ДВЕ ДЕЦЕНИЈЕ РАЗВОЈА ПРАВНЕ МИСЛИ“
06. - 07. октобар 2023. године у Новом Саду,
у организацији Универзитета Привредна академија у Новом Саду
Правни факултет за привреду и правосуђе у Новом Саду

Издавач:
Универзитет Привредна академија у Новом Саду
Правни факултет за привреду и правосуђе у Новом Саду
Гери Кароља бр. 1, телефон: 021/ 400 - 499
Web: www.pravni-fakultet.info

Рецензенти:

Др Милан Почуча
редовни професор
Др Владимир Козар,
редовни професор
Др Милош Марковић,
редовни професор
Др Јелена Матијашевић,
редовни професор
Др Предраг Мирковић
ванредни професор
Др Дарко Голић,
ванредни професор
Др Јоко Драгојловић,
ванредни професор
Др Сања Шкорић,
ванредни професор
Др Маријана Младенов,
ванредни професор
Др Марко Станковић,
ванредни професор
Др Данијела Деспотовић,
ванредни професор
Др Ненад Бингулац,
ванредни професор

За издавача:
Др Милан Почуча, редовни професор

Уредник:
Др Милан Почуча, редовни професор

Штампа:
Граф 021, Нови Сад

Тираж: 100

ISBN
978-86-86121-58-5

Научни одбор:

ПРОФ. ДР МИЛАН ПОЧУЧА - председник Научног одбора
Декан Правног факултета за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР МАРКО ЦАРИЋ
Декан Факултета за економију и инжењерски менаџмент, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР МАРИЈАНА ЦАРИЋ
Председник Савета Универзитета Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР МИРКО КУЛИЋ
Професор емеритус на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР МАРИЈАНА ДУКИЋ МИЈАТОВИЋ
Редовни професор на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР ПРЕДРАГ МИРКОВИЋ
Председник Савета Правног факултета за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР МАРИЈАНА МЛАДЕНОВ
Продекан за међународну сарадњу на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР ЗОРАН ПАВЛОВИЋ
Шеф Кривичноправне катедре на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР ДАРКО ГОЛИЋ
Шеф Теоријске и јавноправне катедре на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР ЖЕЉКО БЈЕЛАЈАЦ
Редовни професор на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР ЈЕЛЕНА МАТИЈАШЕВИЋ
Продекан за науку на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија
ПРОФ. ДР ВЛАДИМИР КОЗАР
Редовни професор на Правном факултету за привреду и правосуђе, Универзитет Привредна академија у Новом Саду | Република Србија

PROF. DR VALENTINA RANALDI
Pravni fakultet, Univerzitet "Niccolò Cusano" | Italija
ПРОФ. ДР НЕБОЈША ШАРКИЋ
Декан Правног факултета, Универзитета Унион
у Београду | Република Србија
ДР МИШО ЂУРКОВИЋ
Научни саветник, Директор Института за Европске
студије у Београду | Република Србија
ПРОФ. ДР ВЛАДИМИР ЧОЛОВИЋ
Директор Института за упоредно право у Београду | Република Србија
ПРОФ. ДР МИЛОШ МАРКОВИЋ
Редовни професор на Правном факултету за привреду и правосуђе,
Универзитет Привредна академија у Новом Саду | Република Србија

Организациони одбор:

ПРОФ. ДР ЈОКО ДРАГОЈЛОВИЋ -
ПРЕДСЕДНИК ОРГАНИЗАЦИОНОГ ОДБОРА
ПРОФ. ДР ИВАН ЈОКСИЋ
ПРОФ. ДР ЈЕЛЕНА СТОЈШИЋ ДАБЕТИЋ
ПРОФ. ДР НЕНАД БИНГУЛАЦ
ПРОФ. ДР НЕНАД СТЕФАНОВИЋ
ПРОФ. ДР МАРКО СТАНКОВИЋ
ПРОФ. ДР ДАЛИБОР КРСТИНИЋ
ДОЦ. ДР МАЈА ПЕТРОВИЋ
ДР ИСИДОРА МИЛОШЕВИЋ
МСР. АЊА КОПРИВИЦА
МСР. МАРА ДЕСПОТОВ
МСР. ТАМАРА КРСТИЋ

Секретар:
МСР АЊА КОПРИВИЦА, асистент

UDK: 341.1/.8:343.645

Marijana Mladenov, PhD, Associate Professor
Faculty of Law for Commerce and Judiciary in Novi Sad
University Business Academy in Novi Sad
e-mail: alavuk@pravni-fakultet.edu.rs

Igor Serotila, LLM, Teaching assistant
American University of Moldova, Moldova
email: igor.serotila@gmail.com

FRAGMENTATION IN CONTEMPORARY PUBLIC INTERNATIONAL LAW: PIECES OF THE SAME PUZZLE OR SEPARATE TABS

Abstract:

In the twenty-first century, global society has witnessed a significant development of international law mostly in order to provide a better understanding of complex challenges that the international community is facing. However, this recent development did not point to unity, it creates a more differentiated vision of international law. The article begins by discussing the concept of fragmentation within the framework of public international law. It next examines the implications of material fragmentation in international law, primarily drawing upon the findings presented in the Report of the International Law Commission. In addition, the article analyses the institutional fragmentation of international law which has led to the proliferation of international organs. In this respect, the matter of the proliferation of international courts and tribunals and its correlation with fragmentation in public international law has been addressed. The paper's main goal is to integrate historical, doctrinal, and critical legal approaches in order to offer innovative perspectives on the fragmentation of international law.

Keywords: *fragmentation of international law, proliferation of international courts and tribunals, coherence, self-contained regimes*

"*Fragmentation is an idea, and like all ideas, it has a history and a politics.*"
Jacob Katz Cogan[1]

1 Cogan, J. K. (2011). The idea of fragmentation. In Proceedings of the ASIL Annual Meeting (Vol. 105, pp. 123-125). Cambridge University Press.

INTRODUCTION

In the twenty-first century, global society has witnessed a significant development of international law mostly in order to provide a better understanding of complex challenges that the international community is facing.[2] However, this recent development did not point to unity, it creates a more differentiated vision of international law. The more powerful the international community deals with specific problems, the more old principles and institutions of public international law are challenged.[3]

The concept of fragmentation in contemporary public international law is one of the most current issues, including theoretical and practical aspects.[4] The doubt about the existence of international law as a unitary system that functions and resists the processes of globalization develops in parallel with the development of self-contained regimes, like International Commercial Law, International Environmental Law, Human Rights Law, Law of Seas, International Criminal Law, etc.[5] The phenomenon of fragmentation in public international law became particularly relevant in 2006 when the UN International Law Commission published a report on fragmentation.[6] At the same time, the significance of the subject matter has been confirmed; nonetheless, the challenges that arise from the process of fragmentation remain unresolved.

The article begins by discussing the concept of fragmentation within the framework of public international law. It next examines the implications of material fragmentation in international law, primarily drawing upon the findings presented in the Report of the International Law Commission. In addition, the article analyses the institutional fragmentation of international law, due to the diversification of branches and sources of international law, which has led to the proliferation of international organs whose activities can contribute to the material fragmentation of international law. In this respect, the matter of the proliferation of international courts and tribunals and its correlation with fragmentation in public

2 Giorgetti, C., & Pollack, M. (2022). Introduction. In Giorgetti, C., & Pollack, M. (Eds.) *Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition among International Courts and Tribunal*. Giorgetti, C., & Pollack, M. (Eds.). Cambridge University Press, p. 1.

3 Koskenniemi, M. (2007). The fate of public international law: between technique and politics. *The Modern Law Review*, 70(1), p. 4.

4 Arcari, M. (2013)The Creeping Constitutionalization and Fragmentation of International Law: From 'Constitutional' to 'Consistent' Interpretation", *Polish Yearbook of International Law* 33, pp. 9-25.

5 Rakić, B. (2009). Fragmentacija međunarodnog prava i evropsko pravo – na Zapadu nešto novo [Fragmentation of International Law And European Law – Something New on the Western Front], Anali Pravnog fakulteta u Beogradu 57 (1), p. 122.

6 Koskenniemi M. (2006). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, Finalised by M. Koskenniemi", A/CN.4/L.682.

international law has been addressed. The paper's main goal is to integrate historical, doctrinal, and critical legal approaches in order to offer valuable perspectives on a fragmentation of international law that remains a persistent difficulty in the field of illegal theory and practice.

THE COURSE OF THE DEBATE

Twenty-three years after the "proliferation" speech given before the UN General Assembly by the former President of the International Court of Justice, Gilbert Guillaume, and seventeen years since the publication of the fragmentation report by the International Law Commission, the doctrine is still searching for the precise meaning of the phenomenon of fragmentation of public international law.[7]

The term "fragmentation" refers to the process of breaking up and reducing anything that was formerly a unified entity into smaller fragments.[8] The statement suggests a factual assumption that there was a unified entity prior to its fragmentation, together with a value-based assessment that views fragmentation negatively and unity positively. The discourse around the fragmentation of international law emerged without first addressing the empirical accuracy of its unity and instead expressed concern towards fragmentation as a possible threat that should be avoided. The decision made by the International Law Commission in 2000 to address the topic under the term 'Risks ensuing from fragmentation of international law' holds great importance. This observation indicates that there was an underlying assumption that fragmentation was a matter of concern.[9] The concerns mentioned are implicitly conveyed in Hafner's descriptive analysis of the advantages and disadvantages associated with the fragmentation of international law. Hafner characterizes international law as comprising disparate blocks and components, diverse partial systems, and universal, regional, or even bilateral subsystems demonstrating varying degrees of legal integration. [10]

While the fragmentation seen in the literature is commonly regarded as a negative concept, this article argues that its nature is not intrinsically positive or

7 Guillaume, G. (2000) President of the International Court of Justice, Speech to the General Assembly of the United Nations, https://www.icj-cij.org/public/files/press-releases/9/2999.pdf (09.7.2023.). Tedeschini, M. (2020). Historical Base and Legal Superstructure: Reading Contingency and Necessity in the Tadić Challenge. In: *Contingency in International Law: On the Possibility of Different Legal Histories*, eds Venzke, I & Jon Heller, K, Oxford University Press.

8 Peters, A. (2017). The refinement of international law: From fragmentation to regime interaction and politicization. *International journal of constitutional law*, 15(3), p.672.

9 Treves, T. (2009). Fragmentation of international law: The judicial perspective. Agenda Internacional, 16(27), p. 214.

10 Hafner, G. (2003). Pros and cons ensuing from fragmentation of international law. *Mich. J. Int'l L.*, 25, p. 849. cited by Treves, T. (2009). *op.cit.*; Trachtman, J. P. (2011). Fragmentation and coherence in international law. Available at SSRN 1908862. (12.7.2023.)

negative. The assessment of its features can only be made in reference to specific cases, as well as in conjunction with other processes and phenomena.

In its fragmentation report, the International Law Commission explains the concept of fragmentation by defining substantive, institutional, and procedural fragmentation in the following manner:

"What once appeared to be governed by "general international law" has become the field of operation for such specialist systems as "trade law", "human rights law", "environmental law", "law of the sea", "European law" and even such exotic and highly specialized knowledges as "investment law" or "international refugee law" etc. - each possessing their own principles and institutions. The problem, as lawyers have seen it, is that such specialized law-making and institution-building tends to take place with relative ignorance of legislative and institutional activities in the adjoining fields and of the general principles and practices of international law."[11]

When conceptualizing fragmentation, it is important to differentiate between the fragmentation of norms or regimes on one side, and institutions or authority on the other.[12]

SUBSTANTIVE FRAGMENTATION

During the previous years, doctrine put significant importance on the fragmentation of norms, encompassing substantive normative conflicts and potential resolutions to such conflicts.[13] The primary manifestation of fragmentation in international law is substantive fragmentation, which is frequently caused by institutional fragmentation. The phenomenon of substantive fragmentation is mostly manifested through the formation of new branches within the field of international law, due to the possibility of regulating a single issue by norms belonging to different corpus of legal rules. In order to enhance the efficacy of the standards within the new branch, the new branch frequently incorporates novel treaty provisions or practices that may not align with the general law or the legal framework of some specialized domains. Frequently, new regulations or systems emerge with the specific intention of diverging from the provisions established by the overarching legal framework. When these aberrations or occurrences become widespread and regular, they compromise the cohesion of the legal system.

11 Koskenniemi M. (2006). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, op.cit. p. 11.

12 Matz-Lück, N. (2011). *Structural questions of fragmentation*. In Proceedings of the ASIL Annual Meeting (Vol. 105, pp. 125-127). Cambridge University Press.

13 Megiddo, T. (2019). Beyond Fragmentation: On International Law's Integrationist Forces. *Yale J. Int'l L*., 44, pp. 115 -147.; Jenks, W. (1953). The Conflict of Law Making Treaties, *British Yearbook of International Law*, 30, pp. 401-453.

Furthermore, in the context of the international law system, any discussion related to the phenomena of fragmentation must necessarily include self-contained legal regimes that are considered to be the main cause of fragmentation.[14] Self-contained regimes denote regimes that are independent, specialized, relatively autonomous parts of a fragmented legal order that includes special rules related to responsibility.[15] Self-contained regimes are not unintentionally established but rather purposefully developed in response to novel technological and functional demands. Every regime is characterized by its own set of principles and specialized knowledge. The discourse frequently revolves around the concept of principles of international environmental law or human rights principles, on the presumption that these principles vary from the provisions of general law in similar circumstances.[16]

INSTITUTIONAL FRAGMENTATION

The institutional fragmentation of public international law refers to the diversity of international law related to various subjects and institutions within the international community. This fragmentation has implications for the distribution of competencies in applying and interpreting different norms of international law.

14 In the Hostages judgment of 1980, the International Court of Justice introduced the term "self-contained regimes" to describe a specific and intricate concept. This concept relates to treaties that establish unique (secondary) rules governing the violation of their primary rules and the corresponding responses to such violations. These secondary rules deviate from the general principles of state responsibility in the following manner:
"*The rules of diplomatic law, in short, constitute a self-contained regime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving States to counter any such abuse*." Case concerning the United States Diplomatic and Consular staff in Tehran (United States v. Iran), Judgment of ICJ of 24 May 1980, I.C.J. Reports, 1980, 40, para. 80. The same term had been used before, in the Wimbledon case judgment of 17 August 1923 (France, Japan, United Kingdom, Italy v. Poland), P.C.I.J.Publications, 2, 1923, Ser. A No. 1.

15 Đajic, S. (2016). Fragmentacija međunarordnog prava i specijalni pravni režimi, [Fragmentation of International Law and Special Legal Regimes], *Zbornik Radova*, 50, p.443.

16 See the principle of precaution within the context of Enviromental Law: Kovačević, M., & Živanov-Gardašević, J. (2023). Principles of environmental law in the function of prevention of environmental risks. Ekonomija: teorija i praksa, 16(1), pp. 230-241. Mladenov, M., & Serotila, I. (2022). Human Rights' Approach to Environmental Protection-Practice of the Human Rights Committee. *Law Theory & Prac.* 39, pp. 52 – 64; Alavuk, M., & Matijašević, J. (2012). Principi (načela) na kojima se zasniva sprečavanje i kontrola zagađivanja medija životne sredine u zakonima o zaštiti životne sredine Republike Srbije. [The Basic Principles of the Prevention and Control of the Environmental Media Pollution in the Environmental Law of Republic of Serbia*]. Pravo–teorija i praksa* 29 (10-12), pp. 29-40.

First of all, relations between states have been greatly influenced by the emergence of international organizations. Due to their diversity in terms of the objectives of establishment and competence, it is very difficult to apply uniform rules to all international organizations, and sometimes to clearly draw a line between the competencies of international organizations and their Member States, which is particularly dangerous in the case of violations of the norms of international law and the determination of responsibility for their violations.[17]

Furthermore, the growth of international courts and tribunals highlights the fragmentation of international public law. The proliferation of diverse international judicial institutions, along with the expansion of their jurisdiction, presents novel opportunities for addressing the same challenges. This particular environment fosters conflict at several levels, particularly leading to the formulation of conclusions that are entirely contradictory.

Addressing the General Assembly in 2000, President Gilbert Guillaume expressed concern about the potential negative outcomes associated with the increasing number of international courts and tribunals. Specifically, he highlighted the risks of overlapping authorities and the potential for forum shopping. President Guillaume made reference to many points, including:

"The proliferation of international courts gives rise to serious risks of conflicting jurisprudence, as the same rule of law might be given different interpretations in different cases. This is a particularly acute risk, as we are dealing with specialized courts that are inclined to favour their own discipline".[18]

In the context of proliferation and the threat of fragmentation, an illustration of this phenomenon may be found in the Tadić case of 1999, as documented by the Appeals Chamber of the International Criminal Tribunal for Former Yugoslavia (ICTY). The Chamber modified the criterion of 'effective control' established by the International Court of Justice (ICJ) in the Nicaragua decision of 1986 with the more expansive norm of 'overall control' to regulate the responsibility of foreign States for the actions of parties involved in civil conflicts.[19] However, it's significant to emphasize here that determining the responsibility of the state is not within the jurisdiction of the ICTY. The jurisdiction of the ICTY is criminal and limited

17 Prost, M., & Clark, P. K. (2006). Unity, diversity and the fragmentation of international law: how much does the multiplication of international organizations really matter?. Chinese Journal of International Law, 5(2), pp. 341-370.

18 Guillaume, G. (2000) President of the International Court of Justice, Speech to the General Assembly of the United Nations, *op.cit*.

19 In Tadić case, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia stated: "*International law, because it lacks a centralised structure, does not provide for an integrated judicial system operating an orderly division of labour among a number of tribunals, where certain aspects or components of jurisdiction as a power could be centralized or vested in one of them but not the others. In international law, every tribunal is a self-contained system (unless otherwise provided).*" The Prosecutor v DuskoTadić (1999) the International Criminal Tribunal for the former Yugoslavia, IT-94-1. 32.;

to a determination of individual criminal responsibility for acts provided by the Statute of the ICTY. On the other hand, the ICJ has comprehensive authority to decide upon all aspects of international law as well as to specifically address issues relating to state responsibility. Furthermore, both of these courts are affiliated with the United Nations (UN) system according the Article 94 of the UN Charter.[20] It is noteworthy that the International Court of Justice (ICJ) conducted a reevaluation of the principle in question some years later within the framework of an inter-States dispute. The ICJ confirmed its original determination that the establishment of State responsibility required the presence of effective control over irregular forces.[21]

POSSIBLE SOLUTIONS

The challenges of fragmentation with respect to the conflict of norms can be resolved by legal techniques that are generally applied in law. These are maxims that refer to the priority of the *lex specialis* (the norms that deal more specifically with a matter shall prevail), and the priority of the *lex posterior* (the norms later in time shall prevail), under the conditions defined in the Vienna Convention on the Law of Treaties.[22] Article 31(3)(c) of the Vienna Convention on the Law of Treaties offers a mechanism within the framework of this treaty that facilitates the establishment of interpretive connections.[23] The interpretation of a treaty is obligated to consider any relevant rules of international law that are applicable in the relations between the contracting parties. The article articulates the concept of systemic integration, which argues that treaties, regardless of their subject matter, are created by the international legal system and their functioning is based on this fundamental principle.[24]

20 Đajic, S. (2016). Fragmentacija međunarordnog prava i specijalni pravni režimi, [Fragmentation of International Law and Special Legal Regimes], op.cit. p.453.

21 Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (2005). ICJ Reports, p. 168.

22 Peters, A. (2017). The refinement of international law: From fragmentation to regime interaction and politicization, *op.cit*. p. 682.
The ILC report proposes these approaches aimed at resolving this type of conflict of norms: "*The techniques of lex specialis and lex posterior, of inter se agreements and of the superior position given to peremptory norms and the (so far under-elaborated) notion of "obligations owed to the international community as a whole" provide a basic professional tool-box that is able to respond in a flexible way to most substantive fragmentation problems*". Koskenniemi M. (2006). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, *op.cit*. p.249.

23 Aust, A. (2006). Vienna convention on the law of treaties (1969). Max Planck Encyclopedia of Public International Law.

24 Koskenniemi M. (2006). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, *op.cit*.

However, both approaches, *lex specialis* and the *lex posterior* cannot be applied in international law in the manner in which they are applied in the domestic system. With respect to the first maxim, there are situations where special regulations make an exception to the general rule, as well as situations when special regulations form an elaboration of a general rule. Moreover, the later rule may have been established by an entirely different actor compared to those involved in the earlier rule, so its formulation does not necessarily indicate an intention to replace or revoke the previous standard (which may still be preferred by its original creator. The question of which treaty is later in time would not always indicate a presumption of priority between them in the event of disputes or overlaps between treaties in different regimes.

The widely accepted reaction in the doctrine to the above challenges of fragmentation refers to constitutionalization.[25] This point of view indicates that the international system shows constitutional characteristics, or at the very least, it can relate to the United Nations and its Charter. When a system possesses the attributes of constitutionality, it exceeds the relatively simple relationship between the general and the specific. This is due to the incorporation of the community's interest and the public law nature of the system. As per the provisions outlined in Article 103 of the Charter, the text explicitly establishes its authoritative status within the legal framework. Nevertheless, it is possible that while addressing the issue of fragmentation in this manner, the solution itself may unintentionally contribute to the problem. This phenomenon occurs when distinct legal systems autonomously embrace comparable methodologies, leading to the incorporation of constitutional characteristics within their own regimes.[26] The potential effectiveness of the constitutionalization process in addressing the problem of fragmentation appears to be questionable since it is likely to intensify rather than resolve the issue.

CONCLUSION

Fragmentation can be viewed when there is a deviation from the perceived uniformity of the world, resulting in a separation (or potential deviation) from the established norm, whereby supplementary regulations and actors become relevant. However, it is essential to note that the concept of total consistency in law does not exist. There is a consistent occurrence of intersections between norms and institutions, accompanied by the presence of established procedures aimed at achieving their harmonization. The construction of a legal system at any given moment determines its stability and normality. The contemporary global landscape, characterized by its

25 Peters, A. (2016). Fragmentation and Constitutionalization, in *Oxford Handbook of the Theory of International Law*, (Orford. A. & Hoffmann F. eds.), pp. 1011–1032; Murray, C. & O'Donoghue, A. (2017). A Path Already Travelled in Domestic Orders? From Fragmentation to Constitutionalisation in the Global Legal Order, *International Journal of Law in Context* 13 (3), pp. 225 - 252.

26 Đajic, S. (2016). Fragmentacija međunarordnog prava i specijalni pravni režimi, [Fragmentation of International Law and Special Legal Regimes], *Zbornik Radova*, 50, p.449.

fragmented nature, is poised to evolve into a state of homogeneity in the future. The future state of a uniform world is likely to develop fragmentation over time.

While the prevailing perception of fragmentation in the literature is typically negative, the above analysis demonstrates that fragmentation cannot be universally categorized as either positive or negative. Instead, its characteristics can only be evaluated in relation to specific cases, as well as in conjunction with other processes and phenomena. International law encompasses various partial systems, including universal, regional, and bilateral frameworks, each characterized by different degrees of legal integration. These features give rise to some paradoxes. The absence of explicit legal instructions for addressing disputes between standards, which contributes to fragmentation, is not only a characteristic of the international legal system but may also be observed in domestic laws. Furthermore, it is widely acknowledged that, even within the same judicial entity, different chambers can apply varying interpretations of international law in similar circumstances.

Fragmentation should be considered as a consequence of the specialization of law as well as the development of international law in general. A different perspective would prevent the further development of international law. After all, international law cannot become a victim of its own success.

Dr Marijana Mladenov, vanredni profesor
Pravni fakultet za privredu i pravosuđe u Novom Sadu
Univerzitet Privredna akademija u Novom Sadu

Mast. prav. Igor Serotila
Asistent na Američkom univerzitetu u Moldaviji

FRAGMENTACIJA U SAVREMENOM MEĐUNARODNOM JAVNOM PRAVU: DELOVI ISTE SLAGALICE ILI POSEBNE CELINE

Sažetak:

U 21. veku, globalno društvo je svedok značajnog razvoja međunarodnog prava pretežno u cilju boljeg razumevanja složenih izazova sa kojima se međunarodna zajednica suočava. Međutim, ovaj nedavni događaj nije uticao na jedinstvo međunarodnog prava, već na stvaranje njegove drugačije vizije. Članak počinje diskusijom o konceptu fragmentacije u okviru međunarodnog javnog prava. Zatim ispituje implikacije materijalne fragmentacije u međunarodnom pravu, pre svega na osnovu zaključaka predstavljenih u Izveštaju Komisije za međunarodno pravo. Pored toga, u tekstu se analizira institucionalna fragmentacija međunarodnog prava, koja je

rezultirala proliferacijom međunarodnih sudova. U navedenom smislu, razmatrano je pitanje proliferacije međunarodnih sudova i tribunala u kontekstu fragmentacije u međunarodnom javnom pravu. Glavni cilj članka odnosi se integrisanje istorijskog, doktrinarnog i kritičkog pravnog pristupa kako bi se ponudia inovantivna perspektiva sagledavanja fragmentacije međunarodnog prava.

***Ključne reči**: fragmentacija međunarodnog prava, proliferacija međunarodnih sudova i tribunala, koherentnost, specijalni pravni režimi*

REFERENCES

1. Alavuk, M., & Matijašević, J. (2012). Principi (načela) na kojima se zasniva sprečavanje i kontrola zagađivanja medija životne sredine u zakonima o zaštiti životne sredine Republike Srbije. [The Basic Principles of the Prevention and Control of the Environmental Media Pollution in the Environmental Law of Republic of Serbia]. *Pravo–teorija i praksa 29 (10-12),* pp. 29-40.
2. Arcari, M. (2013). The Creeping Constitutionalization and Fragmentation of International Law: From 'Constitutional' to 'Consistent' Interpretation", *Polish Yearbook of International Law* 33, pp. 9-25.
3. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (2005). ICJ Reports, p. 168.
4. Aust, A. (2006). *Vienna convention on the law of treaties* (1969). Max Planck Encyclopedia of Public International Law.
5. Case concerning the United States Diplomatic and Consular staff in Tehran (United States v. Iran), Judgment of ICJ of 24 May 1980, I.C.J. Reports, 1980.
6. Cogan, J. K. (2011). *The idea of fragmentation*. In Proceedings of the ASIL Annual Meeting (Vol. 105, pp. 123-125). Cambridge University Press.
7. Giorgetti, C., & Pollack, M. (2022). Introduction. In Giorgetti, C., & Pollack, M. (Eds.) *Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition among International Courts and Tribunal*. Cambridge University Press.
8. Guillaume, G. (2000) President of the International Court of Justice, *Speech to the General Assembly of the United Nations*, https://www.icj-cij.org/public/files/press-releases/9/2999.pdf (09.7.2023.).
9. Hafner, G. (2003). Pros and cons ensuing from fragmentation of international law. Mich. *J. Int'l L*., 25, pp.849-863.
10. Jenks, W. (1953). The Conflict of Law Making Treaties, *British Yearbook of International Law*, 30, pp. 401-453.
11. Koskenniemi M. (2006). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, Finalised by M. Koskenniemi", A/CN.4/L.682.

12. Koskenniemi, M. (2007). The fate of public international law: between technique and politics. *The Modern Law Review*, 70(1), pp. 1-30.
13. Kovačević, M., & Živanov-Gardašević, J. (2023). Principles of environmental law in the function of prevention of environmental risks. *Ekonomija: teorija i praksa,* 16(1), pp. 230-241.
14. Matz-Lück, N. (2011). Structural questions of fragmentation. In *Proceedings of the ASIL Annual Meeting* (Vol. 105, pp. 125-127). Cambridge University Press.
15. Megiddo, T. (2019). Beyond Fragmentation: On International Law's Integrationist Forces. *Yale J. Int'l L.*, 44, pp. 115 -147.
16. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (1986). ICJ Reports, p.14.
17. Mladenov, M., & Serotila, I. (2022). Human Rights' Approach to Environmental Protection-Practice of the Human Rights Committee. *Law Theory & Prac.* 39, pp. 52 – 64.
18. Murray, C. & O'Donoghue, A. (2017). A Path Already Travelled in Domestic Orders? From Fragmentation to Constitutionalisation in the Global Legal Order, *International Journal of Law in Context* 13 (3), pp. 225 - 252.
19. Peters, A. (2016). Fragmentation and Constitutionalization, in *Oxford Handbook of the Theory of International Law*, (Orford. A. & Hoffmann F. eds.), pp. 1011–1032.
20. Peters, A. (2017). The refinement of international law: From fragmentation to regime interaction and politicization. *International journal of constitutional law*, 15(3), pp.671-704.
21. Prost, M., & Clark, P. K. (2006). Unity, diversity and the fragmentation of international law: how much does the multiplication of international organizations really matter?. *Chinese Journal of International Law*, 5(2), pp. 341-370.
22. Rakić, B. (2009). Fragmentacija međunarodnog prava i evropsko pravo – na Zapadu nešto novo [Fragmentation of International Law And European Law – Something New on the Western Front], *Anali Pravnog fakulteta u Beogradu* 57 (1), p. 122. pp. 122-147.
23. Tedeschini, M. (2020). Historical Base and Legal Superstructure: Reading Contingency and Necessity in the Tadić Challenge. In: *Contingency in International Law: On the Possibility of Different Legal Histories*, eds Venzke, I & Jon Heller, K, Oxford University Press.
24. *The Prosecutor v Dusko Tadić* (1999) the International Criminal Tribunal for the former Yugoslavia, IT-94-1.
25. Trachtman, J. P. (2011). Fragmentation and coherence in international law. Available at SSRN 1908862. (12.7.2023.)
26. Treves, T. (2009). Fragmentation of international law: The judicial perspective. Agenda Internacional, 16(27), pp. 213-253.
27. Wimbledon case judgment of 17 August 1923 (France, Japan, United Kingdom, Italy v. Poland), P.C.I.J.Publications, 2, 1923, Ser. A No. 1.

CIP - Каталогизација у публикацији
Библиотека Матице српске, Нови Сад

34”2003/2023”(082)

МЕЂУНАРОДНИ научни скуп Правнички дани - проф. др Славко Царић (20 ; 2023 ; Нови Сад)
Две деценије развоја правне мисли : [зборник радова] = Two decades of the development of legal thought : [proceedings] / XX међународни научни скуп “Правнички дани - Проф. др Славко Царић”, Нови Сад, 06-07. октобар 2023, Нови Сад = XX International Scientific Meeting “Legal days - Prof. Slavko Carić, PhD”, October 6th and 7th 2023, Novi Sad ; [уредник Милан Почуча]. - Нови Сад : Универзитет Привредна академија, Правни факултет за привреду и правосуђе, 2023 (Нови Сад : Граф 021). - 678 стр. : табеле, граф. прикази ; 24 cm

Радови на срп. и енгл. језику. - Тираж 100. - Стр. 25-26: Уводна реч / Милан Почуча. - Напомене и библиографске референце уз текст. - Библиографија уз сваки рад. - Резиме на енгл. језику уз сваки рад.

ISBN 978-86-86121-58-5

а) Правна мисао - Развој - 2003-2023 - Зборници

COBISS.SR-ID 125609225