

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

Introduction: The Productive Friction between Regimes

MARGARET A. YOUNG

Defining regimes and theorising their interaction is a risky undertaking for international lawyers. Acknowledging the boundaries and relationships between fields of functional and professional specialisation – such as international trade law, human rights law and the law of the sea – may be read as a repudiation of international law's systemic nature, and of the common governing principles that are essential both to the discipline and to the idea of international law. At the same time, however, there is an urgent need for international lawyers to understand how different branches of norms and institutions overlap on issues of global concern. This extends from the problem of conflicting legal norms – which has already garnered broad attention – to novel explorations of the way in which, in the default situation of diversity and concurrent activities, norms and institutions from disparate legal regimes interact.

An understanding of regime interaction requires engagement with specialised regimes and with the often unseen interaction between them, as well as with key existing and emerging principles of international law. It demands a flexibility of approach that draws on legal, historical, doctrinal, institutional and sociological forms of analysis. It is grounded in real global issues that traverse regimes, such as marine pollution, trade in services, indigenous guardianship of biological diversity and the protection of foreign investors. It requires investigation into different stages of international law-making and adjudication – because regime interaction is not simply a matter for international judicial tribunals who seek to interpret conflicting norms, but is a constant feature in the setting of agendas for new negotiations, the ongoing norm elaboration within regimes and even the domestic policy coordination between state ministries and departments. It combines a critical awareness of the perils of conceiving of regime interaction – which include the reification of 'regimes' – with a constructive commitment to the

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

potential for productive friction and growth of set institutional and normative arrangements. In short, it needs to ‘face’ the complex issues that arise from the fragmentation and diversification of international law. This prodigious challenge is at the heart of this volume.

This introductory chapter provides a brief background to the phenomenon of the fragmentation of international law and its seminal literature, a tentative typology of the meanings of the term ‘regimes’, which has differed within international law and international relations scholarship, and a brief preview of the chapters.

A. The fragmentation of international law

The recognition that international law is made up of fragments of normative and institutional activity is not new. Notwithstanding the ambitious hopes represented by the United Nations system, there has never been a single global legislature or appellate court to mould a unified body of international law. Nor has there ever been a uniform will for such a system by sovereign states. Instead, states have implicitly or explicitly conceived of particular issues and problems – often at key historical moments of transition and often strategically – and responded by agreeing to new laws and supporting international organisations. So besides the wealth of laws stemming from treaties agreed under the auspices of the United Nations and its specialised agencies, there are additional branches of international trade law, human rights law, investment law and so on. And unlike the rapid increase in regulatory frameworks and agencies within domestic states – which has also happened at key moments of strategic and ideological change – there has been no hierarchical order to resolve normative and institutional conflicts. In recent times, this expansion of international treaties and associated international organisations and tribunals has generated a burgeoning interest in the effects of fragmentation: what it means and whether something ought to be done about it.

At the turn of the century, the International Law Commission of the United Nations (ILC) directed its attention to the fragmentation phenomenon, and later convened a ‘Study Group’ of ILC members. The ILC Study Group, chaired by Martti Koskenneimi, released a consolidated study into ‘The Fragmentation of International Law’ in 2006,¹ followed by

¹ ILC Study Group, ‘Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law’, Report of the Study Group of the International Law Commission finalized by Martti Koskenneimi (A/CN.4/L.682 and Corr.1) (13 April 2006).

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

INTRODUCTION

3

a set of conclusions by way of ‘practical guidelines to help thinking about and dealing with the issue of fragmentation in legal practice’.² Its terms of reference were to focus on situations where multiple international norms co-existed in relationships of interpretation or conflict.³ This focus augmented existing literature that has been preoccupied with the potential that conflicting norms could lead to disarray and disorder within the international legal system.⁴ Amongst that literature are calls for unity and coherence.

The ILC Study Group’s findings, although underpinned by a systemic understanding of international law, are modest, contextual and heterogenous. Its recommendations aim to be ‘concrete’ and ‘practice-oriented’.⁵ For example, the Study Group discusses the rule of *lex specialis derogat legi generali*, which is based on the primacy of the specific over the general, and observes that a more specific treaty will usually trump the general treaty.⁶ The Study Group also discusses the principle of *lex posterior derogat legi priori*, which gives primacy to a more recent treaty over an earlier one,⁷ and a ‘principle of harmonization’, according to which international norms are interpreted ‘so as to give rise to a single set of compatible obligations’.⁸ The Study Group points to peremptory norms, norms ‘accepted and recognised by the international community of states as a whole from which no derogation is permitted’,⁹ such as the prohibition of slavery or genocide, and emphasises that such norms will trump all others in an event of conflict.¹⁰ Special treaty clauses that set out the priority of

² ILC Study Group, ‘Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, Conclusions of the Work of the Study Group’ (A/CN.4/L.702) (18 July 2006).

³ See, e.g. ILC, ‘Conclusions’, Conclusion (2), 7–8 (distinguishing between situations where one norm assists in the interpretation of another and where the application of two norms would lead to incompatible decisions).

⁴ See the discussion in Martti Koskenniemi and Päivi Leino, ‘Fragmentation of International Law. Postmodern Anxieties?’ (2002) 15 *Leiden Journal of International Law* 553; see also Georges Abi-Saab, ‘Fragmentation or Unification: Some Concluding Remarks’ (1999) 31 *New York University Journal of International Law and Politics* 919, and associated writings in the influential journal symposium on ‘The Proliferation of International Tribunals: Piecing Together the Puzzle’.

⁵ ILC, ‘Conclusions’, p. 2.

⁶ Ibid., Conclusion (5), pp. 8–9.

⁷ Vienna Convention on the Law of Treaties (VCLT) Art. 30. See ILC, ‘Conclusions’, Conclusions (24)–(30), pp. 17–19.

⁸ ILC, *ibid.*, Conclusion (4), p. 8. Note also the Study Group’s reference to the harmonising effect of treaty interpretation under VCLT Art. 31(3)(c), which the Study Group calls a principle of ‘systemic integration’: Conclusions (17)–(23), pp. 13–17.

⁹ VCLT Art. 53.

¹⁰ ILC, ‘Conclusions’, Conclusion (32), p. 20.

conflicting norms, such as the provision in the United Nations Charter for Charter obligations to prevail over members' obligations under any other international agreement, are also supported.¹¹ The offered techniques are non-exhaustive, flexible, and not always in harmony themselves, given the possibility, for example, that the application of a *lex specialis* and *lex posterior* principle to actual or potential conflicts of norms could lead to different results.

The recommendations of the ILC Study Group were offered without regard to the institutional dimension of fragmentation. That the Study Group's mandate expressly excluded an analysis of the relations between various international institutions is understandable, given the ILC's position within the United Nations system, which may have precluded any substantive recommendations about institutional practices or hierarchical relations between international organisations. Notwithstanding the restricted nature of its mandate, however, the Study Group was well-aware of the growth in 'quasi-autonomous normative sources' arising at the international level,¹² and of the complexity associated with non-governmental participants and other actors.¹³ Indeed, it concludes its pioneering study by calling for further work to be done on 'the notion and operation of "regimes"'.¹⁴

B. A typology of 'regimes'

'Regimes' is a short-hand, non-legal term that has multiple and overlapping meanings in diverse literatures, including public international law and international relations (IR). These meanings are often qualified with adjectives such as 'self-contained' or 'special', as described in the following typology.

The International Court of Justice (ICJ) used the term 'self-contained regimes' to describe the rules of diplomatic law, in order to emphasise that the consequences of breach were contained within the prescriptive content of the primary rules.¹⁵ Although the ILC once drew upon this

¹¹ Such priority was based on UN Charter Art. 103 and the special character of the UN: see *ibid.*, Conclusion (36), p. 22.

¹² ILC, 'Analytical Study', p. 249.

¹³ *Ibid.*, p. 252.

¹⁴ *Ibid.*, p. 249.

¹⁵ *Consular Staff in Tehran (USA v. Iran)* [1979] ICJ Rep 7 (para. 86). See further Bruno Simma, 'Self-Contained Regimes' (1985) 16 *Netherlands Yearbook of International Law* 111, 115 and 117 (self-contained regimes as a limited sub-category of subsystems of international law, which embraced 'a full (exhaustive and definite) set of secondary rules'). For

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

INTRODUCTION

5

‘misleading doctrine’, it was subsequently abandoned.¹⁶ The ILC Study Group concludes that the term was a misnomer, and cautions against its use, although it concedes that groups of rules and principles concerned with a particular subject matter could be labelled as ‘special regimes’.¹⁷

The concept of ‘special regimes’ was useful for the ILC Study Group in conceptualising the operation of *lex specialis*. The Study Group identifies three possible understandings of the term:¹⁸

- (i) [narrowly, where] violation of a particular group of (primary) rules is accompanied by a special set of (secondary) rules concerning breach and reactions to breach [ie the diplomatic law as conceived by the ICJ in *Tehran*];
- (ii) [more broadly, where there is] a set of special rules, including rights and obligations, relating to a special subject matter. Such rules may concern a geographical area (eg a treaty on the protection of a particular river) or some substantive matter (eg a treaty on the regulation of the uses of a particular weapon). Such a special regime may emerge on the basis of a single treaty, several treaties, or treaty and treaties plus non-treaty developments (subsequent practice or customary law); and
- (iii) [most broadly, where] all the rules and principles that regulate a certain problem area are collected together so as to express a ‘special regime’. Expressions such as ‘law of the sea’, ‘humanitarian law’, ‘human rights law’, ‘environmental law’ and ‘trade law’, etc give expression to some such regimes. For interpretative purposes, such regimes may often be considered in their entirety.

These definitions of ‘special regimes’ contain differing assumptions, some of which are mirrored in other literature on ‘regimes’, including from IR scholarship. These differing assumptions deserve greater attention, affecting as they do the utility of the definitions for the current study of regime interaction.

There are four principal sets of assumptions that diverge in the definitions of regimes offered in the ILC and other literature. These relate to the actors, institutions, ‘stages’ of legal development and, finally, the possibility of systems-based or emergent practices within regimes. In short,

criticism of the Court’s use of the term, see James Crawford and Penelope Nevill in Ch. 8 of this volume, p. 259.

¹⁶ Pierre-Marie Dupuy, ‘The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice’ (1999) 31 *New York University Journal of International Law and Politics* 791, 797, and sources cited therein.

¹⁷ See ILC, ‘Analytical Study’, pp. 65–101 (esp 82); 492.

¹⁸ See ILC, ‘Conclusions’, pp. 11–12 (para. 12).

they are assumptions about the ‘who’, ‘what’, ‘when’ and ‘why’ inherent in ‘regimes’. Articulating the differences in these four sets of assumptions provides for a better understanding of the conceptions of ‘regimes’ and the associated study of regime interaction in this volume.

The first set of assumptions relate to the actors that make up regimes. Two of the ILC’s three conceptions of ‘special regimes’ rest on international norms and practices propagated by a single set of actors – namely, states. According to a positivist conception, some regimes apply to all states (for example, when treaties enjoy universal membership) while other regimes apply only to some (most commonly, because only a group of states have consented to be bound by a treaty). State participation and consent is the same foundation underpinning the notion of ‘regimes’ developed in international relations scholarship (notwithstanding the marked deviations in some of the other fundamentals of the discipline founded by Morgenthau as compared to international law). In contrast, states are *not* the sole influences operating in the ILC Study Group’s third conception of ‘special regimes’. This is akin to scholarship on private law and transnational arrangements, which consider the operation of ‘private regimes’ that coalesce around issues of functional specialisation but that are not necessarily motivated by – and may even exclude – the interests of states.¹⁹

‘Regimes’ in IR scholarship have been defined as ‘sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations’.²⁰ Given the background realist assumptions of the IR discipline, it is fair to imply that it is the intentions of states that are paramount in establishing regimes, as defined.²¹ The idea of ‘regimes’ in IR literature has spawned a massive literature that has sought to study discrete groups

¹⁹ See further Gunther Teubner and Peter Korth in Ch. 1 of this volume. A further distinction may be made in public law, where the term ‘regime’ has been used to emphasise both formal arrangements as well as the ‘temper and manner’ of sovereign rule: see Martin Loughlin, *The Idea of Public Law* (Oxford University Press, 2003) 31.

²⁰ Stephen Krasner, ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’ in Stephen Krasner (ed.), *International Regimes* (Cornell University Press, 1983) 1, 3. See also Oran Young, *International Cooperation: Building Regimes for Natural Resources and the Environment* (Cornell University Press, 1989).

²¹ For example, discussions of the ‘club model’ of multilateral cooperation emphasise that different international regimes are made up of specialised state bureaucrats and officials: see e.g. Robert Keohane and Joseph Nye, ‘The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy’ in Roger Porter et al. (eds.), *Efficiency, Equity, and Legitimacy: The Multilateral Trading System at the Millennium* (Brookings Institution Press, 2001) 264.

of norms under the rubric of ‘regime theory’²² – a normative turn that preceded current constructivist accounts.²³ ‘Regime theory’ has tended to analyse single regimes rather than regime interaction, although there is a growing body of work on ‘regime complexes’.²⁴ The IR definition of ‘regime’ has also been influential in international law scholarship.²⁵

Other conceptions of ‘regimes’ seek to include actors besides states within the term. The broadest of the ILC Study Group’s three notions of ‘special regimes’ emphasises a body of ‘functional specialization or teleological orientation’, such as environmental law or trade law.²⁶ This may imply that the ideals, objectives and activities of other actors, besides states, are formative to the regimes. If so, it requires one to consider the influence of ‘professional mindsets’ on regime interaction.²⁷ Technical experts, non-governmental organisations, secretariat staff, tribunal members, and other actors become part of the definition of regimes and thus essential to a study of regime interaction.

Such awareness underpins a sociological understanding of fragmentation – and the Weberian idea of functional specialisation – and informs the approach of scholars who acknowledge that the conflict between regimes in international law reflect wider societal conflicts. The associated studies of ‘discursive networks’ seek to demonstrate certain biases and preferences within regimes that preclude efforts at harmony or conflict resolution.²⁸ Fields of functional specialisation also underlie the conception of

²² See Krasner, *International Regimes*. The term ‘regime’ has other connotations within the wider political science literature, where it is sometimes used to denote governments or other systems of power (as reflected in the popular genteelism ‘regime change’).

²³ See e.g. Anne-Marie Slaughter, ‘International Law and International Relations Theory: A Dual Agenda’ (1993) 87 AJIL 205, 206; see also, on the tensions between early IR conceptions of law and the normativity of regime theory, Crawford and Nevill in Ch. 8 of this volume, pp. 258–259.

²⁴ See e.g. Kal Raustiala and David Victor, ‘The Regime Complex for Plant Genetic Resources’ (2004) 58 *International Organization* 277; Robert Keohane and David Victor, ‘The Regime Complex for Climate Change’ (2011) 9 *Perspectives on Politics* 7.

²⁵ E.g. Krasner’s definition is adopted by Jeffrey Dunoff in Ch. 5 of this volume, p. 139.

²⁶ ILC, ‘Analytical Study’, para. 136, p. 72.

²⁷ On the influence of experts on international law, see Martti Koskenniemi, ‘The Fate of Public International Law: Between Technique and Politics’ (2007) 70 *Modern Law Review* 1; David Kennedy, ‘The Mystery of Global Governance’ (2008) 34 *Ohio Northern University Law Review* 827. See also Koskenniemi in Ch. 10 of this volume. See also Andrew Lang in Ch. 4 and Margaret Young in Ch. 3 of this volume.

²⁸ Andreas Fischer-Lescano and Gunther Teubner, ‘Regime-collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law’ (2004) 25 *Michigan Journal of International Law* 999; Oren Perez, *Ecological Sensitivity and Global Legal Pluralism: Rethinking the Trade and Environment Conflict* (Hart Publishing, 2004).

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

'regulatory regimes' governing particular activities, such as taxation or finance arrangements.²⁹ Moreover, an awareness of the role of an expanded set of actors is central to IR scholarship on 'epistemic communities'.³⁰

That 'regimes' are *not* dependent on states is fundamental to the study of global, private legal relations identified as 'transnational regimes'.³¹ The problem of regime interaction is especially challenging in this context: the 'private' legal regimes, though not based on the interests of states as articulated in international fora, still seek a global, unifying reach. Like regimes in international law, transnational regimes such as *lex digitalis* are motivated by sectoral differentiation, but they are removed from any state-based political articulation. The resulting legal pluralism presents known and emerging challenges for governance,³² especially in the context of interacting regimes. Techniques from private international law are being offered in both the transnational and international context in an increasingly fluid and dynamic way.³³

The second set of assumptions inherent in the differing conceptions of 'regimes' relates to institutions. The role of international organisations is not apparent in any of the ILC's conceptions of 'special regimes', although arguably the two broader conceptions implicitly rely on some kind of institutional background to the relevant rules and principles. For example, intergovernmental rules relating to a geographical area have historically depended on administrative bodies.³⁴ The normative influence of such institutions on matters of international governance has received renewed attention in legal and interdisciplinary literature,³⁵ and has animated studies on 'linkages', 'global administrative law' and 'new

²⁹ Sol Picciotto, 'Constitutionalizing Multilevel Governance?' (2008) 6 *International Journal of Constitutional Law* 457, 463, and Sol Picciotto, *Regulating Global Corporate Capitalism* (Cambridge University Press, 2011) 22ff.

³⁰ See e.g. Peter Haas, 'Introduction: Epistemic Communities and International Policy Coordination' (1992) 46 *International Organization* 1.

³¹ See Teubner and Korth in Ch. 1 of this volume. The ILC Study Group calls for greater attention to transnational regimes (as well as international regimes) in its conclusions: see ILC, 'Analytical Study', p. 253.

³² See generally Christian Joerges, Inger-Johanne Sand and Gunther Teubner (eds.), *Transnational Governance and Constitutionalism* (Hart Publishing, 2004).

³³ Ralf Michaels and Joost Pauwelyn, 'Conflict of Norms or Conflict of Laws? Different Techniques in the Fragmentation of International Law' in Tomer Broude and Yuval Shany (eds.), *Multi-Sourced Equivalent Norms in International Law* (Hart Publishing, 2011) 19; see also Alex Mills, *The Confluence of Public and Private International Law* (Cambridge University Press, 2009).

³⁴ See e.g. reference to the Danube regime established by Danube riparian states discussed in Crawford and Nevill in Ch. 8 of this volume, p. 258.

³⁵ See e.g. José Alvarez, *International Organizations as Law-Makers* (Oxford University Press, 2005).

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

INTRODUCTION

9

governance', as well as fragmentation.³⁶ Examples of institutional interplay, particularly in the environmental sphere, enhance understanding of particular legal arrangements.³⁷

Regimes may well include or depend upon an 'institutionalized system of dealing with a particular field of behaviour'.³⁸ A combination of approaches would thus adopt a definition of regimes that includes institutions. Accordingly, regimes are sets of norms, decision-making procedures and *organisations* coalescing around functional issue-areas.³⁹

The third set of assumptions that deviate as between different regime definitions relate to what are loosely described here as 'stages' of legal development and application. International law is constantly made, implemented and enforced. These 'stages' are not always temporally sequenced; especially as law may be 'made' before it is formally negotiated or implemented.⁴⁰ Yet the literature on fragmentation has so far concentrated mainly on the resolution of conflicting norms,⁴¹ which occurs after laws are negotiated or have otherwise become custom. Such a focus is apparent in the first two of the ILC Study Group's conceptions of 'special regimes'. Yet its broadest conception allows for a more dynamic understanding of

³⁶ For a sample of the limitless references, see, on linkages, the symposium in (2002) 96:1 *American Journal of International Law*; on global administrative law, the symposium in (2005) 68 *Law and Contemporary Problems* 1–377; on new governance, the collection by Gráinne de Búrca and Joanne Scott (eds.), *Law and New Governance in the EU and the US* (Hart Publishing, 2006); on fragmentation of institutional authorities, the collection by Tomer Broude and Yuval Shany (eds.), *The Shifting Allocation of Authority in International Law* (Hart Publishing, 2008). For a focus on the role of dispute settlement bodies see e.g. Chester Brown, *A Common Law of International Adjudication* (Oxford University Press, 2007); Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press, 2002).

³⁷ See e.g. Olav Schram Stokke (ed.), *Governing High Seas Fisheries: The Interplay of Global and Regional Regimes* (Oxford University Press, 2001); see also Sebastian Oberthür and Thomas Gehring (eds.), *Institutional Interaction in Global Environmental Governance: Synergies and Conflict among International and EU Policies* (The MIT Press, 2006). On the 'cognitive openness' of particular legal institutions to ecological issues, see Perez, n. 28 above.

³⁸ Crawford and Nevill in Ch. 8 of this volume, p. 259 ('We would define a regime as a more or less institutionalized system of dealing with a particular field of behaviour, often associated with the governance of territory, which claims a substantial measure of comprehensiveness and exclusivity.') See also Steven Ratner, 'Regulatory Takings in Institutional Context: Beyond the Fear of Fragmented International Law' (2008) 102 *American Journal of International Law* 475, 485.

³⁹ As adopted in Young in Ch. 3 p. 86 and Nele Matz-Lück in Ch. 7 of this volume, pp. 204–205.

⁴⁰ As implicit in Lauterpacht's judicial function: see Hersch Lauterpacht, *The Function of Law in the International Community* (Clarendon Press, 1933).

⁴¹ But note the consideration of multi-sourced equivalent norms (MSENs): Tomer Broude and Yuval Shany (eds.), *Multi-Sourced Equivalent Norms in International Law* (Hart Publishing, 2011).

Cambridge University Press

978-1-107-01048-2 - Regime Interaction in International Law: Facing Fragmentation

Edited by Margaret A. Young

Excerpt

[More information](#)

legal processes, because a field of functional specialisation in its entirety, such as trade law, is subject to ongoing normative development and change, especially with respect to multilateral negotiations but also due to state practice.

The IR regime definitions – with their emphasis on the convergence of principles, norms, rules and decision-making procedures – also seem to accommodate different stages of legal development, although sometimes at the risk of ignoring issues of juris-generative power. Specialised legal knowledge, however well-organised, is not the same as a regime. A flexibility of understanding of stages of legal development within regimes must combine, in studies of regime interaction, a legal sense for the cross-fertilisation between relevant stages.⁴²

The fourth set of assumptions inherent within the current definitions of regimes relate to the possibility of systems-based or emergent practices. One of the dangers of discussions about ‘regimes’ is that they risk essentialising certain bodies of laws and principles. When a broad definition is used, such as the ILC Study Group’s third conception, the danger is particularly great, because the multiplicitous and often conflicting perspectives and preferences within professional circles may be reduced to a single set of ideas.⁴³ In addition, notions of ‘regimes’ obscure the generality of international law and may distort our understanding about the overall international legal system.⁴⁴ It makes the use of metaphors in the regime literature – such as ‘ships’, ‘islands’, ‘arenas’ and ‘platforms’ – seem rather imprudent.

Yet notwithstanding the problems with reification of regimes, it remains the case that there is a certain ‘stickiness’ within particular bodies of laws, institutions and professional specialisations, especially those that are constituted by specialist courts and tribunals.⁴⁵ The unwieldy and intransigent nature of regimes is often intentional, and may reflect a wish by powerful states to protect their dominance.⁴⁶ Moreover, functional

⁴² As adopted especially by Dunoff in Ch. 5, Young in Ch. 3 and Matz-Lück in Ch. 7 of this volume.

⁴³ This was noted early in the ‘linkage’ literature surrounding ‘trade and ...’ issues: see e.g. Jeffrey Dunoff, ‘Rethinking International Trade’ (1998) 19 *University of Pennsylvania Journal of International Economic Law* 347, 384; see also by Andrew Lang, ‘Reflecting on “Linkage”: Cognitive and Institutional Change in The International Trading System’ (2007) 70 *Modern Law Review* 523, 538; see also Koskenniemi, ‘The Fate of Public International Law’, n. 27 above, 27 (warning about the dangers of reducing a ‘trade’ or ‘environment’ regime to a single policy upon which to ground cooperation).

⁴⁴ Crawford and Nevill in Ch. 8 of this volume, pp. 258–259.

⁴⁵ Ibid, p. 257.

⁴⁶ Eyal Benvenisti and George W. Downs, ‘The Empire’s New Clothes: Political Economy and the Fragmentation of International Law’ (2007) 60 *Stanford Law Review* 595. Conversely,