PART II

CONVERGING AND DIVERGING NORMATIVE TRENDS
IN THE INTERNATIONAL COMMUNITY
CHAPTER SEVEN

INTEGRATING THE FRAGMENTED INTERNATIONAL PUBLIC ORDER: A THEORETICAL PERSPECTIVE

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1. Introduction

Set off against the rules of traditional international law, conventions governing global environmental protection, international protection of human rights and the institutionalisation of international crimes (e.g. the International Criminal Court) have complicated and diversified not only the interests protected by the rules and the addressees of those rules, but also the procedures for dispute settlement and implementation thereof. This diversification in the making and the implementation of international rules has resulted in the so-called ‘fragmentation’ of the international legal order. At present, a significant problem facing international lawyers, both at a theoretical and a practical level, is how to characterise this phenomenon, and how to resolve the problem this fragmentation seems to represent. This chapter both deals with this characterisation and with the question how to integrate the fragmented international order.

2. Characterising the Fragmentation of Public International Law

2.1. Aspects of Fragmentation

So far, two aspects of the phenomenon of the fragmentation of public international law have taken centre stage: conflicting norms and conflicting authorities. The first of these concerns the problem of when norms of different legal regimes are in conflict. The application of one norm may constitute a violation of another conflicting norm, thus making it difficult to apply these conflicting norms consistently in the international community as a whole. The other aspect of fragmentation is concerned with the situation in which inconsistencies arise in the application and interpretation of a rule, or in the characterisation of conflicting rules, between the dispute settlement mechanisms of different legal regimes that are not hierarchically organised. Here, the problem arises from the conflict of competing authorities that purport to prioritise their own legal regimes.