

**FRAGMENTATION OF INTERNATIONAL LAW
DIFFICULTIES ARISING FROM THE DIVERSIFICATION
AND EXPANSION OF INTERNATIONAL LAW**

At its fifty-second session, in 2000, the International Law Commission decided to include the topic “Risks ensuing from fragmentation of international law” in its programme of work, following the recommendation of the Working Group on the Long-Term Programme of Work (A/55/10). At its fifty-fifth session, in 2000, the General Assembly took note of paragraphs 726 to 733 of the report of the International Law Commission with regard to its long-term programme of work, and the syllabuses on new topics annexed to the report (resolution 55/152 of 12 December 2000). At its fifty-sixth session, in 2001, the General Assembly requested the Commission to give further consideration to the topics to be included in its long-term programme of work, having due regard to comments made by Governments in the Sixth Committee (resolution 56/82 of 12 December 2001) at its fifty-fifth session.

At its fifty-fourth session, in 2002, the Commission included this topic in its programme of work and also established an open-ended Study Group on the Fragmentation of International Law, chaired by Mr. Bruno Simma (A/57/10). The Study Group’s first report on the fragmentation of international law was considered by the Commission (A.CN.4/L.628 and Corr.1). The report discussed, *inter alia*, the procedural issues involved, the methodology and format of work, and suggestions as to the possible outcome of the Commission’s work. The Commission agreed on a number of recommendations and amended the title of the topic to read as “Fragmentation of international law: difficulties arising from diversification and expansion of international law”. The Commission also agreed to the preparation of the following series of studies to be undertaken: (a) the function and scope of the *lex specialis* rule and the question of “self-contained regimes”; (b) the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties”, in the context of general developments in international law and concerns of the international community; (c) the application of successive treaties relating to the same subject matter; (d) the modification of multilateral treaties between certain of the parties only; and (e) hierarchy in international law: *jus cogens*, obligations *erga omnes*, and Article 103 of the Charter of the United Nations, as conflict rules (A/57/10).

On 19 December 2002, the General Assembly, in resolution 57/21, took note of the Commission’s decision to include “Fragmentation of international law: difficulties arising from diversification and expansion of international law” in its programme of work.

At its fifty-fifth session, in 2003, the Commission once again established an open-ended Study Group on this topic and appointed Mr. Martii Koskeniemi as Chairman to succeed Mr. Bruno Simma who had resigned from the Commission (A/58/10). The Study Group submitted a second report to the Commission containing a summary of its discussions (A/CN.4/L.644). The Study Group held a preliminary discussion on the outline prepared by the new Chairman of the Study Group on the first subject identified for study, namely “The function and the scope of the *lex specialis* rule and the question of self-contained regimes”. The Study Group also established a tentative schedule of work for the preparation of the studies to be carried out during the remainder of the quinquennium (2003 to 2006) and distributed work among its members for the preparation of outlines on the four remaining studies endorsed by the Commission in 2002.

At its fifty-sixth session, in 2004, the Commission reconstituted the Study Group (A/59/10). The Study Group considered the preliminary report on the study on the

“Function and scope of the *lex specialis* rule and the question of ‘self-contained regimes’” and discussed the outlines prepared in respect of the other remaining studies. Based on the studies it had considered, the Study Group agreed to draw conclusions regarding the nature and consequences of the phenomenon of “fragmentation” of international law, with the intention of developing a collective document that would be submitted to the Commission in 2006 (A/CN.4/L.663.Rev.1).

At the fifty-seventh session of the Commission, in 2005, the Study Group was again reconstituted (A/60/10). The Study Group had before it the following: (a) a memorandum on regionalism in the context of the study on the “Function and scope of the *lex specialis* rule and the question of ‘self-contained regimes’”; (b) a study on the interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (article 31, paragraph 3 (c), of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (c) a study on the application of successive treaties relating to the same subject matter (article 30 of the Vienna Convention on the Law of Treaties); (d) a study on the modification of multilateral treaties between certain of the parties only (article 41 of the Vienna Convention on the Law of Treaties); and (e) a study on hierarchy in international law *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules. The Study Group also had before it an informal paper on the “Disconnection Clause” (A/CN.4/L.676). The Study Group reaffirmed its approach to focus on the substantive aspects of fragmentation in the light of the 1969 Vienna Convention on the Law of Treaties. The Study Group also reaffirmed its intention to submit a consolidated study as well as a set of conclusions, guidelines or principles to the fifty-eighth session of the Commission in 2006.

At its fifty-eighth session, in 2006, the Commission finalized its work on fragmentation of international law and took note of the set of forty-two conclusions contained in the sixth report of the Study Group (A/CN.4/L.702), which had to be read in connection with the analytical study, finalized by the Chairman of the Study Group, on which they were based (A/CN.4/L.682 and Corr.1). The analytical study summarized and analyzed the phenomenon of fragmentation on the basis of studies prepared by the various members of the Study Group and took into account the comments made in the Study Group. The Commission, after taking note of the conclusions of the Study Group, commended them to the attention of the General Assembly (A/61/10).

On 4 December 2006, the General Assembly adopted resolution 61/34, in which it took note of the conclusions of the Commission’s Study Group on the topic “Fragmentation of international law: difficulties arising from diversification and expansion of international law,” together with the analytical study on which they were based.