Mads Andenas and Eirik Bjorge (eds.), *A Farewell to Fragmentation: Reassertion and Convergence in International Law*, Cambridge, Cambridge University Press, 2015, x+593 pp., ISBN 978-1-107-08209-0, (hb), £94.99
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The title of *A Farewell to Fragmentation* seems to pay homage to Ernest Hemingway's novel *A Farewell to Arms*.[1] (Or, possibly, to the short George Peele poem of the same name,[2] or even the progressive rock band Rush's album *A Farewell to Kings*.) Like Hemingway (and Peele) envisaged tired soldiers bidding farewell to weapons and battle, the editors of *A Farewell to Arms* encourage international lawyers to do the same to the debates (or battles?) over the purported fragmentation of their discipline.

In 2006, nine years prior to the publication of *A Farewell to Fragmentation*, the International Law Commission released its *Fragmentation Report*.[3] The report is perhaps the most significant contribution to the topic in recent times, even though there has been no shortage of other writings.[4] Many of these other writings have, however, had a narrow focus, for example on a specific form of fragmentation or on fragmentation in some specific field of international law. *A Farewell to Fragmentation* instead takes the same perspective as the ILC's Report, by focusing on fragmentation as such in international law generally. An overall finding is that fragmentation in international law is now outweighed by 'convergence and unity', and that this is helped in particular by the work of the International Court of Justice (ICJ) and 'most other courts and tribunals, treaty bodies and United Nations (UN) institutions, such as the International Law Commission (ILC) and special procedures of various kinds'.[5]

The ICTY's departure in the *Tadić* case[6] from the 'effective control' test for attribution developed by the ICJ in the *Nicaragua* case[7] and adopted by the ILC in its articles on the *Responsibility of States for Internationally Wrongful Acts*[8] is a famous example of 'fragmentation' between international courts and tribunals. However, as Sir Christopher Greenwood points out in his chapter, it is precisely that: a single example.[9]

1 E. Hemingway, *A Farewell to Arms* (1929).
2 In G. Peele, *Polyhymnia* (1590).
3 ILC Study Group on the Fragmentation of International Law, *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 Koskenniemi*, UN Doc. A/CN.4/L.682 and Add.1 and Corr. 1, 2006; Study Group on the Fragmentation of International Law, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Conclusions*, UN Doc. A/CN.4/L.702, 2006.
4 E.g., J. Charney. 'Is International Law Threatened by Multiple International Tribunals?', (1998) 271 *Recueil des cours* 271 101–382; M. Young (ed.) *Regime Interaction in International Law: Facing Fragmentation* (2012); P. Webb, *International Judicial Integration and Fragmentation* (2013); D.H. Joyner and M. Roscini, *Non-Proliferation Law as a Special Regime: A Contribution to Fragmentation Theory in International Law* (2012); O.K. Fauchald and A. Nollkaemper (eds.), *The Practice of International and National Courts and the (De-)Fragmentation of International Law* (2012).
5 P. 2.
6 *Prosecutor v. Tadić*, Judgement, Case no. IT-94-1-A, A. Ch., 15 July 1999.
7 *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, [1986] ICJ Rep. 14.
8 ILC, Responsibility of States for Internationally Wrongful Acts, 2001 YILC, vol. II (Part Two), annexed to General Assembly Resolution 56/83 of 12 December 2001.
9 Pp. 52–3.

The book goes into a variety of specific examples of the opposite, where international courts and tribunals and treaty bodies have chosen approaches and solutions that promote convergence rather than fragmentation. Many of the book's chapters outline this development in limited areas of international law, including in the relationship between the ICJ and human rights institutions,[10] between the European Court of Human Rights (ECtHR) and general international law,[11] between different human rights institutions,[12] between the ICJ and the ECtHR,[13] between the ICJ and domestic courts,[14] and between international courts and tribunals generally,[15] and in the fields of provisional measures,[16] state immunity[17] and treaty interpretation.[18] The chapters mostly discuss the contributions of international courts and tribunals and treaty bodies, and in particular the ICJ.[19]

When taken together, these chapters support the book's overall argument that international law currently sees more convergence than to fragmentation.

While there is no doctrine of binding 'precedent' in international law, writers have repeatedly stated that the decisions of the ICJ have a unique position at the top of an informal hierarchy of 'impact' (or 'weight', 'influence' or similar terms). As argued in the book, this enables the ICJ to make a significant contribution to the promotion of convergence. In doing so the ICJ should engage with the practice of other courts and tribunals, as Philippa Webb emphasizes in her chapter.[20] The relationship between the ICJ and others should not be a one-way street.

A Farewell to Fragmentation is divided into two main parts, the first focusing on 'courts' and the second on 'sources'. In their introduction ('Introduction: from fragmentation to convergence in international law'), the Editors draw a distinction between 'substantive', 'institutional', and 'methodological' fragmentation, which the overall structure of the book builds on. 'Substantive' fragmentation concerns the 'autonomy' of 'different regimes or disciplines' in international law.[21] 'Institu-

10 Sir N. Rodley, 'The International Court of Justice and Human Rights Bodies', in M. Andenas and E. Bjorge (eds.), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (2015), 87; V. Gowland-Debbas, 'The ICJ and the Challenges of Human Rights Law', in Andenas and Bjorge, ibid., at 109.

11 M. Forowicz, 'Factors Influencing the Reception of International Law in the ECtHR's Case Law: An Overview', in Andenas and Bjorge, ibid., at 191.

12 M. Payandeh, 'Fragmentation Within International Human Rights Law', in Andenas and Bjorge, ibid., at 297.

13 D. Spielmann, 'Fragmentation or Partnership? The Reception of ICJ Case-Law by the European Court of Human Rights', in Andenas and Bjorge, ibid., at 173.

14 V. Fikfak, 'Reinforcing the ICJ's Central International Role? Domestic Courts' Enforcement of ICJ Decisions and Opinions', in Andenas and Bjorge, ibid., at 343.

15 P. Webb, 'Factors Influencing Fragmentation and Convergence in International Courts', in Andenas and Bjorge, ibid., at 146.

16 C.A. Miles, 'The Influence of the International Court of Justice on the Law of Provisional Measures', in Andenas and Bjorge, ibid., at 218.

17 A. Orakhelashvili, 'State Practice, Treaty Practice and State Immunity in International and English Law', in Andenas and Bjorge, ibid., at 407.

18 R. Kolb, 'Is there a subject-matter ontology in interpretation of international legal norms?', in Andenas and Bjorge, ibid.; P. Palchetti, 'Halfway Between Fragmentation and Convergence: The Role of the Rules of the Organization in the Interpretation of Constituent Treaties', in Andenas and Bjorge, ibid., at 486; E. Bjorge, 'The Convergence of the Methods of Treaty Interpretation', in Andenas and Bjorge, ibid., at 498.

19 The convergence effect of the ILC's most important recent work, Responsibility of States for Internationally Wrongful Acts (*supra*, note 7), may be explored further in a forthcoming book by S. Olleson, *State Responsibility before International and Domestic Courts: The Impact and Influence of the ILC Articles* (forthcoming).

20 Pp. 165–9.

21 P. 4.

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tional' fragmentation concerns how international law has dealt with 'institutional proliferation'.[22] 'Methodological' fragmentation is about potential differences in how different courts and tribunals in different fields of international law approach sources of international law.[23]

The distinctions between these concepts are clear in principle, but may be blurred in practice. For example, since 'institutions' apply 'methodology', and 'methodology' is applied by 'institutions', the one often cannot be discussed without the other. The point can be illustrated by comparing the chapters of Cameron A. Miles on 'The influence of the ICJ on the law of provisional measures' and Alexander Orakhelashvili on 'State practice, treaty practice and State immunity in international and English law'. Miles examines how the law of provisional measures is applied in similar ways by different tribunals, who apparently follow the ICJ and its Statute.[24] Orakhelashvili investigates the extent of state immunity in international law, by examining the practice of international courts and tribunals, as well as state practice and national (English) law. The two chapters are fundamentally similar, in that they both investigate how certain actors have approached a specific question of international law. Yet despite this similarity, Miles' chapter is classed under 'courts', while Orakhelashvili's is under 'sources'. The chapters approach their respective questions in different ways. Miles focuses strictly on international courts and tribunals, while Orakhelashvili takes a broader approach by also including state practice and national law. Thus the classification can be justified, even though it also illustrates the fluidity of the distinction between 'institutional' and 'methodological' fragmentation.

The first part of the book, on 'courts', is further subdivided into two parts, one focusing the 'International Court', the other on 'regimes'. The second part of the book, on 'sources', is also further subdivided into two parts, on 'Custom and Jus Cogens' and 'Treaty Interpretation'.

Thus one of four parts of the book focuses exclusively on treaty interpretation. Treaty interpretation is only one part of the law of treaties, which is one part the sources of international law. It nonetheless has significant practical importance. For example, international courts and tribunals must often interpret treaties, and must do so explicitly. This also means that treaty interpretation lends itself to systematic research.

Robert Kolb's chapter ('Is there a subject-matter ontology in interpretation of international legal norms?'), is thematically similar to Eirik Bjorge's ('The convergence of the methods of treaty interpretation: Different regimes, different methods of interpretation?'). Both discuss fragmentation in treaty interpretation. However the two chapters neither overlap nor contradict each other. Bjorge focuses on the role of the ICJ in combatting fragmentation. Kolb's main point is that even if the *approaches* taken by different international courts and tribunals are different, their

22 P. 6.
23 Pp. 7–12.
24 Statute of the International Court of Justice, 24 October 1945, 188 UNTS 137.

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underlying methodology (in this case the VCLT Arts. 31–3[25] and equivalent customary law) can be the same.[26] This is an important message in the fragmentation debate.

This point is also borne out by recent publications that discuss treaty interpretation as a unified concept. This includes general works such as Gardiner's *Treaty Interpretation*,[27] Bjorge's *The Evolutionary Interpretation of Treaties*,[28] Linderfalk's *On the Interpretation of Treaties*,[29] and Orakhelashvili's *The Interpretation of Acts and Rules in Public International Law*.[30] Even works that focus on treaty interpretation practices within a specific area of international law, such as Van Damme's *Treaty Interpretation by the WTO Appellate Body*[31] and Weeramantry's *Treaty Interpretation in Investment Arbitration*,[32] situate these practices within the context of general international law.

Book editors are generally faced with a choice between imposing a strict predetermined plan, or instead, accepting contributions that simply relate to some overall theme. Treaty commentaries are at one extreme, with their structure and content being determined by the relevant treaty. At the other extreme are edited books that look more like journal issues, with chapters that have only a loose substantive connection between them. *A Farewell to Fragmentation* balances between these extremes. It seems clear that (at least most of) the contributors have proposed their topics themselves. Yet the book maintains a collective and coherent argument, in that most chapters contribute to explaining how international law favours convergence over fragmentation.

The potential audience of *A Farewell to Fragmentation* should include anyone, including academics, students, and practitioners, who is interested in the debate(s) over fragmentation in international law. Since its overall argument is that fragmentation is now outweighed by its opposite, it may also interest those who are tired of hearing about fragmentation. The book can also be read as a follow-up to the ILC's *Fragmentation Report*, in that it assesses what direction international law has taken since the publication of that report. In this connection the book benefits from its primarily empirical focus (looking at whether fragmentation takes place in practice rather than more theoretical issues), from being an edited book (with a variety of voices from different perspectives), and from a distinguished list of contributors that lends authority to its conclusions (the list includes two ICJ judges, the President of the European Court of Human Rights, and the Chair of UN Human Rights Committee, and one of the editors is a former Chair of the UN Working Group on Arbitrary Detention).

The book's argument is convincing, and it may well achieve the ambition that the publisher has stated on its cover, which is to 'be the last word on the fragmentation debate'. However, as the book itself points out, the debate is old and its orthodoxy

25 1969 Vienna Convention on the Law of Treaties, 1155 UNTS 331.
26 Pp. 473, 484.
27 R.K. Gardiner, *Treaty Interpretation* (2nd edn., 2015).
28 E. Bjorge, *The Evolutionary Interpretation of Treaties* (2014).
29 U. Linderfalk, *On the Interpretation of Treaties* (2007).
30 A. Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (2008).
31 I. Van Damme, *Treaty Interpretation by the WTO Appellate Body* (2009).
32 J. Romesh Weeramantry, *Treaty Interpretation in Investment Arbitration* (2012).

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has shifted over time.[33] It may do so again, and in either direction. This will depend, among others things, on the attitudes of judges, scholars, and states and state officials. For example, to the extent that the current convergence is driven by the practices of the ICJ and other institutions, it might also be reversed by those institutions. How this plays out in the future may depend on, for example, the disposition of individual members, what cases that are brought before different courts and tribunals, substantive developments in international law, and external political contexts.

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Pierre-Marie Dupuy and Jorge E. Viñuales (eds.), *Harnessing Foreign Investment to Promote Environmental Protection. Incentives and Safeguards*, Cambridge, Cambridge University Press, 2013, 470 pp., ISBN 9781107030770 (hardback), US$129,99
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The international community is now aware that there are urgent environmental challenges that need to be addressed. Important changes need to be introduced in the common behaviours of peoples in their everyday lives, such as the industrial production processes, the public and private transportation systems or the way houses are heated. These and many other core changes of contemporary society come at a cost and require shifting substantial financing towards a greener and low-carbon economy in industrialized countries and – even more challenging – in developing states and emerging economies. These are among the crucial matters that were recently discussed during the climate change negotiations under the UN Framework Convention on Climate Change (UNFCCC) which resulted in the Paris Agreement.[1] The Paris Agreement envisages reinforced financial commitments of developed countries for mitigation and adaptation initiatives to promote the transition to low-carbon economies in developing states and emerging countries and encourages the participation of the private sector.[2] Many politicians, negotiators, businessmen, scholars of various disciplines are focusing their attention on how to encourage and implement these changes and who should pay for them.

Touching upon these challenges, this book describes various types of 'green' private sector investments, assesses their contribution to environmental protection and highlights their valuable aspects, as well as their shortcomings. Considering the interface of legal, economic and policy aspects of these matters, this volume

33 Pp. 503–5.

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1 The Paris Agreement consists of a preamble and 29 articles and is found in an Annex to a Decision (*Draft Decision -/CP.21*) of the Conference of the Parties that provides for interpretative and complementary guidelines on its application. As regards its legal nature, the Agreement is an international treaty which will be open for signature by states on 22 April 2016.

2 Paris Agreement, Art. 9.