In the past decade or so international lawyers have become very interested – not to say obsessed – about the “fragmentation” of their field. The phenomenon has been understood to take two forms: normative and institutional. By normative fragmentation I mean the experience that what used to be a single unitary system of rules and principles called “public international law” has been breaking down into narrower and more specialized systems of law and legal knowledge such as “human rights law”, “trade law”, “environmental law”, “intellectual property law”, “humanitarian law” and so on. Each of these more or less new fields has energetically asserted its independence from the old general law, understood often to be quite problematic in its effects. In reaction, the specialized systems have developed their own leading principles, their specific professional ethos and objectives that have sometimes quite significantly departed from those of public international law.

Simultaneously, an “institutional fragmentation” has taken place to the extent that specialized organizations, committees, courts and tribunals have mushroomed in the international scene, each paying less deference to “old” international law than to their own rules and principles. Human rights bodies apply human rights law, environmental institutions environmental law, criminal tribunals international criminal law and so on. Concern over fragmentation began in the late 1990s precisely as a worry over the effects of proliferation over the coherence of international law. Might the new institutions develop forms or practice and jurisprudence not only to deviate from but to stand in actual conflict with the principles of public international law? Was the centre collapsing?

It may seem odd that public international lawyers have woken to the phenomenon of legal fragmentation only very recently. After all, the experience of tradition breaking down under the pressure of scientific, technological and economic developments is surely the quintessential experience of modernity, anxiously analyzed by sociological classics such as Emile Durkheim or Max Weber and more recently formalized by systems theory and ideas about legal pluralism and polycentricity. The breakdown of homogenous traditions through the division of labour and the diversification of the forms of life of social classes, groups and professions must have been one of the most important legacies of the 20th century to the future. For some time, nation-states and nationalism provided the only remaining centre around which different social groups could rally to reaffirm their belonging to some unity, to live through some shared experience. With globalization and “hyper-modernity”, that alternative may no longer be generally available. And there are serious doubts about the beneficial character of nationalism as a unifying force, especially among internationalists.

Innumerable reports have been published and articles and essays written in the past few years on the reality and significance of fragmentation. In this book Mario Prost discusses critically most of the points of view put forward, paying especial attention to the kaleidoscopic nature of the phenomenon itself, the way it changes form depending on the direction from which it is surveyed and the interest of the surveyor. In fact, I know of no more intelligent
or useful discussion of the phenomenon in its various aspects than the one offered here. No significant perspective is left out, no concern unmentioned and the problems in any suggested “solution” are meticulously detailed. Already for providing the reader a full view of the many different ways in which international lawyers have been affected by the experience of fragmentation, this book is important. But that is not where I see its principal merit. The main lesson I draw from Unitas multiplex: Unités et fragmentations en droit international is that a certain change of perspective is needed, that the “problem of fragmentation” does not lie at all where we thought it lay – namely in the social and political world – but much closer to home, in the experience that we have of the world. Let me explain.

The world, including the legal world, is always a complex of disparate elements and relations whose articulation is the task of the scientific and professional, but also lay vocabularies. As a unity of its elements, as Mario Prost points out in Chapters 1 and 2 of this work, the world can always be described as a single whole – but also as an aggregate of its parts. E pluribus unum. What we see “out there” is a function of the way our vocabularies are able to explain a multifaceted world to us as a meaningful whole and help us orient ourselves in it. Sometimes we feel our inherited languages explain to us the world in a perfectly adequate and workable fashion. But at other times we struggle to understand what is going on as old concepts and ways of thinking block our ability to recognize and react to the new. The latter experience often appears to us as the “fragmentation” of the familiar world into bits and pieces that seem hard to understand or relate to each other in some greater scheme. In the latter case, “fragmentation” is less about the legal world “out there”. It is, instead, a feature of our experience of the world “in here”, transmitted to us by the weakness of our professional languages, perhaps a sense of loss of control on a world we used to be able to operate. For much of the 20th century, international law could explain the international world in a reasonably satisfactory way, pointing out things that seemed relevant, laying out projects of reform and enabling us to find our way in diplomacy and politics. It was a useful tool for understanding the world and acting in it. But in the late 20th century, that sense of familiarity and control was lost. Events of great importance took place in which international law played no role, raising novel concerns and opportunities for new groups and professions. New technical vocabularies were created to give expression to new preferences: human rights, environment, financial regulation, global trade, multiculturalism and so on. For all such languages – and their connected groups of experts – public international law seemed distant and stale, part of an old world that was best left behind. How remote were the interminable debates in the International Law Commission on state responsibility, or the principles of interpretation of the Vienna Convention on the Law of Treaties from what really counted in the world! When journalists speak of the “Hague Court”, they mean either the ICTY or the ICC and are surprised to hear that the city has also housed the International Court of Justice, the principal juridical organ of the UN.

So fragmentation is not something situated in what sociologists might call the real world but closer to home – “in here” as an experience of loss of control and marginality felt within a group of experts identifiable as public international lawyers. This resembles the way the above-mentioned sociological classics saw the nature of modernity at the turn of the 20th century, connecting it to path-breaking studies on alienation, suicide, anomie (Durkheim) and the de-formalization of modern law in the context of increasing complexity (Weber). Loss
of control bred anxiety. To deal with it, what was needed was conceptual and psychological analysis, perhaps psychoanalysis. “How do you feel about it?” “What does it signify to you?” It is quite remarkable that then, as now, different people may feel the same situation as one of “unity” or one of “fragmentation”. But if we relate those perceptions not to the way the world is but what experience of the world we have, then the puzzle is resolved. In the world we have inherited it was always the case that while some felt in control others did not.

The great merit of the conceptual analysis carried out by Mario Prost lies in the way it opens the door for understanding the nature of the anxiety that bears the name of “fragmentation” in international law. Both “unity” and “fragmentation”, the book shows, are experiences that international lawyers have of the world. Those experiences result from the way the object – international law – has been or may be experienced from different participant perspectives. As Prost writes – “La même instance, selon la perspective retenue, peut représenter tantôt la fragmentation, tantôt la continuité, et tantôt l’unité” (“depending on one’s point of view, the same norm or decision can be interpreted as fragmentation, continuation or unity”) (page 219). This does not mean the phenomenon could not be analysed, however, as is done here, by examining it from “material”, “formal”, “cultural” or “logical” perspectives. The choice of the language, again, depends on where the interest of the observing subject – the lawyer – lies. The analysis demonstrates the power and limits of the resources (vocabularies, techniques) available for international lawyers to think about unity and fragmentation and to choose their argumentative strategies as they participate in the institutional struggles in the professional everyday. Perhaps even more importantly, the analysis begins the work of reconceiving international law in terms of the imagination and experience of a group of men and women who have chosen legal vocabularies as their access-points for engagement with the world. No doubt much needs to be done to update international law into a significant platform over which important questions of international government are decided and resources are distributed. Problems relative to confidence and anxiety, the sense of control and lack of control need to be addressed. But in the end, the experience we have of the world is really the only reliable guide we have to how we should move in it. To deal with the international world today it is necessary to first dissect the problems of unity and fragmentation. To have carried out this work with elegance and skill international lawyers owe a great debt to Mario Prost. For only once it is done, it becomes possible to move from how the world feels to us to what should be done with it.

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