NEW VOICES

TWO KINDS OF SYSTEMIC CONSISTENCY IN INTERNATIONAL LAW

Henrique Marcos*

The systemic view of international law has grown in popularity in recent decades. Even central authors who endorse the fragmentation of international law have recognised it as a legal system. Despite its popularity, however, some unresolved issues still obscure the systemic view. If international law is a system, does that mean it has no rule conflicts? Or is it that a system can handle these conflicts in a way that preserves legal consistency? In this respect, this article aims to contribute to a better understanding of international law as a legal system by rationally reconstructing the concept of consistency in international law. To make its argument,

* Lecturer at the Department of Foundations of Law, Maastricht University. Double PhD in Law at Maastricht University and the University of São Paulo. MSc in Legal Sciences at the Federal University of Paraíba (UFPB). Member of the University of São Paulo's Centre for Studies on International Courts (NETI-USP) and Maastricht University's Globalization and Law Network (GLaw-Net). This research was partially financed by a 2021 international internship grant from the CAPES Foundation (Brazil).

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this research distinguishes rules from statements, as well as the consistency of rulesets (R-consistency) from the consistency of statement sets (S-consistency). With this differentiation, this article then explains how the internal logic of international law allows subjects to derive an S-consistent set of legal consequences even if the ruleset of international law is R-inconsistent.

Keywords: International Law; Legal Systems; Rule Conflicts; Legal Logic; Legal Reasoning

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I. INTRODUCTION

'International law is a legal system.'[1] Thus concludes the International Law Commission (ILC). With this clear statement, the ILC closes its study on the 'fragmentation' of international law by adopting a systemic view. This view recognises that international law rules interact with and should be interpreted in light of other rules. As a legal system, international law is not

[1] International Law Commission, 'Conclusions of the Study Group of the International Law Commission on the Fragmentation of International Law' (2006) UN Doc A/CN.4/L.702 para 14.

a random collection of rules. Rather, its rules are interconnected in meaningful ways.

The systemic view of international law has grown in popularity in recent decades. Even Koskenniemi, one of the strongest supporters of the fragmentarian view,[2] argued in a paper published in the first issue of the European Journal of Legal Studies (EJLS) that international law is a unified system as there is no 'special regime' outside of it.[3] There are also passionate allies of the systemic view who have always disagreed with the idea that international law is fragmented. Dupuy is a good example. In an article published in that same issue of the EJLS,[4] he portrayed systematicity and fragmentation as opposites. Dupuy argued that the fragmentation debate is misguided and that efforts should be directed towards understanding the increasing complexity of the international legal system. He maintained that the expansion of international law has not resulted in its fragmentation. Instead, the international legal order is systemic, unified, and consistent due to the significant interrelationship among its rules.

Questions concerning the systemic character of international law are deeply rooted in legal scholarship, and most international lawyers have a general idea of what it means to think of international law as a system. Nonetheless, there are still unresolved questions that obscure the systemic view. If international law is a system, does that mean it has no rule conflicts? Or can the system handle these conflicts in a way that preserves legal consistency? These questions do not have a definite answer, and different lawyers may offer different responses based on their interpretations of international law.

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[2] For an in-depth analysis of Koskenniemi's fragmentarian views, see Sean D Murphy, 'Deconstructing Fragmentation: Koskenniemi's 2006 ILC Project' (2013) 27 Temple International & Comparative Law Journal 293.

[3] Martti Koskenniemi, 'International Law: Constitutionalism, Managerialism and the Ethos of Legal Education' (2007) 1 European Journal of Legal Studies 8.

[4] Pierre-Marie Dupuy, 'A Doctrinal Debate in the Globalisation Era: On the "Fragmentation" of International Law' (2007) 1 European Journal of Legal Studies 25.

Nevertheless, further research can still help develop and refine the systemic view of international law by providing clarity to its conceptual components.

This article aims to contribute to the scholarship by examining the concept of consistency, demonstrating how international law can be viewed as a system despite potential rule inconsistencies. This research identifies two types of consistency: R-consistency and S-consistency. R-consistency pertains to rulesets. A ruleset is R-consistent if it cannot lead to rule conflicts. In turn, S-consistency relates to statement sets, which are S-consistent if all statements can be simultaneously true. This article contends that even if international law's ruleset is not R-consistent, subjects can still draw S-consistent conclusions about the legal consequences of international law rules.[5]

This study engages in a philosophical analysis of legal concepts, particularly the concept of consistency. As such, it is not a doctrinal study of how international lawyers typically use and understand consistency. Rather than providing a descriptive account of consistency, this research 'rationally reconstructs' it. It conceives of consistency in ways that may differ from everyday usage to provide a coherent account of international law's systemic nature. To allow for this reconstruction, the article uses tools developed by contemporary research on legal logic and legal reasoning. Specifically, the present research is inspired by logical models for reason-based decision-making.[6] Such a reason-based perspective is beneficial when addressing rules and underlying legal reasons, because it allows agents to consider opposing reasons before arriving at a conclusion.

As to this article's structure, section II addresses the fragmentation and the systematicity of international law. Section III discusses the different directions of fit of rules and statements. Section IV explains the distinction

[5] For a more detailed conceptualisation of consistencies, see Henrique Marcos, *Consistency in International Law* (PhD Thesis, Maastricht University; University of São Paulo, 2023).

[6] Jaap Hage, *Reasoning with Rules* (Springer 1997).

between R- and S-consistency and shows how to derive S-consistent outcomes from an R-inconsistent ruleset and section V concludes this study.

II. Between Fragmentation and Systematicity

Scholars have long debated whether international law constitutes a legal system, with Hart famously arguing that it is not a legal system as it more closely resembles the pre-legal order of primitive social groups.[7] Although Hart's views on international law are now considered outdated,[8] the concerns he raised still echo. This is particularly due to differences between international and domestic law, especially in terms of (de)centralisation. In this respect, in 2000, the ILC published a first report on the fragmentation of international law.[9] Authored by Hafner, this report raised concerns that the growth in international regulations could lead to contradictions within international law, resulting in legal uncertainty for its subjects.[10]

The risks pointed out in the 2000's ILC report prompted the United Nations General Assembly to request the ILC to further work on the topic of fragmentation. In 2006, the ILC released its second and final report on the subject.[11] This report was written by Koskenniemi, who had previously published on the topic. For instance, in a 2002 publication with Leino, Koskenniemi drew on Hart's description of international law as a mere set of rules that did not constitute a legal system.[12] In that paper, Koskenniemi and Leino noted that the dream of a 'constitutional community' of states was

[7] HLA Hart, *The Concept of Law* (3rd edn, Oxford University Press 2012) 232–236.

[8] M Payandeh, 'The Concept of International Law in the Jurisprudence of H.L.A. Hart' (2010) 21 European Journal of International Law 967.

[9] International Law Commission, 'Risks Ensuing from Fragmentation of International Law' (2000) UN Doc A/55/10.

[10] ibid 143–144.

[11] International Law Commission, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (2006) UN Doc A/CN.4/L.682 and Add.1.

[12] Martti Koskenniemi and Päivi Leino, 'Fragmentation of International Law? Postmodern Anxieties' (2002) 15 Leiden Journal of International Law 553, 558.

divorced from political and legal reality.[13] In fact, their conclusion was that fragmentation could not be a risk to international law's systemic character because international law had never been a true legal system in the first place.[14]

Yet, the ILC concluded in its second report that international law is a legal system.[15] The Commission argued that international law's decentralised nature alongside its regulatory expansion had led to rule conflicts as rules are incessantly introduced without any coordination.[16] Nonetheless, the ILC also affirmed that international law is not a disjointed collection of rules as there are legal techniques available for outlining how rules interact with one another.[17] In fact, after the publication of the second report, it seems that Koskenniemi himself changed his views on the systemic character of international law: 'Law is a whole […]. You cannot just remove one of its fingers and pretend it is alive. For the finger to work, the whole body must come along.'[18]

On the one hand, some scholars view international law as both fragmented and systemic, with some referring to it as a 'fragmented legal system.'[19] On the other, certain authors firmly insist that fragmentation and systematicity are mutually exclusive.[20] This divergence on the relationship between fragmentation and systematicity has led to a disjointed understanding of these concepts in international law. For analytical precision, however, it is

13 ibid.
14 ibid 559.
15 International Law Commission (n 1) para 14.
16 International Law Commission (n 11) para 5 f.
17 ibid 485 f.
18 Koskenniemi (n 3).
19 For example, see A Lindroos, 'Addressing Norm Conflicts in a Fragmented Legal System: The Doctrine of Lex Specialis' (2005) 74 Nordic Journal of International Law 27; K-H Ladeur, 'Constitutionalism and the State of the "Society of Networks": The Design of a New "Control Project" for a Fragmented Legal System' (2011) 2 Transnational Legal Theory 463.
20 As section I pointed out, Dupuy is an author who sees systematicity and fragmentation as opposites.

crucial to work with well-defined concepts. The following paragraphs will provide these definitions.

According to the ILC's reports, fragmentation is a result of the decentralised expansion of international law.[21] Despite the importance of institutions like the United Nations, international law still lacks a central authority to coordinate rulemaking. Also, contemporary international law has expanded its scope to encompass diverse areas such as human rights, environmental protection, and international trade. Its institutions have also multiplied, including thematic and regional organisations as well as various courts and tribunals. This has led to a growth in the number of international legal rules organised into special regimes, including human rights law, environmental law, and trade law. Conflicts often arise between rules from different special regimes and general international law rules, threatening the consistency of the international legal order. This scenario is known as the fragmentation of international law.

Systematicity refers to the characteristic of elements organised in a set and structured as a system. According to Losano, there are two types of systems: external and internal.[22] An external system is an outward organisation imposed on certain elements. For example, a system that organises books by their authors' names does not reveal any intrinsic relationship between these books. In contrast, an internal system comprises interconnected components that operate under a specific rationality or logic to ensure consistency between them. For instance, a multi-volume encyclopaedia with cross-referenced entries can be seen as operating within an internal system. When discussing the systemic nature of international law, the focus is on internal systems. Lawyers seem more interested in whether international legal rules

[21] International Law Commission (n 1) para 4 f.; International Law Commission (n 15) para 5 f.

[22] Mario G Losano, *Sistema e Struttura nel Diritto*, vol 2 (Il Novecento) (Giuffrè 2002) s I.

have an inherent systemic relationship rather than if an order of classification can be imposed on these rules.[23]

According to Losano's definition of an internal system, there are two necessary conditions for a ruleset such as international law to be considered a legal system: *(i)* it must be a unified set of rules *(ii)* that functions according to an internal logic.[24] The reason is that if a system does not function as a unified entity, we may be dealing with multiple systems rather than just one. Similarly, if the elements of a system have no logical inter-relationship, then they are merely a collection of unrelated components bundled together, rather than a true system. In this regard, unity and internal logic are necessary for the existence of a legal system, even if they may not be sufficient on their own. For instance, some authors believe a system must also be 'complete', but other authors argue that legal systems are necessarily 'incomplete.'[25] Despite these differing views, most agree that a legal system must be unified and operate under some internal logic, even if the terminology used to describe these elements varies.[26] In this article, we will focus solely on the two widely accepted elements and set aside the discussion on the (in)completeness of legal systems.

The idea that the international legal system is unified is easy to understand. International law is a single ruleset made up of several rule subsets — special regimes. These special regimes are still part of international law, so their rules are still international law rules. Rules that are part of international law but do not comprise elements of any special regimes are rules of general international law. The ILC follows this view, as it recognises that the label

[23] On the intrinsic character of systematicity, see Martti Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics' (2007) 70 Modern Law Review 1, 16.

[24] Losano (n 22) s I.

[25] For an overview, see Eugenio Bulygin, 'Carlos E. Alchourrón and the Philosophy of Law' (2015) 1 South American Journal of Logic 345, 350–351.

[26] For example, Bobbio, speaks of 'coherence' instead of 'consistency.' Norberto Bobbio, *Teoria Generale Del Diritto* (G Giappichelli 1993) 201 f.

of special regime has 'no value per se' given that 'no legal regime is isolated from general international law.'[27]

By contrast, the internal logic of international law is more complicated. Delmas-Marty refers to a logic that enables 'ordered pluralism' to overcome 'the contradiction between the one and the many.'[28] Benvenisti explains that international law is 'arranged within a hierarchy, composing together a coherent logical order.'[29] Similarly, Menezes claims that '[international law] is an autonomous normative legal order, conceived in a logical system, with its own characteristics and elements.'[30] Dupuy provides a compelling explanation of how international law's internal logic operates.[31] Contrary to ideas of fragmentation, he explains that the international legal order is systemic due to its formal and material unity. Formal unity results from the application of special rules on law-making, interpretation, adjudication, and normative hierarchy. Material unity stems from the substance and content of specific rules of general international law. We can understand these two unities as resulting from the effective functioning of international law's internal logic, which safeguards its consistency and helps subjects interpret international law even in the face of the complex challenges posed by its decentralised expansion.

There is tension between fragmentation and systematicity. While fragmentation portrays international law as prone to rule conflicts and inconsistency, systematicity contends that despite such complications, international law remains consistent due to its internal logic. In recent years, some authors like Peters have become increasingly confident in the

[27] International Law Commission (n 15) paras 21, 193, 254.

[28] Mireille Delmas-Marty, *Ordering Pluralism* (Hart 2009) 12–13.

[29] Eyal Benvenisti, 'The Conception of International Law as a Legal System' (2008) 50 German Yearbook of International Law 393.

[30] Wagner Menezes, 'International Law in Brazil' (2017) 103 Bulletin of the Brazilian Society of International Law 1237.

[31] Pierre-Marie Dupuy, 'L'Unité de L'Ordre Juridique International' (2002) 297 Cours Général de Droit International Public 9.

effectiveness of systemic techniques in safeguarding the consistency of international law, suggesting that we 'bid farewell to fragmentation.'[32] Interestingly, Peters cites the *MOX Plant* cases which were previously used by Koskenniemi as evidence of fragmentation,[33] as an example of how these techniques help maintain consistency. Specifically, Peters claims that *MOX Plant* contributed to the development of the environmental precautionary principle and delineated the jurisdictions of international courts, including the European Court of Justice and the International Tribunal for the Law of the Sea. [34]

The evidence supporting the systemic character of international law is compelling. However, the concerns raised by the ILC's reports on fragmentation remain persistent.[35] The decentralised nature and the continuous expansion of international law do in fact make it vulnerable to rule conflicts and inconsistency. Nonetheless, its internal logic somehow maintains its consistency as a legal system. In this regard, merely changing the terminology to refer to international law as a 'fragmented legal system' does not resolve this apparent contradiction. To effectively address this question, we need to better understand how the internal logic of international law maintains consistency despite the potential for conflicts and inconsistency. The following sections aim to provide such an explanation. Briefly, there are two types of consistency at play: the consistency of rulesets and the consistency of statement sets (R- and S-consistency). To appreciate the importance of differentiating between these

[32] Anne Peters, 'The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization' (2017) 15 International Journal of Constitutional Law 671, 696.

[33] Koskenniemi (n 3); Koskenniemi (n 23).

[34] Peters (n 32) 696.

[35] Sivan Shlomo Agon, 'Farewell to the F-Word? Fragmentation of International Law in Times of the COVID-19 Pandemic' (2021) 72 University of Toronto Law Journal 1.

types of consistency, we must first discuss the distinction between rules and statements.

III. Directions of Fit

This section discusses the different directions of fit between rules and statements and how they relate to facts.[36] A fact is any situation that happens or event that takes place. For example, if the event that Uganda supported irregular forces in the Democratic Republic of the Congo (DRC) took place, then that is a fact.[37] In this context, statements are sentences that attempt to describe facts. If they can do so, then they are true. If they do not, they are false. So, if we say, 'Uganda supported irregular forces in the DRC', and that is a fact, then what we said is true. If we say, 'Germany is a permanent member of the Security Council' and that is not a fact, then what we said is false. In this way, statements have a word-to-world direction of fit, which means that statements try to fit the world.

Rules (including 'norms' and 'principles') go in the opposite direction. Rules have a world-to-word direction of fit. Rules do not try to describe the facts in the world. Instead, their endeavour is to shape the world by leading to new facts. Thus, it is possible to affirm that 'rule-based facts' are facts that take place because of rules.[38] For example, the fact that states are obligated to make reparations for wrongful acts is only a fact since there is an international law rule on state responsibility making it so.[39] Let us call this rule 'R1.' Note that it is only because of R1 that Uganda is obligated to make

[36] On directions of fit, see John Searle, *Making the Social World* (Oxford University Press 2010).

[37] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2022] ICJ Reports 1.

[38] Jaap Hage, *Foundations and Building Blocks of Law* (Eleven 2018) 86 f.

[39] International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) UN Doc A/56/10 para 42 f.

reparations to the DRC for supporting irregular forces in the territory of this state.

It is important to note that legal rules are more flexible than statements. While statements automatically fit (or do not fit) the facts in the world, rules only lead to new facts when they apply to cases. To properly perceive this difference, we must bear in mind that law, like prudence and morality, comprises the social practices that dictate to subjects what they ought to do and what ought to happen by giving subjects reasons for acting.[40] Therefore, the only way to truly understand how the law works is to realise there is a normative purpose that legal rules must serve. In essence, the normative reasons provided by the law influence the application of rules, rendering them particularly significant for our purposes.

By adopting a reason-based perspective, we can say that a rule applies to a case (which is equivalent to saying that a court ought to apply that rule to a case) when the reasons for applying that rule outweigh the reasons for not applying it.[41] By contrast, a rule does not apply when the reasons for applying it are weaker than the reasons against applying it. We can understand rule application and how rules lead to (rule-based) facts by examining the subtle distinction between a rule being 'applicable' and a rule 'applying' to a case. This difference can more easily be seen by looking at the conditions-consequence formulation of a rule. For example, R1 can be formulated as:

> R1: 'state X has committed a wrongful act against state Y → X is obligated to make reparations to Y.'

In the formulation above, 'X' and 'Y' are placeholders for states such as Uganda and the DRC. The '→' ties in this rule's conditions (on the left) to its consequences (on the right). When a case meets the conditions of a rule, this rule becomes applicable to that case. As a result, if R1's conditions are met by a specific case in which Uganda commits a wrongful act against the

[40] Gerald J Postema, 'Coordination and Convention at the Foundations of Law' (1982) 11 The Journal of Legal Studies 165.

[41] Marcos (n 5) ch 3.

DRC, then R1 is applicable to this case (for ease, let us call it the 'DRC v Uganda case'). Meanwhile, a rule applies when its consequence is imposed on a case, thus leading to a new rule-based fact.

As pointed out above, from this reason-based perspective, a rule only applies if the reasons for applying it outweigh the reasons against it. From this same point of view, we can say that the fact that a rule is applicable to a case — like the fact that R1 is applicable to the DRC v Uganda case — is a reason for this rule to apply. Since R1 is applicable to the DRC v Uganda case and assuming that there are no more reasons to take into account, R1 applies to this case. If R1 applies to the DRC v Uganda case, this rule's consequence is imposed on this case, making it a rule-based fact that Uganda is obligated to make reparations to the DRC.

Most of the time, rules apply to cases to which they are applicable. However, this reason-based approach allows for the non-application of applicable rules.[42] For instance, a rule may not apply to a situation if doing so would go against the reason that rule was made.[43] Although a 'no vehicles in the park' rule is applicable, it does not prohibit an ambulance from entering a park to respond to an emergency. Likewise, a court could decide that even though R1 is applicable, it does not apply to the DRC v Uganda case if Uganda had exculpatory reasons.[44] Suppose that in an alternative DRC v Uganda case, not only had Uganda committed wrongful acts against the DRC, but the DRC had also committed wrongful acts against Uganda. The fact that both parties had committed wrongdoings against one another could result in R1's non-application. If we conclude that the reasons for R1's application do not outweigh the reasons against it, then R1 does not apply in this case, even if

[42] ibid.

[43] Lon L Fuller, 'Positivism and Fidelity to Law' (1958) 71 Harvard Law Review 630, 664 f.

[44] Ademola Abass, 'Consent Precluding State Responsibility: A Critical Analysis' (2004) 53 International & Comparative Law Quarterly 211.

it is applicable. If R1 does not apply, its consequence is not imposed. As a result, Uganda would not be obligated to make reparations to the DRC.

IV. R- AND S-CONSISTENCY

1. *Two Kinds of Consistency*

As introduced in section I, S-consistency is the consistency of statement sets, and R-consistency is the consistency of rulesets. Since statements attempt to describe facts of the world, it can be affirmed that a set of statements is S-consistent if all of them can be true simultaneously. For example, the statements 'Uganda injured the DRC' and 'Uganda did not injure the DRC' are S-inconsistent because Uganda either did or did not injure the DRC, but not both.[45] Meanwhile, the statements 'Uganda injured the DRC' and 'Uganda must make reparations to the DRC' are S-consistent because they can be concomitantly true.

Truth and falsity are not relevant when it comes to R-consistency because rules are not true or false. Rule conflicts, in contrast, are worth analysing. Two or more rules conflict when they are both applicable to a case and, if applied simultaneously, they would impose incompatible consequences. Rule consequences are incompatible when they are facts that cannot occur together. In other words, rule-based facts led by conflicting rules cannot be facts simultaneously. To understand this, consider the following rulesets S1 and S2:

> S1: {R1: 'state X has committed a wrongful act against state Y → X is obligated to make reparations to Y'; R2: 'state X has committed an act of aggression against state Y → X's act against Y is wrongful'}
>
> S2: {R3: 'state X has discriminated between like products → X is prohibited from discriminating between these products'; R4: state X has discriminated

[45] The logical rule of non-contradiction posits that contradictory statements cannot be true at the same time. Dave Barker-Plummer and others, *Language, Proof, and Logic* (2nd edn, Center for the Study of Language and Information 2011).

between like products to protect wildlife → X is permitted to discriminate between these products'}

Note the difference between these two rulesets. S1 does not lead to conflicts. An act of force can be both an act of aggression and wrongful, and the guilty state can be obligated to make reparations for its wrongdoing — these are all compatible. Therefore, there is no conflict between rules R1 and R2. Hence, S1 is R-consistent. Conversely, S2 leads to conflicts.[46] Trade law rule R3 and environmental law rule R4 will conflict in any case where a state discriminates between like products with the goal of protecting wildlife. If R3 and R4 both apply to the same case, it would mean that a single state is both permitted and prohibited to discriminate against a particular product. The incompatibility is that someone can either be prohibited or permitted to do something, but not both simultaneously.[47]

Consider the following scenario to help elaborate this explanation. Imagine that the United States of America (US) discriminates against Asian shrimp products in favour of importing similar shrimp products from other continents. Even though the end product is the same, the shrimp from other continents is caught using fishing nets that prevent sea turtles from being entrapped. Unfortunately, Asian producers still use nets that trap and kill turtles. Assume that the US genuinely wants to protect sea turtles in this case (let us call it the 'Shrimp-Turtle case')[48] and that this discrimination is not arbitrary or unjustified. Thus, both R3 and R4 are applicable to the Shrimp-

[46] S2 is inspired on the discussion of process or procedure method distinctions. See María Alejandra Calle Saldarriaga, 'Sustainable Production and Trade Discrimination: An Analysis of the WTO jurisprudence' (2018) 11 Colombian Yearbook of International Law 221.

[47] Prohibitions and permissions are incompatible under non-contradiction. See Sven Ove Hansson, 'The Varieties of Permission' in Dov M Gabbay and others (eds), *Handbook of Deontic Logic and Normative Systems* (College Publications 2013).

[48] This hypothetical scenario draws inspiration from the real-life 'Shrimp-Turtle' case of the World Trade Organization. However, the example presented in this paper is a modified and simplified version of the actual case, used solely for the purpose of illustration. See: *United States — Import Prohibition of Certain Shrimp and Shrimp Products* [1998] WTO Doc WT/DS58/AB/R.

Turtle case as this case matches their conditions. But if both rules were to apply to this case, they would impose incompatible consequences: the US would be prohibited from discriminating under R3 and permitted to discriminate under R4.

2. S-Consistency out of R-Inconsistency

Given that S2 leads to conflicts, it is R-inconsistent, but that is not the end of the story. As explained in section III, there is a subtle but critical difference between applicability and application, which makes it possible for applicable rules not to apply. In this regard, consider how this article defined conflicts in terms of the incompatibility of rule consequences. Due to this definition of conflicts, conflicting rules cannot both apply to the same case. After all, if these conflicting rules applied, they would lead to (rule-based) facts that, by definition, could not take place simultaneously (incompatible facts). In light of that, and since R3 and R4 are conflicting in the Shrimp-turtle case, either R3 or R4 applies to this case, but not both. This leads to the question of which rule (R3 or R4) applies.

The conflict between R3 and R4 can be addressed by using rules that set up priority relationships, such as *lex specialis,* which prioritises more specific rules over less specific ones. Under the reason-based approach, priority works as a meta-reason (a reason about reasons). The meta-reason given by *lex specialis* expresses that the reason for a more specific rule's applicability outweighs the reason for a less specific rule's applicability. Considering that 'C' is a placeholder for a case and 'R(n)' and 'R(m)' are placeholders for other rules, we can formulate *lex specialis* as:

> *Lex Specialis:* 'Rules R(n) and R(m) are conflicting in a case C, and R(n) is more specific than R(m) → R(n) has priority over R(m) in C'

Lex specialis is applicable to the Shrimp-Turtle case because there is a conflict between two rules, one of which (R4) is more specific than the other (R3). R4 is more specific than R3 because R3 is applicable to all instances of like-product discrimination. Meanwhile, R4 is only applicable to cases of like-

product discrimination to protect wildlife. Assuming there are no more reasons to consider, the conflict between R3 and R4 can now be addressed.

We must first consider whether *lex specialis* applies to this case. Since *lex specialis* is applicable to this case, that is a reason it applies. If there are no reasons against *lex specialis'* application, it can be concluded that it applies. Therefore, *lex specialis* imposes its consequence on this case by presenting a meta-reason that, in the Shrimp-Turtle case, the reasons for R4's applicability are more important than the reasons for R3's. Next, we must evaluate this meta-reason that *lex specialis* provides. If there are no reasons opposing the conclusion that R4's applicability is more important than R3's, the (meta-)reason given by *lex specialis* prevails. Thus, in the Shrimp-Turtle case, R4's applicability outweighs R3's applicability. (Note that if R3 came from a more fundamental treaty provision than R4, then another priority-giving rule, such as *lex superior,* might present meta-reasons to weigh against the ones given by *lex specialis*.)

It is now possible to weigh the reasons R3 applies against the reasons R4 applies. The information given by the paragraph above allows the inference that R4 applies and R3 does not apply in this case. Since R3 does not apply, its consequence is not imposed on this case. Accordingly, the rule-based fact of R3's consequence does not take place. In contrast, because R4 applies, its consequence is imposed on this case. As a result, the US is permitted to discriminate against similar products (shrimp) because the discrimination is intended to protect wildlife (turtles). Nonetheless, a different case could result in the opposite outcome. If US actions were not genuine but instead a disguised restriction on international trade, R4 would not be applicable. If that were the case, the reasoning would shift to the conclusion that R3 would apply, prohibiting the US from discriminating against these products.

The explanation above shows it is possible to obtain a set of legal consequences that are S-consistent from an R-inconsistent ruleset. Although S2 is R-inconsistent (as its rules, R3 and R4, can conflict), the reason-based approach allows for the non-application of applicable rules. Even if R3 and

R4 are applicable to the Shrimp-Turtle case, only R4 applied. So, in reasoning with R3 and R4, we used the R-inconsistent ruleset S2 to draft an S-consistent statement set S3. The elements of S3 are all statements that are true at the same time as they all correspond to (rule-based) facts that can coexist:

> S3: {'R3 and R4 are applicable to the Shrimp-Turtle case'; 'R4 applies to the Shrimp-Turtle case, thus imposing its legal consequence on this case'; 'R3 does not apply to the Shrimp-Turtle case, so it does not impose its legal consequence on this case'; 'given that R4 applies, the US is permitted to discriminate against similar products (shrimp) to protect wildlife (turtles)'}.

The Shrimp-Turtle case presented in this article is less intricate than practical scenarios. It has been intentionally simplified to serve as an effective illustration. Breaking down complex issues to their fundamental components allows a better understanding of them. While this particular case may not be as challenging as those encountered in real life, it exemplifies how logic can help figure out which rules apply and what legal effects these rules have in the cases at hand.

V. Final Remarks

This article has shown that it is logically possible to derive an S-consistent statement set from an R-inconsistent ruleset. This conclusion is important as it elaborates on what can be understood when analysing international law from a systemic point of view. A legal system such as international law need not be immune to conflicting rules. Instead, it needs to be able to address those conflicts. This logic has shown how conflicts can be resolved by reasoning with applicable rules and weighing reasons for and against applying these rules.

This account helps us understand how international law's internal logic contributes to the consistency and systematicity of the international legal order. Even though international law may seem like a 'fragmented legal system' riddled with rule conflicts, it is still possible for subjects to make sense

of what the international legal order expects from them by reasoning with rules. This is possible because subjects can extract S-consistent outcomes from an R-inconsistent ruleset. In other words, even if the rules of international law are not consistent with each other, it is still possible to extract a consistent outcome from them by using the logical approach developed by this article.