PART I

INTRODUCTION

CHAPTER 1

INTRODUCTION

Defining State Jurisdiction and Jurisdiction in International Law

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I. Jurisdiction: First Overtures to an Elusive Concept

For every lawyer, regardless of whether he or she is working in domestic or international law, 'jurisdiction' is a constant companion. In most cases, one seems to know intuitively what it means—for example, where a film shows a crime scene and the arriving officer (often from the United States Federal Bureau of Investigation) tells the local sheriff: 'You can stop your investigations now. This case is within my jurisdiction.' Without going into the details of US law and assessing whether such scenes are legally accurate, jurisdiction therefore appears to be closely connected to legal power or competence.[1] This means that jurisdiction as a legal concept is normative, not empirical, and it primarily concerns the competence to control and alter the legal relations of those subject to that competence through the creation and application of legal norms.[2] The concept of jurisdiction is so far unproblematic, and in the absence of further questions lawyers seem to know what it means. Yet if pressed, one struggles to provide a comprehensive definition,[3] because '[j]urisdiction is a word of many, too many, meanings'.[4]

The reason for this general lack of agreement lies in the extreme compartmentalization of the law of jurisdiction which, in turn, stems from the nature of jurisdiction, as Cedric Ryngaert notes on the first page of his monograph *Jurisdiction in International Law*.[5] It remains an abstract concept that is in constant need of application and elaboration in particular areas of substantive and procedural law. Therefore, seeing that a full grasp of the underlying substantive regulations is invariably required (for instance, antitrust law, data protection law, emissions trading schemes), the substantive law specialists rather than generalist (international) lawyers have ventured into jurisdiction.[6] In the area of antitrust jurisdiction, for instance, the sheer amount of litigation has favoured 'the development of principles and techniques the application of which seems to be the object of a somewhat autonomous scientific debate'.[7] However, given this obvious casuistic approach to jurisdiction, it is the general principle or a general theory of

[1] Patrick Capps, Malcolm Evans, and Stratos Konstadinidis, 'Introduction', in Patrick Capps, Malcolm Evans, and Stratos Konstadinidis (eds.), *Asserting Jurisdiction: International and European Legal Perspectives* (Oxford: Hart Publishing, 2003), xix.

[2] *Ibid.*, xix fn 1, and xix–xx; Wesley Hohfeld, 'Some Fundamental Legal Conceptions as Applies in Judicial Reasoning', *Yale Law Journal* 23 (1913–14): 16, 49. See also Robert Alexy, *A Theory of Constitutional Rights* (Oxford: Oxford University Press, 2002), 132–8 and 149–59.

[3] Which presents an interesting analogy to St Augustine's *dictum* on the nature of time in St Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford University Press, 2008), 230 (book XI, chapter XIV): 'What then is time? Provided that no one asks me, I know. If I want to explain it to an inquirer, I do not know.'

[4] *United Phosphorus, Ltd v Angus Chemical Co.*, 322 F 3d 942, 948 (7th Cir. 2003).

[5] Cedric Ryngaert, *Jurisdiction in International Law*, 2nd edn (Oxford: Oxford University Press, 2015), 1.

[6] *Ibid.*, 1–2.

[7] Andrea Bianchi, 'Extraterritoriality and Export Controls: Some Remarks on the Alleged Antinomy between European and U.S. Approaches', *German Yearbook of International Law* 35 (1992): 366, 374 fn. 32.

jurisdiction that is required in order to gain a meaningful insight into what 'jurisdiction' really is.[8]

The first general and probably intuitive definition given here (i.e. that jurisdiction is legal power) is plausible because this is the original etymological meaning of the word, derived from the Latin 'to speak the law' (*ius dicere*) and the magistrate's power 'to determine the law and, in accordance with it, to settle disputes concerning persons and property within his forum (sphere of authority)'.[9] The central perspective will, of course, be 'jurisdiction in international law', as the title of this book suggests.[10] The minimum consensus is that jurisdiction is an element of state sovereignty (or territoriality)[11]—although sceptics might then point out that this definition simply shifts the problem to another level, namely to the similarly enigmatic concept of 'sovereignty' or to the notion of 'territoriality'. Yet, if we can accept state sovereignty as an axiomatic postulate, then domestic laws extend only so far as the sovereignty of the state. These laws, ordinarily, do not apply to persons, events, or conduct outside the limits of a given state's sovereignty.[12] This principle results from the sovereign equality of states,[13] from which it follows that in a world of such equally sovereign states every state has the right to shape its sovereignty by adopting laws *within* its sovereign boundaries.[14] Readers might have noticed that this definition remains hopelessly circular, but it becomes more meaningful once one adds that this principle also bars states from encroaching upon the sovereignty of other states.[15] Prima facie, international jurisdiction is, consequently, more or less congruent with a state's territory and its nationals. This static view of the *territoriality principle* is generally unproblematic, as determining a state's jurisdiction is merely an exercise in demarcating its geographical borders and producing the relevant documents to prove an individual's nationality.

II. Jurisdiction: Why Does It Matter in International Law?

This congruence of sovereignty and territory, however, ends once the relationship between the two becomes dynamic and nationals of a given state move across borders. Thus, jurisdiction becomes an issue in international law once a state adopts laws that

[8] F. A. Mann, 'The Doctrine of International Jurisdiction Revisited after Twenty Years', *Recueil des cours* 186 (1984–III): 13, 19.

[9] Joseph Plescia, 'Conflict of Laws in the Roman Empire', *Labeo* 38 (1992): 30, 32.

[10] See B. J. George, 'Extraterritorial Application of Penal Legislation', *Michigan Law Review* 64 (1966): 609, 621.

[11] Mann (n. 8), 20. [12] *Ibid*. [13] See e.g. Art. 2(1) of the UN Charter.

[14] See Hessel E. Yntema, 'The Comity Doctrine', *Michigan Law Review* 65 (1966): 9, 19; Joseph H. Beale, 'The Jurisdiction of a Sovereign State', *Harvard Law Review* 36 (1923): 241.

[15] Mann (n. 8), 20.

govern matters which are not purely of domestic concern.[16] In this case, the extension of jurisdiction to regulate the activities of a state's nationals abroad under the so-called *active personality principle* draws on the conception of a state as more than just territory, namely as a group of persons, wherever located, who are subject to a common authority that accompanies nationality.[17] This kind of jurisdiction is often exercised in the field of international family law[18] and, more prominently, criminal law, in particular to prevent nationals from engaging in criminal activity upon return to their state of nationality and from enjoying impunity. This type of jurisdiction is also exercised to protect a state's reputation from being tarnished by the conduct of its nationals abroad.[19] Especially in the latter case, the active personality principle can be regarded as compensation for the diplomatic protection offered by the state of nationality.[20] Lastly, as states often refuse to extradite their nationals for crimes committed abroad, the active personality principle becomes a corollary of the need to avoid impunity on the part of offenders, while the *locus delicti* state might even welcome this exercise of jurisdiction by the perpetrator's state of nationality, as it relieves the former of the task of prosecuting the offender.[21] The question of nationality is determined by domestic law, although international law ascertains whether such a claim of nationality by one state must be accepted by another on the basis of the 'genuine link' test.[22] However, Article 4 of the 2006 ILC Draft Articles on Diplomatic Protection,[23] rejecting this 'genuine link' test, seems to be more appropriate and practically applicable in this respect, as—in our age of mass migration—this test would exclude millions of persons. States usually limit their active personality jurisdiction to the most serious crimes, but this limitation does not seem to be required by international law.[24] In contrast, it is controversial whether the nationality of the victim of a crime also constitutes a sufficient jurisdictional link under international law.[25] Therefore, the *passive personality principle* is typically not accepted, because it would amount to an encroachment upon the sovereignty of other states and thus be viewed 'as an excess of jurisdiction'.[26]

The orthodox starting point for international lawyers in assessing questions of jurisdictional limits remains the *Lotus* case,[27] which clarified—in paraphrased

[16] Ryngaert (n. 5), 5; F. A. Mann, 'The Doctrine of Jurisdiction in International Law', *Recueil des cours* 111 (1964–I): 1, 9.

[17] Henri Donnedieu de Vabres, *Les Principes modernes du droit pénal international* (Paris: Sirey, 1928), 77.

[18] *Ibid*., 80.

[19] Ryngaert (n. 5), 106.

[20] See Donnedieu de Vabres (n. 17), 63; Frédéric Desportes and Francis Le Gunehec, *Le Nouveau Droit pénal*, 7th edn (Paris: Economica, 2000), 328; Geoffey R. Watson, 'Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction', *Yale Journal of International Law* 17 (1992): 41, 68.

[21] Watson (n. 20), 69–70; Ryngaert (n. 5), 106–7.

[22] See *Nottebohm Case (Liechtenstein v Guatemala) Second Phase* [1955] ICJ Rep. 4.

[23] ILC Draft Articles on Diplomatic Protection with Commentaries, *Yearbook of the International Law Commission 2006*, vol. II, part two, para. 5.

[24] Harvard Research on International Law, 'Draft Convention on Jurisdiction with Respect to Crime', *American Journal of International Law* 29 (1935): 439, 531.

[25] Mann (n. 16), 39; Harvard Research on International Law (n. 24), 579.

[26] Mann (n. 16), 92. See also Ryngaert (n. 5), 110–13.

[27] *SS Lotus (France v Turkey)* [1927] PCIJ Series A, No. 10, 19.

words—that 'whatever is not explicitly prohibited by international law is permitted'.[28] The judgment remains decisive,[29] notwithstanding the criticism it has attracted over the years.[30] It summarizes the underlying rules of international law concerning state jurisdiction: first, jurisdiction is *permissive*, since, within its territory, a state may freely exercise its jurisdiction subject only to certain rules of international law;[31] and, second, jurisdiction is *prohibitive*, because outside of its territory a state may ~~not~~ exercise its jurisdiction unless international law ~~permits it so to do~~.[32] This finding simply reflects what has already been said earlier in the context of the sovereign equality of states. However, the situation becomes more complex when talking about *extraterritorial* jurisdiction beyond the context of the two personality principles discussed ~~before~~ (e.g. where a state purports to apply its jurisdiction in situations that do not have a genuine connection to that state).[33] Therefore, jurisdiction remains an area of international law that continues to be underdeveloped. Alex Mills has pointed out that the problem of scrutinizing jurisdiction in international law has not received extensive scholarly attention, and the attention it has attracted can be coalesced into a fairly ritualized account of the standard 'heads' of jurisdiction, based on territoriality and nationality.[34]

This *Oxford Handbook of Jurisdiction in International Law* is intended to be an authoritative guide to the rapidly developing domain of state jurisdiction and jurisdiction in general in international law. The book seeks to provide a comprehensive analysis of historical, contemporary and emerging issues in the area of state jurisdiction and jurisdiction in general as a manifestation of state sovereignty and other forms of authority, which is tantamount to a state's inherent powers to affect the rights of persons, whether by legislation, by executive decree, or ~~by~~ the judgment of a court in its own territory.[35] Thus, the book examines what jurisdiction in international law means, and it analyses how this concept is used by international courts ~~and~~ tribunals and international organizations. The principal aim of this Handbook is, therefore, to shed light on this legal concept, which is particularly prone to conflicts and overlaps, and on the increasing exercise of extraterritorial jurisdiction. Further, the legal position became considerably more nuanced after the Permanent Court of International Justice (PCIJ) rendered judgment in the *Lotus* case.[36] Consequently, the book will take up the task ~~of~~ not only explaining the historical sources of international jurisdiction, but also of scrutinizing recent developments and the legal *status quo* in a wide-ranging but concise inquiry. These recent developments in particular make it necessary to reconsider both the orthodox understanding of state jurisdiction as an element of territorial sovereignty and the role

[28] An Hertogen, 'Letting *Lotus* Bloom', *European Journal of International Law* 26 (2016): 901, 902.

[29] See e.g. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep. 403, Declaration Judge Simma, paras. 3 and 8–9.

[30] See e.g. Hersch Lauterpacht, *The Function of the Law in the International Community* (Cambridge: Cambridge University Press, 2011), 102–4; and Alex Mills, 'Rethinking Jurisdiction in International Law', *British Yearbook of International Law* 84 (2014): 187, 192–4.

[31] *Lotus* case (n. 27), paras. 46–7. [32] *Ibid*., para. 45.

[33] See e.g. Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Oxford University Press, 1994), 74.

[34] Mills (n. 30), 188. [35] Beale (n. 14), 241. [36] *Lotus* case (n. 27), 19.

of international law in resolving problems of authority in international relations. The need to respond to global phenomena (e.g. transnational environmental threats,[37] cyber-activity,[38] investment and trade practices,[39] health epidemics,[40] the extraterritorial application of human rights regimes[41]) means that territorial and exclusive conceptions of jurisdiction are being supplanted by extraterritorial exercises of authority.

These phenomena are now occurring to such an extent that extraterritoriality is increasingly viewed as a starting point for the exercise of state jurisdiction, rather than as an exception. This shift has major implications for international law, which has largely functioned on the assumption that states possess exclusive authority within certain spheres and that it merely performs the modest task of maintaining this exclusive, predominantly territorial, framework by resolving coordination problems.[42] It is becoming apparent from an array of international instruments and institutional initiatives being adopted across a number of areas—from the decisions of international and national judicial bodies and from the work of scholars in a range of fields and disciplines—that not only are traditional approaches to state jurisdiction increasingly unable to cope with contemporary global conditions, but also that manifestations of extraterritorial jurisdiction escape strict categorization because of their great variations in degree.[43] It is well-known that these developments also threaten the primacy of the state as the principal actor in the international legal order. The claims of normative authority, which accompany the exercise of jurisdiction, have also exercised legal theorists working in the area of transnational legal pluralism[44]—and those interested in the sociology of law more generally[45]—in their work on non-state forms of law.

Against that background, this book focuses on the ways in which international law responds to the jurisdictional challenges which currently confront it. While there have been important publications on specific aspects of jurisdiction in international law, attention must also be drawn to the general absence of scholarly works that have sought to offer a comprehensive analysis of this concept at a general level. Accordingly, the aim of this book is to examine the topic of jurisdiction in a holistic manner and to examine

[37] See e.g. An Hertogen, 'Sovereignty as Decisional Independence over Domestic Affairs: The Dispute over Aviation in the EU Emissions Trading System', *Transnational Environmental Law* 1 (2012): 281–301.

[38] See e.g. Derek J. Illar, 'Unraveling International Jurisdictional Issues on the World Wide Web', *University of Detroit Mercy Law Review* 88 (2010): 1–16.

[39] See e.g. Stephan W. Schill, *The Multilateralization of International Investment Law* (Cambridge: Cambridge University Press, 2014), 173 *et seq*.

[40] See e.g. Allyn L. Taylor, 'Global Governance, International Health Law and WHO: Looking towards the Future', *Bulletin of the World Health Organization* 12 (2002): 975, 977–8.

[41] See e.g. Hugh King, 'The Extraterritorial Human Rights Obligations of States', *Human Rights Law Review* 9 (2009): 521–56; Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford: Oxford University Press, 2011).

[42] Hans Kelsen, *Principles of International Law* (New York: Rinehart & Company, 1959), 202.

[43] Harold G. Maier, 'Jurisdictional Rules in Customary International Law', in Karl M. Meessen (ed.), *Extraterritorial Jurisdiction in Theory and Practice* (The Hague: Kluwer Law, 1996), 78.

[44] Paul Schiff Berman, *Global Legal Pluralism* (Cambridge: Cambridge University Press, 2012), 195–243.

[45] Justin B. Richland, 'Jurisdiction: Grounding Law in Language', *Annual Review of Anthropology* 42 (2013): 209–26.

the intersection and interaction between various aspects of jurisdiction (e.g. public international law/private international law, general/special regimes, theory/practice) with a view to providing fresh insight into the practical and theoretical function and content of the doctrine of jurisdiction in contemporary international law.

At the same time, this book follows a decidedly critical approach: instead of blindly applauding state sovereignty and jurisdiction as ends in themselves, the steady erosion of which through the growing obsolescence of territorially bound political authority (e.g. through international human rights; supranational organizations, such as the EU; or economic globalization)[46] is to be deplored,[47] it sheds light not only on the current legal status of jurisdiction in international law, but also considers its history, its potential future, and its underlying theoretical framework in order to render this difficult concept more accessible. It introduces into the purview of scholarship on international jurisdiction new perspectives and angles of analysis which explore how this specific field of law has developed and how it is applied in both international and domestic courts. In this context, this book certainly takes into account the past and present law of jurisdiction, but it does not merely rehearse this field: rather, it is directed towards investigating the steady transformation of one of the most basic principles of international law from exclusivity to flexibility. In the end, this Handbook ~~highlights~~ that the rules and principles of jurisdiction in international law must be reimagined, simply because the traditional framework of public international law which is only concerned with state rights has changed. Today, jurisdiction on the international plane must rather be thought of as a combination of state rights and obligations in relation to individual rights, which reflects the more complex reality of contemporary international law.[48]

III. Jurisdiction in International Law: An Overview of this Book

III.1. History of Jurisdiction

As illustrated ~~herein~~, jurisdiction in modern international law is closely connected with the territoriality principle, which represents the basis of jurisdiction most often invoked in international law. This, however, has not always been the case. In order to understand

[46] Alfred van Staden and Hans Vollaard, 'The Erosion of State Sovereignty: Towards a Post-Territorial World?', in Gerard Kreijen *et al.* (eds.), *State, Sovereignty, and International Governance* (Oxford: Oxford University Press, 2002), 67.

[47] See especially for the case of the United Kingdom and the European Convention on Human Rights: Samantha Besson, 'The Reception Process in Ireland and the United Kingdom', in Helen Keller and Alec Stone Sweet (eds.), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (Oxford: Oxford University Press, 2008), 49–52.

[48] Mills (n. 30), 235.

how the principle of jurisdiction developed, Part II of this Handbook thoroughly investigates the historical roots of jurisdiction in international law. This account will demonstrate that territoriality constitutes a rather novel basis for exercising jurisdiction, which did not become prominent until the ascendance of sovereign nation states after 1648,[49] and even then, could not be universally applied.

In his chapter 'The Beginnings of State Jurisdiction in International Law until 1648', Kaius Tuori examines the evolution of sovereignty, universal jurisdiction and state authority prior to the existence of the Westphalian international legal order. Tuori challenges the notion that jurisdiction prior to the introduction of modern-day states was solely based on the personality principle. Rather, he argues that the foundations of modern jurisdiction are present in Roman and medieval jurisdictional practices. By developing three case studies to support his argument, Tuori provides a more nuanced understanding of how Roman law was reinterpreted to form the foundations of modern international law. Therefore, this chapter presents an alternative historical perspective based on a fresh reading of historical practices.

A historical account of jurisdiction in international law also necessarily covers the inception of the modern notion of jurisdiction, which is best exemplified by the abovementioned judgment of the PCIJ in the *Lotus* case and its main proposition that the principle of jurisdiction entitles states to do whatever is not prohibited by international law.[50] Stéphane Beaulac addresses the significance of the *Lotus* case from a jurisdictional perspective in 'The *Lotus* Case in Context: Sovereignty, Westphalia, Vattel, and Positivism'. Beaulac situates the *Lotus* case in its historical context by considering the influence of the Westphalian legal order and Vattel's understanding of state sovereignty on the Court's judgment. He argues that the influence of both of these frameworks supports the positivistic stance taken by the PCIJ in this decision, which remains present in the more recent jurisprudence of the International Court of Justice (ICJ). By examining the legacy of the *Lotus* case, Beaulac's chapter draws our attention to the theoretical assumptions that underpin state sovereignty and jurisdiction in international law.

In 'The European Concept of Jurisdiction in the Colonies', Nurfadzilah Yahaya critiques the operation of jurisdiction when applied outside of its European origins. Yahaya examines the application of a territorially focused approach to jurisdiction in the colonial context, where territorial control was incomplete and subject to competing assertions of authority by colonial subjects. Thus, this chapter examines the pluralism that resulted from colonial powers imposing new administrative structures on colonial subjects. Based on an examination of different colonial settings, Yahaya argues that jurisdiction remained plural, contested, and reliant on factors such as relations amongst people, property regimes and similar cultural practices, rather than control over territory. This chapter highlights the significance of territorial jurisdiction as a tool to further the expansion of colonial rule and how the use of jurisdiction in this manner resulted in the subjugation of pre-existing legal frameworks.

[49] ~~The~~ Westphalian Peace of 1648.

[50] *Lotus* case (n. 27), 19.

In the last chapter of Part II, Stephan Wittich discusses 'Immanuel Kant and Jurisdiction in International Law', which is a difficult undertaking, as Kant nowhere in his works specifically dealt with questions of jurisdiction. But Kant's work does nonetheless contain several thoughts and ideas on the scope of regulatory state activities that may well be read as pertaining to the exercise of *imperium* in the sense of jurisdiction as it is commonly used today. In his philosophical sketch *Toward Perpetual Peace*, Kant proceeded from a traditional understanding of jurisdiction as coexistence between states as a cornerstone of international law. In this traditional view, jurisdiction is nothing more than a reasonable mutual delimitation of jurisdictional spheres based on territoriality or personality. Yet, at the same time, he also developed a visionary idea of cosmopolitan law which would significantly affect the traditional rules of jurisdiction, especially the personality principle through the emergence of individual rights. Kant's approach thus foreshadowed a development towards an anthropocentric international legal order epitomized by the concepts of human rights and universal jurisdiction.

III.2. Theory of Jurisdiction

The concept of jurisdiction does not exist in a theoretical vacuum, but is, in fact, grounded in a plethora of underlying notions, be they—to name a just few—constitutional, pluralistic, sociological, or critical in nature. From a political and international relations perspective, the rules of jurisdiction in international law are designed to enable the state to maintain its sovereign powers. States would, from one point of view, never agree to the rules of international law if these rules encroached on their powers and interests. Conversely, however, it is also in any given state's interests to accept limitations on national power in order to avoid descending into global anarchy.[51] It is, therefore, of utmost importance to examine, theoretically, how the modern constitutional state accepts, and denies, foreign jurisdictional claims, and how it engages with jurisdictional questions in an international setting. A prominent example involving theoretical questions of jurisdiction and the constitutional state, for instance, can be found in the dispute between the German Constitutional Court and the Court of Justice of the European Union (CJEU) on the question who has the last say (i.e. jurisdiction) on competence and sovereignty within the EU and its relation with the Member States.[52]

Theories of jurisdictional conflicts between the CJEU and the Member States are closely related to pluralist theories which hold that a multitude of legal orders coexist at

[51] Alexander Orakhelashvili, 'International Law, International Politics and Ideology', in Alexander Orakhelashvili (ed.), *Research Handbook on the Theory and History of International Law* (Cheltenham: Edward Elgar, 2011), 361.

[52] Miriam Aziz, 'Sovereignty *Über Alles*: (Re)Configuring the German Legal Order', in Neil Walker (ed.), *Sovereignty in Transition* (Oxford: Hart Publishing, 2006), 290–3.

the national and international levels in the same time–space context,[53] and that the global legal system constitutes an interlocking web of jurisdictional assertions by state, international, and non-state normative communities. And as each type of overlapping jurisdictional assertion (state versus state; state versus international body; state versus non-state entity) potentially creates a hybrid legal space that is not easily eliminated,[54] a clear-cut and hierarchically informed theory of jurisdiction becomes impossible to conceive. Against this background, it is expected that the account of a pluralist theory of jurisdiction in international law discussed in this volume will help to fill this gap and offer a different view of the conflicts ~~which are~~ currently pervad~~ing~~ the exercise of jurisdiction in international law.

In Part III, jurisdiction will also be examined from a socio-legal perspective (i.e. on the basis of a 'systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience'[55]). Essentially, international jurisdiction is about the exercise of power, and—as Max Huber rightly observed—power without law leads to tyranny, whilst law without power tends to descend into anarchy. We must, therefore, take into account that the predominant players on the international stage still have an important role as the power-substrate of international law.[56] A sociological theory of international jurisdiction can not only enrich our understanding of the social factors involved in the creation and implementation of international rules on jurisdiction, but also yield valuable insights regarding better legal mechanisms for coping with modern jurisdictional challenges and disputes. Of equal significance, sociological methods may further our understanding of the social limits inherent in the concept of international jurisdiction in the contemporary international system.[57] In a similar way, this Handbook will also explore the explanatory strength of Critical Legal Studies in analysing jurisdiction in international law. In the deconstructive light of this theory, jurisdiction merely plays a regulatory role, particularly in structuring international relations by defining the boundaries of various authorities already in existence. This specific contribution will, therefore, question whether the attempt to make jurisdiction in international law depend upon the 'real' configurations of power in fact perpetuates the assertion of sovereign will in its present form[58] and protects it from being challenged on normative grounds.[59]

[53] William Twining, 'Normative and Legal Pluralism: A Global Perspective', *Duke Journal of Comparative and International Law* 20 (2010): 473, 476 fn. 4.

[54] Paul Schiff Berman, 'Global Legal Pluralism', *Southern California Law Review* 80 (2007): 1155, 1159.

[55] Roger Cotterrell, 'Sociology of Law', in David S. Clark (ed.), *Encyclopedia of Law and Society: American and Global Perspectives*, 3 vols. (Los Angeles: Sage Publications, 2007), III, 1413.

[56] Jost Delbrück, 'Max Huber's Sociological Approach to International Law Revisited', *European Journal of International Law* 18 (2007): 97, 111.

[57] Moshe Hirsch, 'The Sociology of International Law: Invitation to Study International Rules in their Social Context', *University of Toronto Law Journal* 55 (2005): 891, 891–2.

[58] David Kennedy, *International Legal Structures* (Baden-Baden: Nomos, 1987), 117 and 125–6.

[59] Anthony Carty, 'Critical International Law: Recent Trends in the Theory of International Law', *European Journal of International Law* 2 (1991): 66, 76–7.

In her chapter, 'Navigating Diffuse Jurisdictions: An Intra-State Perspective', Helen Quane analyses the jurisdictional boundaries between state and non-state law with specific reference to religious, or customary, law. In particular, she contends that the determination of these regulatory forms as state law depends on the extent to which they perform prescriptive, adjudicative or enforcement functions, an assessment which is, in turn, driven by contextual considerations. Quane, therefore, argues that the boundaries between state and non-state law are not as stable as they may appear, as they are liable to shift according to circumstances and over time. As Quane rightly points out, the issue of classification acquires resonance in cases where legal pluralism occurs as the character and scope of a state's exercise of jurisdiction becomes far more ambiguous in such situations.

In 'Jurisdictional Pluralism', Paul Schiff Berman berates the formalist notion of jurisdiction for its failure to recognize the extent to which the exercise of jurisdiction must be accommodated by numerous multiple and overlapping norm-generating communities and to the vagaries of political and sociological reality, as they manifest themselves in specific situations. Accordingly, he argues that we need to adopt an approach that is far more sensitive to the contribution that such communities make to our understanding of jurisdiction (and to the phenomenon's contested nature). To this end, in his chapter, Berman offers an elaborate theoretical framework for the reconceptualization of jurisdiction, one which recognizes the extent to which contemporary social conditions, which are increasingly experienced across different jurisdictions, and changes in regulatory authority (i.e. governance), are visibly supplanting the exclusive notion of jurisdiction favoured by classical international law, with its preoccupation with sovereignty and territory.

In 'Deepening the Conversation between Sociolegal Theory and Legal Scholarship about Jurisdiction', Mariana Valverde considers the relationship between social theory and law but, as a social theorist, she does not attempt to sketch out a non-legal theoretical model for the purpose of applying it in the legal domain. Instead, she shows the insights that can be gained from a much more interactive approach. In particular, Valverde pays close attention to the theoretical implications of specific legal technicalities by borrowing methodologies originating from non-legal disciplines for this purpose. In this context, she reveals how ~~the~~ substantial benefits may be derived from this genuine exercise in interdisciplinarity by harnessing considerations of scale, temporality, materiality, and narrative affect, as far as ~~the~~ jurisdiction is concerned.

In his essay, 'Critical Approaches to Jurisdiction and International Law', Shaun McVeigh draws upon jurisdiction's etymological origins which, as noted earlier, refer to the power, or authority, to 'speak the law'. Relying on this aspect of jurisdiction, he observes that international law is often treated, by scholars, as a critical discipline or project in its own right. McVeigh harnesses this specific aspect of jurisdiction in order to analyse the ways in which critical jurists have grappled with the character and transmission of forms of authority in a variety of settings. For this broad and multifaceted purpose, McVeigh interprets jurisdiction as a concept which determines the conduct of lawful

relations, and, in this respect, he adopts a standpoint which differs significantly from the one embraced by doctrinal scholars. For McVeigh, this conception of jurisdiction comes to the fore in situations where different peoples, nations, and legal regimes come into contact with one another. In this regard, McVeigh is particularly interested in the impact that such encounters have on invested scholars and the critical projects at stake. In adopting this analytical approach, he demonstrates the diversity which pervades the scholarship concerning jurisdiction while illuminating our understanding of the different and competing conceptions of authority that underpin the work of leading scholars in the field of international law and legal theory.

III.3. Jurisdiction in General International Law

Besides the historical and theoretical basics of jurisdiction, this Handbook also looks into the more doctrinal notions of jurisdiction in general international law. Part IV therefore primarily deals with the current legal challenges and issues of jurisdiction in the interplay between states, international organizations, and the instruments of public international law. Not only does general international law increasingly face conflicts and changing patterns in defining the limits of the personality versus the territoriality principle (e.g. when a state is attempting to regulate matters extraterritorially),[60] but it is also confronted with the so-called 'effects principle', which seeks to expand the jurisdictional rights of states in order to cover the effects of an act committed in one state taking place in another state. Yet it fails to provide an effective framework for protecting the interests of states that might be affected by this expansion of jurisdiction.[61] Similar problems are caused by the notion of universal jurisdiction, which does not operate on the basis of a connecting factor linking up with a state's interests, but which is solely based on the 'international' nature of the criminal act committed.[62]

To this end, Cedric Ryngaert assesses in his contribution the current 'Cosmopolitan Jurisdiction and the National Interest' and first engages with the very *raison d'être* of the law of jurisdiction, which has, historically, been legally to delimit spheres of state power on the basis of the principle of territoriality, so as to prevent international conflict from arising. In a world characterized by increasing interdependence and multiple identities, territoriality is losing its power as a principle of jurisdictional order. Harmful activities (e.g. cybercrime, international corruption, emitting greenhouse gases) often have territorial connections—strong or weak—with multiple states. This raises the question of which territorial sovereign has prescriptive jurisdiction in a given situation. Moreover, a territory-based law of jurisdiction that limits itself to keeping states at arm's length from each other may fail to address the major problems of our time. It may fail to recognize

[60] D. W. Bowett, 'Jurisdiction: Changing Patterns of Authority over Activities and Resources', *British Yearbook of International Law* 53 (1983): 1, 8.

[61] David J. Gerber, 'Beyond Balancing: International Law Restraints on the Reach of National Laws', *Yale Journal of International Law* 10 (1985): 185, 185.

[62] Ryngaert (n. 5), 101.

that states have adopted common substantive norms and have set shared goals, for the realization of which the international community may, crucially, depend on unilateral state action. The need to take international action in the face of unjustified multilateral blockage is obviously in tension with the time-honoured principle of territorial sovereignty. The chapter argues that, from a global governance perspective, continued reliance on territoriality no longer serves a purpose, and suggests *(global) interest-based* jurisdiction as a useful alternative, at least where the harmful activity cannot readily be located in one particular state.

Another doctrinal aspect is covered by Paul Gragl in his chapter on 'Jurisdictional Immunities of the State in International Law'. The 2012 judgment by the ICJ in the *Jurisdictional Immunities* case[63] has reinvigorated the debate surrounding the question whether states enjoy immunity before the courts of other states in questions of grave human rights violations and violations of international humanitarian law. Jurisdictional immunity is not absolute anymore, and it is now accepted that private law acts of states can be subjected to adjudication before foreign national courts, whereas public law acts cannot. This raises the question of whether the plea for immunity still is a purely procedural principle or whether it is now also shaped by questions of substantive law. And even though it seems that the Court's negative answer appears to have foreclosed any development of the customary law of state immunity in this area for the foreseeable future, this chapter investigates what this means for the interaction between international and national law. In this regard, the reaction of the Italian Corte Costituzionale in 2014, effectively disregarding the ICJ's decision, is remarkable. The question remains whether new paradigms and new customary international law can be established on the basis of national judicial decisions and what this means for the relationship between international law and domestic law.

The chapter by Dino Kritsiotis, 'The Establishment, Change, and Expansion of Jurisdiction through Treaties', considers the insufficiency of the so-called traditional principles of jurisdiction—territoriality, nationality, protection, universality, and passive personality—when set against jurisdictional provisions of treaties (e.g. the Genocide Convention) and, indeed, in customary international law. These jurisdictional principles seek to explain the exercise of sovereign power, but, especially with treaty provisions, we now see a much more refined set of propositions—often an obligatory kind—in action. Therefore, this chapter enquires into the extent to which these provisions, read against those of custom (e.g. take the Genocide Convention and the *Eichmann* trial, on the one hand, and the Anti-Torture Convention and the *Pinochet* case, on the other), help us understand what these jurisdictional principles try to achieve, and what new modalities can help achieve a better understanding of them.

Uta Kohl—in her chapter 'Territoriality and Globalization'—challenges the commonly held view that the territorial state is fundamentally unsuited to, and incompatible with, twenty-first-century manifestations of globalization in the form of ever-tightening economic integration or all-pervasive global communication networks. This is only partly

[63] *Jurisdictional Immunities of the State (Germany v Italy; Greece Intervening)* [2012] ICJ Rep. 99.

true. The state—as defined and enabled by public international law around the idea of territorial sovereignty—provides the ideal mechanism for global capital and corporate activity to function and grow with maximum efficiency and minimal accountability. The territorial nation state provides the legal framework that facilitates foreign wealth accumulation through open borders, and its subsequent retention in the Global North through closed borders. At the core of this legal framework are the territorial rules under private and public international law that provide high flexibility in, selectively, opening and closing borders as and when national interest demands. The chapter argues that the complementary concepts of territory and borders are useful constructs to ring-fence capital from 'leakages' to the outside. The argument is illustrated with reference to US cases applying the presumption against extraterritoriality, on the one hand, and by English corporate cross-border tort litigation, on the other hand. In these cases, the territorial state emerges not as a victim of globalization but as an essential participant, propagator, and beneficiary ~~of it~~.

Alex Mills then focuses on 'Private Interests and Private Law Regulation in Public International Law Jurisdiction' and discusses how questions of private law are, generally, marginalized in favour of a focus on public law, particularly criminal law. This is surprising and unfortunate for two main reasons. The first is that private law issues played a central role in the development of public international law jurisdictional principles. The second is that public international lawyers have, in a range of other contexts, increasingly recognized the significance of private law regulation, and the 'public' function which it can play in pursuing particular state interests. Recognizing the significance of private law jurisdiction presents, however, some important challenges to the way in which public international law jurisdiction has become to be understood. In the field of private law, private interests (such as rights of access to justice or exercises of party autonomy) are widely recognized as playing a role in legitimizing state regulatory interventions, in addition to traditional connections of territoriality and nationality or residence. If public international law jurisdiction faces these challenges, the outcome will be a richer and more accurate understanding of the way in which international law regulates the allocation of regulatory authority between international actors.

Kimberley Trapp's chapter on 'Jurisdiction and State Responsibility' adopts a somewhat classical structure in its discussion of state responsibility and jurisdiction by discussing prescriptive, adjudicative, and enforcement jurisdiction in turn. The substantive discussion is, however, anything but classical, and engages with state responsibility issues in respect of a state's exercise of jurisdiction through the prism of several themes, including shifting approaches to sovereignty (from exclusively a source of rights to a source of obligation and responsibility) and the increasing pluralism of the international community. The starting point of this chapter is that *Lotus* has been turned on its head—the forces of globalization, resulting in the ever-increasing interdependence of states and peoples, ~~has~~ a counterpoint in the law of jurisdiction, requiring states to exercise their prescriptive jurisdiction more *narrowly* than *Lotus* suggests. While these constraints on jurisdiction mirror, to a certain extent, a bygone principle of non-intervention, they are not driven by principles of exclusivity and conceptions of

sovereignty as a shield, but rather by concerns to rationalize the exercise of jurisdiction so as to minimize excessive overlap and conflict.

Finally, Stephen Allen examines in his chapter 'Enforcing Criminal Jurisdiction in the Clouds and International Law's Enduring Commitment to Territoriality', a very topical issue—how cross-border data storage by way of Cloud Computing and related criminal activities have become a major problem for criminal justice authorities. Since these authorities remain beholden to the territoriality principle and cannot search, unilaterally, for data located within another state's territory, the dramatic growth in trans-border criminality means that this territorial limitation now risks undermining the extent to which individual states are able to satisfy their positive obligation to maintain the integrity of their criminal justice systems and to uphold the rule of law more generally. Therefore, this chapter seeks to draw attention to the consequences, for states and the inter-state system, of certain choices which are currently being mooted at the global level. To this end, in addition to considering the proposals developed by the Cybercrime Committee, this chapter pays particular attention to two significant cases—the Belgian Supreme Court's 2015 decision in the *Yahoo!* case;[64] and the *Microsoft Warrant* case, which was the subject ~~to~~ an appeal ~~before~~ the US Supreme Court.[65]

III.4. Contextualizing Jurisdiction: Selected Substantial and Institutional Issues

In contrast to the earlier chapters, Part V covers discrete substantive areas in relation to the concept of jurisdiction in international law and analyses distinct institutional settings in which jurisdiction plays a central role. With regard to the first subject matter, the editors are fully aware that substantial jurisdictional issues relate to areas as topical and diverse as cyberspace (in relation to issues such as data protection, cyber-attacks, and espionage);[66] the law of the sea, particularly in relation to maritime delimitation,[67] the exploitation of maritime resources,[68] and the combatting piracy;[69] the question of

[64] The *Yahoo! Judgment*, Belgian Court of Cassation, 1 December 2015, Case No. P13.2082.N/1.

[65] *United States v Microsoft Corp.*, Case No. 17–12 (2018) (the '*Microsoft Warrant* case'). The Supreme Court proceedings were halted due to Congress's intervention via the Clarifying Lawful Overseas Use of Data (CLOUD) Act, which was enacted on 23 March 2018. See the Supreme Court's judgment, 17 April 2018: https://www.supremecourt.gov/docket/docketfiles/html/public/17-212.html. However, this legislation does not affect the resonance of this case for the wider purposes of international law.

[66] See e.g. Scott J. Shackelford, *Managing Cyber Attacks in International Law, Business, and Relations: In Search of Cyber Peace* (Cambridge: Cambridge University Press, 2014).

[67] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)* [2001] ICJ Rep. 40, para. 169.

[68] Louis Rey, 'Resource Development in the Arctic Regions: Environmental and Legal Issues', in Dorinda G. Dallmayer and Louis ~~d~~eVorsey Jr (eds.), *Rights to Oceanic Resources* (Dordrecht: Martinus Nijhoff, 1989), 167 *et seq*.

[69] Eugene Kontorovich, '"A Guantánamo on the Sea": The Difficult of Prosecuting Pirates and Terrorists', *California Law Review* 98 (2010): 243, 244.

res communes, which encompass~~es~~ areas as diverse as outer space,[70] aviation,[71] and protecting cultural heritage;[72] human rights, ranging from issues of transnational human rights law[73] to refugee law,[74] terrorism,[75] and the notion of 'R2P';[76] environmental and health law, including questions of jurisdiction with regard to climate change,[77] sustainable development, and global health;[78] and international trade, investment, and finance—areas that often raise conflicts with human rights law.[79]

Yet, given this extensive range of substantive areas, it is impossible for this Handbook comprehensively to cover and critically ~~to~~ examine all of them without becoming too voluminous. Part V is therefore deliberately concise, and it contextualizes jurisdiction in international law on the basis of two selected issues, namely human rights and investment law. These areas have not been chosen arbitrarily. On the contrary, the editors believe that these two areas of law currently raise particularly interesting and urgent questions in relation to jurisdiction in an international setting. The decision not to include, in this Handbook, chapters on a wider variety substantive and institutional issues should not be attributed to the space constraints alone. As one of the insightful—anonymous—scholars who reviewed the proposal for the book commented, a volume with a large number of chapters looking at specific aspects of jurisdiction may result in a compendious Handbook that fails to capture the holistic nature and shape of the concept of jurisdiction. This is one of the principal aims of this book and so we have chosen to wield Occam's razor somewhat brutally in our endeavour to engage with the protean notion of jurisdiction in a meaningful and reflective manner.

The chapter by Wouter Vandenhole, 'The "J" Word: Driver or Spoiler of Change in Human Rights Law?', examines the controversial extraterritorial jurisdiction of human

[70] Gbenga Oduntan, *Sovereignty and Jurisdiction in Airspace and Outer Space: Legal Criteria for Spatial Delimitation* (London: Routledge, 2011), esp. 174 *et seq*.

[71] See e.g. the controversies of the EU Emission Trade Scheme; Case C-366/10, *Air Transport Association of America and Others* [2011] ECR I-13755.

[72] Roger O'Keefe, 'Protection of Cultural Property under International Criminal Law', *Melbourne Journal of International Law* 11 (2010): 1–54.

[73] Sigrun Skogly and Mark Gibney, 'Transnational Human Rights Obligations', *Human Rights Quarterly* 24 (2002): 781–98.

[74] Andreas Fischer-Lescano, Tillmann Löhr, and Timo Tohidipur, 'Border Controls at Sea: Requirements under International Human Rights and Refugee Law', *International Journal of Refugee Law* 21 (2009): 256–96.

[75] Colin Warbrick, 'The European Response to Terrorism in an Age of Human Rights', *European Journal of International Law* 15 (2004): 989, 1015.

[76] Krista Nakavukaren Schefer and Thomas Cottier, 'Responsibility to Protect (R2P) and the Emerging Principle of Common Concern', in Peter Hilpold (ed.), *The Responsibility to Protect (R2P): A New Paradigm of International Law?* (Leiden: Brill, 2015), 124–5.

[77] James Bushnell, Carla Peterman, and Catherine Wolfram, 'Local Solutions to Global Problems: Climate Change Policies and Regulatory Jurisdiction', *Review of Environmental Economics and Policy* 2 (2008): 175–93.

[78] Stefania Negri, 'Sustainable Development and Global Health', in Malgosia Fitzmaurice, Sandrine Maljean-Dubois, and Stefania Negri (eds.), *Environmental Protection and Sustainable Development from Rio to Rio+20* (Dordrecht: Martinus Nijhoff, 2014), 264–88.

[79] Steven R. Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility', *Yale Law Journal* 111 (2002): 443, 506–7.

rights courts. The author argues that human rights law should accept extraterritorial obligations. That argument relies on two submissions. First, reality indicates that states frequently engage in extraterritorial conduct, or take measures with extraterritorial effects, which can have a negative impact on human rights outside of these states' borders. Second, human rights law must be able to reflect reality (i.e. it must be able to engage with extraterritorial conduct or effects). The notion of 'jurisdiction' has been at the centre of debates on extraterritorial human rights obligations. In human rights law, jurisdiction is not about the legality to act but rather about the question whether an obligation to observe human rights applies towards certain individuals. Therefore, it defines the scope of a treaty's application *ratione personae*. The question, thus, becomes to which rights-holders does a State Party have obligations? It may be said that jurisdiction has rather been a spoiler of change than a game-changer in the case law of the European Court of Human Rights (ECtHR). Extraterritorial jurisdiction mainly finds support in the case law of other human rights bodies, such as the UN Human Rights Committee and the American Commission on Human Rights. However, there are many challenges in the way of a wider recognition of extraterritorial jurisdiction in the area of human rights.

The chapter by Edward Guntrip, 'International Investment Law, Hybrid Authority, and Jurisdiction', examines the extent to which contemporary approaches to jurisdiction can be applied to hybrid exercises of state and non-state authority in international investment law. The author relies on theories of relative authority and transnational law and demonstrates that jurisdiction needs to be reformulated to capture exercises of hybrid authority in international law (i.e. in the public, private, and the international and domestic legal spheres). International investment law is a leading example of where activities can be classified as hybrid authority. Guntrip's hypothesis is based on the premise that actors within international investment law need to address jurisdiction's shortcomings if jurisdiction is to capture exercises of hybrid authority in international investment law. If jurisdiction cannot address hybrid authority, it will continue to overlook significant exercises of authority within international investment law. The concept of relative authority can legitimize exercises of hybrid authority, which means that jurisdiction fails to capture key exercises of authority within international investment law.

In the context of selected institutional issues concerning jurisdiction in international law, the last chapters of this Handbook explore the respective approaches that certain institutional bodies take to jurisdiction. Again, the editors are aware that there is a plethora of international bodies the jurisprudence and decisions on jurisdiction of which deserve careful analysis. These include, among others, the ECtHR, the CJEU, and the WTO Dispute Settlement Body.[80] As in Part IV of this Handbook, the editors made the decision to maintain a relatively narrow focus on general international law. The chapters, as a result, explore the approaches of the ICJ, the UN Security Council and the International Criminal Court (ICC) to state jurisdiction.

[80] Joel Trachtman, 'Jurisdiction in WTO Dispute Settlement', in Rufus Yerxa (ed.), *Key Issues in WTO Dispute Settlement: The First Ten Years* (Cambridge: Cambridge University Press, 2005), 135.

In his chapter 'Conceptionss of State Jurisdiction in the Jurisprudence of the International Court of Justice and the Permanent Court of International Justice', Daniel Costelloe traces the manner in which the PCIJ and the ICJ have understood and applied notions of state jurisdiction in response to a variety of legal issues in international dispute settlement. These have notably included the so-called 'reserved domain' of domestic jurisdiction, which certain states have invoked in an effort to challenge the jurisdiction of an international court or tribunal or the admissibility of claims. They have also included the foundational question, invariably associated with the PCIJ's judgment in the case concerning the *SS Lotus*, whether a state must invoke a permissive rule before it may lawfully ~~invoke territorial adjudicatory~~ jurisdiction. Finally, these issues have involved international legal limitations on the exercise of such jurisdiction in the context of state immunity. The PCIJ's and ICJ's jurisprudence reflects the various manifestations of state jurisdiction and their relationship to the body of international law. It is, moreover, indicative of a gradual trend towards an increasing regulatory purview of international law.

Blanca Montejo and Georg Kerschischnig, in their chapter 'The Evolving Nature of the Jurisdiction of the Security Council: A Look at Twenty-First-Century Practice', analyse the original conception of the Security Council's jurisdiction and contrast it with the way its jurisdiction has developed—and expanded—in practice since the end of the Cold War. The Security Council's jurisdiction—which is ~~principally political and~~ informed primarily by political rather than legal considerations—rests on a limited legal framework consisting of provisions in the UN Charter and of the Council's own provisional rules of procedure. Nevertheless, the Security Council's jurisdiction has expanded considerably since the end of the Cold War and has expanded into areas beyond international security. One notable area in which the Council's competence has increased in this period, the authors explain, is that of sanctions. The authors conclude that these jurisdiction-related developments in the Council's practice reflect a world in which the ~~line~~ between national and international jurisdiction are no longer clear or desirable. At the same time, the Council has also increased its interaction with UN Member States and with civil society.

Kirsten Schmalenbach's chapter, 'International Criminal Jurisdiction Revisited', traces the theoretical foundations and the genealogy of international criminal jurisdiction in international law. One of the central themes that typically accompanies the establishment of a body with international criminal jurisdiction is the relationship of this body's jurisdiction to state sovereignty. While it is clear that international criminal jurisdiction cuts into national jurisdiction to a certain extent, the question concerning the proper foundation of international criminal jurisdiction—whether it rests on state consent or a mandate by the international community—remains more nuanced and more debated. Schmalenbach brings the discussion to the world of practice by exploring judicial perspectives on the jurisdiction of international courts and tribunals, from the International Military Tribunals at Nuremberg and Tokyo up to the ICC. Where the Security Council has been involved in establishing a court or tribunal, jurisprudence supports the position that international criminal jurisdiction is exercised on behalf of the international

community, she concludes. In the case of the ICC, however, the picture becomes more complex, due to the role of domestic criminal jurisdiction and the difficulty in identifying a single international community.

In the final chapter of the Handbook, James Summers discusses 'Jurisdiction and International Territorial Administration', which is an exception to the normal state of affairs. Such territorial administration regimes have been created where international organizations or states collectively have had to step in to stabilize, or reconstruct, a particular country or region, and this kind of administration creates a very distinctive and complex environment for jurisdiction. Accordingly, this chapter explores five different aspects of jurisdiction in relation to these administrations. First, it looks at the basis on which these bodies might assert jurisdiction over a territory and its people. Second, it examines how this jurisdiction can be exercised within the domestic legal systems of these territories. Third, it investigates jurisdiction over international crimes, which may be shared between different international bodies. Fourth, it considers the impact of international organizations' immunities on jurisdiction, including, fifth, their significance for human rights jurisdiction. The focus is, predominantly, on the missions in Kosovo and East Timor (UNMIK and UNTAET) as well-developed examples of international administration.

IV. The Objective of this Handbook

In 2010, Vaughan Lowe and Christopher Staker complained about the lack of engagement with the topic of jurisdiction in general treatises on international law.[81] Indeed, they went further by saying that: '[c]uriously, there is no satisfactory modern monograph on jurisdiction'.[82] ~~Although this statement overlooks~~ Cedric Ryngaert's acclaimed monograph, *Jurisdiction in International Law* (which was first published in 2008), it was a fair comment at the time it was made. Nevertheless, as this introduction has shown, the topic of jurisdiction has attracted considerable academic attention in recent years. To this end, a number of significant books on the general theme, ~~and~~ on specific aspects of jurisdiction in international law have been published in the last few years. Many of them have been written by scholars involved in this Handbook but other such works include: Alexander Orakhelashvili (ed), *Research Handbook on Jurisdiction and Immunities in International Law* (2015); Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy* (2011); and Christopher Kuner, *Transborder Data Flows and Data Privacy Law* (2013), to name but a few. We are confident that this Handbook will make an important contribution to this evolving field of study. However, as the chapter outlines indicate, this Handbook was not developed with a view to

[81] Vaughan Lowe and Christopher Stalker, 'Jurisdiction', in M. D. Evans (ed.) *International Law*, 3rd edn (Oxford: Oxford University Press, 2010), 314–39, 315.

[82] *Ibid*., at 338.

offering only a doctrinal account of the topic jurisdiction as a matter of international law. Instead, it was designed with several ~~clusters of~~ academic audiences in mind, including those working in the domains of constitutional law, comparative law, legal history, and legal theory. The volume in its entirety, or certain of its chapters, could also be used in the context of specialist courses in particular areas of law but it is also meant to be accessible to non-lawyers ~~as well~~ (a number of the Handbook's chapters ~~exhibit~~ an interdisciplinary nature). We hope that it offers scholars, practitioners, and policy-makers a conceptual understanding of the past, present, and future of jurisdiction in international law.