

The Multifaceted Notion of Time in International Law



Klara Polackova Van der Ploeg and Luca Pasquet

Abstract Although time forms a part of the very bedrock of international law as a legal order and fundamentally determines international law as a discipline, the relationship between time and international law has received only limited attention. To most international lawyers, time appears as simply a technical problem, and mainstream international law doctrine presents international law as essentially atemporal. However, such attitudes obscure the complex temporalities involved in international law and the choices that have underpinned them. Time in international law is profoundly multifaceted, and there is a significant intra-disciplinary diversity in the understanding of the relationship between international law and time. Nevertheless, international law and international lawyers may be said to primarily cope and engage with time in two main—albeit intertwined—ways: through the construction of narratives and through the development of legal techniques.

1 International Law and Time

Time is omnipresent in international legal practice and scholarship, just as it is in all aspects of human life. Although intangible, even elusive, time is all-pervasive, conspicuous, and ever-present. Time underlies international law's norms, institutions and processes, and forms a part of the very bedrock of international law as a legal order; it also fundamentally determines international law as a discipline. However,

K. P. Van der Ploeg (✉)
University of Nottingham School of Law, Nottingham, UK
e-mail: klara.vanderploeg@nottingham.ac.uk

L. Pasquet
Utrecht University, Utrecht, Netherlands
e-mail: l.pasquet@uu.nl

international lawyers have explored time from the vantage point of their discipline only in a limited manner.¹

To most international lawyers, time may appear as simply a technical problem: an issue to be handled through the application of the intertemporal rule, time limits, and ‘critical date’, or a requirement to be satisfied in relation to the temporal jurisdiction of international courts and tribunals and in the formation of a customary rule of international law.² However, the relationship between time and international law goes far beyond the technical detail of any rules that serve to determine a set of applicable international legal norms, their temporal scope, or procedural mechanisms available for their invocation and enforcement. The technical concepts are ultimately expressions of the temporality of international law.

2 The Conundrum of Time

Time is one of the essences of human experience as well as one of the basic categories through which we as human beings make sense of our social and physical reality and of our existence. Still, despite its pivotal role in human life, time has puzzled philosophers, physicists and other scholars throughout history, as it escapes easy characterization (even if the temporality of our ordinary day-to day life may seem quite banal).³

While Plato considered time a physical characteristic of the universe, independent of events that occur in time,⁴ Aristotle fundamentally viewed time as temporal relations among things and argued that time follows change, as we only know that time has passed through change.⁵ Other philosophers associated time with the human mind: Plotinus linked time to changes of states in the life of the soul,⁶ Husserl to inner temporal consciousness,⁷ Kant thought time an a priori equipment of reason, which enabled the organization of chaotic perceptions into comprehensible units.⁸ Yet other thinkers have drawn distinctions between external and internal existence or experience of time. McTaggart argued for two conceptions of time—an objective one,

¹ See eg Pedone (2001); Cassese and Weiler (1988); Craven et al (2007); some of the articles in Netherlands Yearbook of International Law vol 45 (2014) on ‘Temporariness in International Law, Wuschka et al (2019); and, most recently, McNeilly and Warwick (2022). See also the works cited in (n 2).

² Significant works exploring these matters include Rosenne (1960); Nick (2017); Higgins (1997); Linderfalk (2011).

³ The difficulty in conceptualizing time was, of course, famously observed at the turn of the 5th century by St Augustine in Confessions, Book XI, Chapter XIV: ‘What then is time? If no one asks me, I know what it is. If I wish to explain it to him who asks, I do not know.’

⁴ Emery et al (2020).

⁵ Aristotle (2005); Emery et al (n 4) s 2.

⁶ Majumdar (2007).

⁷ Husserl (1991).

⁸ Kant (1999); Janiak (2016).

which distinguishes between earlier and later stages, and a subjective one, which incorporates the observer in the analysis—⁹ while Bergson contrasted time as an external measurable variable from internal duration, associated with the experience of flow, stability and change.¹⁰ Vast philosophical literature has explored whether and in what sense time passes, what is its direction, whether it is infinite or whether it has a beginning and an end.¹¹ Time has also been extensively considered in sociology (where sociologists developed various notions of time as ‘social time’),¹² in anthropology (which established how concepts of time vary widely around the world and elaborated different culture-based meanings and forms of time),¹³ in other social sciences and humanities, and also in law.¹⁴

Distinct conceptualizations of time and a continuing disciplinary debate about the nature and even the existence of time also exist in physics.¹⁵ In classical Newtonian physics, time is conceptualized as a unit of measure of motion (the duration that it takes for something to change its position in space) and a quantity to be measured.¹⁶ Time is expressible as a number, invariant, infinitely divisible, unaffected by the transformation it describes,¹⁷ while itself being an apparent manifestation of an ‘absolute, true and mathematical’ time that is not directly accessible to the senses and flows continually without relation to anything.¹⁸ Modern physics has challenged the Newtonian notion of time as limited and only operative at a high level of abstraction. Einstein has shown that there is no such thing as a fixed interval of time that is independent of the observer and their frame of reference; rather, he thought of time and space as fusing in circular, curved space-time, with the speed of light providing the absolute constant and the upper limit to all physical signals at which time stops for any moving particle.¹⁹ At subatomic level, quantum physicists have observed that sequence is replaced with simultaneousness in an interconnected reality in which causality disappears and particles are in constant flux, transient rather than permanent.²⁰ Physicists also keep asking whether time as a fundamental entity at all exists, given that the basic equations of quantum gravity can be written without a time variable.²¹

The previous paragraphs could only briefly allude to some of the vast scholarly debates on time that have taken place across disciplines and millennia. Still, they

⁹ Emery et al (n 4) s 4.

¹⁰ Bergson (1912).

¹¹ See eg Savitt (2008); Poidevin (2019); Gale (1968).

¹² See eg Sorokin and Merton (1937); Adam (1994); Elias (1993); Hassard (1990); Šubr (2021).

¹³ See eg Munn (1992); Greenhouse (1996; 1989); Hoskins (1997).

¹⁴ See eg Ost (1999); Grabham and Beynon-Jones (2019); Ranchordas and Roznai (2020).

¹⁵ See eg Prigogine (1980); Hawking (2016); Rovelli (2018).

¹⁶ Adam (n 12) 50–55.

¹⁷ *id.*

¹⁸ Newton (1999); Rynasiewicz (2011).

¹⁹ Adam (n 12) 55–57.

²⁰ *ibid* 57–60.

²¹ Rovelli (n 15); Durrani (2018).

clearly illustrate the great multiplicity of understandings of time (which may conflict with one's personal, typically instinctive, unarticulated notion of what 'time' is), as well as the many distinct and often contradictory views: the little consensus on what time actually is, the 'incompatible array of definitions',²² the lack of its definitive account, and the uncertainty as to whether time is a substance in its own right or a property of another substance. 'Time' involves passage of time, duration, change, measurement, clock-time, timing, instant, sequence, chronology, synchronization, pace, and so on. It is considered a dimension, a coordinate, a quality, a quantity, a sense, a parameter, an idea, a measure, but also a commodity, a resource, an ordering principle, and a tool of organization, co-ordination and control. 'Time' also encompasses ideas about the past, present and future, a beginning and an end, before and after, memory and expectation, sequence and simultaneity, trajectory and cyclicality, and so forth. 'Time' is inherently polysemic and consequently involves a universe of meanings. In fact, Geană has argued that the semantic field of the word 'time' is one of the most comprehensive in the English language.²³

Still, 'time'—or what we refer to as 'time'—arguably involves at least two distinct notions. First, 'time' denotes a basic dimension of the physical world. Even if science has shown the essential relativity and malleability of time as a physical dimension, the passage of time frames our experience of the world, as well as of the course of our life, in a way that seems to transcend human existence. Time passes; events occur; things change. Time appears a unified, universal, invariant, indefinite physical dimension, which has an unavoidable impact on the world and which exists independently of the human experience of it.

On the other hand, 'time', or the human perception of it, is also collectively constructed and individually experienced, making 'time' both an independent and dependent variable: something we cannot control and need to come to terms with, and something we actually make. Although temporal structures may be 'socially interpreted as factually given, as something objective and seemingly natural in character',²⁴ notions of time and temporalizations—acts of situating in time—have differed throughout history.²⁵ Societies have developed distinct metaphors, concepts and instruments to enable themselves to think and speak about time. Social and cultural ideas about time shape the lens through which individuals and societies observe, assess, record and anticipate events and experiences, and through which they organize themselves.

Individually experienced, lived time reconciles the notion of physical time—'the reality of time, as the changing state of the universe from moment to moment'²⁶—not only with social and cultural practices but also with human biology and psychology. Neuroscience has established that the perception of time is not uniform and may be

²² Adam (n 12) 15.

²³ Geană (2016) 1072.

²⁴ Rosa and Scheuerman (2009).

²⁵ See eg Greenhouse (1989); Luhmann (1976); Jones (1988). See also chapter by Soave in this book, s 2.1.

²⁶ Schiff and Nobles (2012).

altered by emotional state, level of attention, memory and illness.²⁷ Recent discoveries have also suggested that at the neural level, it is the observed change in content—rather than some abstract property—which creates the sense of the passage of time and the experience of the world as a sequence of events.²⁸ Additionally, the brain may generate a linear mental timeline, the sense of ‘before’ and ‘after’, from what may in fact be multiple nonlinear local timelines neurally.²⁹

In law generally and in international law specifically, time consequently manifests both as the setting within which law must operate and as a notion that law creates (and then presents as given). International law thus emerges as a practice that operates within a temporal setting based on an idea of physical time, external and independent of international law and exemplified in the passage of time, while itself producing particular understandings of that temporal dimension, thus co-creating it.³⁰

The relatively recent temporal coordination of societies through the imposition of legal (official) time (what sociologists might refer to as the ‘standardization of temporal reference’)³¹ may provide perhaps the most straightforward example of this central duality of time in law, although its application and relevance is much more fundamental, as many chapters in this book illustrate.³² In order to account for the physical reality of the passage of time—and to facilitate social coordination—law has been used to impose a particular temporal structure within society, such as clock-time and time zones. International law itself has facilitated worldwide standardization of units of time, time measurement, time reference points and time zones to enable global coordination and ordering through time synchronization.³³ As this ‘legal’ time is implemented and followed, it embeds particular temporalities within the structure of the legal order (such as the Newtonian time),³⁴ and marginalizes other possible conceptualizations of time. Even though being only one of ‘times’ existing in the physical world and ultimately a legal articulation of a human convention on time, this constructed ‘legal’ time then becomes part and parcel of the notion of physical time as the setting within which international law operates.

²⁷ Fontes et al (2016).

²⁸ Tsao et al (2018).

²⁹ Buhusi et al (2018).

³⁰ cf. eg Šubr (2021) 4 (discussing Heidegger’s concept of *Dasain*, our existence, which took place over time but at the same time related to time in some way and thus co-created it in a certain way); Giddens (1979) esp ch 6; Mawani (2014).

³¹ Zerubavel (1982).

³² See eg chapters by Schramm, Soave, Vanhullebusch, Messenger and Ellis in this volume.

³³ See eg the Metre Convention [1875] as amended, the 1884 International Meridian Conference, and the resolutions of the International Bureau of Weights and Measures and the General Conference on Weights and Measures. The International Bureau of Weights and Measures, an international organization, also calculates the international reference time scale, UTC—‘the time’ for the world. International Bureau of Weights and Measures, ‘Time’ <https://www.bipm.org/en/bipm/tai/> (accessed 15 April 2020).

³⁴ cf. Adam (n 12) 53.

3 On This Book: Thinking About International Law and Time

In contrast to other scholarly fields with well-identifiable and developed studies of time, international law has been characterized by a lack of focused attention to the relationship between time and international law. There has been a conspicuous discrepancy between practitioners' and doctrinal scholarship's preoccupation with the mechanics of temporal rules and an absence of more foundational considerations of understandings, manifestations, uses and implications of time in international law.³⁵ In fact, the conceptual structure of international law would often seem to be presented as essentially atemporal—temporally neutral.

The present book provides an invitation to start noticing the intimate, intricate, complex, and consequential—yet to a large extent implicit—relationship between time and international law. The volume explores how time—both as an irrepressible physical dimension, manifesting in the passage of time, and a social construct, shaped by diverse social and cultural factors—impacts and interacts with international law. The book considers how international law operates in time; how international law as a legal order embeds and perpetuates particular temporal realities; how international law adjusts to and regulates time; and the ways in which international lawyers engage and cope with time.

In particular, this volume seeks to provide the groundwork for a more widespread debate on the relationship between international law and time by exploring some of international legal scholarship's existing ways of engaging with time. To that end, the book brings together a diverse group of authors in terms of theoretical approaches to international law, disciplinary backgrounds, research agendas, and geographical locations, who have reflected on the notion, significance, manifestations, uses and implications of time in their own work and area of specialization, thus providing rich case studies on the matter.

Considering the fundamental ambiguity in both philosophy and science of what 'time' actually is, this volume does not start from a premise of a singular notion of 'time'—as if 'time' had necessarily only one meaning. Rather, this book has adopted a broad, open approach to what 'time' may mean or involve in international law and what legitimate questions of 'time' in international law are. Barbara Adam has convincingly argued against forcing choices among the 'multitude of meanings' of time and viewing time as a unitary concept, given that everyday experience of time makes evident that time is multi-layered and each of its expressions is equally significant for human experience of the world.³⁶ Carlo Rovelli has similarly warned that '[m]ost mistakes' and 'much of the confusion' about the nature of time in fact come from taking a set of attributes to constitute 'a unique bundle that either is there or is not there'.³⁷

³⁵ See (n 1) and (n 2) and related text.

³⁶ Adam (n 12) 1–8.

³⁷ Durrani (2018).

At its core, the book seeks to challenge and problematize the seemingly atemporal character of mainstream international law doctrine by putting a spotlight on the fundamental significance of time for international law as a legal order and as a discipline: the temporalities underpinning rules, concepts, institutions and practices of international law, as well as the profound temporal assumptions, choices and implications involved in considerations of international law. However, the volume has not sought and does not claim to present a general (all-encompassing) theory of time in international law; its chapters are not applications of a unified theory. Rather than to subscribe to a single theoretical view while discounting other perspectives, this book includes chapters written from different theoretical perspectives, including conceptual, philosophical, doctrinal, critical as well as historically focused studies to allow for an exploration of a possible intra-disciplinary diversity of understandings, manifestations, uses, and implications of time in contemporary international law.

The chapters in this book have been organized into five Parts to reflect five thematic areas that have emerged as pivotal to the relationship between time and international law during the course of this project: (i) the question of understandings of time in international law; (ii) the temporal dynamics involved in international lawmaking; (iii) the role of time in the operation of international law; (iv) time as change of international law; and (v) the temporal dynamics involved in transformations of international legal concepts over time. Each of these themes, including the connection and contribution of the individual chapters to the exploration of the relationship between international law and time, are described in greater detail below. However, each Part provides an insight into a central segment of international law's current engagement with time. Adam noted that most disciplines seem to have 'their very own subject-specific focus on time',³⁸ and these five thematic areas may perhaps be understood as a preliminary articulation of just that in the field of international law.

Part I: Constructing and Attributing Meaning to Time in International Law

The opening Part I, entitled 'Constructing and Attributing Meaning to Time in International Law', explores some of the conceptions or understandings of time in international law and their implications for the content and operation of international law. From the vantage point of a range of theoretical and disciplinary perspectives, authors explore how international legal discourses create and embed particular temporal structures within international law, and how these in turn shape international law's concepts, norms and institutions. Exposing time in international law as a social construct—a theme that is further explored throughout the book—the Part substantiates the constitutions of international law's internal temporality and reveals the implications—and for some of the authors also the potential—of particular temporal frameworks for international law as a legal order and discipline.

In Chapter "Lawyers as Creators of Law's Temporal Reality: A Pragmatic Approach to International Law", Eric Wyler and Arianna Whelan espouse how lawyers actively create the temporal reality of international law by adopting a specific legal discourse in their reasoning. Contrasting formalism with pragmatism, Wyler and Whelan discuss how each legal discourse inherently entails a particular concept

³⁸ Adam (n 12) 2.

of time, and the ensuing temporal construction critically impacts the interpretation and application of international law in specific cases. While formalism employs a linear, sequential, discontinuous and synchronic concept of time, leading it to apply law through the use of formal logic imposed on fixed temporal points identified in legal texts, pragmatism involves a cyclical concept of time, which, in their view, enables the practice of concrete justice.

Using the example of historical representations of human rights, Juhana Mikael Salojärvi in Chapter “[Human Rights in Time: Temporalization of Human Rights in Historical Representation](#)” then considers the implications of adopting a particular temporal perspective in historical research on international law for the understanding of international law itself. Salojärvi conceptualizes time as one of the methodological choices a researcher makes when dealing with the topic of human rights and argues that temporalization—with its dichotomies of long and short time frames, continuous and discontinuous temporality, as well as change and transformation—fundamentally shapes historical representations of human rights. He submits that by situating the origins of the modern concept of human rights at a particular point in time and by producing a particular narrative of the historical evolution of modern human rights, temporalization determines not only the historical account, but also impacts our contemporary understanding of human rights.

In Chapter “[Interstellar Justice Now: Back to the Future of International Law](#)”, Bérénice Kafui Schramm offers a vision for the future of international law through a postcolonial and queer feminist inquiry into the human existence in time and international law. Employing Christopher Nolan’s film *Interstellar* as a didactical device, Schramm dissects standard narratives of international law and unveils their rooting in Western, masculine, patriarchal conceptions of time, which fail to account for all the ways in which time materializes in everyday human experience. Schramm challenges the identified dominant temporal structures of contemporary international law and builds a radical case for an alternative that would embed international law in a strong ethics of responsibility, with justice as its final cause.

Part I concludes in Chapter “[Digressing Towards Justice: International Criminal Law’s Narrative of Moral Transit Through Violence](#)” with Timothy Waters’ exploration of time as a connection between the past, present and future through a probe into the use of international criminal trials to relate international law to time and to employ international law as a means of reconciling with the past and providing a way forward for a post-conflict society. Considering the judicial practice of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and its role in the process of the democratic transition of Yugoslavia after the fall of communism, Waters identifies international criminal law as a source of a unique transformational narrative of the past, present and future created to facilitate reconciliation after the 1990s Yugoslav wars. In particular, he highlights how the ICTY’s assessment of events preceding its formal temporal jurisdiction became a central part of the ICTY’s jurisprudence, while questioning the nature of the tribunal’s historicizing ambitions.

Part II: Time in International Lawmaking

Part II primarily focuses on the temporal dynamics involved in the creation of international law, including their effect on the normativity and content of international law; however, in the process, the chapters expose also other temporalities implicated in sources of international law, such as treaties. The Part opens with two case studies exploring the two central, contrasting—yet often complementary—temporal dynamics involved in international lawmaking: instantaneousness and gradual development. While illustrating how these dynamics have played out in specific contexts, the case studies invite broader considerations of temporalities underpinning sources of international law and processes generating normative shifts. Part II then proceeds to consider the distinct time horizons and temporal dynamics of international as opposed to domestic lawmaking, before reflecting on the temporalities involved in the epistemic struggles over the very concept of international law, as these may be viewed as constitutive of international law itself.

In Chapter “[How Instant and Universal International Law Is Born and How It Dies: The 1856 Declaration of Paris](#)”, Jan Martin Lemnitzer considers the instrument of a multilateral treaty as a mechanism for the creation of instant and universal international law through a case study of the 1856 Declaration of Paris Relative Respecting Maritime Law. Tracing the origins, features and normative implications of the declaration, Lemnitzer argues that the today largely forgotten document constituted an important innovation in the creation of international law, which brought about a novel—and useful—temporality into international lawmaking. At the same time, he takes the Declaration of Paris, its transformations and demise as an opportunity to explore the lifespan of an international treaty, including the interplay between a treaty and customary norms of international law.

Chapter “[Incrementalism in International Lawmaking: The Development of Normative Frameworks of Protection for Forcibly Displaced Persons](#)” by Rob Grace examines the temporal dynamics involved in the development of the law on the protection of forcibly displaced persons since the 1920s—a gradual development of an area of international law over a long period of time. Grace juxtaposes horizontal and vertical incrementalism in the creation of new—and in the interpretation (and reinterpretation) of existing—international law and links the normative developments in the law on the protection of forcibly displaced persons to a particular constellation in the lawmaking process: an alignment between governmental political interests and humanitarian needs at particular points time. He concludes by emphasizing the potential of incrementalism to empower advocates seeking to develop international law for humanitarian and other causes.

In Chapter “[The Politics of Time in Domestic and International Lawmaking](#)”, Tommaso Soave focuses on the central role of the politics of time in lawmaking, contrasting the temporal narratives of domestic and international political discourses that underpin lawmaking. In Soave’s analysis, domestic lawmaking is characterized by arguments and narratives involving strong circular, short-term time horizons, while international lawmaking is dominated by ideas of linear time, incremental change, and long-term progression toward a better future. Soave argues that the

distinct temporalities involved in domestic and international lawmaking determine specific regulatory choices, such as a selection between a short-term and long-term objective, while the interaction among such temporalities fundamentally shapes the temporal dimensions of global governance and the normative outcomes of global legal processes.

Finally, Chapter “[Life Cycles of International Law as a Noetic Unity: The Various Times of Law-Thinking](#)” by Thomas Schultz approaches the consideration of time in the creation of international law from a metacognitive position, departing from the proposition that lawmaking is in its essence (the product of) ‘law-thinking’—a collective noetic experience. He therefore asks what temporalities—in his terminology ‘life cycles’—are involved in the construction of the idea of international law within international law’s epistemic communities. Identifying five such life cycles (the time of paradigm shifts; the time of struggles between competing schools of thought; the time of the formation of distinct epistemic fields; the time of the evolution of interests; and the time of the change of beliefs), Schultz argues that these temporalities provide an alternative depiction of the passing of time in international lawmaking and consequently further the understanding of the creation of international legal norms.

Part III: Time and the Operation of International Law

Part III explores how time manifests in the design and application of specific international legal norms and concepts, and how a particular understanding of time may impact actors’ conduct. The first four chapters focus on some of the most prominent temporal rules in international law to examine various technical legal means through which international law both adjusts to and regulates time. Authors analyze specific normative solutions developed to account for the passage of time and dispel contingency from adjudication and other law-application, including their profound implications on case outcomes. At the same time, the authors substantiate the challenges involved in temporalization of social phenomena in international law and explore the problem of frequent asynchrony between the temporal character of the regulated conduct and the international legal rule. Finally, these chapters evidence the multiplicity of the relevant temporalities in various subject-matter contexts, including treaty interpretation, international investment law, internal adjudication, and the law of state succession. The largely doctrinal examinations are then complemented with a study of the impact of a particular understanding of time on a state’s engagement with international law. Part III overall exemplifies how rules of international law integrate specific temporal assumptions and preferences, while proposing that social and cultural notions of time may significantly affect international law’s operation.

In opening Chapter “[Time-Traveling Rules of Interpretation: Of ‘Time-Will’ and ‘Time-Bubbles’](#)”, Panos Merkouris considers temporal dimensions of the rules and the process of treaty interpretation, focusing on the interpretative practices of international courts and tribunals. He submits that international adjudicative bodies regularly ignore the temporal dimension of treaty interpretation, applying the Vienna Convention on the Law of Treaties’ (VCLT) rules of interpretation even when interpreting treaties that predate the VCLT’s entry into force. Exposing treaty interpretation as supremely temporal, Merkouris argues that such adjudicative practice is problematic

due to a potential unreflected anachronism involved: as the rules of interpretation have changed over time, there may be a discrepancy between the temporal planes of the primary treaty rules and the rules of interpretation utilized to interpret them. Merkouris demands a principled solution to the intertemporal problem involving the change in the content of rules of treaty interpretation over time. While in his view the rules of interpretation may ‘travel in time’, the determination of whether to apply the contemporary rules of treaty interpretation or those of the time of the treaty’s conclusion should be based on the ‘time-will’ of the treaty parties.

Chapter “[Time and Tide Wait for No One: The Curious Consideration of Time in International Investment Treaty Law](#)”, by Robert Howse and Barry Appleton, reflects on some of the difficult temporal issues involved in the determination of a breach of an investment treaty—a determination that involves judgments about conduct over time. While considering some of the rules defining the temporal jurisdiction of investment arbitration tribunals and the admissibility of claims before them (including time bars, time limits, waiting periods, notice periods the an entry of a treaty into force), as well as rules governing situations of continuing breach under the law of state responsibility, Howse and Appleton submit that arbitral decisions on the question of a treaty breach ultimately center on a determination of the temporal relation between the events giving rise to liability and the claimant’s steps to bring a claim. Reviewing relevant arbitral jurisprudence, the authors note that dealing with temporal issues often requires more than just looking at a clock and instead depends on detailed factual determinations to be made by the arbitral tribunal. They argue, however, that as a matter of principle, arbitral decisions on temporal issues must be guided by the object and purpose of the treaty’s temporal requirements and the nature of the primary treaty obligations involved.

Lorenzo Palestini turns in Chapter “[The Relevant Time for Assessing Jurisdiction and the *Ratione Temporis* Objection in the *Genocide \(Croatia v. Serbia\) Case*” to the topic of the temporal jurisdiction of the International Court of Justice \(ICJ\), exploring two central issues of the ICJ’s temporal jurisdiction: the question of the relevant moment in time for assessing the ICJ’s jurisdiction and the scope of the ICJ’s temporal jurisdiction. Using the example of the *Genocide \(Croatia v. Serbia\)* case, he analyzes the temporal conundrums that may arise in relation to these issues on account of the passage of time and the legal solutions that the ICJ has developed to deal with these problems. In the course of its discussion, the chapter also illustrates some of the temporalities of the creation and disappearance of states and the challenges presented by the legal fictions relating to statehood in international law. It provides an example of a curious intertwining of the past and the future in the operation of international law, with a future event—the Federal Republic of Yugoslavia’s \(FRY\) admission to the United Nations in 2000—shedding light, ex post facto, on a past situation: the FRY’s legal status before 2000.](#)

In Chapter “[Of Relevant Dates and Political Processes: State Succession and the Dissolution of the Former Yugoslavia](#)”, Asier Garrido-Muñoz focuses on the temporal dimension of the international law on state succession and considers the rule that a state replaces another state in the responsibility for international relations on a particular date—the date of state succession. He notes that this rule may benefit from

formal clarity but argues that the temporal nature of the singular point in time does not correspond to the temporal dynamic of the change of statehood. Continuing with the instructive example of Yugoslavia, Garrido-Muñoz contrasts the ‘progressiveness’ or gradual evolution of the political processes of the dissolution of that state with the ‘instantaneousness’ of the date of succession. In his view, the tension between the two competing temporalities renders the date of succession rule inadequate; however, he argues that the tension may be mitigated through the law of state responsibility and concepts such as composite act and attribution.

Part III’s final Chapter “[China, Confucian Time and International Law: A Normative and Behavioral Account](#)” by Matthias Vanhullebusch examines the Chinese notion of Confucian time and evaluates its impact on the international legal conduct of the People’s Republic of China. Vanhullebusch submits that China’s international legal behavior and arguments may only be properly comprehended and accurately interpreted if observers fully appreciate the essential role played by the notion of circular Confucian time. Vanhullebusch identifies Confucian time as a central component of ‘relational governance’, an approach grounded in the Chinese epistemological framework of relational thought and Confucian ethics, which China practices internationally and which aspires to ‘harmonize relationships’ over time. In particular, he argues that within the framework of relational governance, the circular Confucian time is the element that enables the reconciliation of differences among actors on the international plane, and thus places the dimension of time orientation center stage.

Part IV: International Law Between Change and Stability

Part IV focuses on the phenomenon and processes of change in international law. As mentioned, time as change or something relating to change has been one of the leading propositions on ‘time’ in philosophy and the sciences due to the essential role of change in the human perception of the passage of time.³⁹ Although international law has been in constant dynamic change since its inception, accounting for this change, as well as working with international law’s constantly changing *materiae*, have been perennial challenges for international lawyers. This Part unpacks some of the central difficulties involved in the task, including how to identify, describe and explain change in international law; what prompts a change in international law to occur; and what is the interplay between the temporal dynamics of change in international law and the temporality of social processes. In exploring how to reconcile the need for international law to adapt to changing social circumstances with common demands for stability of norms to provide legal certainty (as well as the need for international law to maintain certain systemic stability to perform its normative functions), the Part also exposes the character of stability—a continuity over time⁴⁰—as a fundamentally temporal concept.

In Chapter “[International Law Through Time: On Change and Facticity of International Law](#)”, Klara Polackova Van der Ploeg elaborates on several broader conceptual issues relating to the phenomenon and temporal characteristics of change in international law. Distinguishing among different notions of change appearing in the

³⁹ See eg (n 5), (n 18) and (n 26) and accompanying text.

⁴⁰ Giddens (1979) 99; Adam (n 12) 9.

literature and conceptualizing international law as a process of continuous change, Van der Ploeg identifies practice as the key normative vehicle enabling the dynamism of international law as a legal order over time. She specifically develops the concept of ‘facticity’ to capture and explain international law’s continuous normative responsiveness to its underlying social reality and the changes within it. In this context, Van der Ploeg considers the tension between change and stability as manifested in international law, and reflects on the problem of alleged asynchrony between international law’s formal sources and social acceleration.

Chapter “[The Development of International Law, Perception, and the Problem of Time](#)”, by Gregory Messenger, explores the manner in which international law changes over time through the notion of the ‘development of international law’. Messenger first analyzes the concept of the ‘progressive development’ and considers the interplay between change and stability in the development of international law. He subsequently challenges the practice of treating international law as reducible to a series of static moments and argues that change in international law would be more accurately described through Henri Bergson’s conceptualization of time as *la durée* (duration or extension). In particular, Messenger submits that the contemporary practice of rule-identification and rule-interpretation produces a distorted image of change in international law, as it fails to acknowledge the passage of time as actually perceived by individuals. Taking the example of the ICJ’s reasoning in the *Peru v. Chile* case, Messenger argues that the disregard for individual experience of the passage of time as a continuous flow of perpetual change ultimately results in the instrumentalization of the development of international law.

In Chapter “[Change and Adaptation in International Environmental Law: The Challenge of Resilience](#)”, Jaye Ellis considers change in international law from the perspective of the normative and adaptive capacities of international law under conditions of social acceleration. Using the example of international environmental law, Ellis observes that social acceleration, which also accelerates ecosystemic change and environmental degradation, may have compromised environmental law’s traditional normative logic of developing environmental regulation by drawing on lessons from the past, gathering information in the present and using law to shape a particular future. Still, Ellis questions the attempts to transform international environmental law into a simple, infinitely flexible and open-ended instrument for management of ecosystemic resilience. Drawing on the work of J.B. Ruhl, Ellis argues that international environmental law itself is a complex adaptive system and, as such, the concept of resilience should guide its options for dealing with social acceleration. In particular, resilience of international law itself should be a central concern of ecosystem governance.

Part V: Transformations of International Legal Concepts in Time: Continuity, Discontinuity, Recurrence

Finally, Part V presents studies of a transformation of selected international legal concepts to substantiate—in rich and revealing detail—the temporal dynamics of continuity, discontinuity and recurrence involved in such processes. In a sense, these chapters thus further elaborate Part IV, as the inquiries into how ideas and concepts in

international law appear, disappear and alter to address new problems and new power structures reveal distinct ‘times of change’: continuity—an unchanged understanding of an international legal concept and its elements in time; discontinuity—a disappearance of a concept or its elements over time or a shift in the concept’s understanding in time; and recurrence—a reemergence of a previously disappeared concept, its elements or its understanding in time. At the same time, the chapters further elaborate the interplay between legal temporalities and the temporal dynamics of social processes.

Part V provides four specific examples of possible temporal dynamics involved in transformations of international legal concepts in time: the discontinuity and recurrence of an international legal concept—the minimum standard of treatment (Dumberry); a simultaneous intertwining of legal, political and social continuities and discontinuities in an international legal concept—a peace treaty (Kastner); a discontinuity in an international legal concept—the concept of human rights (Castellanos-Jankiewicz); and a recurring struggle for dominance between competing understandings of an international legal concept—self-determination (Kattan). While espousing the different incarnations of continuity, discontinuity and recurrence, the four chapters also expose how states, political leaders, negotiators, scholars and other stakeholders draw on—or disregard—international law’s conceptual memory to bring about change of international law.

First, Patrick Dumberry in Chapter “[The ‘Minimum Standard of Treatment’ in International Investment Law: The Story of the Emergence, the Decline and the Recent Resurrection of a Concept](#)” explores the dynamics of discontinuity and recurrence through a case study of the minimum standard of treatment within the context of international investment law. Dumberry recounts how the minimum standard emerged as a rule of customary international law to set the basic threshold of treatment that states were required to afford to foreign investors; how the Third World’s challenge of the concept almost led to the rule’s disappearance and replacement with the investment treaty concept of fair and equitable treatment; and how the minimum standard ultimately reappeared center stage after investment arbitration tribunals had interpreted the fair and equitable treatment standard in ways that were unacceptable to many states.

Chapter “[Peace Agreements Between Rupture and Continuity: Mediating Time in International Law](#)”, by Philipp Kastner, then elaborates a simultaneous intertwining of legal, political and social continuities and discontinuities in a transformed (as well as transformative) legal concept of peace agreements. Contrasting the historic practice of peace treaties in interstate wars and peace agreements in recent internal armed conflicts, Kastner demonstrates how these instruments have been employed to embed continuity for certain pasts and discontinuity for others. While historic peace treaties had been based on the idea of continuity, with the victor holding the defeated responsible for the war, recent peace agreements have promoted significant discontinuity between the conflict and post-conflict period to facilitate peace. Still, international law has further developed to reintroduce elements of continuity in peace agreements in the form of transitional justice provisions. Kastner argues that peace agreements exemplify international law’s relationship with time, because negotiating peace involves negotiating the relationship between the past, the present

and the future. Moreover, peace agreements reveal that time in international law may not always be divided into neat segments, as the past, the present and the future may be interrelated in a variety of ways.

In Chapter “[Overlooking Continuity: National Minorities and ‘Timeless’ Human Rights](#)”, León Castellanos-Jankiewicz considers the temporal dynamic of discontinuity by focusing on the concept of human rights. He challenges the presentation of the contemporary individualist conceptualization of human rights as descriptive of individual rights across time or ‘timeless’. He argues that this individualist conceptualization has only been possible because of a radical discontinuity of the human rights project with the interwar system of minority protection and the idea of group protection. In his view, a disregard for the continuity between group protection and individual rights in the field of international human rights is historically inaccurate, given that group protection was in fact generative of individual rights in international law in the first place. The disregard also neglects the social, collective dimension of human rights and is considerably legally consequential, as it has led to an ambiguous treatment of collectives in international law and to a failure to protect the relational aspects of an individual’s life.

The book’s last Chapter “[Self-determination as Ideology: The Cold War, the End of Empire, and the Making of UN General Assembly Resolution 1514 \(14 December 1960\)](#)” by Victor Kattan finally tells a story of a recurring struggle for dominance between distinct conceptualizations of self-determination. Kattan challenges the typical presentation of self-determination as a rule of customary international law, which emerged out of the 1960 Decolonization Declaration and instead traces two competing visions of self-determination that have competed for dominance over the concept—and consequently the content of the rule of international law—throughout its history. On one side stands Woodrow Wilson’s vision of self-determination as self-government and on the other Vladimir Lenin’s vision of self-determination as independence through revolution. Each of these two visions dominated the discourse on self-determination at particular points in time, and they continue to impact the legal meaning of self-determination today.

4 The Multifaceted Notion of Time in International Law

Authors throughout this book elaborate on the importance of time for the construction of the normative content and limits of international law,⁴¹ as well as the conduct of relevant actors.⁴² They explore how notions of time, as embedded in legal norms, concepts and processes, interact with broader ideas about—as well as aspirations for—the world, such as justice, peace and progress.⁴³ The authors also demonstrate how time provides an analytical lens to explore and understand international law,

⁴¹ See esp chapters by Wyler and Whelan, Schramm, Salojärvi, Schultz and Messenger.

⁴² See esp chapters by Waters, Soave and Vanhullebusch.

⁴³ See esp chapters by Schramm, Waters, Messenger and Kastner.

including by providing context and sensitivity to the shifting values of international society.⁴⁴

International law may be observed to incorporate strategies to process the passage of time, while simultaneously constructing time for its own purposes, thereby creating both international law's temporalities and time's international legal manifestations.⁴⁵ International law defines the temporal parameters of its operation, such as how it extends, applies and changes over time. In so doing, international law standardizes and 'objectivizes' individual and collective experiences of time. It also situates social structures in time and links—and negotiates relations between—the past, the present and the future. In this way, international law institutionalizes particular understandings of time, temporal preferences and temporal ordering, taking into account some temporal experiences and disregarding others.⁴⁶ The ensuing temporal structures of international law have comprehensive effects on the conduct and interactions within the international domain,⁴⁷ as well as on the understandings and visions of international law as a legal order, making the relationship between international law and time principally recursive.

Still, the picture that emerges from the individual chapters in this book is perhaps more fragmented than one might hope it to be (although given the disagreements on what is or is not 'time' across history and disciplines, this finding is arguably unsurprising). Notably, the individual studies in this book demonstrate a significant variation both at the definitional level of what 'counts' as 'time' in international law (what time *is*) and at the level of how time manifests in international law (what is an *application* of time).

Some chapters elaborate specific understandings of time and their implications for international law, such as linear time and cyclical time (e.g., Wyler and Whelan, Schramm, Soave and Vanhullebusch), time as *la durée* (Messenger), or time as a methodological problem (Salojärvi). Authors consider particular international legal rules and concepts as expressions of international law's relationship with time, evidencing how positions regarding the nature of time, its orientation and pace explain normative outcomes,⁴⁸ affect the content of individual international legal concepts⁴⁹ and challenge mechanisms of change of international law.⁵⁰ Other chapters elaborate on the multiplicity of temporalities involved in processes of change of international law—ranging from temporal dynamics and timeframes involved in

⁴⁴ See esp chapters by Salojärvi, Waters, Ellis and Kastner.

⁴⁵ Paraphrasing Grabham and Beynon-Jones (2019).

⁴⁶ According to Niklas Luhmann, the function of law is precisely to 'solve a problem in relation to time', relating occurrences to past and possible future, and reducing the uncertainty of the future by setting normative expectations. In his view, it is this temporal dimension, rather than concepts such as 'social control', that defines law and is key to the proper understanding of its nature. Luhmann (2004) 142–147. Consider also Shapiro's theory of law as a 'social planning'. Shapiro (2011).

⁴⁷ See Rosa and Scheuerman (2009) 10.

⁴⁸ See esp chapters by Schramm, Soave, Ellis and Kastner.

⁴⁹ See esp chapters by Castellanos-Jankiewicz and Salojärvi.

⁵⁰ See esp chapters by Schramm, Soave, Van der Ploeg and Ellis.

international law-making;⁵¹ to rhythms of change of the very concept of international law (Schultz); the interplay between international law's temporalities and broader social temporalities, such as social acceleration (Schramm, Soave, Van der Ploeg, and Ellis); and to transformations of international legal concepts over time (Part V).

Yet other chapters examine the temporal properties and ensuing implications of international legal rules and concepts aimed at dealing with the passage of time, including the rules of interpretation (Merkouris), retroactive application of treaties (Palestini), and continuous breach (Howse and Appleton). In decision-making by international courts and tribunals, temporal issues are shown to be imperative both in relation to formal jurisdictional requirements (Howse and Appleton and Palestini) and as a part of the exercise of the judicial function (Waters). Time emerges as the connection between past, present and future (Waters, Kastner, Salojärvi), a dimension of legal reasoning (Wyler and Whelan) and a challenge in international law's construction of social phenomena (Garrido-Muñoz, Messenger).

Several chapters explore possible temporal misalignment between international law and the social processes that international law seeks to regulate. Authors' views include ontological objections to dominant conceptualizations of time and temporal aspects of international law that do not accurately or adequately reflect lived human experiences (Schramm, Messenger), as well as observations of a temporal mismatch between the law and the social processes and relevant conduct involved. While the dissolution of a state unfolds over a period of time, the law of state succession subsumes the process under the rule of a single date of succession (Garrido-Muñoz). Similarly, the binary logic underpinning law (legal/illegal, with standing/without standing, legally relevant/legally irrelevant, etc.) makes it impossible to account for the potential uncertainties involved in an unfolding international affair (Palestini).

The chapters in this book thus substantiate—either conceptually or through application—the varied understandings, manifestations, uses and implications of 'time' in international law. Such intra-disciplinary diversity with respect to 'time' may be disconcerting; however, it opens analytic possibilities and legitimizes a range of topics as areas of inquiry by providing distinct lenses through which to investigate international law and time.

The understanding and conceptualization of time in international law could be said to depend both on the context in which 'time' arises and on the adopted hermeneutic perspective.⁵² However, 'time' in international law fundamentally emerges as a multifaceted notion, which appears on the scene of international law dressed in many different clothes: sometimes as an instant, sometimes as a duration, sometimes as a trajectory, sometimes as change, sometimes as sequence, sometimes as synchronicity, sometimes as the return of the same, sometimes as continuity, sometimes as timelessness and so on. 'Time' may involve the passage of time; an ordering principle; a dimension of law-making; different phases of a legal process; a dynamic of legal

⁵¹ See esp chapters by Lemnitzer, Grace, Soave, Van der Ploeg and Ellis.

⁵² See esp chapters by Wyler and Whelan, Schramm and Schultz.

change; a connection between past, present and future; an analytical lens for the study of international law; as well as an instrument of power and control.⁵³

The multifacetedness of time in international law produces diverse—often implicit—temporalities within international law, which exist and operate simultaneously, interact in complex ways, and generate both clashing demands and potential alternatives for how international law should relate to the world.⁵⁴ Paraphrasing Adam,⁵⁵ to understand the relationship between international law and time, we need to explore and grasp not only the different aspects of time but also their essential interconnectedness, as ‘it is only in their connection and dynamic relation to each other that they begin to resemble the seamlessly integrated aspects of our lives.’⁵⁶

5 Narratives and Techniques

Reflecting both on the multifaceted nature of ‘time’ in international law as well as the common themes that arise from the chapters in this book, international law and international lawyers could be said to primarily cope and engage with time in two main—albeit intertwined—ways: through the construction of narratives and through the development of legal techniques.

The narrativity of international law—the role and the normative significance of narratives in international law—has recently been the subject of burgeoning literature.⁵⁷ Narratives in international law provide ways of explaining and representing⁵⁸ and deliver normative visions for how international law should develop.⁵⁹ They have significant normative implications, as they generate particular conceptual apparatus, frame and constrain legal interpretation and imagination,⁶⁰ justify normative arrangements, and shape central notions, such as justice or legality.⁶¹ Temporal narratives engender and circulate particular meanings and ideas of time and its manifestations. They account for and enable particular uses and implications of time, as they inherently advance specific political projects and normative agendas.⁶² Temporal narratives also conceptually anchor international law and its temporal structures by

⁵³ See, for example, the political dimension of time explored in this book by Schramm, Soave or Merkouris, whose chapters speak to the question of whose time will prevail. Legal regulation of time entails particular moral and cognitive dimensions and enforces social control, analogously to what has been identified in sociology of time. Zerubavel (1979).

⁵⁴ This observation is consistent with that made by Adam (n 12); Grabham et al (2018).

⁵⁵ Adam (n 12).

⁵⁶ Adam (n 12) 6–8.

⁵⁷ See eg Otten (2016); Lixinski (2013). see esp Lixinski (2013) and Ranganathan (2013); Slaughter (2007); Windsor (2015); Singh (2014); Cheng (2011).

⁵⁸ See eg Lixinski (n 57) 2; Windsor (n 57) 747; Singh (n 57) 307.

⁵⁹ Ranganathan (n 57) 31.

⁶⁰ cf. Otten (n 57) 195.

⁶¹ Greenhouse (1989).

⁶² cf. Windsor (n 57) 751.

conveying international law-specific imagery regarding the passage of time, the orientation, speed and other characteristics of time within international law; by assigning directionality to international law;⁶³ by asserting continuities and discontinuities within international law;⁶⁴ as well as by creating associations between the past, the present and the future.⁶⁵

Authors in this book discuss the creation and workings of a variety of temporal narratives in different contexts of international law.⁶⁶ However, the narrative of linear time emerges as the most prominent one. Although many consider it partial, biased, incomplete or otherwise flawed, multiple authors identify linearity of time—with its chronology of successive instances, its prospective and progressive unfolding through clearly identifiable and separable past, present and future—as the dominant temporal narrative underpinning mainstream international law.⁶⁷ The linear narrative provides a clear teleological horizon, entails a sequential trajectory, and underpins the ‘elaborate disciplinary practice retelling international law’s progressive development, which serves as a common intellectual background for professionals in the field’.⁶⁸ Linear time also determines normative outcomes, for example by privileging certain events and promoting continuity only for certain pasts or by generating particular temporal commitments. In the context of peace negotiations (as Kastner argues in his chapter) linear time possibly prevents peace negotiators and mediators from finding the most suitable normative and institutional arrangement for a post-conflict society. Distinct temporal narratives characteristic of domestic and international lawmaking impact policy preferences and determine specific regulatory outcomes, as Soave espouses in his chapter.

The dominant view of time in international law as linear arguably reflects—and perpetuates—the traditional Western cultural notion of time,⁶⁹ as well as the privileged position that Western states have enjoyed in modern international law. However, critiques of the linear narrative as well as conflicting cyclical narratives do exist. Chapters by Wyler and Whelan, Schramm, and Vanhullebusch in this book juxtapose linear and cyclical times and explore their implications for international law. Wyler and Whelan argue that while the linear concept of time may be a defining feature of legal formalism, other legal approaches, such as pragmatism, incorporate—and benefit from—a cyclical approach to time. Schramm rejects the exclusiveness of chronological and periodized time in international law and calls for a more inclusive view that would encompass both linear and cyclical understandings of time, thus freeing international law to better engage with challenges facing humanity, such as climate change. Vanhullebusch explores how the cultural notion of cyclical time has impacted China’s approach to international law and argues that the notion of linear

⁶³ See esp chapters by Schramm, Soave, Vanhullebusch and Castellanos-Jankiewicz.

⁶⁴ See Part V in this book.

⁶⁵ See esp chapters by Salojärvi, Schramm, Waters and Kastner.

⁶⁶ See esp chapters in Parts I and V in this book.

⁶⁷ See esp chapters by Schramm and Castellanos-Jankiewicz.

⁶⁸ Kennedy (1999).

⁶⁹ See eg Hall (1988).

time hinders the grasp of its engagement with international law and China's conduct within the international domain.

Other authors argue that the linearity of time distorts the accounts of the development of international law (Messenger); disregards the nonlinearity in the interactions between law and society, as well as the nonlinear nature of legal operations (Ellis); and results in unduly favoring certain understandings of international legal concepts (Castellanos-Jankiewicz). The past, the present and the future are also often interrelated and appear in a nonlinear relationship. International legal rules such as transitional justice provisions effectively merge the past and the future (Kastner). Rules of treaty interpretation 'time-travel' when the applied rules originate in a different time than the treaty being interpreted (Merkouris). Future events—such as a future admission to the United Nations—may be determinative, *ex post facto*, of earlier legal situations, such as the legal continuity or discontinuity of a state (Palestini).

The ways in which international lawyers conceive of the relationship between time and international law bear upon the international legal norms that define international law's existence and functioning in time. They also impact the legal techniques that have been developed to enable international law to deal with issues arising from the passage of time, as well as the challenges arising from the multifaceted nature of time in international law and the deriving multiplicity of parallel, competing, interacting temporalities.⁷⁰

A legal technique may be characterized as a technical legal solution, a rule, a concept or a method, aimed at eradicating complexity of the world and making legal process conceptually and practically manageable.⁷¹ Once established, a given technique effectively turns into a professional formula and becomes a part of the way of 'doing law',⁷² which arguably explains why international legal practice has largely treated time in international law as a technical problem. Bringing attention to the techniques that provide technical legal solutions to temporal issues in international law, chapters by Messenger and Garrido-Muñoz expose the use of temporal fictions, the former in norm-identification and norm-interpretation and the latter in the law of state succession. Ellis considers the competing legal techniques to accommodate the temporality of social acceleration and the acceleration of environmental degradation in international environmental law. Palestini examines the parameters of the ICJ's temporal jurisdiction, while Merkouris proposes a solution to the intertemporal problem involved in treaty interpretation. Chapters by Howse and Appleton, Dumberry and Kastner provide other examples of such techniques.

⁷⁰ See esp chapters by Merkouris, Howse and Appleton, Palestini, Garrido-Muñoz, Messenger and Ellis.

⁷¹ cf. Del Mar (2015) ix. See also International Law Commission (2006), eg paras 14, 18 and 487; Michaels and Pauwelyn (2012); Peters (2017); Michaels (2020). Legal fictions, modes of legal reasoning, and maxims for resolution of normative conflicts, such as *lex specialis* and *lex posterior*, are some of the classic examples of legal techniques existing and applied in international law. For a distinct understanding of 'legal technique', see eg Kelsen (1941) and Summers (1971).

⁷² Peters (2017); Pottage (2014).

The notion of a legal technique connotes the classical positivist view of law as science,⁷³ in which law exemplifies a systematic disciplinary ('scientific') conceptual framework and methodology, which are objective and neutral (and which are the object of legal education and training). The development of a legal technique as a means of coping with time in international law consequently implies a claim of an objective, interest-free, technical solution made from a neutral position,⁷⁴ the command and use of which constitutes an essential element of professional qualification and competence.

However, even if international legal practice largely treats temporal issues in international law as mechanical and technical problems to be resolved through concepts such as intertemporal rule, time-limits and critical date (and even if the application of these concepts indeed requires technical legal skill), these matters have stakes. Just as temporal narratives, the various temporal legal techniques are far from neutral, but rather entail temporal assumptions and preferences, the adoption of which promotes and protects particular values and interests. The policy choices involved in giving international legal terms to temporal social phenomena and in defining the normative temporal framework of international law have both temporal and outcome implications. The introduction of time limits and time bars may contract or expand time available for relevant conduct (Howse and Appleton). Temporalized judicial reasoning may desynchronize an international legal process from the underlying social processes (Garrido-Muñoz, Messenger), including by setting out its own timeline for a legal determination of a matter (Palestini). International law can make different international legal processes run at different speeds (Soave, Schultz, Van der Ploeg, Ellis). The temporal choices legalized in adjective rules often prove decisive in determining the outcome of legal claims, for example by determining which events may be considered and which must be disregarded for the purposes of treaty interpretation or in proceedings under a particular adjudicative procedure (Merkouris, Palestini).

Narratives and techniques determine international law's operation in time as well as its capacity to regulate conduct that takes place in time. They also shape international law's content, boundaries and uses, and provide answers to fundamental questions, such as how should international law translate temporal dimensions of social processes in its rules; what international law rules exist and apply at a particular point in time; how should international law be interpreted and applied in time (including what, if any, temporal teleology should be incorporated in the interpretative process); what past events should be attributed international legal significance; how may international law as a legal order change over time; and what temporal parameters should international law set out for particular types of conduct within the international domain. As such, narratives and techniques arguably serve as key normative vehicles to process the passage of time in relation to international law, to make sense of time within international law and to construct time for international law's own purposes, thereby creating international law's own temporal reality (internal temporality).

⁷³ See eg Rovira (2013).

⁷⁴ cf. Michaels (2020).

The observation that there is always a ‘gulf between our representation of the world and the world itself’⁷⁵ applies to international law’s dealings with time as well. It is therefore essential to reflect on the nature and implications of the internal temporality of international law, as well as to appreciate the intricacy of the relationship between international law and time. The editors hope that the present book will not only offer stimulating intimations on the matter but will also inspire further explorations of the relationship between international law and time in its many facets and their interactions.

References

- Adam B (1994) *Time and social theory*. Polity
- Aristotle (2005) *Physics IV: 11* Coope U (2005) *Time for Aristotle: Physics IV. 10–14*. Oxford University Press
- Amsterdam A, Bruner J (2016) *Minding the law*. Harvard University Press 2002
- Baer L (2016) Time as technique. *Ann Rev Anthropol* 45:487
- Benediktsson K, Brunn SD (2015) Time zone politics and challenges of globalisation. *Tijdschrift voor Economische en Sociale Geografie* 106:276
- Bergson H (1912) *An introduction to metaphysics* (trans: Hulme TE). G P Putnam’s sons
- Buhusi C, Oprisan S, Buhusi M (2018) Biological and cognitive frameworks for a mental timeline. *Front Neurosci* 12:377
- Cassese A, Weiler J (1988) *Change and stability in international law-making*. Walter De Gruyter
- Cheng T-H (2011) Developing narratives in international investment law. *Santa Clara J Int Law* 9:215
- Craven M, Fitzmaurice M, Vogiatzi M (2007) *Time, history and international law*. Brill
- Crawford J, Viles T (2002) *International law on a given day*. In: Crawford J (ed) *International law as an open system: selected essays*. Cameron May
- Del Mar M (2015) *Introducing fictions: examples, functions, definitions and evaluations*. In: Twining W, Del Mar M (eds) *Legal fictions in theory and practice*. Springer
- Duff MJ (2015) How fundamental are fundamental constants? *Contemp Phys* 56:35
- Durrani M (2018) Carlo Rovelli: the author of the order of time discusses. Perhaps the greatest mystery. *Phys World* 4. <https://physicsworld.com/a/carlo-rovelli-the-author-of-the-order-of-time-discusses-perhaps-the-greatest-mystery/>
- Elias N (1993) *Time: an essay*, new edn. Wiley–Blackwell
- Emery N, Markosian N, Sullivan M (2022) Time. In: Zalta E (ed) *The Stanford encyclopedia of philosophy*. Metaphysics Research Lab, Stanford University. <https://plato-stanford-edu.nottin.gham.idm.oclc.org/entries/time/>
- Fontes R et al (2016) Time perception mechanisms at central nervous system. *Neurology International* 8:5939.
- Gale R (1968) *The philosophy of time: a collection of essays*. Palgrave Macmillan
- Gallus N (2017) *The temporal jurisdiction of international tribunals*. Oxford University Press
- Geană CM (2016) The semantic field of the word “time”. In: Boldea J (ed) *Globalization and national identity: studies on the strategies of intercultural dialogue*. Arhipelag XXI
- Giddens A (1979) *Central problems in social theory: action, structure and contradiction in social analysis*. Palgrave

⁷⁵ Le Poidevin (2019). Similarly, physicist Michael Duff noted that ‘it is important to distinguish between statements about the universe we live in and statements about the human conventions we adopt to describe it’. Duff (2015).

- Grabham E et al (2018) Exploring relationships between time, law and social ordering: a curated conversation. *feminists@law* 8. <https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/652>
- Grabham E, Beynon-Jones S (2019) Introduction. In: Beynon-Jones S, Grabham E (eds) *Law and time*. Routledge
- Greenhouse C (1989) Just in time: temporality and the cultural legitimation of law. *Yale Law J* 98:1631
- Greenhouse C (1996) *A moment's notice: time politics across cultures*. Cornell University Press
- Hall ET (1988) *Dance of life: the other dimension of time*, reissue edn. Bantam Doubleday Dell Publishing Group
- Hassard J (1990) *The sociology of time*. Palgrave Macmillan
- Hawking S (2016) *A brief history of time: from the big bang to black holes*. Bantam Books
- Hayashi M, Ivry R (2020) Duration selectivity in right parietal cortex reflects the subjective experience of time. *J Neurosci* 40:7749
- Higgins R (1997) Time and the law: international perspectives on an old problem. *Int Comp Law Q* 46:501
- Hoskins J (1997) *The play of time: Kodi perspectives on calendars, history, and exchange*. University of California Press
- Husserl E (1991) *On the phenomenology of the consciousness of internal time (1893–1917)* (trans: Brough JB). Springer
- International Law Commission (2006) *Fragmentation of international law: difficulties arising from the diversification and expansion of international law*. Report of the study group' UN Doc A/CN.4/L.682
- Janiak A (2016) Kant's views on space and time. In: Zalta E (ed) *The Stanford encyclopedia of philosophy*. Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/archives/spr2020/entries/kant-spacetime/>
- Jones J (1988) Cultural differences in temporal perspectives: instrumental and expressive behaviors in time. In: McGrath J (ed) *The social psychology of time: new perspectives*. Sage Publications
- Kant I (1999) *Kant: critique of pure reason*. Cambridge University Press
- Kelsen H (1941) The law as a specific social technique. *U Chi Law Rev* 9:75
- Kennedy D (1999) The disciplines of international law and policy. *Leiden J Int Law* 12:9
- Le Poidevin R (2019) The experience and perception of time. In: Zalta E (ed) *The Stanford encyclopedia of philosophy*. Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/archives/sum2019/entries/time-experience/>
- Levine R (1988) The pace of life across cultures. In McGrath J (ed) *The social psychology of time: new perspectives*. Sage Publications
- Linderfalk U (2011) The application of international legal norms over time: the second branch of intertemporal law. *Neth Int Law Rev* 58:147
- Lixinski L (2013) Symposium on narratives of the international legal order and why they matter. *Erasmus Law J* 1
- Lixinski (2013) Narratives of the international legal order and why they matter. *Erasmus Law Rev* 2
- Luhmann N (1976) The future cannot begin: temporal structures in modern society. *Soc Res* 43:130
- Luhmann N (2004) *Law as a social system* (ed: Kastner F et al; trans: Ziegert K). Oxford University Press
- Majumdar D (2007) *Plotinus on the appearance of time and the world of sense: a pantomime*. Ashgate
- Mawani R (2014) Law as temporality: colonial politics and Indian settlers. *Univ Calif Irvine Law Rev* 4:65
- McNeilly K, Warwick B (2022) *The times and temporalities of international human rights law*. Bloomsbury Publishing
- Michaels R (2020) Global legal pluralism and conflict of laws. In: Berman PS (ed) *The Oxford handbook of global legal pluralism*. Oxford University Press

- Michaels R, Pauwelyn J (2012) Conflict of norms or conflict of laws? Different techniques in the fragmentation of public international law. *Duke Jo Comp Int Law* 22:349
- Munn N (1992) The cultural anthropology of time: a critical essay. *Ann Rev Anthropol* 21:93
- Newton I (1999) *The principia: the mathematical principles of natural philosophy* (trans: Cohen IB, Whitman A). University of California Press
- Norton J (2010) Time really passes. *Humana. Mentis: J Philos Stud* 23
- Ost F (1999) *Le Temps du droit*. Odile Jacob
- Otten (2016) *Critical quarterly for legislation and law* 99:187
- Peters A (2017) The refinement of international law: from fragmentation to regime interaction and politicization. *Int J Const Law* 15:671
- Pottage A (2014) Law after anthropology: object and technique in roman law. *Theory Cult Soc* 31:147
- Potts J (2021) *Ideas in time: the longue durée in intellectual history*. Presses universitaires de Provence
- Prigogine I (1980) *From being to becoming: time and complexity in the physical sciences*. Freeman & Co
- Ranganathan S (2013) The value of narratives. *Erasmus Law Rev* 17
- Ranchordas S, Roznai Y (2020) *Time, law, and change: an interdisciplinary study*. Hart Publishing
- Reichenbach H (2003) *The direction of time*. Dover Publications Inc
- Rosa H (2015) *Social acceleration: a new theory of modernity* (trans: Trejo-Mathys J). Columbia University Press
- Rosa H, Scheuerman W (2009) Introduction. In: Rosa H, Scheuerman W (eds) *High-speed society: social acceleration, power, and modernity*. The Pennsylvania State University Press
- Rosenne S (1960) The time factor in the jurisdiction of the International Court of Justice. *A W Sythoff*
- Rovelli C (2018) *The order of time*. Allen Lane
- Rovira MGS (2013) *The project of positivism in international law*. Oxford University Press
- Rynasiewicz R (2011) Newton's views on space, time, and motion. In: Zalta E (ed) *The Stanford encyclopedia of philosophy*. Metaphysics Research Lab, Stanford University. <https://plato.stanford.edu/archives/spr2022/entries/newton-stm/>
- Savitt S (2008) *Time's arrows today: recent physical and philosophical work on the direction of time*. Cambridge University Press
- Schiff D, Nobles R (2012) *Observing law through systems theory*. Bloomsbury
- Shapiro S (2011) *Legality*. Harvard University Press
- Singh S (2014) Narrative and theory: formalism's recurrent return. *Br Yearb Int Law* 84:304
- Slaughter JR (2007) *Human rights, Inc: the world novel, narrative form, and international law*. Fordham University Press
- Société française pour le droit international (2001) *Le droit international et le temps*. Colloque de Paris. Pedone
- Sorokin P, Merton R (1937) Social time: a methodological and functional analysis. *Am J Soc* 42:615
- St Augustine. *Confessions*
- Summers (1971) The technique element in law. *Calif Law Rev* 59:733
- Šubr J (2021) The sociology of time: a critical overview. Springer Nature
- Thompson EP (1967) Time, work-discipline, and industrial capitalism. *Past Present* 56
- Tsao A et al (2018) Integrating time from experience in the lateral entorhinal cortex. *Nature* 561:57
- Twining W (2015) Preface. In: Twining W, Del Mar M (eds) *Legal fictions in theory and practice*. Springer
- Windsor M (2015) Narrative kill or capture: unreliable narration in international law. *Leiden J Int Law* 28:743
- Wuschka S et al (2019) *Zeit und internationales Recht: Fortschritt - Wandel - Kontinuität* Mohr Siebeck. Mohr Siebeck
- Zerubavel E (1979) *Patterns of time in hospital life*. University of Chicago Press
- Zerubavel E (1982) The standardization of time: a sociohistorical perspective. *Am J Sociol* 88:1