Introduction to the *Research Handbook on Extraterritoriality in International Law*

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Extraterritoriality is an often used but notoriously elusive and contested concept. That extraterritoriality is concerned with the spatial extent of normative authority beyond a State's territorial boundaries, however, is clear. The affix 'extra' points to an understanding that territoriality is the normal state of affairs of governance, and extraterritoriality the exception and in need of further authorization.[1] In reality, however, as one scholar recently observed, 'extraterritoriality has become ubiquitous and is often legitimate'.[2] This Handbook addresses the ever-increasing prominence of extraterritorial law in global governance and evaluates the key debates and issues surrounding extraterritoriality and international law.

The introduction to this Handbook does two things: it provides a preliminary overview of the concept of extraterritoriality, and it outlines the structure and aims of the book. We start by highlighting the centrality of territoriality in modern international law, while at the same time noting that territoriality has never been considered exclusive. Indeed, modern international law has always contained openings for the projection of extraterritorial authority. Moreover, the semantic instability of territoriality has created opportunities to 'territorialize' extraterritorial activities, which States have seized enthusiastically. This process has blurred the boundaries between territoriality and extraterritoriality, arguably the main reason why these concepts defy easy categorization. Extraterritoriality is also part of a legal discourse on which actors often rely to further particular political agendas, while hiding behind a veil of technicality. We devote attention to both advocates and detractors of extraterritoriality. We end by outlining the approach and structure of this volume.

THE CONCEPT OF EXTRATERRITORIALITY

The Centrality of Territoriality in International Law

Extraterritoriality can be seen as a challenge to the basic ordering principle of modern international law, namely that political and legal authority is, in principle, exercised over territorially delimited portions of the globe. Classic international law indeed views the world as a set of

[1] Ralf Michaels, 'Notes on Territory', Max Planck Institute for Comparative and International Private Law Research Paper Series 20/18 (2020) 15. But see Stephen Allen et al., 'Introduction' in Stephen Allen et al. (eds), *The Oxford Handbook of Jurisdiction in International Law* (OUP 2019) 8 ('extraterritoriality is increasingly viewed as a starting point for the exercise of state jurisdiction, rather than as an exception').

[2] Matthias Lehmann, 'New Challenges of Extraterritoriality: Superposing Laws' in France Ferrari and Diego P. Fernandez Arroyo (eds), *The Continuing Relevance of Private International Law and Its Challenges* (Edward Elgar Publishing 2019) 259.

neatly bordered geographical entities – States – which have full sovereignty over their territory, to the exclusion of other States. Thus, in the seminal *Island of Palmas* arbitral award, arbitrator Max Huber famously held in 1928:

> Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the function of a State. This development […] of international law [has] established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations.[3]

Within the discipline of international law, as well in its sister discipline of international relations, there is no doubt that territoriality is the main principle of world public order.[4]

Territoriality was not always dominant, however. Before the fourteenth century, governance was largely based on conceptions of personality and universality: individuals paid personal allegiance to rulers,[5] whereas the Church and the Emperor possessed boundless, universal authority, at least in theory.[6] Between the fourteenth and seventeenth centuries, however, circumstances prevailing in Western Europe, along with particular events, led to the pre-eminence of territoriality and the downgrading of non-territorial conceptions of authority. Political scientists, geographers and critical legal scholars have attributed the rise of territoriality to such factors as the development of cartographic mapping techniques,[7] Protestant agitation against the universal authority of the Catholic Church,[8] economic transformations,[9] the rediscovery of Roman law[10] and changes in social epistemes.[11]

The theoretical takeaway of these analyses is that territoriality, as institutionally captured by the State exercising territorial sovereignty, is a socially constructed artefact and a historically contingent phenomenon,[12] which nevertheless has become fixed and naturalized.[13] In no small measure, Western powers have facilitated this naturalization by imposing the territorial State

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[3] Perm. Ct. Arb., *Island of Palmas* (U.S. v Neth.), 2 RIAA 829 (1928).

[4] Kal Raustiala, *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law* (OUP 2009) 5.

[5] See for a detailed historical overview: Stuart Elden, *The Birth of Territory* (University of Chicago Press 2013) 31–155.

[6] Kaius Tuori, 'The Beginnings of State Jurisdiction in International Law until 1648', in Allen, above note 1, 29; Shaunnagh Dorsett and Shaun McVeigh, *Jurisdiction* (Routledge 2012) 119–21.

[7] Jordan Branch, *The Cartographic State* (CUP 2013).

[8] Daniel Ricardo Quiroga-Villamarín, 'Vicarius Christi: Extraterritoriality, Pastoral Power, and the Critique of Secular International Law' (2021) 34 *Leiden Journal of International Law* 629–52, 641–42.

[9] Saskia Sassen, *Territory, Authority, Rights* (Princeton University Press 2008) 43.

[10] Elden, above note 5, 220–3. Roman private law rules on territorial ownership (notably land rights) had a major influence on territorial thought in international law. See Tuori, above note 6, 31–32. However, Tuori also notes that in 212 CE the Roman Antonine Constitution granted citizenship to all inhabitants of the empire, which is a form of public law territoriality. Ibid, 33–34.

[11] John G. Ruggie, 'Territoriality and Beyond: Problematizing Modernity in International Relations' (1993) 47 *International Organization* 160.

[12] See also Paul Schiff Berman, 'Jurisdictional Pluralism' in Allen, above note 1, 131.

[13] See, e.g., Westel Woodbury Willoughby, *Fundamental Concepts of Public Law* (Macmillan 1924) 305–12 (arguing that physical boundaries are natural limits); Anna Stilz, *Territorial Sovereignty: A Philosophical Exploration* (OUP 2019) 8 (after discussing a number of alternatives to territoriality, concluding that '[m]ost political theorists have instead adopted an *institutionally conservative* approach to this issue, taking current states and their boundaries "as given"') (original emphasis).

model on their overseas colonies.[14] Philosophical concerns with democratic legitimacy, which often presuppose the geographical proximity of citizens for purposes of adequate deliberative decision-making, have also played a role.[15] The upshot of this trajectory is that territoriality is currently viewed as *the* spatial extent of (State) sovereignty, and that other approaches to the spatial ordering of the world have been marginalized.[16] Territoriality is considered as the most suitable political technology to bring order in the chaos surrounding us, bearing in mind that peace and order are the main functions of classic international law.[17]

The Non-Exclusivity of Territoriality

While territoriality became the ideal regulative norm, it never attained exclusivity. Non-territorial modes of regulation by non-State actors, such as commercial operators and religious communities, were never entirely stamped out[18] and, in fact, currently they appear to have increased in importance.[19] Furthermore, States did not consider their territory to be the spatial extent of their sovereignty. Instead, they engaged in limited practices of extraterritoriality. Thus, in the early modern period, a legal practice developed whereby diplomats remained subject to the 'extraterritorial' laws of their home State rather than the territorial laws of their host States (diplomatic immunity).[20] Also, Western powers carved out zones of extraterritorial consular authority in foreign ports and concessions, for example in China and the Ottoman Empire, on the basis of 'unequal treaties' backed up by Western gunboat diplomacy.[21] This treaty-based extraterritoriality meant that nationals of Western States were exempted from local laws considered as barbaric, and subject only to their own 'civilized' laws.[22]

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[14] Nurfadzilah Yahaya, 'The European Concept of Jurisdiction in the Colonies' in Allen, above note 1, 79.

[15] Jenik Radon, 'Sovereignty: A Political Emotion, Not a Concept' (2004) 40 *Stan. J. Int'l L*. 199.

[16] Nisha Shah, 'The Territorial Trap of the Territorial Trap: Global Transformation and the Problem of the State's Two Territories' (2012) 6 *International Political Sociology* 57; John Agnew, 'The Territorial Trap: The Geographical Assumptions of International Relations Theory' (1994) 1 *Review of International Political Economy* 53.

[17] David S. Koller, 'The End of Geography: The Changing Nature of the International System and the Challenge to International Law: A Reply to Daniel Bethlehem' (2014) 25 *EJIL* 28.

[18] Larry Cata Backer, 'Governance Without Government: An Overview' in Gunther Handl et al. (eds), *Beyond Territoriality* (Brill 2012) 93.

[19] John Agnew, 'Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics' (2005) 95 *Annals of the Association of American Geographers* 443 ('both centralized and diffused powers are arguably less territorialized by state boundaries than at any time since the nineteenth century').

[20] Linda S. Frey and Marsha S. Frey, *The History of Diplomatic Immunity* (Ohio State University Press 1999) 160–86.

[21] Frank E. Hinckley, 'Extraterritoriality in China' (1912) 39 *The Annals of the American Academy of Political and Social Science: China: Social and Economic Conditions* 97–108; Umut Özsu, 'The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory' in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (OUP 2016) 123. Such practices also predate the nineteenth century, however. See Maïa Pal, *Jurisdictional Accumulation* (CUP 2021) (focusing, from an historical sociology perspective, on sub-sovereign consular establishments in the Mediterranean and the American colonies in the early modern period).

[22] See for a fine overview of the extraterritorial projection of power by the US in the late nineteenth century outside a consular context, but with respect to extradition regimes, and notably in

Arguably, the latter 'evil' use of extraterritoriality sowed the seeds for the poor reputation which extraterritoriality may later have acquired in some quarters.[23] This volume, however, considers extraterritoriality to be a neutral moniker which simply denotes the exercise of (State) authority beyond a State's borders. Still, awareness of the historical baggage with which the concept comes may, as Andrew Fitzmaurice noted in respect of the concepts of sovereign trusteeship and the responsibility to protect, 'alert us to the possible manipulation of those concepts to justify expansionism'.[24]

In the criminal law, territoriality also never acquired exclusivity. In fact, the World Court's most influential judgment on the geographical reach of a State's laws – namely, the *Lotus* judgment of the Permanent Court of International Justice (1927) – displays a remarkably wide, or at least ambiguous, conception of jurisdiction, allowing for various forms of extra-territoriality. The Court famously held: 'Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules.'[25] It has been suggested that not too much should be made of this abstract *dictum*, given that in the particular circumstances of the case jurisdiction was based on an expansive interpretation of territori-ality.[26] Still, *Lotus* has cast a long shadow in the law of jurisdiction, because at least part of the decision seems to confirm the presumptive validity of extraterritoriality.[27] It remains the case that State jurisdiction is still largely conceived in territorial terms,[28] but the overtures to extraterritoriality are undeniable. Also, in the currently dominant model of jurisdiction, as it was first enunciated in the Harvard Draft on Jurisdiction with Respect to Crime,[29] States can exercise extraterritorial jurisdiction on the basis of a number of permissive principles, such as nationality, security and universality. In short, the scope of a State's sovereign authority has never been strictly territorially limited.

Territorializing the Extraterritorial

Concomitant with the rise of treaty-based extraterritoriality and the acceptance of a set of principles of extraterritorial jurisdiction, from the late nineteenth century onwards additional

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relation to Mexico: Daniel S Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877–1898* (University of Georgia Press 2011).

[23] Andrew Cobbing, 'A Victorian Embarrassment: Consular Jurisdiction and the Evils of Extraterritoriality' (2018) 40 *The International History Review* 273.

[24] Andrew Fitzmaurice, 'Sovereign Trusteeship and Empire' (2015) 16 *Theoretical Inq. L.* 471.

[25] S.S. *'*Lotus*', France v Turkey*, Judgment, Judgment No 9, PCIJ Series A No 10, 18–19.

[26] Stéphane Beaulac, 'The Lotus Case in Context: Sovereignty, Westphalia, Vattel, and Positivism' in Allen, above note 1, 52; Daniel Costelloe, 'Conceptions of State Jurisdiction in the Jurisprudence of the International Court of Justice and the Permanent Court of International Justice', in Allen, above note 1, 474.

[27] E.g., dissenting opinion Judge ad hoc Van den Wyngaert, *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, International Court of Justice, 14 February 2002, *I.C.J. Rep.* 3 (2002), para. 51 ('It follows from the *"Lotus"* case that a state has the right to provide extraterritorial jurisdiction on its territory unless there is a prohibition under international law').

[28] Daniel Bethlehem, 'The End of Geography: The Changing Nature of the International System and the Challenge to International Law' (2014) 25 *EJIL* 14.

[29] (1935) 29 *Am. J. Int'l L.* Sup. 466, 470.

opportunities for forms of extraterritoriality arose as a result of wide interpretations of the territoriality principle. Confronted with transnational crime, communication and business transactions, States bent territoriality in such ways that it could capture partly, or even largely, extraterritorial situations. They did so by relying on the – sometimes fortuitous – territorial links of an extraterritorial situation, or by creating territorial fictions, such as via the concept of 'deemed' territoriality.[30] The notion of 'territorial extension' is sometimes also used to denote this phenomenon, especially beyond the criminal law.[31] Anthony Colangelo has observed in this respect that '"territorial" and "extraterritorial" are fluid constructs subject to conceptual manipulation'.[32] Peter Szigeti has put it in even starker terms, where he writes that determining whether an act is territorial or extraterritorial 'involves making essentially metaphysical decisions, without geographic substance, about whether an event, a mental State, or a quality "takes place" within or beyond an international boundary'.[33] Territoriality then becomes a flexible governance technique to regulate essentially extraterritorial situations, thereby blurring the dividing line between territoriality and extraterritoriality. In fact, when extraterritoriality is used in the context of economic law, it is often considered to denote territorial effects of extraterritorial conduct.[34]

Extraterritoriality as a Political Notion: From Restriction to Expansion

Territoriality and extraterritoriality have now become widely accepted international law concepts around which debates on the geographical extent of normative authority have coalesced, even if these concepts do not have any fixed meaning. Suffering from relative indeterminacy, they are simply the canvas on which spatially informed arguments unfold.[35] They are the language in which 'claims of authority, or of resistance to authority' are couched, as they are 'made by particular actors with particular substantive interests to promote'.[36]

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[30] Lindsay Farmer, 'Territorial Jurisdiction and Criminalization' (2013) 63 *University of Toronto Law Journal* 241. Often, these territorial links are constituted by territorial effects of extraterritorial conduct. Notably in regulatory law, states, in particular the US, have relied on the effects doctrine to capture essentially extraterritorial conduct. See in the field of competition law, e.g., Najeeb Samie, 'The Doctrine of "Effects" and the Extraterritorial Application of Antitrust Laws' (1982) 14 *U. Miami Inter-Am. L. Rev.* 23. The US Restatement (Fourth) of US Foreign Relations Law, unlike previous iterations, has upgraded the effects doctrine to a separate jurisdictional principle in Section 409.

[31] Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62 *Am. J. Comp. L.* 87.

[32] Anthony J. Colangelo, 'What is Extraterritorial Jurisdiction?' (2013–14) 99 *Cornell L. Rev.* 1303, 1323.

[33] Peter Szigeti, 'The Illusion of Territorial Jurisdiction' (2017) 52 *Texas International Law Journal* 369, 398 (2017); see also Peter Szigeti, 'In the Middle of Nowhere: The Futile Quest to Distinguish Territoriality from Extraterritoriality', in Daniel Margolies et al. (eds), *The Extraterritoriality of Law* (Routledge 2019).

[34] Diane P. Wood, 'Extraterritorial Enforcement of Regulatory Laws' (2019) 401 *Collected Courses of The Hague Academy of International Law – Recueil des Cours* 17–18.

[35] Borrowing from Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument, Reissue with New Epilogue* (CUP 1989/2005) 589.

[36] Hannah L. Buxbaum, 'Territory, Territoriality, and the Resolution of Jurisdictional Conflict' (2009) 57 *Am. J. Comp. L.* 631, 635.

Consequentially, extraterritoriality has become an intensely political notion, which is used and abused in law to promote or oppose particular normative projects.[37] Given the asymmetry of power in international politics, more powerful States are obviously more likely to successfully engage in practices of extraterritoriality.[38] One strand of critique in this context emanates from the Third World Approaches to International Law (TWAIL) approach, which tends to consider extraterritoriality as a post-colonial technique of domination that allows 'the West' to impose its own values and life-projects on the rest of the world, thereby eroding the hard-won sovereignty of newly independent States.[39] Another strand of critique asserts that extraterritoriality is an undesirable technology of unilateral legal–political action that suffers from a democratic deficit.[40] This arguably undermines international consent-based multilateralism,[41] to the detriment of weaker States.[42]

This critique of extraterritoriality has been countered, however, by an increasingly vocal strand of scholarship that calls for more expansive extraterritoriality, not just to protect a State's territory from threats originating abroad, but also to assume responsibility and further global justice projects.[43] This strand of scholarship tends to argue that strict interpretations of territoriality may unduly limit accountability for extraterritorial harm, such as environmental harm caused abroad by locally incorporated firms, human rights abuses committed by a State's military forces abroad or financial harm caused by unregulated global securities markets.[44] These concerns have sparked a large literature on the extraterritorial human rights obligations of States,[45] as well as on home State regulation of and litigation against multinational

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[37] Neil Brenner and Stuart Elden, 'Henri Lefebvre on State, Space, Territory' (2009) 3 *International Political Sociology* 353, 358 (approving the work of Henri Lefebvre, who argued that 'space generally, but abstract space especially, is inherently political').

[38] Nico Krisch, 'International Law in Times of Hegemony' (2005) 16 *EJIL* 369, 400.

[39] Bhupinder S. Chimni, 'Third World Approaches to International Law' in Antony Anghie et al. (eds), *The Third World and International Order: Law, Politics and Globalization* (Brill 2003) 57; Bhupinder S. Chimni, 'The International Law of Jurisdiction: A TWAIL Perspective' (2022) 35 *Leiden Journal of International Law* 29; Caroline Omari Lichuma, '(Laws) Made in the "First World": A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains' (2021) 81 *ZaöRV* 497.

[40] Stephan Wittich, 'Immanuel Kant and Jurisdiction in International Law' in Allen, above note 1, 87 (critiquing extraterritoriality on the grounds of Kant's concern with democratic legitimacy, pursuant to which 'one may only be required to comply with those laws to whose formation and very existence as well as substance and content one has contributed through democratic processes').

[41] Austen L. Parrish, 'Reclaiming International Law from Extraterritoriality' (2009) 93 *Minn. L. Rev.* 536.

[42] Nico Krisch, 'Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance' (2022) 33 *European Journal of International Law* 481–514.

[43] Martin Kuijer and Wouter Werner, 'The Paradoxical Place of Territory in International Law' (2016) 47 *Neth. Yb. Int'l. L.* 6; Cedric Ryngaert, *Selfless Intervention: The Exercise of Prescriptive Jurisdiction in the Common Interest* (OUP 2020); Malcolm Langford et al. (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law* (CUP 2013).

[44] See on the latter notably Pierre-Hugues Verdier, 'The New Financial Extraterritoriality' (2019) 87 *George Washington L. Rev.* 239, 245 (submitting that 'in a world of weak international financial regulation, unilateral [extraterritorial] action is often necessary to protect legitimate state interests and break deadlocks in international cooperation').

[45] E.g., Antal Berkes, *International Human Rights Law beyond State Control* (CUP 2021).

corporations for their harmful extraterritorial activities.[46] This literature has also interrogated the ways in which institutional decision-makers, such as courts, have been susceptible to restrictive interpretations of territoriality that are aggressively pushed by private actors, thereby entrenching global capitalism's lack of extraterritorial accountability.[47] This critique of territoriality also points to a deeper problem of the territorial State being transformed into a launching platform for, in Saskia Sassen's words, 'new global assemblages', such as global financial markets, characterized by 'multisited territoriality'.[48] These assemblages arguably use the crevices of this multisited territoriality to escape accountability for extraterritorial harm.[49] Doctrinally, they may do so by successfully advocating strict readings of the presumption against extraterritoriality, a canon of statutory construction often used in Anglo-Saxon countries to limit the geographical reach of statutory law.[50] Such manoeuvres may in any event create fodder for a justified global justice-based critique.

THE VOLUME: AN OVERVIEW

The Approach of This Volume

While extraterritoriality as a field of inquiry concerned with the geographical reach of law may be more or less settled, no uniform approach to the study and practice of extraterritoriality exists. Instead, different approaches, ranging from the doctrinal to the critical, and from the historical, to the sociological, to the contextual and more, co-exist.[51] A most commendable recent volume on extraterritoriality placed particular emphasis on non-doctrinal, critical and historical approaches.[52] These approaches partly return in this volume as well. The emphasis here, however, lies more on the actual legal practices of extraterritoriality in discrete fields and their relationship to international law and international legal systems. For sure, these practices diverge significantly, depending on the social, economic or political challenges confronting the particular legal areas. Accordingly, legal knowledge on extraterritoriality has mainly been

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[46] E.g., Daniel Augenstein and David Kinley, 'When Human Rights "Responsibilities" become "Duties": The Extraterritorial Obligations of States that Bind Corporations' in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (CUP 2013) 271.

[47] Uta Kohl, 'Territoriality and Globalization' in Allen, above note 1. See for an elaborate spatial critique: Philip Liste, 'Transnational Human Rights Litigation and Territorialised Knowledge: Kiobel and the "Politics of Space"' (2014) 5 *Transnational Legal Theory* 1; Philip Liste, 'Geographical Knowledge at Work: Human Rights Litigation and Transnational Territoriality' (2016) 22 *European Journal of International Relations* 217.

[48] Sassen, above note 9, 378–87.

[49] See also Hannah L. Buxbaum, 'Extraterritoriality in the Public and Private Enforcement of U.S. Regulatory Law', in Ferrari and Fernandez, above note 2, 257 (pointing to regulatory gaps as a result of a territorialized framework of civil justice); Jenny S. Martinez, 'New Territorialism and Old Territorialism' (2014) 99 *Cornell L. Rev.* 1387, 1390–1.

[50] See on the revival of the presumption in recent US litigation: William S. Dodge, 'The New Presumption against Extraterritoriality' (2019–20) 133 *Harv. L. Rev.* 1582.

[51] John Haskell, 'Ways of Doing Extraterritoriality in Scholarship' in Margolies et al., above note 33 (critiquing legal doctrinal analysis versus historical, sociological, or approaches of other disciplines).

[52] Margolies et al, above note 33.

built by area-specific lawyers and scholars – for example, in antitrust law, criminal law, human rights law and other active areas – thus leaving a scattered impression of the field.[53]

A principal aim of this volume is to take stock of this epistemic fragmentation, and to provide insight into whether there is, or should be, any coherence in the variegated practices of extraterritoriality. The analysis presented is certainly not merely technical, however, in the sense of simply describing and categorizing legislation and case-law. Instead, the technical analysis is a staging ground for a more wide-ranging theoretical inquiry into how spatial knowledge is institutionally (re-)produced in a context of competing narratives on the geographic extent of normative authority and State power.[54]

The Structure of This Volume

The volume's structure is designed to further the aims of the Handbook and the interplay between extraterritoriality and international law. Consistent with the broad goals of Elgar Handbooks, each chapter is designed to contribute to some of the most important debates surrounding extraterritoriality. The Handbook's structure is also designed to provide overviews of specific topics, with the chapters in each Part collectively giving a broad-based introduction to a particular topic in a way that should be of use to a range of readers, including academic researchers, post-graduate students, practising lawyers and those advancing policy reform.

Part I introduces foundational and conceptual issues. In Chapter 1, Cedric Ryngaert provides an overview of the current state of the international law of jurisdiction. He highlights how States have used the principle of territoriality to regulate activities that may largely take place outside their territory. In so doing, States appear to collapse the distinction between the territorial and extraterritorial and cast doubt on the viability of the law of jurisdiction as a set of norms providing world public order. In Chapter 2, Omri Sender and Michael Wood trace how the customary rules of jurisdiction have been identified since the early twentieth century and suggest that the determination of the customary norms of jurisdiction should follow the standard methodology of ascertaining relevant State practice and *opinio juris*. They also point to a number of largely unsuccessful efforts to codify the customary international law of extraterritorial jurisdiction. In Chapter 3, Austen Parrish argues that additional public international law limits on the exercise of extraterritorial jurisdiction exist. He emphasizes in particular the principles of sovereignty, self-determination and non-interference; the duty to cooperate; and the duty to account for the interests of other States.

After these first three chapters, what follows in Part I addresses extraterritoriality from a non-doctrinal perspective. In Chapter 4, Tonya Putnam draws attention to the political aspects of extraterritoriality. She demonstrates how political scientists explore and account for deeper behavioural and institutional underpinnings of extraterritoriality. In Chapter 5, Branislav Hock espouses an economic and criminological approach to extraterritoriality. He

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[53] Compare Allen et al., 'Introduction', above note 1, 8 ('manifestations of extraterritorial jurisdiction escape strict categorization because of their great variations in degree').

[54] We take our cue from Dorsett and McVeigh, above note 6, 4 ('Jurisdictional knowledge is, in a sense, the practical knowledge of how to do things with law'); Shaun McVeigh, 'Critical Approaches to Jurisdiction and International Law' in Allen et al., above note 1, 197–8 (treating jurisdictional arrangements as a matter of technique, established through the practice and conduct of lawyers); Mariana Valverde, 'Jurisdiction and Scale: Legal "Technicalities" as Resources for Theory' (2009) 18 *Social and Legal Studies* 139.

teases out that the extraterritorial enforcement of corporate crime, in particular bribery, is largely a matter of negotiation, persuasion and compliance, involving complex interactions between States and corporations. In Chapter 6, Peer Zumbansen problematizes the spatiality of extraterritoriality, which is commonly conceived as a projection of the regulatory sovereignty of the State. Through the lens of the critical legal historian of an inclusive bent, he analyses how significant regulatory arenas have outgrown the State's legal dominion and occupy their own normative and spatial universes.

Part II of this volume explores extraterritoriality from various regional perspectives and provides a broad overview of how different part of the world have engaged with extraterritorial laws and regulation. In Chapter 7, Régis Bismuth examines different facets of the European Union's experience with extraterritoriality and shows how the EU was initially a willing 'victim' of United States extraterritoriality, and later became itself a 'perpetrator' of soft forms of extraterritoriality. In Chapter 8, Cassandra Burke Robertson documents the rich US experience with extraterritoriality. She traces the development of several US judicial doctrines related to international extraterritoriality, such as the presumption against extraterritoriality and personal jurisdiction, while also addressing interstate federalism and extraterritorial regulation inside the United States. In Chapter 9, Danielle Ireland-Piper traces the similarities of approaches to extraterritoriality in the Commonwealth, especially Australia, New Zealand and the United Kingdom. She observes the ways in which the common law has influenced the practice of extraterritoriality in Commonwealth nations and how this practice differs from the practice of civil law nations. In Chapter 10, Mari Takeuchi turns her gaze to the position of Asia, which boasts the world's largest population. Analysing several areas of law, she argues that Asian countries have adopted a rather passive attitude toward extraterritoriality, which is rooted in their adherence to the principle of non-intervention. In Chapter 11, Alejandro Chehtman notes that also in Latin America, countries have been largely reluctant to extend the scope of their laws beyond their territory. He points out, however, that exceptions to this position are on the rise, in different contexts. Finally, in Chapter 12, Magnus Killander explains how Africa has long been on the receiving end of Western nations' extraterritorial practices. This has informed calls for more expansive extraterritorial obligations and accountability. He also highlights how African nations have recently engaged in their own extraterritorial practices, even if enforcement remains patchy.

Part III of the volume unpacks particular 'kinds' of extraterritoriality, from legislative, to judicial, to treaty-based extraterritoriality. In Chapter 13, William Dodge addresses the extraterritoriality of statutes and regulations, focusing on the US and the EU. He submits that, in determining the geographic scope of statutes, the US has relied primarily on domestic rules of statutory interpretation, whereas the EU (and European nations) give more prominence to customary international law. In Chapter 14, Yanbai Andrea Wang engages with judicial extraterritoriality, that is, the exercise of extraterritorial adjudicative jurisdiction, focusing on the US and China. She observes how, traditionally, the US was a magnet for extraterritorial litigation initiated by private actors. She notes, however, that it has become increasingly attractive for plaintiffs to bring cases abroad, for example in China, while seeking discovery and enforcement assistance in US courts. In Chapter 15, Matthew Garrod discusses how treaty-based extraterritorial jurisdiction has expanded over the years, in the context of countering transnational terrorism and organized crime. In particular, he argues that the principles of extraterritorial jurisdiction enshrined in treaties do not necessarily embody or codify rules of customary international law.

Turning to area-specific analysis, Part IV of the volume contains chapters on how extraterritoriality applies in different fields of the law. The first five chapters explore issues of extraterritoriality and international law in the contexts of human rights, refugee rights and global migration, criminal law, intellectual property and cybersecurity. In Chapter 16, Samantha Besson revisits the notion of extraterritorial human rights jurisdiction. She explores the relations between, on the one hand, the extraterritorial application of human rights, which is concerned with extraterritorial human rights obligations and, on the other, the concept of extraterritorial application of domestic law, which is governed by general international law. In Chapter 17, Chimène Keitner zooms in on States' extraterritorial obligations towards refugees and migrants who have not yet reached State borders. She notes that international supervisory bodies have espoused relatively expansive interpretations of human rights extraterritoriality, but that such interpretations have not always been followed in domestic jurisprudence and political practice. In Chapter 18, Anthony Colangelo categorizes the ways in which the US applies its criminal law extraterritorially. He focuses on adjudicatory and prescriptive jurisdiction, and demonstrates when and how international law plays a role. In Chapter 19, Timothy Holbrook describes the issues facing extraterritorial intellectual property rights, particularly patent, copyright and trade mark. He notes how the use of one nation's intellectual property rights can have significant implications for another nation's sovereignty, but argues how these concerns could be accommodated through a robust use of comity. In Chapter 20, Asaf Lubin explores how the traditional international rules of enforcement jurisdiction could apply in cyberspace. He makes a distinction between activities subject to a more lenient State 'investigative jurisdiction' principle, and more intrusive activities that rise to the level of prohibited extraterritorial enforcement.

The remaining chapters in Part IV continue in a similar vein, focusing on topics of data privacy, environmental law, competition law, financial regulation, bribery and corruption, economic sanctions and global speech laws. In Chapter 21, Christopher Kuner examines the nature of extraterritoriality in the field of data protection. He highlights how conflicts over extraterritoriality have become more frequent and intense in this field, given the ease by which data are processed and transferred across national borders. He also makes suggestions on how extraterritoriality could be managed. In Chapter 22, Ioanna Hadjiyianni analyses how the EU and the US have applied their environmental legislation extraterritorially. She submits that different normative and jurisdictional justifications may determine the degree and nature of extraterritoriality in the field of environmental law. In Chapter 23, Marek Martyniszyn maps how the 'effects' doctrine of extraterritoriality has been applied in antitrust and competition law. He shows that political and economic developments have underpinned the evolution of the doctrine, which is now widely accepted internationally. In Chapter 24, Matthias Lehmann points out that also in financial law, extraterritoriality has been a mainstay for decades. He maps the motives and connecting factors of the extraterritoriality. He also argues that, due to technological evolutions, the world of finance is moving beyond the extra/territoriality dichotomy. In Chapter 25, Ellen Gutterman offers legal and political perspectives on the enforcement of transnational bribery and corruption. She conceives of extraterritoriality as a technique of global governance, which is grounded in the domestic norms, politics and interests of the US, the dominant actor on the world stage. In Chapter 26, Christian Tietje and Cristina Lloyd discuss extraterritorial 'secondary' sanctions, which are imposed by the US on foreign operators trading with targets of 'primary' US sanctions regulation. They point out that such sanctions have been internationally controversial, and led to blocking measures

by foreign nations. In Chapter 27, Dan Svantesson addresses how, in multiple jurisdictions, extraterritorial Internet content blocking, removal, de-listing and must-carry orders have been used as tools to regulate global speech. He observes that such orders may undermine the proper functioning of private international law, and presents an alternative jurisdictional framework. Finally, in Chapter 28, Sara Seck unpacks what the concept of extraterritoriality can offer to those seeking climate justice. She argues that extraterritoriality can be used as a tool for transformative climatic action and discusses this argument in the context of the Dutch climate litigation case against Royal Dutch Shell.