Preface

It is the basic truth that the assertion of, or the refusal to exercise state jurisdiction, for whatever reasons, is a matter of the domestic law of the state in the first place. However, the ultimate framework of the legality of national jurisdictions rests with the system of public international law which independently, and through the network of customary and conventional rules, suggests the criteria for the initial basis and ultimate legality of national jurisdictions, as well as determines the implications of the improper exercise of, or the improper failure to assert, the national jurisdiction. Much of the jurisdiction-related ground is a matter of private international law too, but public international law is the ultimate governing framework. Therefore, this *Research Handbook* presents the issues of state jurisdiction and state immunity from the overarching perspective of public international law in the first place, though also encompassing some issues of private international law and of national laws as they bear on those issues.

Several themes have dominated the discourse on state jurisdiction over the past two centuries. One issue is consular jurisdiction that European states exercised in non-European parts of the world on the basis of treaties concluded with non-European states and which extended, as Oppenheim described it, both to the cases arising as between expatriates, as well as to mixed cases involving native subjects (L. Oppenheim, *International Law* (2nd edn, 1912), vol. I, p. 498). Though advancing extra-territoriality, consular jurisdiction was essentially (in the background) the confirmation of the territorial supremacy of states and of the principle that the territorial jurisdiction of states is unlimited unless superseded, to the relevant extent, by a clear rule under conventional or customary international law. The early twentieth century saw the emphasis on the concurrence of state jurisdictions, culminating in the decision in the *Lotus* case rendered in 1927 by the Permanent Court of International Justice. The period after the Second World War saw the growth of inter-state agreements on the deployment of foreign armed forces on state territory, and on the allocation of jurisdictional competences accordingly. From the 1950s onwards, the assertion of extra-territorial jurisdiction by American courts in economic matters has generated jurisdictional controversies between the United States and the United

Kingdom, lasting over several decades. An even more extreme assertion of the American extra-territorial jurisdiction has taken place through the 1992 US Helms-Burton Act, as an instance of the use of extra-territorial jurisdiction as a tool for political pressure. And then, not to forget, there is a phenomenon of universal jurisdiction in civil and criminal proceedings, to be exercised over core international crimes and serious violations of human rights as well as of the laws of war.

In relation to immunities, the past century has witnessed the transition from the absolute to the restrictive doctrine of state immunity, and the growth of regulation of state immunity via national legislation as well as nascent international treaties. The growth of state involvement in commerce was then followed by the increasing potential of transnational human rights litigation which impacts the doctrine of immunity as it does in relation to the doctrine of jurisdiction. In relation to civil as well as criminal jurisdiction, the discussion of the immunity of states, as well as that of their individual officials, has acquired greater significance. Last but not least, more specialized areas such as the immunity of international organizations have been gaining in importance.

Each of these above developments has generated heavy discussions in the circles of scholars and of practitioners. There have been some great generalist analyses of jurisdiction and immunity by various prominent authors, such as Mann, Akehurst, Bowett, Jennings, Higgins and Crawford. But most of the time over the more recent decades (with very few exceptions such as the monograph by C. Ryngaert), the discussion of jurisdiction and immunities as a matter of public international law has been rather sectoral, restricted to a particular area such as antitrust or international crimes. What, however, is fascinating about state jurisdiction and state immunity is that, while they draw on important controversial aspects of the international legal system, they also relate to more fundamental categories of the international legal system, such as the doctrine of sovereignty, the doctrine of the sources of international law, and more broadly the relationship between legal reasoning and political ideologies. So far, there has been no comprehensive treatment of the matters of jurisdiction and immunities in a way that could benefit both the academic and practical elements of the legal profession.

Consequently, to remedy the gap created over the past few decades through the lack of comprehensive analysis of jurisdiction and immunity issues, this *Research Handbook* brings together a group of scholars who have distinguished themselves not only as recognized experts in the area of jurisdiction and immunities, but also through their scholarly and academic integrity, to provide impartial scholarly analysis of the underlying issues of jurisdiction and immunity, focusing on explaining and

understanding the relevant legal issues as they are, without being affiliated to any agenda held in certain governmental or other quarters, or otherwise to any political ideology.

The overall result, we believe, is the most up-to-date, impartial and comprehensive work so far published examining these controversial issues. This *Research Handbook* is therefore a collective effort by a group of scholars with expertise in the areas of jurisdiction and immunities. What unites the individual contributions in the methodological sense is their reliance on the legal positivist method as the mainstream language for international legal discourse. At the same time, individual chapters allow the contributors also to offer their individual expertise to readers. Consequently, no attempt has been made to harmonize or unify the methods, opinions and approaches adopted by the various contributors. And this also reflects the idea behind such a *Research Handbook*, which is to provide a platform to assist in the conducting of research, rather than presenting a unified or harmonized perspective on the area of law dealt with here, which is especially inhospitable to preconceived attitudes and blanket solutions.

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