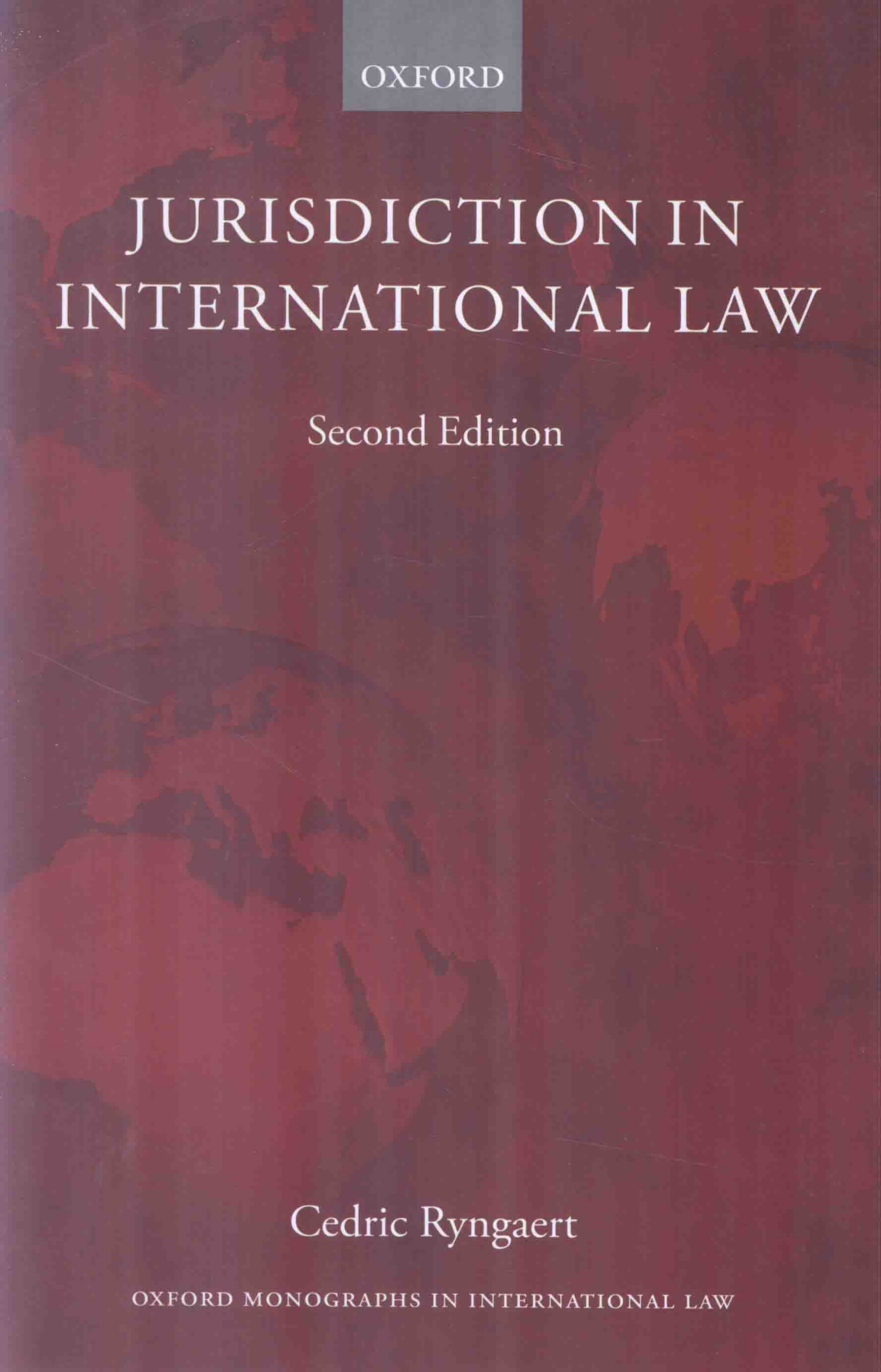




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JURISDICTION IN INTERNATIONAL LAW

Second Edition

Cedric Ryngaert

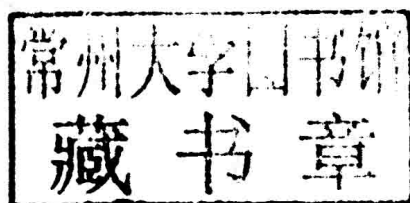
OXFORD MONOGRAPHS IN INTERNATIONAL LAW

Jurisdiction in International Law

Second Edition

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General Editors' Preface

The Vienna Convention on the Law of Treaties is often referred to as the “treaty on treaties”. In the same way, the customary international law rules on jurisdiction could be called the “law on laws”. These public international law rules provide the legal framework for both national law-making and national law enforcement. As such, they form part of the core of general international law. While jurisdiction is in principle territorial, it is the extraterritorial exercise of civil, criminal and regulatory jurisdiction by States that raises some of the most interesting and challenging questions of modern international law. In particular, the question of how issues of concurrent, competing and contradictory exercises of jurisdiction can be resolved provides ample opportunity for creative scholarship.

In the first edition of the present book, published in 2008, Professor Ryngaert offered a coherent theory of “jurisdictional reasonableness” which gives the State with the strongest nexus the *primary* right to exercise jurisdiction. One of the strengths of the study has been its solid basis in State practice and, in particular, the jurisprudence of international and domestic courts. Over the last couple of years, however, opposing trends have emerged in the law of jurisdiction. While States have continued to expand their extraterritorial jurisdiction in areas such as environmental law, they have limited the exercise of extraterritorial criminal and tort jurisdiction. A new edition taking into account these new developments is thus timely and most welcome.

CR, DS, ST
Oxford and Bonn, February 2015

Preface Second Edition

The first edition of this monograph was published in 2008. In light of recent evolutions in the law and practice of jurisdiction, a second edition was considered to be timely. Applying the presumption against extraterritoriality, the US Supreme Court limited the geographic reach of the Alien Tort Statute to (human rights) cases that “touch and concern” the United States (*Kiobel v Shell*, 2013), and similarly limited the reach of the US securities (financial) regulation (*Morrison v National Australia Bank*, 2010). In other fields, notably sanctions law and anti-corruption legislation, US regulators have not shied away from vigorously enforcing laws with undeniable extraterritorial effect. On the other side of the Atlantic, the EU flexed its jurisdictional muscles by including foreign aviation activities in the scheme for greenhouse gas emission allowance trading within the EU (2009, approved by the European Court in 2011), by contemplating a rather broad reach of EU data protection legislation, and more generally using weak territorial connections as triggers to apply EU law to global activities. Internationally, the exercise of universal criminal jurisdiction appears to be on the retreat, with the African Union inveighing against Western (European) overreach, and liberal Spain even abandoning the principle altogether. At the same time, litigators have looked for inventive ways to bring civil cases in respect of human and environmental rights violations, largely drawing on private international law. In the law of the sea, the potential of port State jurisdiction in respect of harmful activities committed on the high seas appears to have been discovered. And, not unimportantly, the Internet has continued to challenge the territorial scheme on which the law of jurisdiction has classically been based, although States have not shed territoriality in respect of essentially de-territorialized cyber-activity. The literature, for its part, has put forward re-interpretations of the (US) presumption against extraterritoriality, has emphasized the artificiality of territoriality in an increasingly borderless world, and has noted the potential of unilateral jurisdiction to address global governance gaps, e.g. in the environmental field.

These evolutions in legal practice and doctrine warranted an update of the relevant chapters and a (limited) reconsideration of the theoretical framework used in the first edition. The basic chapter structure has been maintained, but various sections have been elaborated on or shortened, depending on their current salience. The chapters on the territoriality principle (3) and the principles of extraterritorial jurisdiction (4), as well as the final chapter (6), have been most thoroughly changed. In the last chapter, in particular, I have engaged somewhat more rigorously with the subsidiarity principle, which I suggest as an appropriate mechanism of jurisdictional mediation which allows for deference to the jurisdiction of the most-affected State while at the same time ensuring the protection of global interests in the face of territorial inaction.

Ultimately, this second edition, like the first one, contains a critical overview of the current state of the law of jurisdiction—i.e. as of 2014—especially in the areas of criminal and regulatory law, and a modest plea for a “reasonable” exercise of jurisdiction. The second edition has foregrounded somewhat more that reasonableness need not have just a negative connotation, but also a positive one: reasonableness may soften acute affirmative claims of overlapping jurisdiction, but also vindicate more expansive jurisdictional assertions aimed at addressing globally harmful under regulation and under enforcement, e.g. in the field of economic regulation, respect for human rights, and environmental protection. Needless to say, this quest for jurisdictional reasonableness is on-going.

The author has benefitted from many conversations he has had over the last few years. But he would like to thank in particular the following people: Merel Alstein from OUP, who was so kind as to invite me to write a second edition, Raluca Racasan and Benjamin Thompson for their editorial assistance, and Vibheetha Santhaseelan for the final processing of the manuscript.

Cedric Ryngaert

Utrecht
3 October 2014

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List of Abbreviations

<i>AFDI</i>	Annuaire français de droit international
<i>AJIL</i>	American Journal of International Law
<i>Ala L Rev</i>	Alabama Law Review
<i>Alb L Rev</i>	Albany Law Review
<i>Am J Comp L</i>	American Journal of Comparative Law
<i>Am J Int'l L</i>	American Journal of International Law
<i>Am Rev Int'l Arb</i>	American Review of International Arbitration
<i>Am Soc'y Int'l L Proc</i>	American Society of International Law Proceedings
<i>Am U J Int'l L & Pol'y</i>	American University Journal of International Law and Policy
<i>Am U L Rev</i>	American University Law Review
<i>Ann IDI</i>	Annuaire de l'Institut de Droit International
<i>Antitrust LJ</i>	Antitrust Law Journal
<i>ASIL Proc</i>	Proceedings of the Annual Conference of the American Society of International Law
<i>Aust'l J Int'l Aff</i>	Australian Journal for International Affairs
<i>Aust'l LJ</i>	Australian Law Journal
<i>AWD</i>	Aussenwirtschaftsdienst der Betriebsberater
<i>BC Int'l & Comp L Rev</i>	Boston College International and Comparative Law Review
<i>BC Third World LJ</i>	Boston College Third World Law Journal
<i>Berkeley J Int'l L</i>	Berkeley Journal of International Law
<i>Brigham Young U L Rev</i>	Brigham Young University Law Review
<i>Brookl J Int' L</i>	Brooklyn Journal of International Law
<i>BU Int'l LJ</i>	Boston University International Law Journal
<i>BU L Rev</i>	Boston University Law Review
<i>Butterworths</i>	
<i>J Int'l Banking & Fin L</i>	Butterworths Journal of International Banking and Financial Law
<i>BYIL</i>	British Yearbook of International Law
<i>Cal L Rev</i>	California Law Review
<i>Cal West Int'l LJ</i>	California Western International Law Journal
<i>Can Bus LJ</i>	Canadian Business Law Journal
<i>Can-US LJ</i>	Canada—United States Law Journal
<i>Cardozo J Int'l & Comp L</i>	Cardozo Journal of International and Comparative Law
<i>Cardozo L Rev</i>	Cardozo Law Review
<i>Case Western Res J Int'l L</i>	Case Western Reserve Journal of International Law
<i>Cath U L Rev</i>	Catholic University Law Review
<i>CFI</i>	European Court of First Instance
<i>Chi J Int'l L</i>	Chicago Journal of International Law
<i>CLR</i>	Criminal Law Review
<i>CMLR</i>	Common Market Law Review
<i>Colum Bus L Rev</i>	Columbia Business Law Review
<i>Colum Hum Rts L Rev</i>	Columbia Human Rights Law Review