

PREFACE

This edited volume finds its origin in a conference on the theory and practice of customary international law (CIL) and its interpretation, held in May 2019 at the University of Groningen. The conference was co-organised by the TRICI-Law project and the Interest Group on International Legal Theory and Philosophy (IGILTP).

The TRICI-Law project, headed by Professor Panos Merkouris, is a five-year research project funded by the European Research Council (ERC) Horizon 2020 program (Grant Agreement No. 759728). The project is dedicated to the in-depth study of CIL interpretation, and the identification of the rules that guide this process. It is the first of its kind, introducing the lens of interpretation as a separate process to be studied in the life cycle of a CIL rule.

The IGILTP is one of the interest groups of the European Society of International Law (ESIL). It seeks to facilitate research into all areas, approaches and questions of a theoretical and philosophical nature with a bearing on international law. In the IGILTP the TRICI-Law project found a willing ally for the organisation of the conference and the collection of this edited volume. It was during our time as co-members of IGILTP's Coordinating Committee that we exchanged many of the ideas that inspired the theoretical questions tackled in this volume.

The conference presented an ambitious programme. We invited scholars and practitioners to engage with questions that hit at the core of our selected subject: what are the rules that regulate the functioning of CIL as a source of international law? Is the classical paradigm of state practice and *opinio juris* still valid today? Can CIL be interpreted? Is there a difference between the interpretation of state practice and the interpretation of a customary rule? Where do lines (if any) between identification, interpretation, application and modification of a rule of CIL lie? And what potential lessons may we learn from domestic approaches to these questions?

We were delighted to receive over 100 abstracts in response to our call for papers; a testament to the continued interest that the theory of CIL inspires among scholars and practitioners of international law. We were particularly encouraged to see that many of the abstracts were willing to engage with the novel lens of interpretation alongside the more traditional subjects of CIL genesis and identification. Thus, in our selection of abstracts we were careful to strike a balance between contributions which examined more traditional issues related to the theory of CIL, and contributions which went outside these familiar frameworks. Moreover, attention was paid to bring together a complementary diverse set of contributions which deal with the theory, practice, and interpretation of CIL respectively. The conference, and ultimately the chapters of this edited volume, reflect this balance.

The edited volume boasts twenty-three chapters, organized into five parts. Part I, dedicated to the theory of CIL, deals with the fault lines in CIL theory and the need for new approaches. This part contains chapters which examine some of the issues emerging from the theory of CIL, commentaries on the validity of the traditional 'state practice and *opinio juris*' model, and suggestions for alternative theoretical approaches. Part II is dedicated to an examination of CIL as a source of international law, with a focus on the doctrine and history of custom. This part contains chapters that critically engage with questions of doctrine, the historical development of CIL, and the contribution of some seminal historical scholars to the way we understand CIL today. Part III turns to the practice of CIL. The chapters in this part present studies of the ways various institutions and actors engage with the application of CIL, and offer commentaries on how these practices shape the way CIL operates in international law. Part IV then introduces the notion of interpretation as a separate stage in the life cycle of a customary rule. This part contains chapters which persuasively illustrate the need to account for interpretation in the operation of a CIL rule, and offer suggestions as to how this may be done. Finally, Part V provides insight into the way domestic courts deal with custom. The chapters in this final part trace the jurisprudence of various domestic courts and illustrate that interpretation of custom (both international and domestic) is regularly engaged in by domestic judges, and that there are valuable lessons to be learned from these approaches for the purposes of international law.

We are deeply grateful to the contributors of this edited volume for their impressive scholarly efforts reflected in each chapter. We also thank the other speakers and chairs of the conference, whose presentations and

comments during the 2019 conference no doubt inspired many of the discussions developed in this volume. We are particularly grateful to His Excellency Judge Raul Pangalangan for his engaging keynote speech on the constraints on codified rules and the enduring power of custom.

This edited volume is the first in a line of publications that will deal with the various issues emerging for the study of CIL interpretation. We are very grateful to Cambridge University Press for hosting this pioneering research collection under the heading of the “TRICI-Law Book Series”. In particular, a special thanks is owed to Ms Finola O’ Sullivan, with whom we fleshed out the idea for this book series on a sunny day in Athens during one of the breaks of the ELSA Conference, and who went above and beyond the call of duty in ensuring that this volume and the book series would get off the ground. We are also indebted to Ms Marianne Nield for her invaluable support and unending patience throughout this process and for those that are still to come, and to Mr Tom Randall and the Cambridge University Press editing team for their continued support through the publication process. A special place of mention is also owed to the ERC and the University of Groningen, without whose generous financial help this edited volume, as well as the TRICI-Law Book Series, would not have been possible.

Finally, we thank Ms Nina Mileva for her assistance in the organisation of the conference and the editing of this volume, as well as Mr Konrad Turnbull for his immense help in all practical matters related to the production of this volume.

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