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UNILATERAL JURISDICTION AND THE PROTECTION OF GLOBAL VALUES

THE CONCEPTUAL PAPER[1]

The legitimacy and binding force of modern international law has long resided in the explicit consent of sovereign States.[2] This model has remained structurally concentrated in these units for some three centuries.[3] However, over the last seven decades there have been multiple demonstrations of an evolution towards a more *cosmopolitan* international law.[4] These demonstrations reveal an increasing relativization of the relevance and scope of statehood.[5] One of such demonstrations is the emergence of phrases that aim to give legal protection to what we now term as *global values*. This category, which serves to assemble diverse legal phrases, requires some conceptual clarification in order for us to understand its impact on the structure of contemporary international law, especially on the principles of jurisdiction.[6] In this paper, we firstly conceptualize what global values are by analysing the phrases through which they manifest in international law (**I**); we then examine the law of international jurisdiction, focusing on extraterritoriality (**II**); and finally we discuss the role of unilateralism in international law as a means to protect those *global values* through national sovereignty (**III**).

I. Global values in contemporary International Law

The concept of *global values* refers to 'an enduring, globally shared belief that a specific state of the world, which is possible, is socially preferable, from the perspective of the life of all human beings, to the opposite state of the world'.[7] This belief is of an ethical or moral nature, but it can be translated into a legal term with binding force. This translation has been occurring through the usage, in the practice of States, both bilaterally or through international

[1] The authors of this conceptual paper are NF Coelho and NL Dobson, both *promovendi* under the UNIJURIS research project. They wish to thank for the support and comments of the whole of the UNIJURIS team.

[2] For a perspective on how the reliance on consent is changing see N Krisch, 'The Decay of Consent: International Law in an Age of Global Public Goods', (2014) 108 AJIL 1.

[3] Broadly referring to the time lapse between the Treaties of Westphalia in 1648 and the 1948 Universal Declaration of Human Rights which recognized the *rights of all members of the human family*. However, references to the *bonum commune humanitatis* can be traced back to Francisco Suárez writings in the early 16th century. See I Feichtner, 'Community Interests', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2011).

[4] Cosmopolitanism itself has been described as being 'an age-old normative ideal which contends that all *kosmopolites*, all citizens of the world, share a membership in one single community, the cosmopolis, which is governed by a universal and egalitarian law.' See R Pierik and W Werner, 'Cosmopolitanism in context: an introduction', in R Pierik and W Werner (erds), *Cosmopolitanism in Context: Perspectives from International Law and Political Theory* (CUP 2013) (emphasis added).

[5] This process of development towards a 'common law of mankind' based on shared values was explained in CW Jenks, *The Common Law of Mankind* (1958). This shift is a response to social changes and can be visible through phenomena such as globalization, which Rosenau affirms to be distinguished from other social changes in the world in the sense that 'they are not hindered or prevented by territorial or jurisdictional barriers'; see JN Rosenau, *The Study of World Politics* (Taylor & Francis 2006) 84.

[6] See WG Friedmann, *The Changing Structure of International Law* (Columbia University Press 1964) 60-71.

[7] O Spijkers, *The United Nations, the Evolution of Global Values and International Law* (Intersentia 2011) 9. Mendlovitz, the director of the World Order Model Project (WOMP) has said that '[w]e were able to agree that humankind faced five major problems: war, poverty, social injustice, environmental decay and alienation' and that '[w]e saw these as social problems because we had values – peace, economic well-being, social justice, ecological stability and positive identity – which no matter how vaguely operationalized, we knew were not being realized in the real world'. See SH Mendlovitz, *On the Creation of a Just World Order* (1975), quoted by Spijkers, at 46.

organizations, of phrases inspired by that underlying ethical or moral belief.[8] Such practice has therefore given to some *global values* an international legal relevance.[9]

Legal manifestations of *global values* can be found in multiple sources. For example it is frequent that UN resolutions use some phrases enshrined with ethical considerations, hence transpiring to them a legitimate normative force.[10] Furthermore, indirect referencing to *global values* appear through the dissenting opinions of some international judges.[11] This means that States themselves have, up to some measure, been recognizing the existence of a distinct sphere of normativity, separated from the immediate will of the State or the nation; it does also mean that some international judges have engaged with those notions in international jurisprudence, furthering the relevance of this discussion today. The question that remains to be answered is whether and how a single State can unilaterally enhance *global values* with its own national laws, eventually going further than the applicable rules and standards.

The binding legal force of phrases related to the protection of *global values* is approached in a variety of scholarly debates.[12] The fact that they are dealt with some degree of conceptual interchangeability makes it harder to grasp their reach and legal consequences. Since those phrases relate to an immense variety of facts,[13] it is necessary to rationalise them as part of a general abstract category. Such category, which we academically term as 'globally values recognized in international law', encompasses all phrases that refer to *global values* can be directly or indirectly linked to the explicit consent of States. In order to present this category with the necessary level of abstraction, the existing phrases, which have some degree of legal force, can be fragmented and organized following three dimensions.

The first dimension gathers 'subjective' elements, *i.e.*, what refers to the personal entity behind such value. In this context, those personal entities could be an ethically-oriented organization of States, such as the UN, or an abstract/philosophical construction that encompasses all individuals or, more broadly, humanity.[14] It would be a mistake to consider the

[8] 'These formulae to varying degrees express an ideology that consists chiefly in picturing international society as a single human collectivity, the global nature of which consequently compels a multilateral approach to international law'. See JA Carrillo Salcedo, 'Reflection on the Hierarchy of norms in International Law', (1997) 8 EJIL 589.

[9] Examples of such phrases are 'common concern of humankind', from the preamble to the Convention on Biological Diversity, or 'common heritage of mankind', from Part XI of the United Nations Convention on the Law of the Sea.

[10] The ethical foundations of the United Nations legal production, is discussed under the general term 'global values' by Spijkers (above n 7).

[11] See Judge Weeramantry, stating in his opinion to *Gabcíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997, [1997] ICJ Reports 7 that 'We have entered an era of international law in which international law subserves not only the interests of individual States, but looks beyond them and their parochial concerns to the greater interests of humanity and planetary welfare. In addressing such problems, which transcend the individual rights and obligations of the litigating States, international law will need to look beyond procedural rules fashioned for purely *inter partes* litigation.'; another example is Judge AA Cançado Trindade's dissenting opinion to the judgment on merits and reparations in *The Serrano Cruz Sisters v. El Salvador* case, para. 7, presented at the Inter-American Court of Human Rights, stating that: 'By protecting fundamental values shared by the international community as a whole, contemporary international law has overcome the anachronic voluntarist conception belonging to a distant past. Contrary to what some rare, nostalgic survivors of the apogee of positivism-voluntarism presume, the methodology of interpreting human rights treaties developed on the basis of rules of interpretation embodied in international law (such as those stipulated in Articles 31 to 33 of the 1969 and 1986 Vienna Conventions on the Law of Treaties) applies to both the substantive provisions (on the protected rights) and the clauses that regulate international protection mechanisms – based on the principle *ut res magis valeat quam pereat*, which corresponds to the so-called *effet utile* (sometimes called the principle of effectiveness), amply supported by international case law.'.

[12] CJ Tams, 'Individual States as Guardians of Community Interests', in U Fastenrath *et al.*, *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (OUP 2011).

[13] To list some examples, we could refer to 'good governance', as opposed to corruption practices, biological diversity and climatological conditions, as opposed to the consequences of human-resulting climate change, the right to online privacy, the environment as a whole, etc.

[14] Referring to the expression 'elementary considerations of humanity' from the ruling of 9 April 1949 given in the *Corfu Channel* case (*Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment of 25 March 1948, [1949] ICJ Reports, at 22). See A C Trindade, 'Humankind as a Subject of International Law', in *International Law for Humankind* (Martinus Nijhoff Publishers 2010).

existing evidence of such entity as tantamount to the existence of a new subject of international law, for it is too scarce to make such argument.[15] These are mere legal abstractions, which are partially or totally detached from the classic centrality of Statehood in international relations.[16] This dimension is relevant because States can eventually justify their action on a vicarious or substitutive ground: States can claim to be acting *on behalf of* these abstract entities, replacing their own incapacity to assert jurisdiction to protect *global values*.[17] Under some circumstances, the reference to the personal entity that was recognized might have an impact on the legal scope of such phrases in practical terms.[18]

The second dimension refers to the material content of a particular *global value*. The elements of this dimension correspond to the facts of life to be protected. These categories always relate to something concrete, to a real objective virtually worth of pursuit by all States. They are, in some sort, the translation into the law of purposes that are present in the conscience of all humans and that States ought to pursue on their implicitly given behalf. It is the presence of this material content of the global value in positive international law that entitles the value to have legal protection. However, the large variety of such phrases that can be found raises issues regarding their reciprocal delimitation. Are the interests of the international community equivalent to common concerns? Are global public goods a part of a collective heritage? How to assess what are the needs of mankind? These questions, it is submitted, receive proper answer on an *ad hoc* analysis of the object in itself, for these concepts are supposed to be open to interpretation.[19] There is however sufficient evidence to demonstrate that some of these elements are more recurrent in particular fields than others, which leads us to question whether their variety is but a discursive element within a broader struggle for ideological hegemony rather than a genuine development of international law.[20]

The third dimension refers to characteristics or attributes of the material content of the *global values*. The elements are useful in delimiting the reach of the legal protection international law provides them, not only amongst each other but especially when taking into consideration national interests or rights. Therefore they ought to be interpreted as potentially antagonistic to 'private', 'national', 'local/regional' or 'individual', which characterize State actions that are inward looking rather than cosmopolitan. In other words, this dimension strengthens the fact that global values face a system of international law still strongly imbued with State-centrism and parochial values. It is submitted that these attributes are not irrelevant because they serve a function of connecting the object of protection – the material content – to the abstract entities that constitute the subjective dimension of our categorization.

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[15] See ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, [1996] ICJ Reports, Declaration of President Bedjaoui, para. 13.
[16] See the appearance of the international community in the draft discussions on the Vienna Convention on the Law of Treaties.
[17] It could be argued that international organizations could also act under this assumption; for example, UNCLOS affirms that '[a]ctivities in the Area shall be organized, carried out and controlled by the Authority [ISA] on behalf of mankind as a whole'; see UNCLOS, Article 137.
[18] This is the case of the UNCLOS attribution of the deep seabed area to 'mankind as a whole' in Article 136.
[19] Feichtner attempts to design a typology of 'community interests protected by international law', differentiating *common goods*, related to peace and security, from *common values*, related to the environment and human rights, and *common spaces*, defined spatially such as the moon. See Feichtner (above n 3).
[20] The fact that each field of international law 'competes' with others for epistemological hegemony turns the usage of such legal phrases, both in practice and in the academic literature, into engagements with broader world views. Further research is however necessary to understand which discourse practices are enshrined in the usage of particular phrases, namely on the message they convey about the global order envisaged by the actors that give them use.

Hence, and following the evidence of such phrases in both international legal documents and literature, this schema can be drawn:

Subjective elements	(International) Community (of States/as a whole), Humanity/Mankind/Humankind (as a whole).
Objective elements	Area(s); Concern(s); Good(s); Heritage; Interest(s); Need(s).
Adjective elements	Collective; Common; Global; Public; Special; Universal.

Despite the lack of a clear-cut scope for each possible combination of these concepts, they have in common the fact that they relate to trans-boundary concerns (e.g. the value of biodiversity or of human dignity, which know no borders in their relevance). This signifies that the exclusivity of the link between the facts of life they refer to and a single State is non-existent. This lack of an exclusive link towards a single State then signifies that there must be a connection between those facts of life and all other States or abstract entities such as the community of States or Humankind in general.[21] Hence, these *global values* are shared, despite State borders, because their realization benefits all indiscriminately: they are non-rivalrous, non-excludable and available worldwide, i.e., their benefits 'reach across borders, generations and population groups'.[22] These are purposes from which no State can depart under the argument that consent was not given. They are *naturally* binding.

There remains a necessary challenge in understanding how the practice of protecting *global values* evolves through the process of asserting jurisdiction. In other words, research is needed to understand how those normative phrases accommodate harmoniously to principles such as, for example, State sovereignty and non-interference with domestic affairs.[23] The adequacy of existing legal instruments to realize those purposes remains questionable because of the reliance on State material capacity, i.e. technical and financial means, and their actual will to perform actions, i.e. to effectively exercise some sort of sovereign power over individuals. It is submitted that only by taking into consideration the specific regimes where each legal manifestation of *global values* is used can we assess their normative reach and legal

[21] On this interdependency see JA Carrillo Salcedo, 'Reflection on the Hierarchy of norms in International Law', (1997) 8 EJIL 588.
[22] See I Kaul, I Grunberg and MA Stern, *Global Public Goods International Cooperation in the 21st Century* (OUP 1999) xxi.
[23] 'International law, in other words, has been very conservative of its traditional institutions, which have not been challenged by the new developments towards the protection of community interests.' See S Villalpando, 'The Legal Dimension of the International Community: How Community Interests are Protected in International Law', (2010) EJIL (2010) 387 *et seq*.

consequences. This means, unfortunately, that this paper cannot possibly conceptualize each of these expressions; nor is it meant to. Its aim is merely to highlight the legal manifestations of *global values* in international law; it serves the purpose of demonstrating the place they occupy in a normative system that is still almost exclusively based on State consent and national interest. This system will hence require from the international principles of jurisdiction a high degree of elasticity in order to cope with them.[24]

II. Jurisdiction and the protection of global values

Jurisdiction concerns the limits of a State's legal competence to regulate the conduct and consequences of an event.[25] Notably, these limits differ for the exercise of civil and criminal jurisdiction. The underlying assumption that States exist with inherent powers to be limited by international law can be examined through the legal lens of **sovereignty**. There has been much discussion on the meaning and characterisation of different 'types' of sovereignty, focusing on control, autonomy, territory and authority as different elements of this power.[26] The classic definition can be found in the *Island of Palmas* case, where the Permanent Court of Arbitration found that sovereignty in the relationship between States entails the right to exercise the functions of a State within a certain portion of the globe, to the exclusion of any other State.[27] Sovereignty in relation to a portion of the globe, or territorial sovereignty, is the legal condition necessary for its inclusion in the territory of any particular State.[28] Central to the international legal system is the **principle of sovereign equality** of all States. Within its own territory a state has domestic jurisdiction, and is supreme.[29] At the same time, as codified in article 2, paragraph 7 of the United Nations Charter, it must not intervene in the domestic affairs of another State.

Both the US Third Restatement and the Council of Europe Model Plan identify three **'types' of jurisdiction**: the jurisdiction to (a) prescribe, (b) adjudicate and (c) enforce.[30] Some authors question the value of considering adjudicative jurisdiction as a separate category, as any conflicts arising out of antisuit orders or conflicting court orders, which can be dealt with under prescriptive or enforcement jurisdiction.[31] Whether or not a State can claim jurisdiction is dependent in part of the type of jurisdiction exercised.

As a general rule, States may only legally exercise certain competences within their defined territory.[32] This is known as the **territoriality principle**, and its primacy is rooted in

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[24] Sato affirms that there is 'a problem or dilemma inherent in the international society, where there is no alternative but to act by means of treaties which can, based on the principle of contract, bind only consenting states in order even to realize the public interest and organization despite the fact that the public interest of the whole of international society has become apparent'. See T Sato, 'Legitimacy of International Organizations and Their Decisions: Challenges that International Organizations Face in the 21st Century', (2009) 32 Hitotsubashi J L & Pol 11.

[25] See V Lowe and C Staker, 'Jurisdiction', in MD Evans, *International Law* (3rd ed, OUP 2010) 313; and SA Watts (ed), *Oppenheim's International Law: Pease* (Longman 1992) 456.

[26] See, *e.g.*, SD Krasner, *Sovereignty: Organised Hypocracy* (Princeton University Press 1999) and J Jackson, 'Sovereignty-Modern: A New Approach to an Outdated Concept', (2003) AJIL 782. Note that this discussion is prominent in the field of international relations.

[27] Permanent Court of Arbitration, *The Island of Palmas Case (United States v The Netherlands)*, 2 UN Rep Int'l Arb Awards 829 (1928) 8.

[28] *Ibid*, at 7.

[29] MN Shaw, *International Law* (7th edn, CUP 2014) 471.

[30] Restatement (Third) of Foreign Relations Law, § 401 and Model Plan for the Classification of Documents Concerning State Practice in the Field of Public International Law, Council of Europe Res (68) 17, adopted by the Ministers' Deputies on 28 June 1968.

[31] See Lowe and Staker (above n 25) 313. See also Watts (above n 25) 317.

[32] BH Oxman, 'Jurisdiction of States', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2011). Oxman notes that '[i]n addition to its land territory, the territorial sovereignty of a State extends to its internal waters, to the territorial sea adjacent to its coast, to archipelagic waters in the case of an archipelagic State […] and to the air space above its territory, including internal waters, archipelagic waters, and the territorial sea […]'.

the principle of equal sovereignty.[33] States may claim territorial jurisdiction where the conduct being regulated occurs within a State's territory (*subjective territoriality*). They may also do so where an incident is completed within the territory of a State, despite being initiated outside of the State (*objective territoriality*).[34] Some States, in particular the US, take a far more extensive approach to objective territoriality, applying it to instances where the effects of certain conduct can be felt within a nation's boundaries.[35] Under the **effects doctrine** contained in the US Third Restatement of Foreign Relations Law jurisdiction may only be exercised when the foreign conduct produces substantial effects on its territory, and where the exercise of jurisdiction is reasonable.[36] While many States have objected to the US application of effects doctrine,[37] there is some discussion on whether it is not also developing within EU law in the field of antitrust law.[38]

Another question is whether jurisdiction based solely on internal effects should be characterised as territorial or extraterritorial. While the US Third Restatement of Foreign Relations Law classifies it as territorial, many authors argue that the absence of intraterritorial conduct renders the exercise of jurisdiction extraterritorial.[39] **Extraterritorial jurisdiction** refers to the competence of a State to make and enforce rules in respect of persons, property or events beyond its territory.[40] As illustrated by the example above, the line between territorial and extraterritorial legislation is not always clear-cut. Despite the wide use of the term in political discourse, it has been argued that 'true' extraterritoriality only occurs when a State exercises its jurisdiction in the absence of any territorial link.[41] In the *Arrest Warrant* case, it was put forward that even in these cases, where this jurisdiction is actually exercised within a State's territory it should be considered as 'the exercise of territorial jurisdiction over an extraterritorial event'.[42] In line with this view is the **theory of territorial extension**, recently put forward in the context of EU law. According to this theory, a measure in can be considered an exercise of territorial extension when it takes into account conduct or circumstances abroad, while its application is triggered by a *territorial connection*.[43] Although such measures take foreign conduct or circumstances into account, the existence of a territorial connection prevents their qualification as extraterritorial. Examples of such territorial connections include the conduct (such as market access), nationality and presence of individuals addressed. Scott also

[33] C Ryngaert, Jurisdiction in International Law (OUP 2008) 36.
[34] Lowe and Staker (above n 25) 313 and Watts (above n 25) 322.
[35] This was first laid down in the field of antitrust law in *United States v Aluminum Corp of America,* 148 F 2d 416 (2nd Cir 1945), where the US Federal Court found that 'it is settled law […] that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends'.
[36] Restatement (Third) of Foreign Relations Law**,** §§ 402 and 403. See also: M Kamminga, 'Extraterritoriality', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2011) and Shaw (above n 29) 500.
[37] See, *e.g.*, the international reaction to *Rio Tinto Zinc Corp v Westinghouse Electric Corp* [1978] 1 ALL ER 434 (HL), where US law was applied to non-US companies in the absence of intra-territorial conduct. See also Lowe and Staker (above n 25) 323. See also Supplemental Brief of the European Commission on Behalf of the European Union as *Amicus Curiae* in Support of Neither Party, *Kiobel v Royal Dutch Petroleum Co*, 133 S Ct 1659 (2013) (No 10-1491), at 28.
[38] J Scott, 'The New EU Extraterritoriality', (2014) 51 Common Market L Rev 1349, 1365-7. Scott refers to the EU Merger Regulation (Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, [2004] OJ L 24/1) and to the EU Derivatives Regulation (Regulation (EU) No 648/2012 or the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, [2012] OJ L 201/1).
[39] See, *e.g.*, Lowe and Staker (above n 25) 323 and Shaw (above n 29) 499.
[40] Kamminga (n 36 above).
[41] Ryngaert (above n 33) 22.
[42] ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, Judgment of 14 February 2002, [2002] ICJ Reports 3 (*Arrest Warrant* case), para. 42.
[43] J Scott, 'Extraterritoriality and Territorial Extension in EU Law', (2014) 62 Am J Comp L 87.

points out that the EU has progressed to using 'extraterritorial triggers', applying its legislation in situations of anti-evasion, internal effects and transactions with EU persons or property.[44]

A measure's characterisation as extraterritorial does not necessarily render it unlawful. In the *Lotus* case, the Permanent Court of International Justice held that while a State is not permitted to exercise enforcement jurisdiction outside of its borders without a permissive rule of international law, it does not follow that international law prohibits States from exercising prescriptive jurisdiction within its own territory, in relation to acts which have taken place abroad in the absence of a permissive rule.[45] The *Lotus* case has received much criticism over the years as it implies a burden to prove the existence of a rule of international law prohibiting the exercise of jurisdiction, which many argue is not representative of current practice.[46]

In addition to the primary principle of territorial jurisdiction, there are a number of alternative bases of jurisdiction that can be relied on to exercise extraterritorial jurisdiction. The first is the **active nationality principle**, which concerns the right of States to extend the application of their laws to their nationals, also when they are outside of their territory.[47] This is a basis for criminal jurisdiction, and also extends to companies, ships and aircraft.[48] In addition, under the **passive nationality principle,** States may exercise (criminal) jurisdiction over conduct abroad that injures their own nationals.[49] Another basis is the **protective principle**, according to which States can extend their (criminal) jurisdiction to individuals, including non-nationals, who threaten essential State interests.[50] Under the **universality principle**, States may exercise (criminal) jurisdiction in respect of certain serious crimes irrespective of the location of the crime and irrespective of the nationality of the perpetrator or the victim.[51] Which crimes are sufficiently serious to trigger this jurisdiction is a matter of considerable discussion, and further clarity will have to wait for future case law.

Finally, the special case of functional jurisdiction must be considered. This approach towards extraterritoriality builds on the fact that some assertions of State power beyond the territory are not based on a sovereign connection but rather on a particular activity to be accomplished by any State.[52] This approach has been adopted namely in the law of the sea regime.[53]

III. Unilateralism in the international law of jurisdiction

The exercise of jurisdiction usually only becomes an issue, and for that matter a question of international law, when a State seeks to use it to regulate matters that go beyond 'domestic

[44] Scott (n 38 above).
[45] PCIJ, *SS Lotus*, PCIJ Reports, Series A, No 10 (1927), paras. 45-6.
[46] See, *e.g.*, Shaw (above n 29) 477.
[47] Lowe and Staker (above n 25) 322.
[48] Kamminga (n 36 above).
[49] *Ibid*, referring to the *Arrest Warrant* case.
[50] See Lowe and Staker (above n 25) 326 and Oxman (n 32 above). Examples include the criminalisation of acts betraying State secrets and threatening State security occurring outside of that State's territory.
[51] Kamminga (n 36 above).
[52] W Riphagen, 'Some Reflections on Functional Sovereignty', (1975) 6 Netherlands Yb Int'l L 121.
[53] M Gavouneli, *Functional Jurisdiction in the Law of the Sea* (Vol 62, Martinus Nijhoff Publishers 2007).

concerns'.[54] This is particularly true when they do so without consulting or cooperating with other States. As this will indeed often be the case, the exercise of State jurisdiction ordinarily falls within the realm of **unilateralism,** which refers to the individualistic approach States take to foreign relations.[55]

Unilateralism is not a strictly legal concept, and has been described as more of a conceptual tool with which international activities can be identified and located within the international legal order.[56] **Unilateral acts of States**, on the other hand, are 'unilateral declarations formulated by a State with the intent of producing certain legal effects under international law'.[57] What characterises these legal acts is that they only express the will of one subject, or a select group of subjects, of international law.[58] An exercise of State jurisdiction often takes the form of such a unilateral act. Notably, the consent of other States is not determinative of its legality.

Unilateralism tends to have a negative connotation, as it is often used to refer to a so-called 'imperialistic' approach of powerful States who can impose their values and norms on other weaker States without their consent.[59] This goes against the principle of equal sovereignty, and also infringes upon the democratic rights of citizens of weaker States to vote for the rules that govern them. The alternative to acting alone is, of course, acting in cooperation with one or more other States in the form of **bilateralism** or **multilateralism.** Multilateralism has been described as an approach to foreign relations that seeks cooperation with other States,[60] and has a preference amongst international lawyers, as it allows for all participants to have a voice in the formulation of rules regulating matters in which they have a shared interest.[61] However, one could question whether, in practice, multilateralism actually achieves this. During negotiations, powerful States can use their bargaining power to influence the outcome of multilateral agreements. This strategy has been termed 'policy forging unilateralism' in the literature,[62] and illustrates that power and territory provide a position of dominance, even in formally 'multilateral' settings.

On the other hand, there are States that openly act unilaterally while purporting to serve the interests of the international community. Where such unilateral acts constitute the exercise of extraterritorial jurisdiction this may lead to tensions with other States. In such situations the acting State may refer to the shared nature of the value i.e. the broader personal entity behind

[54] Ryngaert (above n 33) 6. Ryngaert refers to Mann who goes even further defining jurisdiction itself as 'a State's right in international law to regulate conduct not exclusively of domestic jurisdiction'. See FA Mann, 'The Doctrine of Jurisdiction in International Law*',* (1964-I) 111 RCAD 1, 23. Domestic jurisdiction refers to 'the power of an organ or subdivision of a State to act' as defined by municipal law. International law generally only addresses municipal law to the extent that its exercise violates international obligations, see Oxman (n 32 above).
[55] See A Nollkaemper, 'Unilateralism/Multilateralism', in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2011) and the *American Heritage Dictionary of the English Language* (3rd edn, American Heritage Publishing Company 1992).
[56] L Boisson de Chazournes, 'Unilateralism and Environmental Protection: Issues of Perception and Reality of Issues' (2000) 11 EJIL 315.
[57] See Nollkaemper (n 55 above), citing the UN International Law Commission, Report of the International Law Commission, General Assembly Official Records, 61st Session, Supplement No 10, UN Doc A/61/10, Principle 1 and ICJ, *Nuclear Tests (Australia v France),* Judgment of 20 December 1974, [1974] ICJ Reports 253.
[58] PM Dupuy, 'The Place and Role of Unilateralism in Contemporary International Law', (2000) 11 EJIL 20.
[59] See, *e.g., ibid,* and Krisch (n 2 above)
[60] Nollkaemper (n 55 above).
[61] See JE Alvarez, 'Multilateralism and its Discontents', (2000) 11 EJIL 394, who refers to the international approach to unilateralism as a 'shared secular religion'.
[62] Boisson de Chazournes (above n 56) 325.

the object (subjective element), and the value of its material content (objective element).[63] However, while other States may accept the *prima facie* existence of a shared value, they do not necessarily agree on its precise delineation (adjective elements) or the most appropriate means with which to protect it. This is particularly true for the exercise of extraterritorial jurisdiction, as these other States have a share in both the interest at stake and the effects of such unilateral acts, without participating in the decision-making process. Extraterritorial actions thus effectively constitute an erosion of the principle of equal sovereignty. The traditional rules of prescriptive jurisdiction sought to prevent this by requiring a formal link with State territory as part of the different jurisdictional bases. The scope of unilateral enforcement jurisdiction is even more limited, humanitarian intervention constituting a key example. In cases where global values are at stake, it seems doubtful that the rules of jurisdiction can continue to be constructed in a value/substance neutral manner. This raises interesting questions about the applicability and legitimacy of the traditional rules of jurisdiction to the world we live in today.

Conclusion

All the legal phrases that give global values a legal force are likely to have an impact on the evolution of jurisdictional principles, both through treaty law arrangements that take them into consideration and through customary developments that are motivated by their general recognition. The role of individual States is however not clear. States might act, hypothetically, as champions of global values, therefore circumventing the structural limits of multilateral debates. The study of the opportunities and the limits of such actions under international law is what motivates further research.

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[63] This is related to the discussion on 'jurisdictional reasonableness', where States take into account the sovereign interests of other States, while at the same time making sure its own interests and those of the international community are sufficiently heeded. This may render unilateral jurisdiction 'multilateral'. See Ryngaert (above n 33) 3.