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A General Theory on Special Jurisdictions

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Abstract:

A special jurisdiction is an area or community with a certain normative authority wherein a specific set of rules is in place and enforced that are different from its 'home' jurisdiction. Today, many special jurisdictions exist. Special Economic Zones are some of them. This paper addresses the idea that in the Westphalian era, nearly all special jurisdictions are exceptional autonomy carve-outs from States, as opposed to self-standing sovereign jurisdiction such as Monaco, Singapore or other micro-states or city-states. It goes on further to explain that the basis of that autonomy can be either territorial, as it is set forth in the jurisdiction's foundational texts or laws, and which can be found either in international, national law or customs, or personality or identity based. The paper concludes that special jurisdictions should be seen as 'places in between' the classic legal fields, as they largely transcend the regular legal distinctions between and within national and international law due to their foundational fluidity. Thus, they deserve to be studied as a field of law on their own.

Keywords: Carve-outs, identity-based autonomy, international law, legal pluralism, national law, semi-autonomous legal anomalies, special jurisdictions, territorial autonomy.

Resumen:

Una jurisdicción especial es un área o comunidad con cierta autoridad normativa en la que rige y se aplica un conjunto específico de normas distinto del de su jurisdicción de origen. En la actualidad existen muchas jurisdicciones especiales. Las Zonas Económicas Especiales son algunas de ellas. Este artículo aborda la idea de que, en la era westfaliana, casi todas las jurisdicciones especiales son excepciones de autonomía recortadas dentro de los Estados, a diferencia de jurisdicciones soberanas autónomas como Mónaco, Singapur u otros microestados o ciudades-estado. A continuación, explica que la base de esa autonomía puede ser territorial, tal como se establece en los textos fundacionales o leyes de la jurisdicción y que puede encontrarse en el derecho internacional, el derecho nacional o las costumbres, o bien personal o basada en la identidad. El artículo concluye que las jurisdicciones especiales deben entenderse como "lugares intermedios" entre los campos jurídicos clásicos, en la medida en que trascienden en gran parte las distinciones jurídicas habituales entre el derecho nacional y el internacional, y dentro de cada uno de ellos, debido a su fluidez fundacional. Por ello, merecen ser estudiadas como un campo del derecho propio.

Palabras clave: carve-outs, autonomía basada en la identidad, derecho internacional, pluralismo jurídico, derecho nacional, anomalías jurídicas semiautónomas, jurisdicciones especiales, autonomía territorial.

1. Introduction

Do you know how the civil registry works? It's simply a matter of applying the same mechanism in a new way. In every municipality, we open a new office—the office of political status. This office sends every adult citizen a declaration form to fill out, just as with the personal tax or the dog tax.

Question: What form of government do you desire? You answer, in complete freedom: monarchy, democracy, or something else. Question: If it's monarchy, do you want it absolute or limited—and by what? You answer: constitutional, I suppose.

Whatever your answer may be, you are entered into a special register, and once entered, unless you lodge a complaint in the proper form and within the legal deadlines, you are henceforth either a subject of the king or a citizen of the republic. From that point on, you have nothing more to do with the government of others—no more than a Prussian subject has to do with the Belgian authorities.

You obey your leaders, your laws, your regulations; you are judged by your peers, taxed by your representatives. You pay neither more nor less, but morally, it is something altogether different. In short, each person is in their own political state, exactly as if there were not, alongside them, another—or rather, ten other—governments, each with its own taxpayers (De Puydt, 1860, p. 22) ¹

This quote from Paul-Émile De Puydt's article on 'Panarchy', published in Brussels in 1860, suggests that all citizens should be able to freely choose and change their own governmental systems (and thus also their tax and legal systems) by way of a 'political status', next to their civil status. De Puydt contends that such freedom of governmental choice would reduce unrest and prevent revolutions, as individuals could adopt the system that suits them best. In effect, this would create numerous parallel governments and legal systems, a Panarchy, leading to extreme legal pluralism and, also to numerous jurisdictional questions. According to De Puydt, legal issues arising between these different governments and citizens following

¹ Translation by the author. The original French version reads as followed : « *Vous connaissez le mécanisme de l'état civil? Il ne s'agit que d'en faire une nouvelle application. Nous ouvrons, dans chaque commune, un nouveau bureau, le bureau de l'état politique. Ce bureau envoie, à chaque citoyen majeur, une feuille de déclaration à remplir, comme pour la contribution personnelle ou l'impôt sur les chiens.*

Question. Quelle est la forme de gouvernement que vous désirez? Vous répondez, en toute liberté: monarchie, ou démocratie, ou autre chose. Question. Si c'est monarchie, la voulez-vous absolue ou tempérée ... et par quoi? Vous répondez: constitutionnelle, je suppose. Quelle que soit, d'ailleurs, votre réponse, on vous inscrit sur un registre ad hoc, et une fois inscrit, et sauf réclamation de votre part, dans les formes et les délais légaux, vous voilà sujet du roi ou citoyen de la république. Dès lors, vous n'avez plus rien à démêler avec le gouvernement des autres, non plus qu'un sujet prussien avec l'autorité belge. Vous obéissez à vos chefs, à vos lois, à vos règlements; vous êtes jugé par vos pairs, taxé par vos représentants; vous n'en payez ni plus ni moins, mais, moralement, c'est tout autre chose. Enfin, chacun est dans son état politique, absolument comme s'il n'y avait pas, à côté de lui, un autre, que dis-je? dix autres gouvernements, ayant aussi chacun ses contribuables. »

different systems should be solved as they already were (and still are) via treaties, the law of nations (here entailing both private and public international law) and general principles of law.² Whilst this system some may see as utopian system would undoubtedly, like any other, encounter many troubles and create many new solutions, it brings up an important issue about an international multi-jurisdictional world that is not exclusively based on territory.

To some extent, such a ‘panarchic’ world exists in our present day and age. One can think of the avid forum (and law) shopping done by large companies and the adjoined competitive international dispute resolution market, sharply illustrated by the recent rise of International Commercial Courts (Kramer and Sorabji, 2019; Brekoulakis and Dimitropoulos, 2022; Theus, 2022). Other examples include the moving of companies to advantageous ‘light touch & tax’ jurisdictions, such as special economic zones, or the ‘nationality/permanent residency’ shopping by private persons by way of investor visa’s (Abrahamian, 2015; Holleran, 2016). All of these imply moving and choosing between different and often competing jurisdictions.

Many jurisdictions themselves are establishing ‘special jurisdictions’ to gain a competitive advantage to attract investors. Before deepening any further, let us be clear that many definitions of special jurisdictions exist. One of them is given by Shikida and Christo (2024), namely ‘*extensions where a legal regime operates that is distinct from the rest of the original jurisdiction*’ or by Bell (2023), ‘*areas where different laws apply than those that prevail more generally*’. Special Economic Zones (SEZs) are commonly seen the most widely utilized type of special jurisdictions. There are reportedly around 5400 SEZs in the world, and they have been defined in a 2019 UNCTAD report as ‘*geographically delimited areas within which governments facilitate industrial activity through fiscal and regulatory incentives and infrastructure support*’ (...) ‘*they provide a regulatory regime for businesses and investors distinct from what normally applies in the broader national or subnational economy where they are established*’ (UNCTAD, 2019, p. 128). Chaisse and Dimitropoulos explicitly point out SEZs as ‘special jurisdictions’ in their definition: ‘*SEZs are different from international trade and investment norms because of the carving out of a ‘special’ jurisdiction for the application of a separate economic regime within the country—hence the term ‘special economic zone’*’ (Chaisse and Dimitropoulos, 2021, p. 240). The essence of an SEZ thus seems to boils down to being ‘*a demarcated geographic area contained within a country’s national boundaries where the rules of business are different from those that prevail in the national territory*’ (Baissac and Farole, 2011, p203; Freisler, 2022).

Many related concepts to special jurisdictions and SEZs, such as the concept of a Special International Zone (SIZ), defined by Bell (2018, p. 274) as ‘*an area that its host nation state places outside of its territory for the purpose of some local laws, leaving other such laws and applicable international obligations in force*’, or the Charter Cities concept

² In his own words : « *Survient-il un différend entre sujets de gouvernements divers, ou entre un gouvernement et le sujet d'un autre? Il ne s'agit que de se conformer aux règles dès à présent observées entre nations voisines et amies, et s'il s'y trouve quelque lacune, le droit des gens et tous les droits possibles la combleront sans peine. Le reste est l'affaire des tribunaux ordinaires* » (De Puydt 1860)

(Romer, 2010) follow similar routes and focus on the economic aspect. Special jurisdictions are therefore in essence are exceptional semi-autonomous jurisdictional carve-outs from a 'host' or home jurisdiction in a certain or multiple fields. That 'home' or 'original' jurisdiction is often indeed the general sovereign State jurisdiction and is based on territory, as all of the above-mentioned definitions point out.

This is however not the full story. The present general understanding of the concept of special jurisdictions mainly focuses on 'economic' special jurisdictions and mostly disregards the existence of identity-based special jurisdictions, i.e. This is the so-called personality of laws doctrine in international law or personal jurisdiction. For the majority of history, the personality of laws (or personal jurisdiction) was the prevailing situation for most people: your city, tribal or religious affiliation determined the laws applicable to you and often followed you outside your original 'domain' (Guterman, 1966). A clear example of this is the 888 AD Treaty between the Venetian Doge Pietro Tribuno and the future Roman Emperor Arnulf of Carinthia, which stipulated that any Venetian in Imperial Italy would remain under the jurisdiction of the Doge and Venetian laws (Norwich, 1982, p. 82-83). This treaty expanded previous extradition rights with regard to criminals and was aimed at protecting Venetian merchants operating in Italy. The co-existence of a plurality of (foreign) legal systems in a certain territory and/or under a certain Sovereign was thus the norm and not the exception (Liu, 1925). This system over time morphed into the principle of extraterritoriality, which also saw the creation of consular courts, under which for example a Frenchman doing business in Shanghai in 1904 could be tried before a Shanghai-based French consular court under French law for damages.

Having said that, the main aim of this article is to present a more general theory on special jurisdictions that encompasses both the territorial and personal or identity elements, based on a literature review and certain historical and contemporary case studies such as he recognised religious minorities of Iran, the British Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, and the Dubai International Financial Centre (Ford, 1999; Berman, 2019; Serlet and Zuegel, 2022).

This article is structured as follows. First, I focus on the concept of jurisdiction itself. While this concept is hard to define precisely, I take a closer look at both the personal and territorial aspects it, in order to propose a new expanded, yet restricted, definition for special jurisdictions. My proposed definition will be clarified by three examples, drawn from the case studies previously mentioned. These three examples also illuminate another exceptional trait of special jurisdictions: they can be created by international or national law. In other words, special jurisdictions largely transcend all regular legal distinctions, including between national and international law. Certain special jurisdictions even go a step further and blur national borders themselves as 'transboundary special jurisdictions' as argued later in this article.

2. The Notion of Jurisdiction

2.1 General

The term jurisdiction itself is hard to define precisely. Its exact meaning alters with time, but especially according to the context and subfield in which it is used: the jurisdiction of public international law is not that of private international law, which is not that of national civil procedural law, which is not that of (international) tax law (Ryngaert, 2008; Mills, 2014, pp. 190–200; Hernández, 2022, pp. 210–235; Holderness, 2019; Malherbe, 2020, pp. 35–50; Pirlot and Culot, 2021, p. 899; Geringer, 2022).

In the context of the study of special jurisdictions it is however clear that the term deals with ‘different rules from the original jurisdiction’. I therefore propose the following interpretation of the concept of jurisdiction: a specific system of law or a specific legal community (Berman 2019, p. 122; S. Allen et al., 2019, pp. 4-5; Ryngaert, 2008, pp. 5-6).³ Or phrased more extensively: *an area or community wherein a specific set of rules is in place and enforced and which has a certain normative authority*. Such a wide reading of the concept means that we all live in multiple jurisdictions at once (Ford, 1999).

What the concept of jurisdiction for the purpose of this article is and is not can be clarified by the status of German island of Heligoland (Helgoland in German). The island is a municipality (= a jurisdiction) in the German state of Schleswig-Holstein (= two jurisdictions, the *Land* of Schleswig-Holstein itself and the Federal Republic of Germany), a member state of the EU (= a jurisdiction). For historical reasons (it was for around 80 years a British colony, see Knudsen, 2018), it is a VAT-free zone and, therefore, a VAT-tax paradise characterised by duty-free shops and the connected day trippers.⁴ In German and EU VAT- and customs law, it is a special territory, but as it lacks any autonomy on VAT matters, it cannot be considered to be a tax jurisdiction of its own. This example immediately shows the multilayeredness of the term ‘jurisdiction’ and the fact that it can be limited to a certain field, such as tax or family matters or building permits, as the ‘specific set of rules’ in my definition implies.

2.2 A Certain Normative Authority

Especially the last part of the definition, ‘a certain normative authority’, or the possibility or power to enact and enforce a specific set of rules is of great importance. What exactly constitutes ‘normative authority’ once again highly depends on the context and the viewpoint. This is nicely illustrated by the following example from Israel:

³ Or in Schiff Berman’s words: ‘*In short, rather than being merely a fixed set of territorially based legal rules, jurisdiction (has always been a terrain of engagement among multiple overlapping communities and an ongoing site for contestation and legal pluralism.*’ (Berman, 2019:p.122)

⁴ Art. 6 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1–118. Also see: (Röpke, 2022; European Commission, 2024; Helgoland, 2024)

From the perspective of the secular constitutional system, the religious courts derive their legal powers from the statutes enacted by the Knesset (Israel's Parliament). The religious courts must abide by the laws of the Knesset as interpreted by the Supreme Court (according to the doctrine of stare decisis), even if these conflict with the religious interpretation of the personal law. The religious view is different: the religious courts view their authority as emanating from a religious normative system. This authority historically precedes the state, and is intrinsically valid, regardless of whether it is recognized by the secular law of the land. Encroachments on their autonomy to rule according to religious law, whether by legislation or by binding precedent of the Supreme Court, are therefore inherently problematic for religious courts to accept, notwithstanding the fact that they are recognized authorities within the secular system. (...) This division leads to intractable collisions between two normative systems, neither of which recognizes the superiority of the other's source of authority. Scolnicov (2006, pp.734-735).

Defining normative authority is dependent on the concept of rules and norms, as well as on the hierarchy of these rules, all of which open up very complex and philosophical debates (Hart, 1997; Kelsen, 1937). This article only focuses on normative authorities that can create their own rules in at least some domains and are recognised or founded by law, irrespective of the level, as we shall see, and that can enforce their rules in some manner.

Courts are vital to the concept of normative authority, as it is via courts that the specific set of rules are upheld and enforced. However, not all normative authorities necessarily have their own court system; their rules can be enforced by those of another jurisdiction. Courts can, in other words, be shared between multiple jurisdictions. This happens daily: think for instance of a German federal court handling a case arising from a Heligoland municipal ordinance forbidding protests against the construction of a new navy outpost. Consequently, courts are generally not jurisdictions under my definition, as they do not enact a specific set of rules, but they rather adjudicate and interpret the rules and only make new rules when there are certain gaps.⁵ Put otherwise: courts themselves can, for example, not enact a completely new all-encompassing family law legislation via a judgment – they make the law more incidentally (Endicot, 2020, p. 135). Only in some rare instances, such as was the case for the Mixed Courts of Egypt (1875-1949), can certain court systems be seen as jurisdictions when they have their own specific legal codes applying to them and can they change those codes and adapt new legislation in certain fields (Erpelding 2020). This discussion is of course closely related to the debates surrounding legal pluralism and the concepts of sovereignty, territoriality and jurisdiction under public international law (Willis, 1929, pp. 437–455; Jennings, 2002; Anghie, 2005; Kayaoğlu, 2010; Twining, 2010; Vanderlinden, 2013; Howland, 2016).

⁵ This in itself is of course a whole debate on judges as 'law-makers'. (Sauveplanne 1982; Wolfe 1986; Troper and Pfersmann 2001; Endicott 2020)

2.3 Personal or Territorial Jurisdiction, ‘Extra-Jurisdictionality’ and Legal Pluralism

The examples of Heligoland and Israel above neatly illustrate the multi-jurisdictional world we all live in. The aforementioned reading of the concept jurisdiction closely aligns to when private international law/conflict of laws kicks in, namely when there is an ‘international’ or ‘foreign’ element present.⁶ The ‘foreign’ signifies a contact or link with some system of law other than the law of the forum and can thus be inter-territorial, inter-personal (formerly known as ‘inter-gentile law’, see Verstraete, 1940; Kollewijn, 1953; Lemaire, 1956; Resink, 1959), inter-religious or in older times even inter-customary (E.M Meijers, 1935, p. 42) and therefore need not necessarily transcend international state borders or in fact any territorial border (Bartholomew, 1952; Allott, 1958; Gouwgioksiong, 1965; Wähler, 1978; Bennett, 1980; Maqutu and Sanders, 1987; Berger, 2001, p. 89; Berger, 2005; Govindaraj, 2019; Okoli and Oppong, 2020, pp. 3–7). This is why both the term ‘area’ and ‘community’ are used: both personal and territorial jurisdictions exist.

Territorial jurisdiction is self-explanatory: a certain region, zone or area can have its own rules and these can be enforced within the defined territory. Jurisdiction can also exist on the basis of identity (sometimes known as the personality of laws). This can be, for instance, based on a tribal allegiance, religion, ethnicity or nationality (E.M Meijers, 1934; E.M Meijers, 1935, pp. 7–24; Guterman, 1966). Jurisdictions based on personality of laws entails that certain rules only exist for a certain community, i.e. a group of people and that these rules can be enforced amongst and against them. In short, their own rules and courts are attached to (an element of) their personal status.⁷ This was very common in the Ottoman Empire under the millet-system (Barkey & Gavrilis, 2016). A good example of such a present-day personal jurisdiction system is the aforementioned religious court system in Israel (such as for example the Rabbinic courts), which has competence for most personal status matters depending on the religion of the involved parties, disregarding the nationality of the persons involved (Shava, 1985; Ghandour, 1990; Scolnicov, 2006; Levush, 2021).

Personal jurisdiction today is always ‘territorialised’ as it is a territorial State that allows for this system on (a part of) its territory and is ultimately responsible for the enforcement thereof. Therefore, one could state that territorial jurisdiction today is ‘personified’ by way of nationality (the state of belonging to the population of a certain territorial State⁸) and that amongst other effects, via nationality, one’s own national laws can

⁶ The use of the term jurisdiction in private international law however only relates to the competence of the courts to handle cases.

⁷ Thus personal jurisdiction goes much further than the active personality principle of international law and it is also not linked only to nationality.

⁸ Or as defined by the ICJ in the *Nottebohm* case (second phase), 6 April 1955, ICJ Reports 4, page 23: ‘According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State.’

have effect in another territorial State, especially with respect to personal status matters (Vonk, 2012, pp. 11–29; S. Allen et al. 2019, pp. 5–6).

The distinction, tension and overlap between both grounds is most evident in the original reading of the personality of laws, which entailed ‘extra-jurisdictionality’ or the employment of one’s own jurisdiction outside of the original jurisdiction. Nationality or territory was still largely undefined, and borders and allegiances were often in flux. Still, all people were, of course, present in a certain physical area that was under the (nominal) control of a Sovereign (Ford 1999). Extra-jurisdictionality then was in effect the allowance of personal jurisdiction to a certain ‘foreign’ group by another Sovereign in their (ill-defined territorial) jurisdiction. For example, in the medieval county of Flanders, many cities had their own laws and customs, and many of these followed the burghers of a city when they moved to another city (E.M. Meijers, 1932, pp. 15–18). In the city of Bruges, the situation was even more complex as numerous foreign traders had their own consulates that housed consular jurisdictions. If, for example, two Lucchese tradesmen did business in Bruges and something went wrong, they could sue each other under Lucchese law before the Lucchese consular court in Bruges and they could enforce the judgment there. The Count of Flanders had granted this right or privilege to the Lucchese and many other nations (Gelderblom, 2013, pp. 109-110). Legal pluralism was thus the order of the day not only due to these international trading practices but also due to competing religious and state jurisdictions (Decock, 2017).

This extra-jurisdictionality and legal pluralism was not isolated to Europe: it was the norm for most of history (Liu, 1925; L.A. Benton, 2001; Theus, 2023). Later, when territory and territorial jurisdictions and the European territorial nation-state become more fixed, this concept arguably morphs into the better-known term of extraterritoriality – for current purposes meaning a foreign territorial State’s laws being applicable to their own nationals in a different country (Liu, 1925; Margolies et al., 2019; Simon, 2021). Originally, this right was granted unilaterally by the Sovereign and could be easily revoked in times of war, but sometimes it was granted reciprocally (Özsu, 2016, pp. 129-132; Vanev, 2018).⁹ Later, it was utilised by both European and non-European nations to build their (colonial) empires or gain influence abroad, but it largely disappeared by the late 20th century with the advent of the UN and decolonisation.

The complex relationship between both types of jurisdiction is perhaps best summarized as followed by Ford (1999, pp. 904): ‘

Jurisdiction in fact defines a relationship between the government and individuals, mediated by space. Territory acts as a medium of governmental power as well as its primary object. Territory is, in this sense, a container that holds a bundle of

⁹ Also see the right to Persian Consular Courts following the 1715 Treaty between the French King and the Persian Shah: Treaty of Amity and Commerce between France and Persia (signed at Versailles, 13 August 1715) 29 CTS 303

individuals and resources, just as fee simple ownership of real property consists of a bundle of rights.

People and territory are hard to pull apart and for this reason the exact ground for jurisdiction remains hard to strictly define, without even taking into account the newly added layers of the digital world and globalization (S. Allen et al. 2019, pp. 7–8). The definition given thus remains open for debate and contestation, as do all other definitions of jurisdiction, precisely because the concept is so fluid (Yahaya, 2020).

3. The Concept of Special Jurisdictions

3.1 Definition

Certain jurisdictions are distinctive from a ‘regular’ jurisdiction, i.e. they are an out of the ordinary or unusual jurisdiction and are an exceptional carve-out from an overall jurisdiction. They are thus special jurisdictions or put differently: *an area or community with a certain normative authority wherein a specific set of rules is in place and enforced that are different from its home jurisdiction.* What the regular or overall jurisdiction is can vary and depends on one’s viewpoint. In the contemporary world it can be said that nearly all special jurisdictions are exceptional carve-outs from regular State jurisdictions.

Special jurisdictions are carve-outs and not a self-standing sovereign jurisdiction such as Monaco, Singapore or other micro-states or city-states (Armstrong and Read, 1995; Dozsa, 2008; Sharman, 2017).¹⁰ The concept of special jurisdictions is also related to questions surrounding ‘autonomy’ for minorities under international law (Suksi, 2015; Barkey & Gavrilis, 2016; Prina, 2020), but the crucial distinction here is that special jurisdictions are a wider concept that do not only involve ‘minority jurisdictions’ but also autonomous special economic zones or sovereign military base areas. The best way to clarify the wide angle of the concept is by way of three different examples. The first one is to be placed in the sphere of personal special jurisdictions (and minorities), and the other two in the sphere of territorial special jurisdictions.

3.2 Examples

3.2.1 Recognised Religious Minorities of Iran

In the contemporary Islamic Republic of Iran, certain ‘recognised’ minorities such as the Zoroastrians, Jews and Armenian, Assyrian and Chaldean Christians are entitled to have their own representatives in the National Assembly and to have their own courts and laws to handle personal status matters between themselves by way of Articles 13 and 64 of the

¹⁰ They do however involve the Special Administrative Regions of Hong Kong and Macau, as these are very autonomous regions, but they remain under the sovereignty of the People’s Republic of China.

Constitution.¹¹ These specific exceptions flow forth from their unique position in the history of Iran, especially their continuous right to have such courts and their own laws, and the religion of Islam itself (Herzig 2018). This entails that a divorce case two Iranian Armenians¹² will be dealt with under Armenian canon law, which is not to be confused with by Armenian state law. All other Iranians, including other non-recognized ethnic and religious minorities, fall under the ‘regular’ family and personal status laws of Iran, which are largely based on the Twelver Shi’ism’s interpretation of Islamic law.¹³ One could say that these recognised minorities are a special jurisdiction within Iran for family and personal status matters, as they can also set their own applicable laws, as opposed to the previously mentioned example of Israel, where religious courts are the regular jurisdiction for such matters as there are no secular family courts. For all other matters these minorities are not to be seen as a special jurisdiction, as these exceptions only exist in this field.

3.2.2 Cyprus: British Sovereign Base Areas of Akrotiri and Dhekelia

The second example relates to the British Sovereign Base Areas of Akrotiri and Dhekelia (SBA) in Cyprus, which are, in the words of Hadjigeorgiou and Skoutaris (2019, p. 3) ‘*an international law oddity*’. In recent history, Cyprus had belonged to the Ottoman Empire until 1870, when Cyprus came under the British Empire until its independence in 1960. The SBA today are a British Overseas Territory enclaved in an EU Member state. These bases are under ‘limited’ British sovereignty as confirmed by the 1960 Treaty of Establishment, an international agreement between the UK, Greece, Turkey and the then newly formed Republic of Cyprus (‘RoC’). Most notably, it cannot be used for economic purposes (Stergiou, 2015). The SBA make up approximately 3% of the island of Cyprus, and within them are several villages inhabited by RoC citizens. There are no hard borders between the RoC and the SBA. The SBA is a special jurisdiction for both Cyprus and the UK. Regarding the latter, it is a British Overseas Territory (all of which are arguably special jurisdictions) with a distinct ‘mini-constitution’ or basic law and its own administration, legal and court system, that is quite different from the regular UK system (Sovereign Base Areas Administration, 2024a; Sovereign Base Areas Administration, 2024b). Regarding the former, it is a ‘parallel Cyprus’ for many matters and staff: Cypriot law, courts and institutions apply there ‘extraterritorially’ to Cypriot nationals resident there, following agreements between

¹¹ Also note art. 12 of the Iranian Constitution, which gives similar personal status rights to non-Shia Muslims. The Constitution of Iran (unofficial translation), can be found on https://www.constituteproject.org/constitution/Iran_1989.pdf. Also see: (Barry, 2018, p. 176).

In practice the regular Iranian courts merely confirm the judgment of a religious official in the matter at hand. The family law of the minorities is not codified. See: Law for Hearing Lawsuits on Personal Matters and Religious Issues of Zoroastrian, Jewish, and Christian Iranians (unofficial translation of the law), Official Gazette, 1372-04-03 (1993-06-24), No. 14138, as found on: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91909&p_count=96799. Also see: Ansari-pour, 2011, p. 76 & Musawah, 2022, p. 7.

¹² Iranian Armenians do not necessarily hold Armenian nationality.

¹³ Which itself has deep roots in Iran’s pre-Islamic history (Macuch, 2017).

the SBA and the RoC and the 1960 Treaty, especially its so-called Annex 0 (Hadjigeorgiou and Skoutaris, 2019).

3.2.3. The Dubai International Financial Centre (DIFC)

Special jurisdictions are also actively being created in the 21st century. One of the best example of this can be found in the emirate of Dubai, United Arab Emirates. In 2004, the government of Dubai established the Dubai International Financial Centre by a regular law (DIFC, 2024a). The DIFC is based on common law and has a light tax regime. It has its own regulatory authorities and courts. Many key officials and judges are foreigners. The Zone has attracted quite some interest from foreign companies. Or in its own words: *‘Amongst its 4,031 entities, DIFC is currently home to 17 of the world’s top 20 banks, 25 of the world’s top 30 global systemically important banks, five of the top 10 insurance companies, five of the top 10 asset managers, and many leading global law and consulting firms’* (DIFC, 2024b). The DIFC’s 2021 contribution to Dubai’s nominal GDP was estimated to be around 5 per cent, and the contribution of DIFC financial firms to the UAE financial services sector was over 13 per cent (DIFC, 2024b). Both numbers show the importance of the DIFC. That being said, the DIFC has certain issues related to its courts and its jurisdiction (Walker and Thadani, 2018; Bayer, 2022; Dudley, 2022).

It is important to note that the DIFC is not as novel as often claimed. The UAE only gained its independence from the UK in 1971. Up until then, it had British consular courts dealing with most cases that had a ‘foreign’ link. This included Dubai’s forgotten first time in the global spotlights as one of the largest gold trading centres of the world in the late 1960s (Vernay 1968, 143–146). Likewise, after independence and until today many legal officials, practitioners and judges hail from Egypt, the contemporary legal system of which is heavily influenced by the case law of the aforementioned Mixed Courts of Egypt.

3.3 Main Characteristics

All three examples underline key factors of special jurisdictions: (i) the importance of history to understand the background or the continued existence of many special jurisdictions, (b) the fact that special jurisdictions can have different foundation grounds, ranging from international to national law, as well as (c) the different types of autonomy it can have from its ‘home’ (State) jurisdiction. Many types and examples of special jurisdictions exist, ranging from Ceuta in Spain and the Azores of Portugal in Europe, to Native American jurisdictions in the USA and far beyond (Ley Orgánica 1/1995, 13 marzo, de Estatuto de Autonomía de Ceuta, BOE núm. 62 de 14 de Marzo de 1995; Prucha, 1997; Swenden, 2006; Smith, 2013; Catawba Digital Economic Zone, 2024).

The exact functioning and structure of the home (State) jurisdiction is important in order to define a specific jurisdiction as ‘special’ or not: if a particular jurisdiction has unique competences and powers as opposed to others of the same level, then we can speak of a special jurisdiction. If not, we are merely talking about separate jurisdictions (for example,

the different municipalities of a country or federal entities). In a way, the study of special jurisdictions is thus closely related to that of comparative federalism.¹⁴ Both share the same goal or function: to accommodate certain groups, especially via non-territorial or personal federalism and/or regions within a larger framework (Burgess, 2006). The connection between special jurisdictions and federalism is logical as states are today still the main anchor points of all law and many states themselves consist of a collection of different tribes, religions, nations and regions. In some cases this has led to federations such as the United States, Brazil or Germany. In other cases it has led to special jurisdictions, with a few territories or groups managing to keep or regain unique privileges within a new State.

However, the study of special jurisdictions goes beyond comparative federalism, which understandably remains locked within the framework of a State, its Constitution and State Sovereignty. Federalism requires ‘constituent units’ that work together for some competences on the federal level. Even though asymmetrical federalism exists, there is still a gap with special jurisdictions. Constituent units are always part of a state or (supranational) union-building exercise. In contrast, special jurisdictions are exceptional situations that are not necessarily part of a state or union-building exercise (Burgess, 2013). Special jurisdictions can also be very limited in scope, unlike in federal states, wherein the constituent units have quite far-reaching autonomy and autonomous institutions (Cameron and Falletti, 2005). Special jurisdictions also exist beyond constitutions and can be established by treaties, as we have seen in the case of the Sovereign Bases in Cyprus. Another example of a special jurisdiction created by a treaty is the still-existing Sharia or Mufti courts in Northern Greece, mandated by the Treaty of Lausanne of 1923.¹⁵ The Western Thracian Muslim community has different rules and institutions applicable to them, but as Greece is a unitary State, comparative federalist scholars do not study this exception (Swenden, 2006, pp. 17–18).

This brings me to the following point: many special jurisdictions are characterised by a certain degree of internationalisation. As just mentioned, some are founded by treaties, whereas other special jurisdictions, such as the DIFC, actively employ foreigners in official capacities, such as judges, out of their own initiative. ‘Internationalised’ special jurisdictions have a long history and some have played an important role in global history. Think for example of ‘International Shanghai’ (+-1854-1941/43), which comprised of the International Settlement and the French Concession. Whilst officially remaining under Chinese sovereignty, the international part of the city was *de facto* a semi-city-state run by Western powers under various international, national and local laws, resulting in what could be called transnational or shared colonial special jurisdiction (Jackson, 2017). It was an important centre of global commerce and finance and rivalled the other global cities of the time

¹⁴ Especially as scholars in this field also often study unions, constitutionally decentralized unions, federations, associated states, condominiums, leagues, joint functional authorities. See: (Cameron and Falletti, 2005, p. 262; Swenden, 2006, p. 13).

¹⁵ Art 42, §1 states: ‘*The [Greek] government undertakes, as regards [Muslim] minorities in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.*’ Also see: (Molla Sali v. Greece 2018; M. Berger, 2019; Tsitselikis, 2019).

(Kaufman, 2020, pp. 77-82). One of its main characteristics was the fact that it was visa-free, which also led it to host many Jews fleeing Europe in the late 1930s and during World War II, even when it was under Japanese Occupation (Kaufman, 2020, pp. 145-175). It was also the main gateway to China for foreign (mostly Western) investors. For example, by 1929, 77 per cent of British investment in China and 65 per cent of American investment went into Shanghai, mainly into the International Settlement. The main reason for this was, in the words of Jackson (2017, p. 6):

These investors wanted to be sure that their capital was secure for the foreseeable future, that the infrastructure they needed would be maintained, that their legal rights would be protected by courts and a police force, that their staff in Shanghai would be protected from disease and that the labour required for their mills and factories would be reliable.'

Similar things can be said of the International Zone of Tangier (1923-1956), which was like Shanghai, a case of a transnational or shared colonial special jurisdiction (Hettstedt, 2022). The International Zone was a special jurisdiction within the French and Spanish protectorate system that existed over Morocco from 1912 until 1956, and was co-governed by certain Western powers such as France, Spain, Italy, the United Kingdom, the Netherlands and Belgium. In Tangier, as in Shanghai, the legal set-up was quite complex, in Tangier there were for example up to 7 different legal and court systems existing in parallel with each other (Nefussy, 1949). Your exact legal status, including which court you could go to, therefore depended on your nationality. After World War II, it was dubbed the 'gold safe' of Europe and it was a major global banking hub, as well as an important entrance point for foreign investment into Morocco, because of its status and functioning as a low-tax internationalised special jurisdiction (Simpkins, 1950).

Both Tangier and Shanghai were also major cultural and political hubs, and due to colonial competition, there was no clear ruling power, leading to a more open atmosphere. It is no coincidence that many key Chinese figures, such as Mao Zedong, lived in international Shanghai, and many Moroccan and other Arab independence activists found respite in international Tangier (Kaufman, 2020, pp. 80-81, 94-97; Stenner, 2016; Benjelloun, 1996). With the fall of Shanghai in 1949 to the very communists it had once harboured, another port city in the region took in many of its successful inhabitants and its vibrant 'internationalised' energy: the British Crown Colony of Hong Kong (Kaufman, 2020, pp. 232-236). Today, the Hong Kong Special Administrative Region retains certain strong 'internationalised' aspects inherited from the refugees of international Shanghai and their former British rulers, such as the presence of judges from common law countries, under the One Country, Two Systems policy of the People's Republic of China (PRC). As such, it is a special jurisdiction of the PRC (Gittings, 2016; Geping and Zhenmin, 2007). Likewise, the handover and reintegration period of the International Zone of Tangier into Morocco from 1956 until 1960 saw its status

as a tax and financial hub and haven been taken over by many contemporary ones such as Switzerland and Luxembourg (Ogle, 2020, pp. 220-224).

Internationalisation of a special jurisdiction does seem to have had a positive impact on attracting foreign investment, as just mentioned. This still seems to ring true today. For example, the impact of the Qatar Financial Centre (QFC) – a special jurisdiction similar to the earlier mentioned DIFC – on Qatar’s overall GDP was around 1% in 2020, and that number has risen since then (Qatar Tribune, January 12, 2023). However, there are many different factors to take into account, such as the location and infrastructure of the special jurisdiction, the geopolitical and global economic climate, Further qualitative research on the (economic) impact of internationalisation on special jurisdictions is necessary and could complement the central findings of Katherina Pistor’s groundbreaking work *the Code of Capital* (2019) and the works of Daron Acemoglu, Simon Johnson and James Robinson, the laureates of the 2024 *Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel*, which all point to the importance of (the origins of the) institutions and the (rule of) law in creating wealth.

Here I should also point out that special jurisdictions can exist within a special jurisdiction too. In this way, special jurisdictions are similar to enclaves, counter-enclaves and exclaves (Prescott and Triggs, 2008, p. 40; Berger, 2010). An example to help illustrate these ‘enclave special jurisdictions’ can be found in the just mentioned International Zone of Tangier. In the territory of the International Zone there was also the Cap Spartel lighthouse, which was de facto an ‘enclave’ special jurisdiction within the International Zone as it was run by an international organisation which predated the establishment of the International Zone and thus different rules were applicable to the Lighthouse (Bederman, 1996).

3.4 Transboundary Special Jurisdictions; Navigating between the Strict Divisions of Law?

This brings me to the following and arguably the most complex part of this article: the existence of transboundary special jurisdictions that negate international state borders and exist outside of any international treaty. A good example of this is the continued existence of the ecclesiastical courts and their own legal codes concerning family law matters, which seemingly negate any official State borders between Israel, Palestine and Jordan or as described by Engelcke (2022, p. 287):

The way family law is institutionalized in Jordan means that there are several sovereign actors when it comes to jurisdiction in family law matters: the Jordanian state has jurisdiction in matters of Islamic family law over Muslim Jordanians, and the eleven officially recognized non-Muslim communities have jurisdiction over their community members. The Greek Orthodox Patriarchate of Jerusalem has jurisdiction over family law matters pertaining to Jordanian Greek Orthodox Christians. The patriarchate's sovereignty, its ‘ecclesiastical sovereignty,’ extends beyond Jordan's state boundaries, encompassing the regulation of family law for Greek Orthodox

Christians in Jordan, Israel, and Palestine. Ecclesiastical sovereignty is a form of legitimate authority. It means that the patriarch in Jerusalem, the head of the Greek Orthodox Patriarchate, has the authority to determine relatively independently the norms of the Byzantine Family Code which those countries that belong to the patriarchate apply. Hence, territory, sovereignty, and jurisdiction do not map onto one another in the case of the Byzantine Family Code.'

In short, the situation she describes is a unique 'shared' transboundary special jurisdiction between Israel, Palestine and Jordan that is a continuation of the Ottoman millet system and which was not changed during the British mandate over the area nor by the independent states that followed (Barkey & Gavrilis, 2016). Church institutions thus fulfil key State attributes for multiple States and nationalities simultaneously, which is not the case in European States that have retained ecclesiastical courts, such as for example Italy (Ferrari and Ferrari, 2010, pp. 443-445). Whilst there has been a reform from the Jordanian side in 2014, strong 'extraterritorial' links (even to the Papal Courts in Rome) remain (Engelcke 2022, pp. 297–300).

Similar situations of shared transboundary special jurisdictions can arguably arise in situations of weak state authority and in transboundary tribal cases in countries with customary courts, such as in Nigeria (Nyíri, 2012). Likewise, religion in some cases overrules nationality in private international law. The recently established bilingual (English-Arabic) non-Muslim Family Court system in the Emirate of Abu Dhabi, United Arab Emirates is a good example of this (Nowais 2021). This court has jurisdiction if both parties are foreigners or non-Muslim citizens, but in some cases, if one party is Muslim, it cannot have jurisdiction, and the regular Sharia courts of the Emirate will have jurisdiction.¹⁶ Nationality thus sometimes plays no role here; merely the religion of the parties involved. Abu Dhabi is not the exception here throughout the Middle East, both past and present (Hamzeh, 1994; Berger, 2002; Foblets and Loukiliv, 2006, pp. 529–530). Religious rules can therefore override regular private international law rules, or phrased differently: there can be a clash of sovereignty between the religious and the secular orders, as already mentioned in the case of Israel.

This can only be explained by the fact that international borders and nationality are not always clear and often don't correspond with the reality on the ground: the Middle Eastern concept of State and nationality seemingly does not correspond with the ones in Western Europe and beyond. As the aforementioned examples highlight, the concept of State can be interpreted differently and/or wider than often presumed (Yntema 1953, 297; Maqutu and Sanders, 1987, p. 386; Juenger, 2000, pp. 1134–1142; Banu, 2018; Okoli and Oppong, 2020, pp. 3–7; Kim, 2021, Chaisse and Dimitropoulos, 2021, pp. 231–232; Dimitropoulos, 2021, p. 373; Hatzimihail, 2021; Hernández, 2022, pp. 27–29). Questions surrounding the

¹⁶ Article 5 of Resolution No. (8) of 2022 concerning the Marriage and Civil Divorce Procedures in the Emirate of Abu Dhabi.

exact status of *sui generis* polities such as the Sovereign Military Order of Malta and the Holy See likewise come to mind. These two are defined as ‘*non-State sovereign entities*’ (E. Allen and Prost, 2022, p. 176) or the Holy See specifically as a ‘*sui generis entity*’ (Morss, 2015, p. 928) or ‘*sui generis non-State international legal person*’ (Ryngaert 2011, p. 855), or the position of certain Native American Tribes (Prucha, 1997; Smith, 2013). But perhaps they should rather be seen as special jurisdiction within the general jurisdiction of public international law?¹⁷

4. Conclusion

Many contemporary special jurisdictions have ancient roots and have been re-affirmed over the centuries and by the modern day legal order. Think for example of Mount Athos in Greece, one of the most important places in Orthodox Christianity, which is still largely run by Orthodox monks and which has its own laws and courts – still heavily infused with Eastern Roman influences – and is also mostly outside EU law. Its special status is confirmed by both the Greek Constitution and the EU and other treaties (The Constitutional Charter of the Holy Mountain of Athos, 1924). Special jurisdictions are also actively still being created this day. Some of these new special jurisdictions have far-reaching autonomy. Think of the aforementioned DIFC and QFC, but there are also the Astana International Financial Centre and the Abu Dhabi Global Markets that spring to mind, that have a similar set-up. Other examples include Próspera or the Catawba Digital Economic Zone.

This article has shed some light on the history behind special jurisdictions to highlight the fact that special jurisdictions do not necessarily need to fulfil an economic role and that both personal and territorial special jurisdictions exist, both elements that are often overlooked. A crucial element to speak of a special jurisdiction is that it should have a certain autonomy. This implies that many now-designated special jurisdictions, such as regulatory sandboxes, should not necessarily be seen as special jurisdictions under my proposed definition as they lack meaningful normative authority, i.e. the possibility or power to enact and enforce a specific set of rules

This also entails that the most contemporary common special jurisdictions, SEZs, should primarily be characterised according to their normative authority and autonomy. Many SEZs are designated by their home jurisdiction’s laws to have certain tax, customs, licencing and/or other exceptions, which automatically makes them an exception in the ‘home’ jurisdiction. Many SEZs have a certain degree of normative authority with respect to those granted exceptions, for example with respect to building permits and company licences that can be granted by the SEZ authority under specific SEZ regulations that differ from the regulations applicable in the ‘home’ jurisdiction. SEZ authorities often also oversee the

¹⁷ Public international law itself can indeed be viewed a legal system or jurisdiction and can therefore raise questions as to what law has to be applied in a certain court and which court has jurisdiction. This ‘conflicts of law’ view on public international law was quite widely held in the interbellum and is masterfully put forth in (Marchegiano, 1931).

enforcement of the home jurisdiction's laws in other domains. However, SEZs lacking any meaningful normative authority and autonomy should perhaps not be considered to be a special jurisdiction. More comparative research on SEZs from this angle would be valuable.

To conclude, special jurisdictions are 'places in between' our general understanding of law and deserve to be studied as a field of law on their own. They offer fascinating insights into the power of 'a line in the sand', i.e. how law can shape and form society and the economy.

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