

JURISDICTION UNBOUND: A COMPARISON BETWEEN MUNICIPAL  
LAW, PUBLIC INTERNATIONAL LAW AND INTERNATIONAL  
CRIMINAL LAW

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## ABSTRACT

First of all, what is considered most important to keep in mind when the case comes to court is jurisdiction. In simple words, jurisdiction means the place where one has the right to exercise power. When we talk about courts, there are different kinds of jurisdiction depending upon the nature of the case. For example, Territorial Jurisdiction, Subject Matter Jurisdiction, Pecuniary Jurisdiction and then various layers of these three major jurisdictions. Now if the courts and institutions dealt only in the matters presented inside the territorial limits, then the jurisdictional issues can easily be solved by dealing with the legal provisions we have. But as we reach the other side of the territorial boundary, we are introduced to other forms of jurisdictional issues. Jurisdiction in municipal law can further be divided in civil cases and criminal cases, on the other hand in International Law as per the divisions of it the jurisdiction will change. For example, Jurisdiction in Public International Law is different from the jurisdiction in International Criminal Law and Private International Law. In this paper, we shall get an in-depth view of the various intricacies of criminal jurisdiction that are to be found in Municipal and International Law.

Keywords: Jurisdiction, Municipal Law, International Law, Public International Law, International Criminal Law.

## INTRODUCTION

Jurisdiction is among the primary concepts in legal systems, as it defines the authority of a legal body to do justice within a predefined area of responsibility. The subtleties of jurisdiction are felt most in comparison with municipal law, public international law, and international criminal law. Although each of these areas of law applies different principles and frameworks, they really interact and influence each other in very intricate ways. More specifically, this essay is going to unravel the nuances of jurisdiction in these three legal spheres, with their unique characteristics, overlaps, and contestation sites.

The law, on the other hand, which is generally concerned with the internal affairs of a state, is referred to as municipal or domestic law. This encompasses nearly all legal issues arising from criminal to civil and even administrative matters. The jurisdiction in municipal law is usually clear because it has well-defined geographical boundaries and legal authority over

persons and elements within its territory. This jurisdictional clarity is important for the sake of order and justice within its territorial jurisdictions.

In contrast, public international law regulates the relations between sovereign states and other actors in international law. It is primarily based on treaties, customary international law, and general principles recognized by civilized nations. In public international law, the question of jurisdiction is more complicated because several sovereignties deal with one another, each having its independent legal system. Jurisdiction can often be complicated in the international sphere due to a raft of concerns, running from state sovereignty and diplomatic immunity to extraterritorial application. Moreover, the enforcement mechanisms within public international law are usually weaker than those found in municipal law, based on a reliance on states' good will to observe international norms and decisions.

International criminal law borrows elements from both municipal and public international law dealing with prosecution and punishment of natural persons for the committing of crimes that are of concern internationally. These crimes are generally associated with genocide, war, and crimes against humanity. This area of law evolved from the atrocities of World War II and further developed to deal with current problems. International criminal law jurisdictions are very complex, most particularly at national courts, hybrid tribunals, and international bodies like the ICC. One such principle, therefore, laid the ground for the jurisdiction of the ICC: the prosecuting entity in charge of prosecuting international crimes at the national level; the ICC steps in only if the national jurisdictions are unwilling or unable to prosecute.

The interplay between municipal law, public international law, and international criminal law gives rise to critical questions on the scope and the limits of jurisdiction. How do states reconcile the tension between national sovereignty and international obligations? Through what mechanisms are jurisdictional conflicts resolved? In what way does the pursuit of international justice bear on the domestic legal system? These questions assume particular relevance in today's globalized world, in which legal issues transcend national borders and require cooperative and coherent legal responses.

This essay tries to clarify the similarities and differences between jurisdictional frameworks across municipal, public international, and international criminal law. It outlines the means by which the systems of law complement, interact, or sometimes even contradict one another, hence highlighting the dynamic and at times controversial nature of jurisdiction in a multifaceted legal landscape.

## CRIMINAL JURISDICTION IN MUNICIPAL LAW

### *Application and Jurisdiction*

Chapter XIV of the BNSS, 2023 states regarding venue as to inquiries and trial. The chapter provides for the demarcating of criminal courts inquiring into or trying the offenders; it ensures the inquiries and trials are taken in the jurisdictions in which the appropriate localities are situated in which the crimes are committed. Section 197<sup>3</sup> provides that offences shall be inquired into and tried by a court within local jurisdiction, meaning the local area over which a court or magistrate exercises authority, where an offence is committed. Changes in the territorial jurisdiction do not affect the jurisdiction of the court after the commission of the offence is recognized.

### *Place of Inquiry and Trial*

The spirit of Chapter XIII underlines the need to conduct investigations and trials at or near the scene of the crime in light of the vast geography of the country. Jurisdiction is to be determined based on the complaint or police report lodged and courts presume jurisdiction unless proved otherwise. Section 198<sup>4</sup> covers cases in which the place of the commission of an offense cannot be exactly ascertained within different local jurisdictions; it may continuously form multiple jurisdictions or may include different places. Courts having jurisdiction in any of these places shall investigate or try the offense. Section 199<sup>5</sup> goes ahead to give flexibility to ascertain the place of trial depending on the locality of occurrence of the act or result.

### *Interrelated Offenses*

Chapter XIII also captures offenses which are interrelated. Section 200<sup>6</sup> provides that if an act constitutes an offence because of its relation to any other act which, by itself, constitutes an offence or to a right, which by itself, constitutes a legal remedy, then that act is triable either in the jurisdiction in which the first act was committed or the jurisdiction in which either of the acts were committed. Section 207<sup>1</sup> mentions provisions for various acts, like thuggery, dacoity, kidnapping, theft, extortion, and criminal misappropriation, to be tried either at the place where the act took place, or where the accused is later found, along with wherever the

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<sup>3</sup> Chapter XIV of the BNSS, 2023

<sup>4</sup>*ibid*

<sup>5</sup>*ibid*

<sup>6</sup>*ibid*

<sup>7</sup>*ibid*

stolen property is found. Section 202<sup>8</sup> deals with offenses involving letters or telecommunication messages, allowing trials in the jurisdiction where the messages were sent or received, and covers cheating and bigamy offenses.

#### *Offenses in Transit*

The Code deals with offences committed during journeys or voyages as well. Section 203 allows such offences to be tried by courts in any locality passed through in the course of such a journey, thus ensuring that courts are vested with jurisdiction in respect of the crime committed while an accused is in transit, except where the offense is committed on the high seas or in some other foreign territory. Section 204 allows for cases involving a similar series of events in respect of several persons or any person to be tried together in any competent court. Pursuant to this section, in the relevant sections of the BNSS, 2023, the several persons charged shall thus be jointly tried.

#### *Government and High Court Powers*

Chapter XIII of the BNSS, 2023 imposes certain powers that are distinct upon the State Government and High Courts. Section 205<sup>9</sup> bestows the State Government with the power to direct cases for trial in different sessions divisions, subject to consistency with directions by the High Court or Supreme Court. Section 206: The High Courts are vested with the power to dispel any kind of doubts as regards jurisdiction when an offence is taken cognizance by more than one courts of equal jurisdiction. It gives the onus to the High Courts firmly to ensure that one court and no more continue the investigation or trail 207; Magistrates have been clothed with authority to take cognizance of offenses over which they are competent and have reasonable grounds of miscreants committing the same outside its jurisdiction – i.e. they have powers to compel attendance, transfer cases, and apply to the. Sections 208 and 209 extend these provisions to the commission of an offense out of India, make Central Government sanction for such trials a necessity, and provide for the receipt of evidence from foreign jurisdictions.

### **CIVIL JURISDICTION IN MUNICIPAL LAW**

The jurisdiction of Civil Courts in India is primarily governed by Section 9 of the Code of Civil Procedure (CPC). This section stipulates that Civil Courts shall have the jurisdiction to

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<sup>8</sup>*ibid*

<sup>9</sup>*ibid*

try all suits of a civil nature except when expressly or implicitly excluded by law. The scope of Section 9 ensures that disputes involving the right to property or office are within the purview of civil courts.

### **Section 9 CPC:**

Section 9 of the CPC confers on Civil Courts the jurisdiction to try all suits of a civil nature. Thereafter, it specifically includes suits where the right to property or office is contested. It underscores the amplitude of civil jurisdiction unless specifically ousted by law. Categories of Civil Courts:

The classes of Civil Courts are specified in Section 3 of the Bengal, Agra and Assam Civil Courts (BAACC) Act, 1887, as by derivation in Uttar Pradesh. The classes are—

- Court of the District Judge
- Court of the Additional Judge
- Court of the Civil Judge
- Court of the Munsif

Previously, these were known as Additional District Judges. Today, they are designated as Civil Judge (Senior Division) and Civil Judge (Junior Division) or Civil Judges can be classified as Senior Subordinate Judge and Junior Subordinate Judge. This direction was given by the Supreme Court in *All India Judges' Association v. Union of India* (AIR 1992 SC 165).

### **Small Causes Courts:**

Small Cause Courts: Section 5 and 6 talk about constitution and appointment of dealing corps of Judges Small Cause Court (JSCC). Then Section and Order 50 of the CPC, in more definite terms, provides a mention of jurisdictional and procedural matters of Small Cause Courts.

### **References of High Court and Supreme Court:**

The CPC has many references to both the High Court and Supreme Court. Some of the important sections are:

- High Court - 24, 100, 113, 115, 116 to 120 and 122.
- Supreme Court - 109 and 112.

**Preconditions of Instituting a Suit:**

The following are the two main preconditions for instituting any suit in a Civil Court:

*Existence of a Cause of Action:* As has been laid down in *Bharat Aluminum Co. v. Kaiser Aluminum Technical Services Inc.* (2012), the cause of action must be live and not speculative. If the plaint does not disclose a cause of action, it shall be rejected at the threshold under Order 7 Rule 11(a) CPC.

*Right to Sue:* Inherent—This right is not necessarily provided by any statute but recognized by common law. The Supreme Court in *Ganga Bai v. Vijai Kumar* (AIR 1974 SC 1126) affirmed that there is an inherent right in every person to bring a suit of a civil nature unless barred by statute.

**Types of Civil Suits:**

Civil suits can be broadly categorized into two types:

*For Money:* It contains a claim for the recovery of money, damages for breach of contract, damages for negligence, or any other tort, or money claims appurtenant to the claim.

*For Specific Relief:* These suits are governed by the Specific Relief Act, 1963, and they include recovery of movable or immovable property, specific performance of contracts, rectification or rescission of contracts, declarations, and injunctions. Sections 5 and 7 of the Specific Relief Act direct the parties to the CPC for recovery of property.

**Specific Relief Act, 1963:**

The Specific Relief Act governs only specific kind of reliefs, but at the same time, the Act is not exhaustive. The courts are entitled to grant relief beyond the four corners of the Act as laid down in the case of *Ramji Gupta V. Gopi Krishan Agrawal*<sup>10</sup>. This Act defined and amended the law relating to certain kinds of specific reliefs, so that specific relief is also an inherent right.

**Section 18:**

Such jurisdictions are in equity as well as in law, but always subject to statutory provisions. This dual character of such jurisdictions is pointed out in *Shiv Kumar Sharma v. Santosh*

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<sup>10</sup> AIR 2013 SC 3099

Kumar<sup>11</sup>, wherein the Court held that equity cannot override an express provision of law. Discretion, in equitable jurisdictions, has to be exercised within parameters lay down by the statutory law to see that equity gives way to the law in a scenario of conflict.

Thus, it is vast and covers a wide variety of civil disputes. CPC lays down the basic structure in this regard, and other statutes, like the Specific Relief Act, supplement it in order to cater to such a remedy to be available to the people on the fulfilment of the required pre-conditions. Such a jurisdiction is important to the purpose of maintaining rule of law and providing a structured way to civil dispute resolution.

### **Case Law References:**

- Bharat Aluminum Co. v. Kaiser Aluminum Technical Services Inc.<sup>12</sup>: Stressed on the need for a live cause of action.
- Ganga Bai v. Vijai Kumar<sup>13</sup>: Reconfirmed the inherent right to suit unless barred by statute.
- Shiv Shakti Co-operative Housing Society v. S. Developers<sup>14</sup>: Reaffirmed the inherent right to sue.
- Shiv Kumar Chadha v. Municipal Corporation of Delhi<sup>15</sup>: Explained the maxim "where there is a right, there is a remedy."
- Premier Automobiles v K.S. Wadke<sup>16</sup>: Examine the territory and the subject matter of the jurisdiction of a civil court as discussed under general or common law.
- Ramji Gupta v. Gopi Krishan Agrawal<sup>17</sup>: Affirmed the right to file suits for declaration beyond the purview of Section 34 of the Specific Relief Act.
- Shamsu Suhara Beevi v. G. Alex<sup>18</sup>: It was also affirmed that equity must bow down to the rule of the statute law.

### **JURISDICTION IN PUBLIC INTERNATIONAL LAW**

In public international law, the concept of jurisdiction is closely tied to sovereignty. Jurisdiction enables States to exercise their sovereign independence by defining laws related

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<sup>11</sup> AIR 2008 SC 171

<sup>12</sup> 2012 (9) SCC 552, para 173 and para 175

<sup>13</sup> AIR 1974 SC 1126, para 15

<sup>14</sup> AIR 2003 SC 2434 (para 17)

<sup>15</sup> 1993 (3) SCC 161, para 11

<sup>16</sup> AIR 1975 SC 2238, para 23

<sup>17</sup> AIR 2013 SC 3099, para 11

<sup>18</sup> [(2004) 8 SCC 569]



to persons or activities in which they have a legal interest. Sovereignty serves both as an enabling concept for exercising jurisdiction and as a restraining device that informs international rules restricting State jurisdiction. States can adopt laws affecting matters beyond their domestic concerns, potentially impinging on other States' sovereignty. Essentially, the laws of jurisdiction delineate the competences between States, functioning as the fundamental 'traffic rules' of the international legal order.<sup>19</sup>

The law of jurisdiction primarily relies on the territorial aspect of sovereignty, establishing permissive and prohibitive rules. Jurisdictional assertions related to acts within a State's territory are generally lawful, while those concerning acts outside its territory are suspect and often presumed unlawful. This focus on territoriality reflects the Westphalian system of territorially defined nation-States with full and exclusive sovereignty over their territory and none over others'. However, the centrality of territoriality is historically contingent, emerging in the 17th century with the centralization of administrative power and advancements in cartography that allowed for more precise borders. In pre-modern times, sovereignty was more community-based, with people subject to the laws of their community or tribe rather than the territory they occupied at a given moment.

Recently, community-based conceptions of jurisdiction have reemerged, notably in the work of Paul Schiff Berman, who highlights individuals' identification with transnational communities over territorially-bound States. He advocates for an overhaul of the territory-based jurisdictional scheme. While global communication, particularly the Internet, has allowed spatially remote individuals to connect and reduced the State's role, States still consider territoriality as the most straightforward way to delineate competences. Consequently, jurisdictional analyses remain focused on territorial connections, even when such connections become increasingly artificial, such as in cyberspace or global climate change.<sup>20</sup>

The law of jurisdiction, rooted in the Westphalian international legal system, is part of the traditional 'negative' international law of State co-existence. This law primarily contains prohibitions aimed at protecting the sovereignty of all States, whether strong or weak. For the law of jurisdiction, this means that States are generally prohibited from asserting jurisdiction

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<sup>19</sup> S. Kassan, 'Extraterritorial Jurisdiction in the Ancient World', (1935) 29 *Am J Int'l L* 237, 240.

<sup>20</sup> See, eg, Article 2(1) International Covenant on Civil and Political Rights (ICCPR), New York, 16 December 1966; Article 3 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Rome, 4 November 1950.

over matters within the domain of other States, especially for acts occurring extraterritorially, as this would violate the principles of non-intervention and sovereign equality of States.

In recent times, however, the 'positive' dimension of jurisdiction has gained prominence, reflecting the evolution of international law towards cooperation between States rather than mere co-existence.<sup>21</sup> A positive understanding of jurisdiction implies that States may sometimes be obliged to exercise jurisdiction, particularly concerning values important to the international community. For example, several conventions impose a duty on States to establish criminal jurisdiction over individuals suspected of committing particularly grave crimes (such as war crimes, acts of torture, or terrorism) if the offender is present on the State's territory and the State does not extradite them (the *aut dedere aut iudicare* clause).

In the realm of international human rights law, the concept of jurisdiction has similarly acquired an obligatory dimension. States that are Contracting Parties to human rights treaties are required to secure the rights of individuals within their jurisdiction, even if these individuals are outside the State's territory.

## **FORMS OF JURISDICTION**

In the law of jurisdiction, most attention has been devoted to 'prescriptive' or 'legislative' jurisdiction. This type of jurisdiction refers to the power of a State to make its law applicable to the activities, relations, or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination by a court. Under the principle espoused by the Permanent Court of International Justice in the 1927 *Lotus* case, States are in principle free to exercise prescriptive jurisdiction over a given situation as they please, unless a prohibitive rule to the contrary could be identified. After *Lotus*, however, starting with the Harvard Research on International Law's 'Draft Convention on Jurisdiction with Respect to Crime', it appears that the international community has embraced a more restrictive approach, by requiring that the asserting State rely on a permissive principle for the exercise of jurisdiction to be lawful.

In this chapter, we will primarily focus on prescriptive jurisdiction, although in this section, the related forms of jurisdiction known as 'enforcement', 'adjudicatory', and 'functional' jurisdiction will be clarified.

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<sup>21</sup> PCIJ, *SS Lotus*, PCIJ Reports, Series A, No. 10, 18-19 (1927).

The most uncontested permissive principle of prescriptive jurisdiction, in light of the Westphalian underpinnings of the law of jurisdiction, may appear to be the territoriality principle. Pursuant to this principle, acts carried out in a State's territory fall within that State's jurisdiction. On closer inspection, however, territoriality is not as simple in application as it might seem, as crimes or other acts over which a State may desire to exercise jurisdiction may straddle borders: the act may be initiated in one State ('subjective territoriality') but completed or cause effects in another ('objective territoriality'). The criminal law's classic approach to dealing with transboundary crime is to allow the exercise of jurisdiction by a State as soon as one of the constitutive elements of the crime has taken place in its territory. This may seem straightforward enough, but where crime has become de-territorialized, such as in cyberspace, the use of the constitutive elements-based territoriality principle becomes particularly challenging. Territoriality has also been relied on outside criminal law, notably in competition law, where objective territoriality came to be known as the 'effects doctrine'. The requirements of the territoriality principle have also been considered to be met where foreign airlines were obliged to surrender emissions allowances in respect of nonterritorial air mileage on the ground that the relevant aircraft departed from or landed at a territorial airport. These liberal interpretations of territoriality in economic and environmental law have given rise to substantial international tension. Foreign nations adopted 'blocking laws' to prohibit their corporations from complying with discovery requests concerning alleged 'extraterritorial' anticompetitive acts and threatened legal action at the World Trade Organization.<sup>22</sup>

Apart from territoriality, the law of prescriptive jurisdiction features a number of principles that allow States to exercise jurisdiction on an extraterritorial basis, especially in criminal law. These principles are usually premised on a link with the asserting State, notably nationality (the active and passive personality principles, which tie jurisdiction to the nationality of the perpetrator or the victim, respectively) or political independence (the protective or security principle). The universality principle, in contrast, premises jurisdiction on the nature (gravity) of the crime rather than on a particular nexus with a State, although in

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<sup>22</sup> CA Bradley, 'Universal Jurisdiction and U.S. Law', (2001) U Chi Legal F 323 (characterizing this as 'the conventional view'); also ICJ, Arrest Warrant (Democratic Republic of Congo v. Belgium), ICJ Rep 3 (2002), sep op Guillaume, § 4 ('Under the law as classically formulated, a State normally has jurisdiction over an offence committed abroad only if the offender, or at the very least the victim, has the nationality of that State or if the crime threatens its internal or external security. Ordinarily, States are without jurisdiction over crimes committed abroad as between foreigners.').

practice universal jurisdiction is often only exercised when the alleged perpetrator is present on the State's territory.<sup>23</sup>

Where a State imposes its laws, possibly extraterritorially, it logically also wants to have these laws enforced. Enforcement jurisdiction refers to a State's jurisdiction 'to enforce or compel compliance or to punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other nonjudicial action.' The rules of enforcement jurisdiction are far stricter than the rules of prescriptive jurisdiction. As the Court held in the Lotus case, States are not entitled to enforce their laws outside their territory, 'except by virtue of a permissive rule derived from international custom or from a convention,' even where they have jurisdiction to prescribe their laws extraterritorially. Accordingly, enforcement can only happen through territorial measures, e.g., by arresting a person who is voluntarily present on the territory, or by seizing property of the defendant located in the territory. Often, international cooperation will be required, e.g., to bring about the presence of the presumed perpetrator by means of extradition, or to have a domestic court order enforced against assets located abroad. Such cooperation is not always forthcoming, which explains why States have sometimes resorted to extraterritorial enforcement measures, arguably in violation of international law. It is not fully settled yet whether the prohibition of extraterritorial enforcement also applies to technological remote searches on computer networks located abroad.

The jurisdiction exercised by the judiciary is typically denoted by the terms 'adjudicative' or 'adjudicatory' jurisdiction, which refer to a State's jurisdiction 'to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, whether or not the State is a party to the proceedings.' Adjudicative jurisdiction thus refers to the jurisdiction of the courts rather than to the reach of a State's laws and pertains to the defendant's anticipation of being hauled before the courts of the State in question. As prescriptive and adjudicative jurisdiction do not coincide, States may have legitimate prescriptive jurisdiction over a situation on the basis of a permissive principle, but lack adjudicative jurisdiction, e.g., because the defendant has no contacts with the State or because the parties to a private contract have chosen another adjudicative forum. The principles of adjudicatory jurisdiction have been well-developed in the conflict of laws (private international law). In Europe, in civil and commercial matters, adjudicatory jurisdiction is mainly tied to the place of domicile or residence of the defendant. The United

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<sup>23</sup> See on universal criminal jurisdiction: L Reydams, *Universal Jurisdiction* (2003)

States, for its part, historically had more liberal rules of adjudicatory jurisdiction. 'Minimum contacts' of the defendant with the forum sufficed for a finding of personal jurisdiction, and even 'tag' jurisdiction, on the basis of the defendant's transitory presence in the forum, was accepted. More recently, however, the U.S. Supreme Court has required that the defendant be essentially 'at home' in the forum State, thereby narrowing the gap with Europe.

'Functional jurisdiction', finally, is a term that is mostly used in the law of the sea, where, in essence, it refers to coastal States' limited jurisdiction over the activities in 'their' maritime zones (the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf), and, to a limited extent, to any State's jurisdiction over certain activities on the high seas, such as piracy and the trade in slaves. Such jurisdiction is primarily geared towards protecting coastal States' own legitimate interests, although exceptionally also towards protecting common concerns. It involves both a prescriptive and an enforcement component, which do not necessarily coincide, e.g., the coastal State may adopt laws and regulations relating to innocent passage through the territorial sea in respect of a considerable number of activities, but it may only enforce those laws there (whether criminally or civilly) in limited circumstances.

One may be tempted to believe that many jurisdictional problems will lose their salience as soon as transnational or global governance problems are adequately dealt with at a multilateral level, e.g., when an international competition law regime is established, or when the International Civil Aviation Organization reaches an agreement on aviation emissions caps, thereby obviating the need for unilateral, extraterritorial State action. At a theoretical level, that may well be true. In practice, however, individual States will continue to play the leading role in global governance in the face of the elusiveness of relevant multilateral agreements and centralized institutions. Even in respect of international crimes, the existing permanent International Criminal Court can only deal with a small number of atrocity cases.

Accordingly, the unilateral exercise of jurisdiction by States or regional organizations will persist to 'recast global problems in local terms,' in Buxbaum's words. One cannot deny that such unilateralism may lead to abuse by economically and politically powerful States, who may limit foreign operators' market access in their own national rather than global interest. Additionally, it could lead to regulatory chaos where numerous States start to exercise jurisdiction over the same situation, thereby increasing transaction costs for transnational operators. Therefore, a rule of reason may be called for, requiring States to defer to other

States that have a stronger regulatory interest in, or nexus to, the situation. It has been argued in this chapter, however, that such deference should not be unconditional. It should hinge on the ability and willingness of the most interested State to genuinely address the situation in ways that serve the interest of the international community (even if such ways are not exactly those that the extraterritorially regulating State had in mind). Failure to discharge this burden may legitimately yield the exercise of subsidiary jurisdiction by bystander States.

## **JURISDICTION IN INTERNATIONAL CRIMINAL LAW**

Jurisdiction is a fundamental concept in international criminal law, determining the authority of a state or international tribunal to investigate, prosecute, and punish individuals for international crimes. This article examines the principles and case laws governing jurisdiction in international criminal law, highlighting key developments and challenges.

### **PRINCIPLES OF JURISDICTION**

1. Territoriality Principle: The territoriality principle grants jurisdiction to the state where the crime was committed.<sup>24</sup>
2. Nationality Principle: The nationality principle grants jurisdiction to the state of which the perpetrator is a national.<sup>25</sup>
3. Universality Principle: The universality principle grants jurisdiction to any state, regardless of territorial or nationality links, for crimes considered to be of universal concern.<sup>26</sup>
4. Passive Personality Principle: The passive personality principle grants jurisdiction to the state of which the victim is a national.<sup>27</sup>

### **CASE LAWS**

1. Lotus Case (1927): The Permanent Court of International Justice held that a state may exercise jurisdiction over a foreign vessel in its territorial waters, establishing the territoriality principle.<sup>28</sup>
2. Eichmann Case (1961): The Israeli Supreme Court applied the universality principle to prosecute Adolf Eichmann for war crimes committed during World War II.<sup>29</sup>

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<sup>24</sup> Lotus Case, PCIJ Rep. Series A, No. 10 (1927)

<sup>25</sup> Nationality Principle, Harvard Research on International Law, 29 AJIL Supp. 435 (1935)

<sup>26</sup> Universality Principle, Eichmann Case, 36 ILR 5 (1961)

<sup>27</sup> Passive Personality Principle, Cutting Case, 29 AJIL 738 (1935)

<sup>28</sup> Lotus Case, PCIJ Rep. Series A, No. 10 (1927)

3. Pinochet Case (1999): The UK House of Lords held that former Chilean President Augusto Pinochet was immune from prosecution for crimes committed outside the UK, limiting the universality principle.<sup>30</sup>

4. Lubanga Case (2012): The International Criminal Court (ICC) exercised jurisdiction over Thomas Lubanga for war crimes committed in the Democratic Republic of Congo, applying the territoriality principle. (8)<sup>31</sup>

#### International Tribunals and Jurisdiction

1. Nuremberg Tribunal (1945): The Nuremberg Tribunal established the principle of individual criminal responsibility for international crimes, exercising jurisdiction over Nazi leaders. (9)<sup>32</sup>

2. International Criminal Tribunal for the Former Yugoslavia (ICTY): The ICTY has exercised jurisdiction over individuals for war crimes, crimes against humanity, and genocide committed in the former Yugoslavia.<sup>33</sup>

3. International Criminal Court (ICC): The ICC has jurisdiction over genocide, crimes against humanity, war crimes, and aggression, subject to state referrals or UN Security Council authorization.<sup>34</sup>

#### Challenges and Future Directions

1. Complementarity: The ICC's complementarity principle requires states to investigate and prosecute international crimes domestically, raising concerns about uneven enforcement.

2. Immunities: The application of immunities, such as state immunity, can limit jurisdiction over international crimes.

3. Universal Jurisdiction: The universality principle faces challenges in practice, with concerns about forum shopping and political motivations.

Jurisdiction is a critical aspect of international criminal law, with various principles and case laws shaping its application. As international criminal law continues to evolve, addressing challenges and ensuring effective enforcement will be essential.

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<sup>29</sup> Eichmann Case, 36 ILR 5 (1961)

<sup>30</sup> Pinochet Case, [1999] 2 All ER 97

<sup>31</sup> Lubanga Case, ICC-01/04-01/06 (2012)

<sup>32</sup> Nuremberg Tribunal, 41 AJIL 172 (1947)

<sup>33</sup> ICTY Statute, UN Doc. S/RES/827 (1993)

<sup>34</sup> ICC Statute, UN Doc. A/CONF.183/9 (1998)

## **COMPARISON OF JURISDICTION BETWEEN PUBLIC INTERNATIONAL LAW AND INTERNATIONAL CRIMINAL LAW**

Jurisdiction is a fundamental concept in both Public International Law (PIL) and International Criminal Law (ICL). While PIL focuses on the relationships between states, ICL deals with individual criminal responsibility for international crimes. This article compares the jurisdictional frameworks of PIL and ICL, highlighting their differences and similarities.

### **Public International Law**

In PIL, jurisdiction is primarily territorial, with states exercising jurisdiction over persons, activities, or interests within their territory. States may also exercise extraterritorial jurisdiction in exceptional cases, such as diplomatic protection or universal jurisdiction over international crimes.

### **International Criminal Law**

In ICL, jurisdiction is primarily based on the principle of territoriality, with international courts and tribunals exercising jurisdiction over crimes committed on the territory of a state that has ratified the relevant treaty or statute. However, ICL also recognizes other bases of jurisdiction, including:

- Personal jurisdiction: over individuals who are nationals of a state that has ratified the relevant treaty or statute
- Universal jurisdiction: over international crimes, regardless of where they were committed or the nationality of the perpetrator

### **Key Differences**

1. Scope of Jurisdiction: PIL has a broader scope, encompassing all aspects of international relations, while ICL is limited to international crimes.
2. Bases of Jurisdiction: PIL relies primarily on territoriality, while ICL recognizes additional bases, including personal and universal jurisdiction.
3. Exercise of Jurisdiction: PIL allows states to exercise jurisdiction unilaterally, while ICL requires international cooperation and authorization from the relevant international court or tribunal.



### **Similarities**

- Territoriality: Both PIL and ICL recognize territoriality as a primary basis of jurisdiction.
- Sovereignty: Both regimes respect state sovereignty, with PIL limiting extraterritorial jurisdiction and ICL requiring state consent for international courts to exercise jurisdiction.
- Complementarity: Both regimes recognize the importance of complementarity, with PIL allowing states to exercise jurisdiction in the absence of international action and ICL recognizing the primacy of national courts in prosecuting international crimes.

In conclusion, while PIL and ICL share some similarities in their jurisdictional frameworks, there are significant differences in scope, bases of jurisdiction, and exercise of jurisdiction. Understanding these differences is essential for effective international cooperation and the promotion of justice and accountability in the international community.

### **COMPARISON OF JURISDICTION BETWEEN MUNICIPAL AND INTERNATIONAL LAW**

Municipal law, also known as domestic law, refers to the legal system of a sovereign state. In municipal law, jurisdiction is primarily territorial, with states exercising jurisdiction over persons, activities, or interests within their territory. This territorial jurisdiction is based on the principle of sovereignty, which grants states exclusive authority over their territory and the individuals within it. Municipal law jurisdiction is typically divided into two categories: subject matter jurisdiction, which refers to the authority of a court to hear a particular type of case, and personal jurisdiction, which refers to the authority of a court over a particular individual or entity.

#### **International Law Jurisdiction: A Different Paradigm**

In contrast, international law jurisdiction operates on a different paradigm. International law does not recognize territorial boundaries in the same way as municipal law. Instead, international law jurisdiction is based on the principles of universality, extraterritoriality, and nationality. Universality refers to the idea that certain crimes, such as war crimes or crimes against humanity, are so heinous that they can be prosecuted by any state, regardless of where they were committed. Extraterritoriality refers to the ability of states to exercise jurisdiction

over individuals or entities outside their territory. Nationality jurisdiction, on the other hand, allows states to exercise jurisdiction over their nationals, regardless of where they are located.

### **Key Differences and Similarities**

One of the primary differences between municipal and international law jurisdiction is the scope of jurisdiction. Municipal law jurisdiction is limited to the territory of the state, while international law jurisdiction can extend beyond territorial boundaries. Another significant difference is the basis of jurisdiction. Municipal law jurisdiction is based on sovereignty and territoriality, while international law jurisdiction is based on universality, extraterritoriality, and nationality. Despite these differences, there are also similarities between the two jurisdictions. Both municipal and international law recognize the importance of jurisdiction in ensuring accountability and promoting justice. Both jurisdictions also recognize the need for cooperation and comity between states in the exercise of jurisdiction.

The jurisdictional frameworks of municipal and international law are distinct but interconnected. Understanding the differences and similarities between these two jurisdictions is essential for effective cooperation and coordination between states. The increasing globalization of crime and the growing importance of international criminal law highlight the need for a nuanced understanding of jurisdiction in both municipal and international law. As the international community continues to grapple with complex issues such as terrorism, cybercrime, and human rights abuses, the jurisdictional frameworks of municipal and international law will play a critical role in shaping the response to these challenges.

## CONCLUSION

Jurisdiction in municipal law, public international law, and international criminal law affirms the complexities of the global legal order. So far as municipal law is concerned, jurisdictional boundaries are well-marked within the territorial limits of a state, and thus it is comparatively easy to establish effective governance and legal order. However, today the domestic legal systems are confronted with a host of problems that transcend national frontiers, such as transnational crime and human rights violations, and hence call for such an understanding of jurisdiction that would strike a balance between national sovereignty and international cooperation.

Public international law further complicates jurisdictional issues by coming up with principles such as state sovereignty and diplomatic immunity, which act as barriers to the application of jurisdiction. Still, it establishes frameworks of dispute resolution and cooperation between states reflected in international treaties and organizations like the United Nations. International criminal law, therefore, is a hybrid between municipal and public international law. Such is the balancing of national jurisdictions with international jurisdiction that the principle of complementarity within the International Criminal Court ensures accountability and justice beyond political and geographical barriers.

These themes of law convene to underscore the need for coherence and integration in its approach to jurisdiction. Effective legal frameworks, enforcement mechanisms, and a commitment to uphold the rule of law need to be in place to strike the right balance between national sovereignty and international obligations. Jurisdictional subtleties are called for if contemporary legal challenges are to be overcome with a view to justice, accountability, and cooperation amongst legal orders. In a world facing increasingly complex issues, for generations to come, jurisdiction will remain at the forefront in shaping justice and protection for human rights.