



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Criminal Jurisdiction of States Under International Law: An Analysis

Brijinder Bhushan

(Assistant Professor, BKSM Law College, Jalalabad (E)
Dharmkot, Dist. Moga, Punjab)

Residential Address: House no.1147, B-36, Behind Gurudwara Singh Sabha, Near J-Block BRS Nagar, Guru Amar Dass Nagar, Ludhiana, PIN CODE 141012

Email: advbrijinder@gmail.com

ABSTRACT

A legitimate body in state conferred with useful power of jurisdiction to manage issues of lawful through suggestions. Jurisdiction idea has solid connection with sway under international law. From the past years, a diplomatic tension between states arises regarding allow of criminal jurisdiction to states by international law. States sovereign autonomy permitted through jurisdiction, which they pass on to equivalent states through worldwide arrangements expressing laws and identified with people. This research paper put light on question as to what extent a state irrespective of powerful or weak entitled under international law to extend criminal jurisdiction to include criminal activity committed in foreign states. It also synthesizes materials on place of individuals in current international law of jurisdiction along with it includes extent of protection of the individuals from excessive claims of criminal jurisdiction. Finally, it summarizes rule of 'recognition' how shapes and shaped by international law of criminal jurisdiction

Key Words: Nationality, Universal, Territoriality, Protective, International Law.

Introduction

Jurisdiction explicit states power under international law to regulate property, people and circumstances. It is derived from the state sovereignty and reflects basic principles of equality of states and non-interference in domestic affair means denotes primarily but not exclusively legal power to make and enforce rules¹. In other words, states lawful power to decide whether and if so, how to act, whether by executive, legislative or judicial means². The unilateral power of power to act under criminal matters only when crime take place on the territory of state and against any of its national³. Extraterritorial jurisdiction are based on protective and universality principle⁴. Universality doctrine requires no specific relation between the crime and forum state. It includes only nature of crime irrespective of where crime was committed, nationality of perpetrator, victim or any other connection to the state exercising such jurisdiction⁵.

State Jurisdiction Under International Law

In world there are 195 states. To find out basis of jurisdiction four fundamental objective to be kept in mind. The first is to establish limits of jurisdiction that protect independence and sovereign equality of states by balancing each states interest in exercising jurisdiction to advance its own policies with states interest to avoiding interference with its policies resulting from the exercise of jurisdiction by foreign states⁶. Secondly, to recognize independence of states⁷, thirdly to harmonize rights of two or more states during concurrent jurisdiction⁸, fourthly to protect individuals from unreasonable exercise of jurisdiction either by individual state or by two or states seeking to impose conflicting or compounding obligations on same person⁹.

Sources of Jurisdiction

1. Customary Law – Criminal jurisdiction under international law flooded in customary international law.

2. UNO Charter – United nations charter is also source of state jurisdiction under international law.

3. Adjudicatory Bodies – International adjudicatory bodies and tribunals judgements have accepted as source of jurisdiction under international law. Landmark “Lotus”¹⁰ case permanent court of international justice explains the basic framework of jurisdiction International law.

4. Doctrinal Writings – In majority legal system and areas reveals general conformity as to the fundamental norms of international law on state jurisdiction¹¹.

Kinds of State Jurisdiction

Three types of jurisdiction are there –

Legislative Jurisdiction – It is also known as prescriptive jurisdiction i.e to make laws applicable to status of persons, to the interests of persons in things either through legislation, execution or order or regulation or determination of court and they operate beyond the local limits of states in certain circumstances¹².

Executive Jurisdiction – It refers to enforce or compel compliance and to punish for non-compliance with its laws or regulation through executive machinery, administrative, police or courts. Due to the principle of sovereignty and equality states generally cannot implement their own laws on foreign land except through permissive rule derived from convention or international customs¹³.

Judicial Jurisdiction – Through this state can adjudicate to subject persons or things through the process of courts, administrative tribunals either in civil or criminal proceedings even if the state is party or not to the matter in question. In criminal matters it ranges from territorial principle to universal principle¹⁴.

Doctrines of Jurisdiction

States jurisdiction under international law can be categorized under five heads –

Territorial Doctrine – States power to maintain law and order within its territorial jurisdiction conferred due to sovereignty exercisable in its territorial home and is indispensable foundation for the application of the series of legal rights that a state possesses¹⁵. Therefore, national of one state whenever entered another state for any purpose subject to the laws and procedure of that place and neither the aliens or their government have right to complaint.¹⁶ In modern times exercise of territorial jurisdiction does not require that all the acts or omissions constitute elements of an offence occur in the territory of the state.

Extraterritorial Doctrine – Term extraterritorial derives due to observation that jurisdiction becomes a concern of international law in which regulation of matters are not exclusively of domestic concern. This concept is only accurate if it refers to assertions of jurisdiction over proper persons or activities having no territorial nexus with regulating state, means assertions should not be based on personality, protective or universality principle of jurisdiction¹⁷.

Nationality Doctrine – According to this state has been given power over their nationals to judicial and legislative criminal jurisdiction for crime they have been committed abroad. Due to every state consist of a collection of individual human beings, it is essential that a link between the two be legally established. This link is provided by the concept of nationality. Therefore, nationality principle is an aspect of sovereignty and thereby authorizes extraterritorial jurisdiction by a state over its nationals, even if the act may have occurred extraterritorially¹⁸.

Protective Doctrine – To protect its own government functions this jurisdiction is exercised by state. Under this aliens are prevented from doing any act which is against security welfare of particular state concerned. This jurisdiction is conferred on state to protect its existence and stability to be shaken by acts done by foreigners outside its territory and resultantly prevent it to become powerless to do anything against them. Therefore, it should become mandatory right for state to dealing with foreigners in any manner they like against prejudicial acts done by them outside its territory¹⁹.

Universality Doctrine – Through this states are conferred jurisdiction over heinous/serious international crimes irrespective where the conduct occurs or the nationality of perpetrator. This jurisdiction sanctioned based on fact that there are certain crimes that are as injurious to interest of community of nations as a whole and every state having right and duty to suppress. Also this jurisdiction is conceived of in two ways. Firstly, a conditional conception means presence of the accused is mandatory in prosecuting state. Secondly, in contrast does not require presence of the accused in absolute conception. This universality jurisdiction applicable only to pirates, the enemies of all humankind, whose criminal acts render them *hostes humani generis*. These persons can be tried by any state even if they are not linked to crime by nationality or territory²⁰. This doctrine gained ascendancy in the 1990's when state relied on it so as to prosecute such heinous crimes as war crimes, crime against humanity, genocide and torture²¹.

State Criminal Jurisdiction Immunity – Literally means exclusion of entity, property, individual enjoying it from jurisdiction of state, an obstacle to exercise of jurisdiction, limitation of jurisdiction, a defense used to prevent exercise of jurisdiction over entity, individual or property. Therefore, immunity is privilege afforded to states and their agents, whereby nationals courts of other nations are denied jurisdiction in respect of certain categories of law cases pending before them. In order to perform legal action abroad in unhindered manner by states and their dignitaries this shield is provided. Moreover, it is a natural extension of the doctrine of sovereign equality of nations through which one sovereign cannot be tried in courts of another²².

Literature Review

Book titled '**Jurisdiction in International Law**ⁱ' of **Cedric Ryngaert**²³ includes six chapters in chapter 2 under heading of 'Public International Approaches to Jurisdiction' It analyzing approaches discussed in 'lotus case' in chapter 3 discussion takes place territoriality principle, antitrust law, transitional securities. In chapter 4 devoted to the instances of extraterritorial jurisdiction with help of various cases. In chapter 5 he suggests principle of reasonable exercise of jurisdiction using several criteria to weigh various international with a view to identifying most genuine connection. In chapter 6 he develops idea of reasonableness along with advocated theory of Substantivism²⁴.

In book '**International Criminal Law**ⁱⁱ' author '**Roger O' Keefe**²⁵' explain jurisdiction to prescribe, to reiterate, refer to states authority under international law to assert applicability of its law to person or property. In penal context discusses states international law authority to treat given conducts criminal whether through primary or subordinate legislation, judicial action or executive decree.

Book 'International Law²⁶' by **Malcolm N. Shaw** discusses about immunities from jurisdiction in criminal and civil under heading of principle of jurisdiction from territorial to universality also points out that primary function of state to maintain law and order hence territorial jurisdiction is most often invoked by state.

In book titled '**Criminal Act, Criminal Jurisdiction and Criminal Justice**²⁷' of **Christoffer Wong** describe study on genera and specific problems about role, function and structure of criminal justice along with analysed elements of criminal offences with special emphasis on territorial element in offence definitions.

Author **Rain Liivoja** in article '**The Criminal Jurisdiction of States: A Theoretical Primer**²⁸' has ruled that state has jurisdiction that can mean two radically different things i.e on one hand such statement might refer to actual ambit of rules as determine by national legal system itself. On other hand same phrase can be used with reference to limits imposed by international law.

Christopher L. Blakesley in article '**United States Jurisdiction over Extraterritorial Crime**²⁹' identified five theories of criminal jurisdiction: territorial, protective, nationality, universal and passive personality. All theories explain possible base for state to claim jurisdiction over actions committed abroad and prescribed by its criminal law alongwith criticize recent development in extraterritorial jurisdiction theory. Author also studies united states judicial assertions of jurisdiction over thwarted extraterritorial conspiracies.

Jennifer A. Zerk, in article '**Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere from Six Regulatory Area**³⁰' pointed out states right to extend application of its laws to its nationals of events occurring entirely abroad and suggests active nationality principle as strongest bases for direct extraterritorial jurisdiction.

Conclusion

After analyzing the literature, it is proved that international law only permits states to exercise their legislative and judicial jurisdiction in criminal matters through three ways: territorial, extraterritorial, and universal jurisdiction. To exercise extraterritorial jurisdiction there must be a direct connection between prosecuting state and the crime committed abroad, universal jurisdiction only allowed when any criminal activity declared by international law against criminal community as a whole such as war crimes, genocide and crime against humanity. To enforce these jurisdictions only extraterritorial jurisdiction exclusively applicable because state never sends its machinery to investigate or enforce to another state without its consent. By applying these above peaceful and harmonic relations can be maintained in near future between nations. To indict officials of weaker states these jurisdictions can be abused by powerful states. But this does not deny right as a matter of international law to states to extend their jurisdiction for the crimes committed in abroad.

References

1. The United Nations Charter, art. 2(7)
 2. Chinedu Chibueze Ihenetu -Geoffrey, "Rethinking jurisdiction under international law" *Nigerian Law Students Journal of International* (2012).
 3. Available at: [https:// unijuris.sites.uu.nl/wp-content/uploads/sites/9/2014/12/The-concept-of-jurisdiction-in-International-Law](https://unijuris.sites.uu.nl/wp-content/uploads/sites/9/2014/12/The-concept-of-jurisdiction-in-International-Law). Pdf (last visited on July 18, 2023).
 4. Ryngaert Cedric, *Jurisdiction in International Law* 7 (Oxford University Press, New York, 2008).
 5. Available at: <http://hrlibrary>. Umn.edu/instree/princeton.html (last visited on July 21, 2023).
 6. Linda J. Pike, vol. *Encyclopaedia of Public International Law* (Elsevier Science Publishers, Netherland, 1987).
 7. *Ibid.*
 8. *Ibid.*
 9. *Ibid.*
 10. *France v. Turkey* (1927) PCIJ Series A no.10, ICGJ 248 (PCIJ 1927).
 11. Convey T. Oliver, *The Jurisdiction (Competence) of States in Mohammed Bedjaoui, International Law: Achievements and Prospectus*, 308 (Martinus Nijhoff Publishers, Netherland, 1991).
 12. The Restatement (third) of U.S Foreign Relations Law, year, s. 401(a).
 13. *Supra* note 10.
 14. *Supra* note 12, s. 401(b).
 15. Malcom N. Shaw, *International Law* 579 (Cambridge University Press, Cambridge, 2003).
 16. Green Haywood Hackworth, *International Law* 84 (1941).
 17. *Supra* note 4.
 18. Jennifer A. Zerk, "Exterritorial Jurisdiction: Lessons for the business and Human Rights Sphere from Sixv Regulatory Area" 9 *Corporate Social Responsibility Initiative Working Paper* 59 (2010).
 19. *KTMS Abdul Cader and Others v. Union of India*, AIR 1987 Madras 386.
 20. J.L. Brierly, *The Law of Nations: An Introduction to the International Law* 311 (Oxford University Press, New York, 1963).
 21. Orentlicher, "Whose justice? Reconciling universal jurisdiction with democratic principle" 92 *Georgetown Law Journal* 1073 (2004).
 22. Llias Banteras and Efthymios Papastavridis, *Criminal Jurisdiction of States Under International Law* 86 (2013).
 23. *Supra* note 4.
 24. *Id.* at 193.
 25. Roger O' Keefe, *International Criminal Law* (The Oxford University Press, New York, 2015).
-

26. *Supra* note 15.

27. Christoffer Wong, *Criminal Act, Criminal Jurisdiction and Criminal Justice* (ILU Publication, Sweden, 2014).

28. Rain Liivoja, "The criminal jurisdiction of states: A theoretical primer" (2010).

29. Christopher L. Blakesley, "United states jurisdiction over extraterritorial crime" 73 *Journal of Criminal Law and Criminology* 1100-1163 (1982).

30. *Supra* note 18.