PRINCIPLES REGARDING STATE JURISDICTION IN INTERNATIONAL LAW

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Abstract

The concept of state jurisdiction in international law is based on the principle of sovereign equality, establishing that each state enjoys the exclusive right to exercise authority (with the obligation of non-interference for other members of the international community) over a given territory, its population and its goods, as well as over events and acts committed within its territorial boundaries. The central focus of the present paper is jurisdiction, regarded as a manifestation of sovereignty, referring to the state competence to legislate and apply law to particular events, persons and property. Traditionaly, jurisdiction has been tightly connected to the concept of territory. However, of particular interest is what happens in situations that involve elements of extraneity, when several states claim jurisdiction over a certain event. In this sense, the five principles governing the exercise of state jurisdiction in criminal law matters will be analysed.

Keywords: *jurisdiction, sovereignty, principle of territoriality, principle of nationality, principle of universality*

1. Introduction

In an international community characterized by polyarchy and, at the same time, by the interdependence between its members, there are two types of interests and concerns in balance - international concerns of the general community and states' particular interests. In the doctrinal analyses of authority in the international order two perspectives on the allocation of authority[1] have been described: on one hand, a vertical allocation of authority between the general community and the particular states – focusing on addressing international concerns – and, on the other hand, a horizontal allocation of authority between the different states in a (still) very state-centered world, governed by the principle of sovereignty.

According to the principle of sovereign equality – basic principle of international law and fundamental pillar of the existing international order – all states, regardless of their differences and asymetries in areas such as military power, geographical and population size, levels of industrialisation and economic development, have equal rights when it comes to the exercise of sovereignty, at international level, as independent entities in relation to other states, and at internal, domestic level, as authorities solely endowed with the competence of exercising power over a particular territory, as well as population, property and events within their territorial boundaries.

Although the concept of jurisdiction may seem rather technical, referring to procedural applications of domestic law and practical delimitations of competences between states, it is, actually much more than that.[2] The concept of state jurisdiction refers to the allocation of power between the members of the international community, being rooted in the principle of sovereignty of states.

Although the actual term is quite generic and has been used in a variety of senses in the literature of international law, there are, basically, three (interrelated) types of jurisdiction that a state can exercise:

- Legislative/ prescriptive jurisdiction – to elaborate laws applicable to everyone and everything within its territorial boundaries;
- Enforcement jurisdiction – to enforce its laws and regulations against those who breach them;
- Adjudicatory jurisdiction – to exercise judicial authority within its territory.[3]

Traditionally, the concept of jurisdiction was tightly and inevitably related to the concept of territory ("jurisdiction as a mist above the swamp of territory")[4], revolving around the power of states. In this classical view, jurisdiction became a matter of international law only when it involved elements of extraneity (for instance, activities taking place abroad), having to do with another state's territorial authority. The major concern was that such extraterritorial elements could lead to conflicts between states. So, in matters of jurisdiction, territoriality was seen as the valid rule, while extraterritoriality was considered suspicious (if not unlawful).[5] This has been the most widely accepted view on jurisdiction for a very long time. However, the increasing interdependence between states has

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[1] Lung-Chu Chen, *An introduction to contemporary international law. A policy oriented perspective,* Third Edition, Oxford University Press, 2015, pp. 269 – 277.

[2] Cedric Ryngaert, *Jurisdiction*, available at https://unijuris.sites.uu.nl/wp-content/uploads/sites/9/2014/12/Jurisdiction.pdf, accessed 12.04.2019.

[3] Ademola Abass, *International law. Text, cases and materials,* Second Edition, Oxford University Press, 2014, p. 239.

[4] Cedric Ryngaert, *op. cit.*, p. 1.

[5] Ibidem, p. 2.

generated a shift in the conception on jurisdiction in international law.

In some instances, it occurred that the exercise of jurisdiction by a particular state came in conflict with the right invoked by another state to exercise jurisdiction on the same issue. Therefore, between the respective states arose a jurisdictional difference. Over the years, international law evolved towards establishing means of resolution for such differences (either conventional or accepted as customary).[6]

The analysis contained in the present paper focuses on this type of situations, on the rules applicable for their resolution and the controversies that they arise in the practice of states.

2. Principles of jurisdiction

Jurisdictional differences in civil law matters are, usually, resolved in accordance with rules of private international law, elaborated and implemented by the state.

On the other hand, criminal law matters are tied to a greater extent to the public sphere and, thus, jurisdictional conflicts of such type lead to specific effects in international law.

A major turning point in the law of jurisdiction (that has influenced international law's approach on the matter ever since) was the 1935 *Harvard Research Draft Convention on Jurisdiction with Respect to Crime*, published in the American Journal of International Law.[7] The Harvard Draft enunciates a series of principles of jurisdiction: territoriality, nationality, protection – security and universality.[8] The "star" of the Harvard Convention remains, of course, territoriality, extraterritorial jurisdiction being considered (still) an anomaly in need of strong justification.

In practice, over time, the principles enunciated by the Harvard Convention have been contested and subjected to a variety of interpretations. Of course, the most widely accepted and applied among states has been the principle of territoriality, according to which a state is authorized to legislate and apply its laws to all events taking place within their borders, regardless whether these events involve nationals or non-nationals of the respective state. Nevertheless, the principle of territoriality sometimes clashed with other jurisdictional principles.

For instance, in the 1988 Lockerbie incident, in which an US airliner was bombed by two Libyan nationals in Lockerbie, Scotland, UK, leading to the deaths of 270 people of different nationalities, there were several claims of jurisdiction over the event: UK claimed jurisdiction because the incident took place on its territory; US did the same, based on the fact that an US registered aircraft was bombed and many of the victims were US citizens; also Libya expressed its intention to prosecute the two suspects, under its domestic law, based on their Libyan nationality.[9] Such intricate jurisdictional differences create many controversies in international practice and doctrine.

2.1. The principle of territoriality

As showen above, according to the principle of territoriality, a state can exercise jurisdiction over everything and everyone within its territorial borders, with some notable exceptions provided by customary or conventional international law (such as, for instance, the case of diplomatic missions premises, under the provisions of the 1961 Vienna Convention on diplomatic relations). Thus, the state exerts comprehensive and continuing authority over its territory (including internal waters, territorial sea and airspace). The wide preference of states for this principle reflects the importance of territoriality in the present-day state system.[10] Actually, the exercise of territorial jurisdiction seems to be an essential and very visible way of manifesting state sovereignty.

However, in practice, the implementation of the principle is often not so easy and clear-cut. What happens, for example, if the crime is initiated on the territory of a state and completed on the territory of another state? In the Lockerbie incident mentioned above, for example, it was believed that the bombs which exploded in the airliner were loaded in Malta, although the explosion took place in UK.[11] Could Malta have had the right to claim jurisdiction, based on the fact that part of the crime was committed on its territory, also violating its domestic norms?

In such cases, the doctrine and practice of international law does not offer a generally agreed answer. There are two theories suggesting two types of jurisdiction tests to be applied in this kind of situations: the objective test theory and the subjective test theory.

According to the objective test, also known as the "terminatory theory", if a crime was completed on the territory of a state, the latter has the right to exercise its jurisdiction, regardless of where the crime was initiated. It is probably the most favoured theory of the two. An argument formulated in the specialized literature to sustain the terminatory theory is the fact

[6] Ademola Abass, *op. cit.*, p. 239.

[7] Dan Jerker B. Svantesson, *A New Jurisprudential Framework for Jurisdiction: Beyond the Harvard Draft*, AJIL Unbound, vol. 109, 2015, p. 1, available at https://www.asil.org/sites/default/files/Svantesson%2C%20A%20New%20Jurisprudential% 20Framework%20for %20Jurisdiction%2C%20Beyond%20the%20Harvard%20Draft_print.pdf, accessed 12.04.2019.

[8] *Draft Convention on Jurisdiction with Respect to Crime*, The American Journal of International Law, Vol. 29, Supplement: Research in International Law (1935), pp. 439-442.

[9] Mitsue Inazumi, *Universal Jurisdiction in Modern International Law: Expansion of National Jurisdiction for Prosecuting Serious Crimes under International Law*, Intersentia, Antwerpen – Oxford, 2005, p. 165.

[10] Lung-Chu Chen, *op. cit.*, p. 281.

[11] Ademola Abass, *op. cit.*, p. 241.

that "the state where the last element of the crime occurs is presumably the sufferer from it, and therefore has the greatest interest in prosecuting it".[12]

The subjective test or the "initiatory theory" suggests that a state can claim the exercise of its jurisdiction if the crime was initiated on its territory, regardless of where it was actually completed. The subjective test proved to have an important practical utility, especially in cases of transborder crimes (terrorism or money laundering).[13]

Another variation on the principle of territoriality is the "effect doctrine", according to which a state has jurisdiction over a crime if its effects are felt on its territory, regardless of the fact that it was not initiated, planned or executed in that respective state. Also, according to the effect doctrine, it is irrelevant whether that particular conduct was lawful in the state in which it was executed.[14] In *LICRA v. Yahoo! (The Yahoo! Auctions Case, 2000),* for instance, two non-profit human rights groups – LICRA (Ligue contre le Racisme et l'Antisemitisme) and UEJF (Union des Etudiants Juifs de France) – filed a lawsuit against Yahoo! in a French court in Paris, because it allowed the auction of Nazi memorabilia on its website, which was accessible to French citizens. The two organizations claimed it violated the French law that incriminates the offering, wearing or public exhibition of Nazi related items under the French Penal Code. Given the fact that Yahoo! is based on the US territory and the acts were not committed in France, the company contesteted the jurisdiction of the French court. Nevertheless, the court rejected Yahoo!'s contestation, finding it had jurisdiction, because the company's conduct caused damage that was suffered in France.[15] Naturally, the effect doctrine sparked some controversies, leading to efforts to limit its application only in cases in which the primary effect or a substantial effect of a crime is felt in a particular state.[16]

2.2. The principle of nationality

The principle of nationality allows a state to impose its jurisdiction on its nationals, wherever they may be: on the the territory of their state, outside the territory of their state and any other states (high seas and airspace over high sea, for instance) or on the territory of another state (with permission). According to this principle, the fact that a state's nationals have the duty to obey its laws even when they are outside its territory entitles that state to regulate their conduct anywhere.

The principle of nationality regards not only natural persons – human beings (based on their relation of citizenship with the respective state), but also juristic persons – corporations, ships, aircraft, spacecraft (based on a relation of nationality).

Concerning the nationality of ships, it has been recognized as that of the flag state – the country of registration (although it is most often related to the fiction of territoriality[17]).

The nationality of aircraft, as regulated by the 1944 Chicago Convention on International Civil Aviation, is the state of registration. According to the 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, the state of registration has exclusive competence to legislate and enforce its laws on acts committed on board of their ships.[18]

Regarding objects launched into space, the 1967 Outer Space Treaty does not regulate their nationality, but it stipulates that the control and jurisdiction over these objects and the personnel thereof are exercised by the state of registration.[19]

Referring to crimes or offences committed by individuals or corporations on the territory of another state, the principle of nationality proved to be particularly useful when the state where the act was committed refused to prosecute it because, for instance, it was not incriminated according to its domestic laws or, although it was incriminated, the respective state was simply unwilling or uninterested to do it (for example, in child trafficking cases, in some countries where these crimes are either not properly regulated or their prosecution is generally lax).[20] In such cases, the application of the nationality principle allowed the prosecution of the offenders in their countries of citizenship.

The nationality principle has also been very usefully employed in issues of private international law, in cases of evasion of the law, when a state's domestic legislation forbids certain acts and, in order to avoid these provisions, its national simply commits the acts in another state where the legislation does not contain such legal restrictions (for instance, to circumvent legal conditions related the conclusion of a marriage or divorce). In this type of situations, the nationality principle allows a state to enforce its legislation on its nationals wherever the acts are committed (in such cases, a divorce or a marriage concluded abroad may not be recognised by the state of nationality if they breach its legal restrictions).

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[12] Glanville Williams, "Venue and the Ambit of Criminal Law" (1965) 81 Law Quarterly Review *apud* Ademola Abass, *op. cit.,* p. 242.
[13] *Ibidem,* pp. 243 – 245.
[14] *Ibidem,* p. 248.
[15] Marc H. Greenberg, *A Return to Lilliput: The LICRA v. Yahoo - Case and the Regulation of Online Content in the World Market,* „Berkeley Technology Law Journal", vol. 18, no 4, September 2003, available at https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi ?article=1435&context=btlj, accessed 10 April 2019.
[16] Ademola Abass, *op. cit.,* p. 248.
[17] Lung-Chu Chen, *op. cit.,* p. 282.
[18] *Ibidem.*
[19] *Ibidem.*
[20] Ademola Abass, *op. cit.,*pp. 248 – 250.

2.3. The protective principle

According to the protective principle, a state can exercise its jurisdiction over acts committed abroad by their nationals or by foreign citizens, if those acts threaten the interests, security or functioning of the respective state. Although the protective principle bears some similarities with the effect doctrine mentioned above, the main difference is that the former contains no requirement that the effect of the offence should be felt on the territory of the state that claims to exert jurisdiction.[21]

Articles 7 and 8 of the Harvard Draft Convention refer to the protective jurisdiction of states in cases of crimes against "the security, territorial integrity or political independence" of states or acts of "falsification or counterfeiting, or uttering of falsified copies or counterfeits of the seals, currency, instruments of credit, stamps, passports or public documents, issued by the state or under its authority."[22]

There was an initial reluctance towards invoking this principle, but, in the 1960s, it became more popular (especially for the USA). For instance, in 1985, Alfred Zehe, an East German citizen was prosecuted under US jurisdiction for acts of espionage against the USA, committed in Mexico and in the German Democratic Republic.[23]

The protective principle proved its usefulness in highly sensitive issues. Nevertheless, there were instances in which the invocation of the principle was rather dubious, potentially undermining its integrity.[24]

2.4. The principle of passive personality

The principle of passive personality is the most controversial of all. It was not included among the principles of jurisdiction in the Harvard Draft Convention, one of the reasons being that it could be partially included in the principle of universality.

The principle of passive personality allows a state to exercise its jurisdiction over an act committed abroad by a foreigner, if the respective act injures a national of that state. It is linked to the principle of nationality, but in a somehow reverse manner: while in the case of the principle of nationality, the national is the perpetrator, in the principle of passive personality, the national is the victim. It also resembles to some extent the protective principle, but while in the latter's case the interests and security of the state are affected, in the former's case the interests of the nationals of that state are injured.

There were some early and notable assertions of this principle. One case that is considered the *locus classicus* of the passive personality principle is the *Cutting Case* (1866). In this case, Mr. Cutting, an American citizen, published in a Texan newspaper, some offensive materials about Mr. Barayd, a Mexican national, an act which was a breach of the Mexican Penal Code. Mr. Cutting was subsequently arrested, while entering Mexico, and charged with breaching the Mexican law. Mexico claimed it had jurisdiction over the case, based on the principle of passive personality. Of course, the United States strongly opposed Mexico's claim and the case caused some frictions between the two states. Mr. Cutting was later released, because the injured party withdrew the charges. So the case was inconclusive in regard to the application of the principle.

Perhaps the most notable assertion of the passive personality was in the *Lotus Case* (1927), brought before the Permanent Court of International Justice (PCIJ). The case referred to an incident that took place on August, the 2nd, 1926, in which S.S.Lotus, a French steamer, collided with S.S. Bozkurt, a Turkish steamer, in the high seas (north of the Greek city of Mytilene), causing the sinking of the Turkish vessel and the deaths of eight Turkish nationals. Turkey claimed jurisdiction over the event, based on the nationality of the victims (passive personality principle), and wanted to prosecute the French officer who was thought to be at fault for the collision. France opposed Turkey's claim, contending that, as flag state, it had jurisdiction over the matter (the principle regarding the jurisdiction of the flag state in such cases was later stipulated in the 1958 Geneva Convention on the High Seas). The case was brought before the PCIJ and the Court decided that there was no rule of international law, at the time, stipulating that criminal proceedings regarding collisions at sea are exclusively within the jurisdiction of the flag state and, therefore, because there was no such prohibitory rule, Turkey had not violated international law by instituting criminal proceedings against the French officer (Lotus principle - states can act as they wish unless the conduct is explicitly prohibited in international law).[25] However, the majority of the PCIJ judges rejected Turkey's justifications, which were based on the principle of passive personality, considering that Turkey had other grounds for holding the French officer liable (effect doctrine or impact territoriality). So, the court's decision was not conclusive on the passive personality principle issue.

Spain had an interesting approach on the passive personality principle in the *Guatemala Genocide Case*. In 1999, an action was brought before a Spanish court concerning acts committed by certain officials of Guatemala, between 1978 and 1990, in Guatemala, against the Mayan indigenous population. The acts constituted the crime of genocide. During the course of

[21] *Ibidem*, p. 250.

[22] *Draft Convention on Jurisdiction with Respect to Crime*, The American Journal of International Law, Vol. 29, Supplement: Research in International Law (1935), pp. 439-442.

[23] Ademola Abass, *op. cit.*, p. 251.

[24] For instance, protective jurisdiction invoked by the USA and Germany in cases involving selling and importing of cannabis (Ademola Abass, *ibidem).*

[25] https://intlaw.co.uk/lotus, accessed 14.04.2019.

events, some Spanish nationals were also tortured and killed. The Spanish court refused to exercise jurisdiction based on the principle of passive nationality, arguing that the nationality of the victims can not be the sole foundation for the jurisdiction claim. Another essential criterion must be met: the crime invoked before the Spanish court must be the same as the one that forms the basis of the jurisdiction – genocide. The latter criterion was not met in the case, since the Spanish nationals had not been victims of genocide.[26]

As mentioned above, it was considered that there was an overlapping between the passive personality principle and the principle of universality. Thus, the former was seen as somehow redundant. In the *Eichmann Case*, Adolf Eichmann, one of the major organizers of Hitler's final solution, was captured by the national intelligence agency of Israel (the Mossad) in Argentina, and prosecuted under Israeli jurisdiction. He was found guilty of the commission of war crimes and subsequently executed by hanging (1962). Israel invoked the universality principle as basis for its jurisdiction, but, nevertheless, the District Court of Jerusalem later justified its competence on the ground that the main victims of the defendant's crimes were Jews.[27]

A case in which the passive personality principle was asserted alongside the universality principle was *Yunis Case*. In this case, Mr. Yunis, a Lebanese citizen, and several accomplices, hijacked a Jordanian airplane in Beirut, in June 1985. The airplane was flown to some locations in the Mediterranean Sea and, eventually back to Beirut were it was blown up. Several victims were American citizens (this was the only actual, direct connection between the event and the United States). The United States went on to prosecute Mr. Yunis, invoking as basis for its jurisdiction the principle of universality (given the international provisions that condemn these sort of heinous acts) and (contrary to their earlier reluctance towards it) the principle of passive personality.[28]

In the practice of states, it was observed that the principle of passive personality can, unfortunately, lead to more jurisdictional differences, especially if the acts are also incriminated in the state where they were committed and/or in the state of nationality of the perpetrator. However, it can be particularly useful in case the latter states are unwilling or unable to exercise jurisdiction.

2.5. The principle of universality

A state is entitled to exercise universal jurisdiction over crimes that constitute a threat to the common interests of mankind, regardless of who committed the crimes, where they were committed and who were the victims. These are acts that, because of their gravity, affecting vital interests of the international community, can be prosecuted by any state, which apprehends or exercises effective control over the perpetrator. No conditions regarding nationality or territoriality are imposed in these cases. What matters is the nature of the crime, that causes universal concern.[29]

The universality principle has a special character that differentiates it from other bases of jurisdiction. The other principles of jurisdiction analysed above derive from national entitlements to legislate and implement law (for instance, entitlements based on a link of territoriality or nationality). Meanwhile, universal jurisdiction is based on an entitlement shared with other states, to implement and enforce international provisions that incriminate universal crimes. So the state exercising universal jurisdiction is simply an enforcer of legal international commitments, without any power of its own to decide which conduct falls under universal jurisdiction and in what conditions.[30]

Moreover, the universality principle goes beyond the classical dichomoty territorial-extraterritorial. Universal jurisdiction is neither territorial, in the traditional sense, nor extraterritorial. It is more of a "comprehensive territorial jurisdiction", based on international proscriptions that are universally applicable.[31]

The category of universal crimes is not new *per se*, although the number of offenses included in this category has always been rather low. The first (and, until relatively recently, the only) crime of universal jurisdiction was piracy. Acts of piracy occurring in the high seas – a space that does not fall under the jurisdiction of any state – were considered to pose a threat to all states. Prosecuting crimes of piracy was, basically, left to the state that apprehended the perpetrator. Although, initially, the incrimination had a customary nature, piracy was later regulated through conventional norms – the 1958 Convention on the High Seas and the 1982 Law of the Sea Convention.

After the Second World War, the category of universal crimes expanded, with the creation of the first international criminal tribunals in Nurenberg and Tokyo, and it is now considered to include the most serious breaches of human rights and humanitarian law, such as crimes against humanity, war crimes, genocide, apartheid, and certain crimes of terrorism. Most of these are nowadays incriminated through conventional norms, although some of them have had a prior

[26] Ademola Abass, *op. cit.*,pp. 258-259.
[27] Lung-Chu Chen, *op. cit.*, p. 284.
[28] https://www.casebriefs.com/blog/law/conflicts/conflicts-keyed-to-currie/international-conflicts/united-states-v-yunis/, accessed 14.04.2019.
[29] Ademola Abass, *op. cit.*,pp. 252.
[30] Anthony J. Colangelo, *Universal Jurisdiction as an International "False Conflict" of Laws*, Michigan Journal of International Law, vol. 30, issue 3, 2009, p. 882.
[31] *Ibidem*, p. 883.

customary reglementation. For instance, after the war, the principles of the Nurenberg Charter and Judgement defined crimes against peace, war crimes and crimes against humanity (at the time, the latter were only considered as such if they were committed in relation to a war). In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted, and, in 1973, the International Convention on the Suppression and Punishment of the Crime of Apartheid. The Statute of Rome of the International Criminal Court came into force in 2002, incriminating the crime of genocide, crimes against humanity (this time, with no requirement of any relation to a war), war crimes and (without a clear definition) the crime of aggression. Terrorism is considered an international crime, falling under the universal jurisdiction. However, there is no generally accepted definition of terrorism, but only various international proscriptions incriminating different terrorist acts. A resolution adopted by the UN General Assembly in 1985 (GA Res. 40/61), "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed".[32] Terrorist acts have also been included in the Draft Code of Crimes against Peace and Security of Mankind, elaborated by the International Law Commission, in 1996.[33]

Such crimes can, thus, be prosecuted by any state, according to the universality principle, based on states' recognized, shared competence to impose criminal or civil sanctions with respect to what is proscribed by the international law.

Given its specificity, the universality principle should not lead to jurisdictional conflicts between states (as mentioned above, in universal jurisdiction, states are merely enforcers of international law). Nevertheless, its implementation was not without controversy, especially since the category of universal crimes is quite dynamic and in continuous evolution.

For instance, more recently universal jurisdiction has been invoked in respect of human rights violations, based on the argument that "some human rights have become *erga omnes* obligations. One important precedent of universal jurisdiction in this field, with an enormous impact in international law, was the *Filartiga v. Pena-Irala Case*, brought before an American court. In 1978, Dolly Filartiga, a citizen of Paraguay, resident in the United States, lodged a civil complaint before an US court against Americo Norberto Pena-Irala, also a national of Paraguay, former Inspector General of Police in Asuncion. Pena-Irala was, at the time, in the USA, waiting for deportation, after remaining on the American territory past the expiration of his visitor's visa. Filartiga contended before the court that, in 1976, her seventeen year old brother, Joelito Filartiga, was kidnapped and tortured to death by Pena-Irala, as retaliation for the political activities of their father. Initially, the complaint was dismissed, but, in 1980, the US Court of Appeals for the Second Circuit ruled in favor of Filartiga, considering that "freedom from torture is protected under customary international law, which forms a part of the law of the land in the United States."[34] The court declared:

"Among the rights universally proclaimed by all nations, as we have noted, is the right to be free of physical torture. Indeed, for purposes of civil liability, the torturer has become like the pirate and slave trader before him hostis humani generis, an enemy of all mankind."[35]

Thus, the ruling in the Filartiga case was an endorsement that torture is considered an international crime, subject to universal jurisdiction.

Another case with a huge impact, which marked a watershed in international law was the *Pinochet Case.* General Augusto Pinochet, former Chilean head of state between 1973 and 1990, was arrested in 1998 in London, based on an international arrest warrant issued by a Spanish Court (*Audiencia National)* for human rights violations committed in Chile. Pinochet invoked before the Law Lords of the House of Lords (that was then the highest British Court) immunity from prosecution as a former head of state. However, the British court rejected Pinochet's claim, reasoning that crimes such as hostage taking and torture could not be protected by immunity. This was the first time the principle of universal jurisdiction was applied in such a manner, against a former head of state.

3. Conclusions

The rules regarding state jurisdiction in international law, traditionally, seek to establish the allocation of competences between sovereign states, based on legitimate jurisdictional links (like territoriality or nationality), ultimately aiming to prevent normative conflicts. The five identified principles of jurisdiction brought some order and predictability in international relations[36], but they are, nevertheless, dynamic, unstable and open to interpretations and controversies.

Among the principles of jurisdiction, territoriality remains the most important and widely accepted in a world that is still state-centered, governed

[32] GA Res. 40/61 available at https://www.un.org/documents/ga/res/40/a40r061.htm, accessed 16.04.2019.

[33] *Draft Code of Crimes against Peace and Security of Mankind*, available at http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf, accessed 16.04.2019.

[34] Lung-Chu Chen, *op. cit.*, p. 287.

[35] *Dolly M. E. FILARTIGA and Joel Filartiga, Plaintiffs-Appellants, v. Americo Norberto PENA-IRALA, Defendant-Appellee., No. 191, United States Court of Appeals, Second Circuit., Argued Oct. 16, 1979, Decided June 30, 1980*, available at https://openjurist.org/630/f2d/876/filartiga-v-pena-irala, accessed 17.04.2019.

[36] Cedric Ryngaert, *Jurisdiction*, available at https://unijuris.sites.uu.nl/wp-content/uploads/sites/9/2014/12/Jurisdiction.pdf, accessed 17.04.2019.

by the principle of equal sovereignty. However, jurisdiction refers to the exercise of power, reflecting the preferred model of governance of a certain time. In a polyarchic, sovereignty-centered international society, it is no wonder that territoriality remains the preferred principle of jurisdiction. But the increasing interdependence between the members of the international community, the advances in technology and communication, that create a more and more interconnected world, could lead to a shift in the way the exercise of power is perceived and, subsequently, to a shift in the law of jurisdiction.

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