MYKOLAS ROMERIS UNIVERSITY
MYKOLAS ROMERIS LAW SCHOOL
INSTITUTE OF INTERNATIONAL AND EUROPEAN UNION LAW

DMYTRO TARANENKO
(INTERNATIONAL LAW)

RESPONSIBILITY OF STATES FOR HUMAN RIGHTS VIOLATIONS OUTSIDE THEIR TERRITORY

Master thesis

Supervisor –
Assoc. prof.
Laurynas Biekša

Vilnius, 2020

TABLE OF CONTENTS

INTRODUCTION

International law is one of the oldest branches of law that arose with the advent of the first states and the need for these states to communicate with each other. The need to regulate relations between states required the establishment of a mechanism to protect states. This mechanism was to establish liability for violations. The term "responsibility" has come a long way in evolution and has usually been one of their makers that reflects society.

The concept of human rights is a relatively new field of law when compared to others. Its significant development took place in the second half of the 20th century after World War II, when the world community saw the weakness of the system and that people were defenceless against totalitarian regimes. The development of this field is linked to the creation of international organizations with the primary purpose of maintaining peace in the world. It was during this period that international organizations created documents that proclaimed human rights, namely the Universal Declaration of Human Rights, which was adopted by the United Nations and the European Convention on Human Rights (henceforth - ECHR). The Universal Declaration is not an effective human rights mechanism because compliance with its norms is not binding on states. Therefore violations of the rules enshrined in this Convention do not create liability for states. Unlike this Declaration, the ECHR is a more effective human rights mechanism. ECHR affirms the obligation of states to protect human rights, and failure to comply with this obligation creates negative consequences for the state.

The topic we are going to address in this work is at the confines of different areas of law, such as international law and international human rights protection. That is why the initial term we will use to disclose it is "extraterritoriality". The issue of establishing this phenomenon is very complex and multifaceted. The term "extraterritoriality" has no precise legal meaning. This issue is also compounded by the fact that off-site violations are usually attempted by States to avoid liability for the violation. The non-regulation of the definition of "extraterritoriality" also complicates States' obligation to protect human rights outside the country. After all, there is no clear definition of the amount of protection the state relies on discussions about the scope of obligations are still ongoing, as the scope of human rights protection is difficult to define clearly. That is why the norms in international human rights treaties are mainly abstract and define only the ultimate goal of human rights protection, but it does not envisage the action that the state must take to do so.

Issue of state responsibility for human rights abuses is a very complex process currently facing the international community since it is difficult to establish a link between state action and human rights abuses. Establishing extraterritorial protection of human rights is an important issue today, as this violation is one of the problems that has not been resolved today.

Problem of research. The state must ensure effective protection of human rights; even outside its territory, in the event of a breach of this obligation, the state should be held responsible. However, in practice, we face insufficient regulation of this mechanism. Theorists and practitioners have different approaches to address this. Theorists are trying to create models with well-defined criteria that would help prove the state's jurisdiction over the relevant violations.

The jurisprudence employs a slightly different method; they use an individual approach to solve each case. Due to this we have the lack of systematic case law on the responsibility of states for human rights violation. The jurisprudence in this area is not sufficiently developed for the effective administration of justice. There are several factors, such as the complexity of the case, the particularities of establishing jurisdiction, etc. However, in our view, the creation of a well-defined system that would activate extraterritorial jurisdiction for States in the event of appropriate action would make judicial action in this area more useful. It is also important to note that the creation of such a system has significantly accelerated the review of cases, as sometimes such lawsuits are extended over years, leading to a systematic violation of human rights in the relevant territory.

The absence of a system of extraterritorial jurisdiction creates an ineffective mechanism for protecting human rights. This is the main problem in our study. We will try to analyze the causes of this phenomenon and possible ways to overcome it.

Insufficient attention is paid to the issue of human rights violations in the territory of the Crimea, Donetsk and Luhansk regions. Absence of clearly defined jurisdiction over these territories leads to a systematic violation of human rights.

Research relevance. Human rights protection issues are extremely important in today's world. Armed conflicts in the world always have a negative impact on civilians, as they are the most vulnerable in situation of conflict. This is exactly what can be seen in court decisions, as a systematic violation of human rights is exercised in the control of the respective territory.

International treaties usually establish a clearly defined territorial jurisdiction, but some of them extend the understanding of extraterritoriality. The lack of a clearly defined term "extraterritoriality" has negative consequences in practice.

The divergence of jurisprudence also creates some questions that scholars are trying to answer. Thus, the courts have set different approaches to establishing state liability for human rights violation. Scientists analyzing these solutions divide them into models, but each of these models has significant drawbacks and gaps in application, which makes them the object of our analysis.

The case-law on the issue of defining extraterritorial human rights protections is time-consuming. The issue of the establishment of extraterritoriality is determined by the situation and is individual. This method creates a different application of the rules of law, which varies from case to case. It also makes the mechanism of protection ineffective concerning long-term human rights violations in its territory.

Scientific novelty and overview of the research on the selected topic. The issue of establishing responsibility for human rights abuses outside the territory has been the subject of many scholars such as: Marko Milanovic, Nienke van der Have, Lea Raible, Ralph Wilde, Samantha Besson and others. The fundamental base for our research was concluded from two scientific works. The first is “The Prevention of Gross Human Rights Violations under International Human Rights Law” by Nienke van der Have. This work has shown us the weakness of the human rights protection mechanism. It has helped us understand what the problems are in the human rights mechanism, but it does not focus on ways to address the issue of human rights abuses. We have tried to highlight the main problems identified in this work and to find possible solutions.

The next work that has influenced our research is “Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy” by Marko Milanovic. This work is one of the main issues concerning the establishment of extraterritorial protection of human rights. It is in this work that the scientist proposes the definition of the term "extraterritoriality", which has no legal fixation. Analyzing this work, we tried to identify the advantages and disadvantages of the author's models of extraterritoriality. In our work, we sought to find ways to address the issue of extraterritoriality effectively.

With the help of the works as mentioned above, we tried to analyze the situation regarding human rights violations in the territory of Crimea, Donetsk and Luhansk regions. The scientific consolidation of extraterritorial models has helped us to identify the characteristics of the establishment of the protection of the population located on the territory of the peninsula, as well as to determine what violations were committed by the controlling state.

The scientific novelty is to apply the theoretical ideas enlightened in scientific work and to compare it with the decisions of the court, to determine where the human rights protection sits lacks and to try to eliminate them. Also, establish extraterritorial jurisdiction of the Russian Federation for the territory of Crimea, Donetsk and Luhansk

Significance of the research. The issue of establishing responsibility for human rights violations is not well defined in modern science and needs more analysis. The question of establishing liability is therefore confronted with a more significant problem, namely the extraterritorial application of the rules of law. We have analyzed international instruments for the

protection of human rights and determined which treaties may be extended to other countries. In the theoretical aspect of the study, we analyzed the models of extraterritoriality and identified their advantages and disadvantages.

The practical side of this work was the analysis of judgments and the determination of how international judicial authorities treat the application of extraterritorial jurisdiction. Also, determine the extraterritorial jurisdiction of the Russian Federation.

The aim of research. The main idea in our work is to show that the current system of international protection of human rights and the establishment of state liability for these violations is not sufficient and has many gaps in practical application. The scalar theorist of this study plays an important role, as it identifies the main features and suggests possible ways to overcome these problems.

The objectives of research.

1. Analyze the terms "responsibility" and "extraterritoriality;"
2. Determine which international human rights instruments have extraterritorial jurisdiction and evaluate norms established in this treaties.
3. Analyze patterns of state extraterritorial jurisdiction as a mechanism for establishing state responsibility. To identify the advantages and disadvantages of the respective systems and to identify possible ways of development.
4. Try to apply extraterritoriality models in practice by analyzing the situation on the territory of Crimea, Donetsk and Luhansk regions.

Research methodology. In our study, we used several methods. We used the dialectical method to define the basic terms of our company, such as "extraterritoriality" and "responsibility". In analyzing the rules of international treaties, we used a linguistic method to interpret the rules enshrined in the documents. The comparative method we used to analyze the jurisprudence of international institutions helped us to carry out an in-depth analysis of court decisions. Also, during the study, we applied a logical method in the analysis of theoretical works. We identified the advantages and disadvantages of the ideas and how they could be applied in practice.

Structure of research. Our work consists of two parts general and special (4 chapters). The first part focuses on defining the basic terms we will use when writing our work. Also, in this section, we will determine which treaties may have extraterritorial jurisdiction over the protection of human rights.

The special part consists of two sections that focus on the analysis of extraterritoriality models and their application in practice. In chapter 3, we will identify the strengths and weaknesses of a particular model of extraterritoriality through case law analysis. We will

describe the weakness of human rights activities in the field of extraterritoriality and the complexity of the process of establishing state liability for violations.

In chapter 4, we have tried to analyze human rights violations through the lens of extraterritorial models. They determined the overall occurrence of the event and what exactly caused the situation of systematic violation of human rights. We have analyzed court cases concerning human rights violations in the Crimea that are currently pending before international judicial institutions.

Defence statements.

1. There are is a lack of stable case law of international courts on the issue of establishing extraterritorial jurisdiction and there are system of extraterritoriality.
2. Russian Federation exercise extraterritorial jurisdiction on the territory of Crimea, Donetsk and Lugansk regions.

LIST OF ABREVIATION

PCIJ – Permanent Court of International Justice.

ILC – International Law Commission.

ICJ – International Court of Justice.

DARS – Draft Articles on the Responsibility of States for Internationally Wrongful Acts

VCLT – Vienna Convention on the Law of Treaties.

ECHR – European Convention on Human Rights.

ECtHR – European Court of Human Rights.

ICCPR – International Covenant on Civil and Political Rights.

HRC – Human Right Committee.

ICSFT – International Convention for the Suppression of the Financing of Terrorism.

CERD – International Convention on the Elimination of All Forms of Racial Discrimination.

DPR – Donetsk People's Republic.

LPR – Luhansk People's Republic.

1. BASIC DEFINITION

This section will define the basic concepts that we will use when writing our work. We define the concept of responsibility, its historical development has passed, and the characteristics inherent in it. Let us note the precedents that influenced the formation of the concept we have today. Let us look at the legal documents that define this term. Also, we will consider the concept of extraterritoriality, which is this phenomenon. We will determine the moment of its emergence and how scientists understand the concept.

1.1 Definition of responsibility in International Law.

The concept of responsibility is viewed through the lens of international law since the basic understanding of the responsibility of states has come from the field of international law. Paul Reuter emphasized the importance of this concept he claimed, "responsibility is at the heart of international law ... it constitutes an essential part of what may be considered the Constitution of the international community.[1]" We fully agree with this statement, since the establishment of a term of liability is one of the effective mechanisms for establishing the interaction of states. Charles de Visscher prescribed the importance of "necessary corollary of the equality of States.[2]"

Ago more thoroughly described the statement and formulated it as: "if one attempts [...] to deny the idea of State responsibility because it allegedly conflicts with the idea of sovereignty, one is forced to deny the existence of an international legal order.[3]" We fully agree with the author's view that the notions of responsibility and international law are inextricable, since they are in relation to each other. Pellet identified the rule that follows from the above statements, "no responsibility, no law.[4]" This assertion assumes that the subjects of international law are equal and that in the absence of the concept of responsibility, there can be no stable links between members of the international community. Many scholars emphasize the term "sovereignty" and point out its importance in considering the concept of responsibility. Allan Pellet established: "Responsibility interacts with the notion of sovereignty, and affects its definition, while, reciprocally, the omnipresence of sovereignty in international relations inevitably influences the conception of international responsibility. At the same time, responsibility has profoundly

[1] Reuter Paul, *Trois observations sur la codification de la responsabilité internationale des États pour fair illicite*, in Le droit international au service de la paix, de la justice et du développement-Mélanges Michel Virally (Pedone, Paris, 1991), 390 quoted in James Crawford et al., *The Law of International Responsibility* (Oxford, Oxford University Press, 2010), 3.

[2] Charles de Visscher, *La responsabiliti des États* (Leiden, Bibliorheca Visseriana, 1924) ,90 quoted in James Crawford et al., *The Law of International Responsibility* (Oxford, Oxford University Press, 2010), 4

[3] International Law Commisiion, *Yearbook of the International Law Commission 1971, vol. II(1), A/CN.4/246 and Add.1-3* (New York, 1971), Accessed 15 February 2020, https://legal.un.org/ilc/documentation/english/a_cn4_246.pdf

[4] James Crawford et al., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), 4.

evolved together with international law itself: responsibility is the corollary of international law, the best proof of its existence and the lost credible measure of its effectiveness.[5]"

It should be mentioned the historical development of definition responsibility and how different scientist understand that. One of the first scientists who described definition responsibility was Grotius, but his theory has many misunderstandings. He established: "Origin and nature of the obligation to restore what belongs to another.[6]" In this statement, the scientist proclaimed one of the main principles in international law, which used to be in practice for many. In his studies, he did not divide the question of liability in the field of law and set only a general rule. That subject which causes damage must compensate for the damage. Nevertheless, Grotius did not prescribe subjects in these relations; he used the same principle for establishment responsibility of people and states.

The next step for the development of definition responsibility was at the beginning of the XX centuries. "It is a well recognized fact that two mutually antagonistic standards were asserted under the traditional law of State responsibility: the one was an "international standard of justice" advocated by West European countries and the United States of America, and the other was a "national standard" or an "equality of treatment between nationals and foreigners.[7]" Difference between definitions made problems for qualifications responsibility of nationals and foreigners. Such a problem started a process for the unification of legislation of international society.

Elihu Root formulated these ideas in his work

> "There is a standard of justice, very simple, very fundamental, and of such general acceptance by all civilised countries as to form apart of the international law of the world. The condition upon which any country is entitled to measure the justice due from it to an alien by the justice which it needs to its own citizens is that its system of law and administration shall conform to this general standard. If any country's system of law and administration does not conform to that standard although the people of the country may be content or compelled to live under it, no other country can be compelled to accept it as furnishing a satisfactory measure of treatment to its citizens.[8]"

This theory is characterized by the introduction of clear rules for the application of the rules on state responsibility. The purpose of this theory is to standardize norms for their universal application by states. This theory is one of the first cases of extraterritorial protection of rights. It establishes a balance between citizens of states and foreigners and states that the state must protect the interests of foreigners to the same extent as its citizens.

---

[5] Crawford, James et al., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), 3.
[6] Grotius Hugo, *The Rights of War and Peace* by A. C. Cambell, A. M, (New York: M. Walter Dune, 1901), 123.
[7] Y Matsui "The transformation of the law of state responsibility" in the *State Responsibility in International Law*, René Provost (Aldershot: Ashgate/Darmouth, 2002), 7.
[8] Root Elihu, "*The Basis of Protection to Citizens Residing Abroad*." *The American Journal of International Law* 4, no. 3 (1910): 521-522, https://https://www-jstor-org.skaitykla.mruni.eu/stable/2186238?sid=primo&origin=crossref&seq=1#metadata_info_tab_contents

This theory was supported in further studies. Edwin M. Borchard in his work established: "… is conditioned upon the fact that (a state's) administration of justice satisfies the standard of civilized justice established by international law.[9]" Also, Clyde Eagleton proclaimed: "a state may be responsible not merely for the same protection which it offers to its own citizens, but for a protection which measures up to reasonable standard of civilized justice. It may set such standards as it may desire for its own citizens; but where aliens is concerned, international law enters with its own standards.[10]" These statements show the theoretical extension of the sphere of responsibility of the state. In this way, they reinforce the definition of protecting the interests of foreigners on par with protecting their citizens. The principle of equality between citizens and foreigners is enshrined. This process is linked to globalization and the creation of the first international organizations. After all, the difference in the application of concepts between states creates legal conflicts.

Let us take a more in-depth look at the development of the concept of responsibility and its stages of establishment. Anzilotti established the term responsibility as: "The wrongful act, that is co say, generally speaking, the violation of an international obligation, is thus accompanied by the appearance of a new legal relationship between the State co which the act is imputable, which is obliged to make reparation, and the State with respect to which the unfulfilled obligation existed, which can demand reparation.[11]" He defined responsibility as the responsibility of 2 states. He also stressed that in case of violation of norms and causing harm to another state, new legal relations arise. The purpose of these new relationships is to recover damages. In doing so, he enshrined the principle of redress for the damage done, which was consolidated in the case-law.

The Permanent Court of International Justice (henceforth – PCIJ) jurisprudence in the early twentieth century on the redress of wrongdoing reflected the theories we described above. In the Mavrommatis Palestine Concessions Case PCIJ established:

> "It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the ease of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting

[9] Edwin M. Borchard, *The Diplomatic Protection of Citizens Abroad; or, The Law of International Claim* (New York: The Banks co. publishing law, 1925), 106. https://ia802505.us.archive.org/20/items/thediplomaticpro00borc/thediplomaticpro00borc.pdf

[10] Eagleton Clyde, *The Responsibility of States in International Law* (New York: Kraus Reprint, 1970), 83-84.

[11] Anzilottii Dionisio, *Cours tu droit international* (trans Gidel, 1929) (Paris, Panthéon-Assas/LGO], 1999), 467 quoted in James Crawford, *The Law of International Responsibility* (Oxford, Oxford University Press, 2010), 4

its own rights – its right to ensure, in the person of its subjects, respect for the rules of international law.[12]"

This case enshrines one of the fundamental principles that states must defend their interests in case of breach by another country. Also, PCIJ in the Factory at Chorzów case established one of the fundamental principles: "it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.[13]" In those judgments the Permanent Court upheld the principle of damages. So they set a rule for restoring legal status that was violated earlier. This statement reflects a civil law approach to the settlement of liability. Indeed, as previously stated, the legal entities are equal, and they are under an obligation to restore the prior legal status caused by illegal acts.

It was the theory and practice of the early twentieth century and the first abuses of unification of responsibility in international law. It has since evolved significantly. So Pellet emphasized what key features have changed about the concept and how its features have evolved.

- "it is no longer reserved only to States, and has become an attribution of the international legal personality of other subjects of international law;
- it has lost its conceptual unity as a result of the elimination of damage as a condition for the engagement of responsibility for the breach, since
- the common point of departure, which is shared with liability for acts not involving a breach of international law has disappeared.[14]"

The next step in the development of the concept of responsibility was made by Roberto Ago. He is one of the developers of "Draft Articles on Responsibility of States for Internationally Wrongful Acts" (henceforth – DARS). It is his responsibility approach that has been applied by the International Law Commission (henceforth – ILC) in this document.

Modern definition established in articles 1, 2 of the DARS

"Article 1
Responsibility of a State for its internationally wrongful acts
Every internationally wrongful act of a State entails the international responsibility of that State.
Article 2
Elements of an internationally wrongful act of a State
There is an internationally wrongful act of a State when conduct consisting of an action or omission:
(a) is attributable to the State under international law; and

[12] "Case of the Mavrommatis Palestine Concessions. PCIJ, Ser. A, No. 2, 1924", 12, Accessed 12 Februaty 2020, https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_A/A_02/06_Mavrommatis_en_Palestine_Arret.pdf
[13] "Case concerning Factory at Chorzów, PCIJ, Series A, No 17, 1927", 21, Accessed 12 Februaty 2020, https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_A/A_09/28_Usine_de_Chorzow_Competence_Arret.pdf
[14] Crawford, James et al., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), 6

(b) constitutes a breach of an international obligation of the State.[15]"

The definition of responsibility assigned by the Commission is different from what we described earlier. The Commission eliminated damage as one of the main elements of liability. ILC described such a revolutionary approach to defining the concept of responsibility. "…if we maintain at all costs that "damage" is an element in any internationally wrongful act, we are forced to the conclusion that any breach of an international obligation towards another State involves some kind of "injury" to that other State. But this is tantamount to saying that the "damage" which is inherent in any internationally wrongful act is the damage which is at the same time inherent in any breach of an international obligation.[16]" This commentary emphasizes that establishing harm as one of the main elements of the application of liability creates problems in the identification of relations between states and creates conflicts in these legal relationships. It also excludes gauge in terms of international obligations and international wrongful acts.

Due to this statements, Allan Pellet said: "We have therefore passed from a purely inter subjective conception of responsibility, with decidedly 'civil' or 'private law' overtones, to a more 'objective' approach: international law must be respected independently of the consequences of a violation and any breach entails the responsibility of its author, while the content of such responsibility, its concrete effects, varies according to whether or not the internationally wrongful act has caused damage, and according to the nature of the norm breached…[17]" He points out the need to distance the rules of responsibility in international law from the civil law understanding of liability, noting the diversity of understanding of the concept of 'harm' in international law.

The International Court of Justice (henceforth – ICJ) expanded the function of responsibility in case United States of America v. Iran: "…the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected.[18]" This statement emphasizes a new direction in understanding the notion of responsibility in international law and marking it more as a preventative mechanism of action than regulation. The primary role is to ensure the effective functioning of international society than to protect individual states. It can

[15] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, 43, Accessed 11 February 2020, https://www.refworld.org/docid/3ddb8f804.html

[16] International Law Commission, *Yearbook of the International Law Commission 1973, vol. II, A/CN.4/SER.A/1973/Add.l*. (New York 1975), 183, Accessed at 12 February 2020, https://legal.un.org/ilc/publications/yearbooks/english/ilc_1973_v2.pdf

[17] Crawford, James et al., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), 9.

[18] "Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)", ICJ Reports 1980, 42-43 (para 92), accessed 13 February 2020, https://www.icj-cij.org/files/case-related/64/064-19800524-JUD-01-00-EN.pdf

also be noted that this understanding of the notion of responsibility places a priority on the protection of international society than separate states.

To sum up, the concept of responsibility has come a long way in its development. It will continue to evolve, as it is an integral part of the ever-evolving international community. At first, responsibility was understood as the need to damage the glass for the wrongdoing. Responsibility in the modern sense, which is enshrined in DARS apply a revolutionary approach to understanding liability, excluding harm as one of the main elements of applying liability for wrongful acts. Such an approach of ILC more responsible for the preventive method and puts the protection of the interests of the international community more priority than the state.

1.2 Definition of extraterritorial jurisdiction.

Defining the concept of extraterritoriality is the next step in our work. This term is a necessary element in the further understanding of treaties as the primary mechanisms for the protection of human rights — the first time the ILC has raised the importance of this issue during the interpretation of Vienna Convention on the Law of Treaties (henceforth – VCLT).

Article 29 of VCLT prescribed territorial jurisdiction of treaties: "Unless a different intention appears from the treaty or is otherwise established, the application of a treaty extends to the entire territory of each party.[19]" This provision is broadly applicable and may extend beyond the borders of one country, depending on the situation and the type of contract — such rule is what the commission enshrined in commenting on this article. "Certain types of treaty, by reason of their subject matter, are hardly susceptible of territorial application in the ordinary sense. Most treaties, however, have application to territory and a question may arise as to what is their precise scope territorially.[20]"

Milanovic, in his work, established the particular approach for extraterritorial jurisdiction which prescribed in human rights treaties.

> "Human rights treaties fall within the latter category. As the ILC explains, it is by looking at the subject-matter of a treaty—the content of the rights and obligations that it creates—that we can tell whether and how these rights and obligations apply territorially. With respect to human rights treaties specifically, we must note that they only impose obligations on their states parties, and do not do so for third states or private individuals. Moreover, they create obligations not only between the states parties themselves, but also between states and individuals—indeed, that is their whole purpose. The application of a human rights treaty to a particular individual thus requires that a state owes that individual some legal obligation under the treaty.[21]"

[19] International Law Commission: "*Draft Articles on the Law of Treaties with Commentaries*", (New York 1996), 213.
[20] Ibid, 213.
[21] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 7.

Due to the particular linkage of the citizen-state, human rights treaties will have a different approach to the regulation of jurisdictional issues, allowing them to delve beyond the territorial jurisdiction of those treaties.

The concept of extraterritorial jurisdiction has no legal definition. In this case, we have only a doctrinal understanding of it. "Extraterritorial application simply means that at the moment of the alleged violation of his or her human rights the individual concerned is not physically located in the territory of the state party in question, a geographical area over which the state has sovereignty or title.[22]" We partially agree with this understanding of the concept of extraterritoriality, but we need to define some elements. The interpretation of this term applies only a territorial approach to understanding the concept of extraterritoriality, which somewhat narrows its understanding. We will consider the models of establishing extraterritoriality in the following sections and highlight what other jurisdictional models have problems.

Having defined the concept of extraterritoriality, we need to determine the causes and timing of the emergence of extraterritorial obligations that arise in the state.

> "Extraterritorial application of a human rights treaty is an issue that will most frequently arise from an extraterritorial state act, i.e. conduct attributable to the state, either of commission or of omission, performed outside its sovereign borders—for example, the killing of a suspected terrorist in Pakistan by a US drone. However—and this is a crucial point—extraterritorial application does not require an extraterritorial state act, but solely that the individual concerned is located outside the state's territory, while the injury to his rights may as well take place inside it.[23]"

It can be stated that the cause of extraterritoriality is the unlawful acts committed outside its territory, but this is not the only territory for understanding extraterritoriality. One model of extraterritoriality is the establishment of jurisdiction over unlawful acts of government agents. It is this theory that causes the most discussion in practice.

Defenition of extraterritoriality is a complex definition which does not have strict regulation that is why the application of this definition can have some misunderstanding. Case of UK vs Soering is one of examples where these issues were raised. "…international human rights instruments lack explicit prohibitions on refoulement, non-refoulement obligations are read into other substantive rights. In this context, state responsibility is engaged by the act of removal of an individual to a state where he or she will be exposed to a certain degree of risk of having his or her human rights violated.[24]" This statement raises a significant problem that is identified in

[22] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 8.
[23] Ibid, 8.
[24] K. Greenman, "A Castle Built on Sand? Article 3 ECHR and the Source of Risk in Non-Refoulement Obligations in International Law." *International Journal of Refugee Law* 27, 2 (2015), 264.

this case and defines the limitations of upward human rights instruments. Due to the practice such issue was decided as: “Clearly, non-refoulement can be distinguished from the type of extraterritorial application that has proved so contentious in the context of the scope of jurisdiction under article 1 ECHR. Non-refoulement does not raise any issues under article 1 ECHR, the applicant being on the territory of the state concerned and therefore straightforwardly within a jurisdiction. […]… the European Court to deny that non-refoulement is an example of extraterritorial application of the ECHR.[25]” This statement states that extraterritoriality does not apply to refugee law, namely in the context of the principle of non-refoulment. Ensuring the principles enshrined in the ECHR should not impose a duty on the state to protect these rights beyond the bounds of its absolute protection.

1.3 Summary on chapter

The analysis of basic concepts is an essential element in the study of our topic. In analyzing our topic, we will repeatedly use these concepts. The term "responsibility" has come a long way in evolution as a part of international law. The question of establishing liability for violations in international law arose with the advent of the first states. This concept is one of the reflections of the international community. Previously, liability was used as a sanction for the violation. However, in the contemporary sense, the UN established responsibility as a preventative mechanism for maintaining peace in the international community. The importance of a broad approach to understanding the concept of "responsibility" has been repeatedly emphasized in international court decisions.

The term "extraterritoriality" is relatively new and has not been sufficiently researched by theorists. This concept is not legally enshrined in legal documents and has only doctrinal entropy. This concept is understood as a violation of human rights outside the territorial borders of the state. The concept of extraterritoriality is usually expressed through extraterritorial models that help determine their application in practice. They also cited examples of extraterritoriality that may be confused with other phenomena and how the court distinguishes between categories.

[25] K. Greenman, “A Castle Built on Sand? Article 3 ECHR and the Source of Risk in Non-Refoulement Obligations in International Law.” *International Journal of Refugee Law* 27, 2 (2015), 285.

2. LEGAL BASES FOR EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

This section will consider extraterritoriality, through treaties, as elements of human rights protection. Thus, we will no longer consider the convention as the basis of any treaty and define it as a principle for the establishment of extraterritoriality as set out therein.

Next, we look at ECHR and International Covenant on Civil and Political Rights (henceforth – ICCPR) that enshrine the possibility of extraterritorial protection of human rights. Let us note which models of extraterritoriality are applied in practice and how they are differentiated. Let us analyze the jurisprudence of applying this jurisdiction and what violations of the state were committed in violation of the relevant rules.

2.1 VCLT as a fundamental bases for human rights treaties

Before addressing the issue of the settlement of extraterritorial jurisdictions under individual treaties, we must determine how this issue is settled in international law. To do this, we need to review the VCLT and analyze the articles there. We have already referred to Article 29 of the Convention on the Territorial Application of Treaties, and to what extent the ILC understands its application. Due to this article 29 ICJ that, creates a presumption against extraterritoriality. We are fully agreed with this statement: "Article 29 lays down merely a residual rule: a treaty is binding upon each party in respect of its entire territory, unless a different intention appears from the treaty or is otherwise established. A different intention can be established in various ways.[26]"

We should determine the fact of extraterritoriality in international law; it is necessary to draw attention to the commentary on Article 29 of the VCLT so: "In [the ILC's] view, the law regarding the extra-territorial application of treaties could not be stated simply in terms of the intention of the parties or of a presumption as to their intention; and it considered that to attempt to deal with all the delicate problems of extra-territorial competence in the present article would be inappropriate and inadvisable.[27]" In the committee's view, the issue of extraterritoriality at the article level is ineffective. This intervention was thus enshrined in court decisions. "Whereas the Court observes that there is no restriction of a general nature in … territorial application. …the

[26] Anthony Aust. *Handbook of International Law*. (Cambridge: Cambridge University Press, 2010), 81.
[27] International Law Commission: "*Draft Articles on the Law of Treaties with Commentaries*", (New York 1996), 214.

Court consequently finds that these provisions … apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory.[28]"

2.2 Extraterritorial jurisdiction under the ECHR

The ECHR has a clearly defined rule on the issue of extraterritorial liability. This Convention is one of the few that does not limit the jurisdiction of the treaty and understands this phenomenon in a broad sense. Such rule prescribed in Article 1 "Obligation to respect Human Rights[29]". "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.[30]" This section will also address the issue of the extraterritorial jurisdiction of the judiciary. We will focus on litigation raising the issue of extraterritoriality and determining which models have been used to address these issues.

European Court of Human Rights (henceforth – ECtHR) jurisprudence is one of the most thorough of the issues of extraterritoriality, which is linked to a system built by the European Union and the ability of states to resort to an effective mechanism to restore justice. The claim of extraterritorial jurisdiction arising from Article 1 first of all, it was fixed in the case of the occupation of the territory of Cyprus by Turkey. The essence of the court case "Loizidou vs Turkey" was that citizen of Northern Cyprus whose territory was occupied by the Turkish Armed Forces. In this situation, she complains that her property rights have been violated because she has not been able to break into her home and other mines that she owns. The present case also raises the question of establishing effective control over the territory and to which the responsibility for the protection of human rights lies in these territories, since the State cannot effectively protect human rights in the territories occupied by other states. Due to this court established extraterritoriality issue as:

> "Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.[31]"

The Court found that Turkey had at that time exercised effective control over the entrusted territory of southern Cyprus with regard to the protection of persons within that

[28] *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports*, accessed 15 February 2020, https://www.icj-cij.org/files/case-related/140/140-20081015-ORD-01-00-EN.pdf

[29] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, Accessed 27 February 2020, https://www.refworld.org/docid/3ae6b3b04.html

[30] ibid

[31] "Case of Loizidou v. Turkey, Application no. 15318/89", Judgment, Eur. Ct. H. R, 18 December 1996, accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58007%22]}

territory. The ECtHR also found that the issue of occupation or fighting in the territory was not important to recognize the issue of control. "Based on a teleological interpretation, the ECtHR concluded that people in occupied territories could not be left without protection of the Convention if the occupying power has effective control over the territory. The occupying power, in this case Turkey, is bound by the ECHR and must ensure the rights contained therein to the people in Northern Cyprus.[32]"

In the present case, the court concluded that Turkey was obliged to protect persons located in the territory of Northern Cyprus in connection with the occupation and effective control of that territory.

The next court case we will consider in the context of the extraterritorial effect of the ECHR will be "Banković and Others v. Belgium and Other Contracting States.[33]" The context of the case was: "…the applicants complained about the deaths of members of their families (and the injuries sustained by one of the applicants who had survived) resulting from the bombing of the Serb radio and television premises in Belgrade by NATO armed forces, even though the Federal Republic of Yugoslavia was not a Contracting State.[34]" In the present case, the court emphasizes the importance of the issue of extraterritoriality:

> "The Court is of the view, therefore, that Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case…[…]…the case-law of the Court demonstrates that its recognition of the exercise of extra-territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government.[35]"

This case applied a completely different approach than in the previous case. The ECtHR stated that jurisdiction should be understood exclusively in a territorial manner. It is also emphasized that the establishment of extraterritorial jurisdiction over the actions of the State should be used as an exclusionary rule and not a generally applicable practice. ECtHR established: "ordinary meaning" of the relevant term in Article 1 of the Convention, the Court is

[32] Nienke van der Have. *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 97-98.
[33] "Case of Banković and others v. Belgium and others, application no. 52207/99", Decision Eur. Ct. H. R 12 December 2001, Accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}
[34] European Court of Human Rights, *Guide on Article 1 of the European Convention on Human Rights*, 7, Accessed 15 February 2020, https://www.echr.coe.int/Documents/Guide_Art_1_ENG.pdf
[35] "Case of Banković and others v. Belgium and others, application no. 52207/99", Decision Eur. Ct. H. R 12 December 2001, Accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}

satisfied that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial.[36]" ECtHR applied a territorial understanding of jurisdiction that is specific to international law. According to the Court, this was done in order to avoid any conflicts of jurisdiction.

> "The Court's obligation, in this respect, is to have regard to the special character of the Convention as a constitutional instrument of European public order for the protection of individual human beings and its role, as set out in Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties…[…]… a failure to accept the extra-territorial jurisdiction of the respondent States would fall foul of the Convention's order public objective, which itself underlines the essentially regional vocation of the Convention system…[37]"

The Court emphasizes that Article 1 must be interpreted exclusively territorially. It is also noted that the Convention positions itself as an exclusively regional instrument of protection. Therefore, the bombing of the Court of Justice in Kosovo does not impose obligations on States parties concerning the protection of human rights, since these actions take place outside the territorial jurisdiction of the ECtHR. The Court argued the general rule of understanding applicable to the present case. The ECtHR stated that the extraterritorial application of the Convention should only be applied in exceptional cases as opposed to the approach that has been applied in past court cases. Thus, the court found that the Convention did not extend to the actions of the countries that bombed Kosovo. We do not agree with the understanding of extraterritoriality and the approach taken by the ECtHR in this case and will argue that the method used has been incorrect.

The Bankovich case has raised considerable resonance in society. Scholars were outraged by the court's approach to understanding the jurisdiction of the convention. To avoid misunderstandings, we must differentiate between the concepts of jurisdiction under international law and the jurisdiction of human rights treaties. So Milanovic said: "…neither the Commission nor the Court in its pre-Banković case law based their interpretation of Article 1 ECHR on the general international law doctrine of jurisdiction. […] The purpose of the doctrine of jurisdiction in international law is precisely to establish whether a claim by a state to regulate some conduct is lawful or unlawful. Conversely, 'effective overall control of an area' is a question of fact, of actual physical power that a state has over a territory and its people.[38]" He

[36] "Case of Banković and others v. Belgium and others, application no. 52207/99", Decision Eur. Ct. H. R 12 December 2001, Accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}

[37] Ibid.

[38] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 27.

criticized the understanding of the issue of jurisdiction, which led to the term jurisdiction in international law and treaties understood as territorial.

We must differentiate between those jurisdictions and define their concepts. "Jurisdiction under public international law refers to a state's "lawful power to act" and is usually broken down into three components: prescriptive, enforcement and adjudicative jurisdiction.[39]" Jurisdiction under international law establishes situations where states may extend their jurisdictions beyond their territories. However, this must be strictly prescribed. Human rights treaties jurisdiction established as: "The legal basis of jurisdiction is grounded in domestic laws, but curtailed by international law, most notably by the principles of state-sovereignty and non-intervention.[40]" This jurisdiction is limited to the treaty. Milanovic differentiated those jurisdictions and underlined the major mistake of Bankovic case: "The greatest of these is the Bankovic fallacy that the notion of state jurisdiction in human rights treaties reflects that notion of jurisdiction in general international law which delimits the municipal legal orders of states.[…]… these two concepts are not the same, and that conflating them is a category error that would produce completely absurd results…[41]"

Another issue raised by Bankovich's case was not the extension of the jurisdiction of the ECHR to non-state parties. The arguments about "espace juridique" do not take any support in further cases which take ECtHR. In case of Issa and others v. Turkey was established: "However, the concept of "jurisdiction" within the meaning of Article 1 of the Convention is not necessarily restricted to the national territory of the High Contracting Parties. In exceptional circumstances the acts of Contracting States performed outside their territory or which produce effects there ("extra-territorial act") may amount to exercise by them of their jurisdiction within the meaning of Article 1 of the Convention.[42]" This statement is the exact opposite of what was in the case of Bankovich because it secures outside the territorial effect of the concession, irrespective of whether the state is a party of ECHR.

As we noted earlier, the Bankovich ruling has received considerable criticism, since the decision was the opposite of jurisprudence which extends only to the territory of the State concerned. He further stated that jurisdiction should not extend to non-treaty countries.

We considered extraterritorial jurisdiction through the actions of the military, determined the form. However, an essential issue in the context of modernity, which we have not considered,

---

[39] Nienke van der Have,.*The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 98-99.

[40] Menno T Kamminga, "Extraterritoriality" in the *Max Planck Encyclopedia of Public International Law*, Rüdiger Wolfrum (Oxford: Oxford University Press, 2012), 1070.

[41] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 262.

[42] "Case of Issa and others v. Turkey, application no. 31821/96", Judgment Eur. Ct. H. R. 16 November 2004, accessed 16 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67460%22]}

is the use of drones inappropriate military operations outside the country. So it is necessary to determine how to qualify drone actions and whether extraterritorial jurisdiction will apply in this case. To do this, we will review the court cases we described earlier. Hence, in his article, noted some gaps in establishing the issue of extraterritoriality, which affect the qualification of the issue of bombing by drones and air attacks. He established:

> "While Loizidou established a straightforward standard for determining the extraterritorial applicability of human rights norms, the Bankovic decision thrust a chasm into the analysis. On one end of the spectrum, Loizidou requires a boots-on-the-ground military occupation, or at least government administration over a territory. On the other end of the spectrum, an aerial bombardment did not constitute extraterritorial jurisdiction under Bankovic.
>
> Distinguishing Loizidou and analogizing Bankovic would seem to end the pilotless drone analysis before it begins. Drone killings do not require military occupation as in Loizidou, yet they do involve the type of geographically limited aerial bombardments as in Bankovic.[43]"

This approach is controversial with regard to the use of air strikes, because it creates a gap in the protection of human rights and allows States to carry out bombardments with air without impunity, which is contrary to human rights treaties.

The issue of contradicting the definition of jurisdiction in the Bankovich case is followed in other court decisions, for example, one can compare the notion of extraterritoriality in the Issa case that we have defined earlier. However, we will consider the data of the understanding of extraterritoriality in the aspect of the use of air strikes.

> "Issa moved the threshold closer towards extraterritorial IHR accountability in holding that physical force against a handful of individuals in a smaller territory constitutes effective control. […] If killing a handful of individuals during a military incursion is deemed effective control in Issa, why not a bombing, such as in Bankovic, that harmed 32 people, destroyed a large building, and was part of a larger military campaign in Kosovo? The answer may lie in the fact that bombings, and thus drone strikes, do not involve the kind of personal, hand-to-hand violence seen in the Issa case. [44]"

We have determined how the court interprets the issue of airstrikes in case law, but these decisions did not address the issue of drone attacks. This issue is not settled today. There is no well-defined procedure for recognizing effective control of the territory, and there is no qualification for drone bombardment. The UN's report underlined the problems and pitfalls of those issues.

> "The failure of States to comply with their human rights law and IHL obligations to provide transparency and accountability for targeted killings is a matter of deep concern. To date, no State has disclosed the full legal basis for targeted killings, including its interpretation of the legal issues discussed. Nor has any State disclosed the procedural

[43] Bryan S. Hance, "Pilotless drones and the extraterritorial application of international human rights treaties", *National University, OC13066*: 6, http://www.aabri.com/OC2013Manuscripts/OC13066.pdf
[44] Ibid, 6

> and other safeguards in place to ensure that killings are lawful and justified, and the accountability mechanisms that ensure wrongful killings are investigated, prosecuted and punished. The refusal by States who conduct targeted killings to provide transparency about their policies violates the international legal framework that limits the unlawful use of lethal force against individuals. […] A lack of disclosure gives States a virtual and impermissible license to kill.[45]"

This report raises the issue of deliberate murder, as drones are usually used to targetted killing. The UN representative notes the lack of accountability and abuses of states in the event of a breach of norms, which renders the human rights camps ineffective. It is also important to remember that the overriding purpose of human rights treaties is to protect human rights. Furthermore, the use of drones and the launching of airstrikes violate these obligations. Since the above arguments do not consider the use of drones effective control of the territory, human rights treaties do not apply in the relevant territory, which creates a significant gap in human rights activities. As we noted about the lack of a system and accountability, the issue of using drones is complicated by an autonomous system of appropriate mechanisms. Thus, experts cannot determine if the appropriate system of those responsible for human rights violations has been established. ""Lethal actions should have a clear chain of accountability," said Noel Sharkey, a computer scientist and robotics expert. "This is difficult with a robot weapon. The robot cannot be held accountable. So is it the commander who used it? The politician who authorized it? The military's acquisition process? The manufacturer, for faulty equipment?[46]""

The issue of the use of drones in the aspect of human rights protection is not settled. Due to the complexity of the definition of drone, the issue of the extraterritorial effect of treaties is also not regulated, which creates gaps in human rights activities.

The next court case we will consider to understand the ECtHR as a human rights mechanism is Case of Al-Skeini and Others v. the United Kingdom. The purpose of the present case was to unify the concept of extraterritorial jurisdiction in accordance with article 1 of the Convention. "The case related to the conduct of United Kingdom (UK) officials during the occupation and armed conflict in Iraq. Based on its past cases, the Court now clearly distinguished between two forms of extraterritorial jurisdictional control: over territory and over individuals.[47]" This court case begins to broaden the concept of jurisdiction. It notes that the establishment of a fact of jurisdiction may be in the case of territorial control and through the

[45] UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Study on targeted killings*, 28 May 2010, A/HRC/14/24/Add.6, 26, Accessed 13 March 2020, https://www.refworld.org/docid/4c0767ff2.html

[46] W.J. Hennigan "New Drone Has No Pilot Anywhere, so Who's Accountable?",Accessed 13 March 2020, https://www.latimes.com/archives/la-xpm-2012-jan-26-la-fi-auto-drone-20120126-story.html

[47] Nienke van der Have,.*The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 100.

actions of agents of the State representing the interests of another State. ECtHR established: "exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory.[48]" In this statement, it is understood that the condition of establishing jurisdiction over the territories is the exercise of effective control over the territories, irrespective of the legality of warfare. The court places a priority on the protection of human rights rather than the fact of state sovereignty. Also, the court enshrined an additional condition that establishes the jurisdiction of the state: "…the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region.[49]" The establishment of extraterritorial jurisdiction is influenced not only by the military forces exercising control of the responsible territory but also by the state's influence on other sectors of the state's activity, such as economy, politics and administration. ECtHR established these criteria as additional conditions of jurisdiction and noted: "Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration.[50]" The court ruled on the issue of extraterritorial jurisdiction over the territory: "The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights.[51]"

The next element highlighted by the court is the fact of establishing extraterritorial jurisdiction through the actions of state representatives, we have not yet considered this issue, but it is necessary to identify the basic tendencies of understanding of this approach, for further analysis of court cases and consideration of practical situations. The Court establishes a list of situations in which the jurisdiction is applicable: "(i) When its diplomatic or consular agents carry out authority or control over a person; (ii) When it carries out all or some of the public powers based on the consent, invitation or acquiescence of the local government; or (iii) When it exercises physical power and control over people through the use of force.[52]"

[48] "Case of Al-Skeini and others v. The United Kingdom", application no. 55721/07, Judgment, Judgment Eur. Ct. H. R, 7 July 2011, para 138, accessed 16 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105606%22]}
[49] Ibid, para 139.
[50] Ibid, para 138.
[51] Ibid, para 138.
[52] "Case of Al-Skeini and others v. The United Kingdom", application no. 55721/07, Judgment, Judgment Eur. Ct. H. R, 7 July 2011 quoted Nienke van der Have, *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 100.

In a separate opinion on Al-Skeini case, Judge Bonello noted the problems faced by the court on the issue of establishing extraterritoriality.

> "The truth seems to be that Article 1 case law has, before the present judgment, enshrined everything and the opposite of everything. In consequence, the judicial decision-making process in Strasbourg has, so far, squandered more energy in attempting to reconcile the barely reconcilable than in trying to erect intellectual constructs of more universal application. A considerable number of different approaches to extra-territorial jurisdiction have so far been experimented with by the Court on a case-by case basis, some not completely exempt from internal contradiction.[53]"

We are fully agree with those thought. The judge establishes the shortcomings the system had at the time of the case, namely, as we noted earlier that there was no uniform system for establishing extraterritorial jurisdiction under Article 1 of the Convention, as well as the various steps taken by the court to establish the relevant phenomenon. He stated that, in establishing extraterritorial jurisdiction, insufficient attention was paid to human rights protection, he enumerated the list of actions that the state should take to protect individuals:

> "States ensure the observance of human rights in five primordial ways: firstly, by not violating (through their agents) human rights; secondly, by having in place systems which prevent breaches of human rights; thirdly, by investigating complaints of human rights abuses; fourthly, by scourging those of their agents who infringe human rights; and, finally, by compensating the victims of breaches of human rights. These constitute the basic minimum functions assumed by every State by virtue of its having contracted into the Convention.[54]"

The judge also sought to determine the reasons for the establishment of extraterritorial jurisdiction and its nature: "Jurisdiction flows not only from the exercise of democratic governance, not only from ruthless tyranny, not only from colonial usurpation. It also hangs from the mouth of a firearm. In non-combat situations, everyone in the line of fire of a gun is within the authority and control of whoever is wielding it.[55]" He notes that usually the establishment of control over the territory of another state is carried out not by democratic means but by violence, which in itself is already a violation of human rights. Similarly, the protection of human rights in such situations is a very complicated and complex issue. As stated earlier, a universal approach to protecting human rights is needed. The last thing we will pay attention to in this case is the "Indivisibility of Human Rights.[56]" This assertion reinforces the state's obligation to uphold human rights outside its borders when there is control. Having one type of control places a duty

[53] "Case of Al-Skeini and others v. The United Kingdom", application no. 55721/07, Judgment, Judgment Eur. Ct. H. R, 7 July 2011, concurring opinion of judge Bonello, accessed 16 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105606%22]}

[54] Ibid.

[55] Ibid.

[56] "Case of Al-Skeini and others v. The United Kingdom", application no. 55721/07, Judgment, Judgment Eur. Ct. H. R, 7 July 2011, concurring opinion of judge Bonello, accessed 16 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105606%22]}

on the state to protect human rights. This rule also works in the opposite direction, in the absence of control, the state has no extraterritorial obligations regarding the protection of human rights outside its jurisdiction.

ECtHR in that situations of the establishment of extraterritorial jurisdiction may be different. Also, it should be understood that the above list is an inexhaustible criterion and may vary depending on the situation. This court decision is also important, as it is one of the first to address and differentiate between territorial and representative jurisdictions. The subsequent lawsuit helps us to differentiate between these jurisdictions.

The next step in the evolutionary understanding of extraterritoriality under the ECtHR is the case Jaloud v. the Netherlands. This case has similar features to Al-Skeini case. Both of these cases raise the issue of extraterritorial action and the convention and the obligation of States to protect human rights outside their territories. However, the difference is that it is not always possible to separate jurisdictions through territory and jurisdiction through people. As we noted earlier, the lack of a unified system of extraterritoriality establishes new situations that need to be addressed, and each decision is taken individually for the relevant case. Riable said about that case: "… the Court might be aware that the case law reached a point where the models it operates with can no longer clarify hard cases. This would explain the ECtHR's silence on which model it was applying in Jaloud...[57]" Raible suggests that either the court is confirming criticism that the territorial model collapses into the individual model when applied to ever smaller areas, or that the two models were never separate to begin with and jurisdiction always essentially "denotes control over persons and […] control over territory merely functions as a shorthand in this context.[58]"

The present case also emphasizes the importance of standard international rules and highlights the criteria previously established by the court to determine extraterritoriality.

> "These cases also illustrate that the general international law context can be important to establish jurisdiction, such as whether a state is an occupying power or has assumed certain responsibilities under an international mandate. Both cases found their origin in the military invasion in Iraq and subsequent occupation by the United States (US), UK and several smaller coalition parties acting under the caretaker administration of the Coalition of Provisional Authorities (CPA).[59]"

The context of case.

---

[57] Lea Raible, " The Extraterritoriality of the ECHR: Why *Jaloud and Pisari* Should Be Read as Game Changers," *2 European Human Rights Law Review*, (2016): 10, accesed 17 February 2020, https://discovery.ucl.ac.uk/id/eprint/1477577/1/Raible%20%E2%80%93%202016%20%E2%80%93%20Extraterritoriality%20of%20the%20ECHR.pdf

[58] Ibid, 10.

[59] "Case of Jaloud v. the Netherlands" application no. 47708/08, Judgment, Eur. Ct. H. R, 20 November 2014 quoted Nienke van der Have, *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 101.

> "…a car approached a vehicle checkpoint, located near a town in south-eastern Iraq and manned by armed guards of the Iraqi Civil Defence Corps (ICDC), at speed. A patrol of six Dutch soldiers, which were present at the time to investigate an earlier shooting incident, ordered the car to stop. Upon refusal to comply, their leading officer, lieutenant A., opened fire. The applicant's son, who sat next to the driver, was hit multiple times and ultimately succumbed to his wounds.[60]"

The difficulty, in this case, was the fact of establishing which state exercises jurisdiction over these actions, since all this passes during the fighting in the territory controlled by several states at the same time, and it is necessary to establish the jurisdiction of persons in order to establish the respective state or jurisdiction actions. The court found that the acts had been committed under the jurisdiction of the Netherlands. "the fact of executing a decision or an order given by an authority of a foreign State is not in itself sufficient to relieve a Contracting State of the obligations which it has taken upon itself under the Convention. […] The Court notes that the Netherlands retained "full command" over its military personnel, as the Ministers of Foreign Affairs and of Defence pointed out in their letter to Parliament.[61]" ECtHR found that it was not necessary to separate the two types of jurisdiction, and sometimes this was not possible. The court thus found that the Dutch wartime forces had committed the relevant acts and that it should be held responsible for the violation of human rights, as this happened within their jurisdiction.

Jurisdiction issue was established as: "The Court has established jurisdiction in respect of the Netherlands. It is not called upon to establish whether the United Kingdom, another State Party to the Convention, might have exercised concurrent jurisdiction.[62]"

The court found that the Netherlands should be held responsible for the issue of missing persons by the checkpoint and should not be held responsible for the actions of its officers. It is characteristic of this judgment in comparison with those we have previously considered the lack of differentiation by type of jurisdiction. As a drawback, we can determine that the issue of jurisdiction has not developed much, as there is still no unified system of extraterritoriality, and each case is resolved depending on the situation.

2.3 Extraterritorial jurisdiction under the ICCPR

As we have already defined in this section, we will define the extraterritorial application of the Convention, since it is one of the few treaties that provides for the extraterritorial effect of its norms as opposed to others that have territorial effect. Article 2(1) of the ICCPR established:

---

[60] Cedric De Koker. "Extra-Territorial Jurisdiction & Flexible Human Rights Obligations: The Case of Jaloud v. the Netherlands." Accessed 18 February 2020, https://strasbourgobservers.com/2014/12/08/extra-territorial-jurisdiction-flexible-human-rights-obligations-the-case-of-jaloud-v-the-netherlands/.

[61] "Case of Jaloud v. the Netherlands" application no. 47708/08, Judgment, Eur. Ct. H. R, 20 November 2014, para 143, Accessed 18 February 2020, https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-148367&filename=001-148367.pdf&TID=qeikrbadtm

[62] Ibid, para 153.

"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[63]" An essential difference between this provision and Article 1 of the ECHR is the territorial character of the norm.

As said McGoldrick: "Solely based on the text of the provision, the ICCPR could be interpreted to apply to people who are both within the state party's territory and within its jurisdiction, limiting its application strictly to territory.[64]" Based on the direct interpretation of this article, one can indeed conclude that a territorial feature is a prerequisite for the application of the ICCPR, but this claim has been extended in practice. "Article 1 of the Optional Protocol (OP) prescribes that the liability of a State thereunder is limited to 'persons subject to its jurisdiction'. This chapter addresses the territorial and jurisdictional limits of State ICCPR and OP obligations. A State has responsibility to all within its jurisdiction, regardless of a person's citizenship.[65]"

The Human Right Committee (henceforth – HRC), recognizing the lack of direct interpretation of the article and extending the application of Article 2 to ensure more effective protection of human rights: "The text of article 2(1) of the ICCPR seems expressly to exclude liability for a State Party for acts which occur outside its territory. However, the HRC has taken a liberal approach to the jurisdictional extent of a State's ICCPR obligations, confirming that States do have a level of extraterritorial responsibility.[66]"

It is also necessary to determine in what form extraterritorial jurisdiction is exercise. "States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party…[67]" This statement establishes two models of extraterritorial jurisdiction over the territory and jurisdiction over persons. Those models are similar to those which we described in the previous part about ECHR.

---

[63] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, 171. Accessed 28 February 2020, https://www.refworld.org/docid/3ae6b3aa0.html

[64] D. McGoldrick, "Extraterritorial Application of the International Covenant on Civil and Political Rights", in the *Extraterritorial Application of Human Rights Treaties,* Fons Coomans and Menno (M.T) Kamminga, (Antwerp – Oxford: Intersentia, 2004), 55.

[65] Joseph Sarah, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2014), 92

[66] Ibid, 96.

[67] Joseph Sarah, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2014), 96.

For a better understanding of the application of this type of jurisdiction, it is better to consider the practice of applying it. The ICJ decision in judgment about "Construction of a Wall in the Occupied Palestinian Territory.[68]" played an essential role in the extraterritorial application of the ICCPR. For further consideration of the court's reasoning, it is necessary to understand the context in which the events occur. The Israeli authorities occupy this territory, and it is this state that exercises effective control over the territory. The Palestinian Authority is unable to protect its citizens because the territory is not under their control.

The Committee established that: "…that the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant, except by operation of article 4, whereby certain provisions may be derogated from in time of public emergency.[69]" The Committee stressed the importance of the protection of rights and freedoms despite the conditions of war. It could only depart from the obligation to protect and uphold human rights only in the exceptional cases provided for by humanitarian law.

In advisory opinion ICJ established:

> "…the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory… The Court would observe that, while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions. The constant practice of the Human Rights Committee is consistent with this.[70]"

The Court upheld the extraterritorial obligations imposed on the State under the ICCPR and stated that it was a consistent practice of the Committee. The Court also consolidated the forms of extraterritorial jurisdiction by determining: "…the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public

[68] *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, Accessed 26 February 2020, https://www.refworld.org/cases,ICJ,414ad9a719.html

[69] Joseph Sarah, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2014), 96.

[70] *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, Accessed 26 February 2020, https://www.refworld.org/cases,ICJ,414ad9a719.html

international law.[71]" This statement reinforces the need to control the actions of agents, which confirms extraterritorial jurisdiction over a person. Also, court established that the rules should first and foremost protect the interests of the people in the respective territory. The Committee determines which form of extraterritorial jurisdiction is more applicable and needs more detailed settlement. "The HRC addressed the issue of extraterritorial responsibility in the following cases, where the complaints alleged ICCPR violations entailed in the extraterritorial activities of State agents.[72]" The Court found that the promotion of human rights must be carried out effectively. However, this criterion is unclear, and the state determines it at its discretion.

In the present case, the court found Israel guilty of violating the Convention. The Israeli authorities were required to protect the rights of Palestinian citizens in the occupied territory by Article 2 (1) of the ICCPR. The court also argued for the need for adequate protection of human rights in the occupied territory. It noted that exceptions for the protection of human rights were possible only in emergencies. The court also paid attention to the forms of extraterritorial jurisdiction and distinguished their peculiarities.

Thus, we paid more attention to extraterritorial jurisdictions over persons. However, another form of extraterritorial jurisdiction must also be addressed. So, we will look at situations where the Committee has paid attention to territorial jurisdiction. "…This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.[73]" This statement establishes that the reasons for the use of extraterritorial jurisdiction under the ICCPR may be actions committed during peacekeeping operations. The reason for those conclusions was that states exercise control over the relevant territory, which places them under the responsibility of protecting human rights.

The HRC has identified this approach concerning Belgium's peacekeeping operations.

> "The Committee is concerned about the behavior of Belgian soldiers in Somalia under the aegis of the United Nations Operation in Somalia (UNOSOM II), and acknowledges that the State party has recognized the applicability of the Covenant in this respect and opened 270 files for purposes of investigation. The Committee regrets that it has not received further information on the results of the investigations and adjudication of cases and requests the State party to submit this information.[74]"

[71] UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Israel*, 21 August 2003, CCPR/CO/78/ISR, para. 11. Accessed 28 February 2020, https://www.refworld.org/docid/3fdc6bd57.html

[72] Joseph Sarah, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2014), 97.

[73] Ibid, 99.

[74] UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Belgium*, 12 August 2004, CCPR/CO/81/BEL, para 6. accessed 28 February 2020, https://www.refworld.org/docid/42ce6d6ec.html

The Committee thus argues for the unlawfulness of Belgium's actions against persons within its territory and determines the need for adequate protection of its citizens.

Thus, we have determined that the state may extraterritorially exercise jurisdiction due to effective control, but the conditions for applying this approach are not clearly defined. HRC established: "State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.[75]" We have defined in the previous chapter the extraterritoriality of the ECHR. The HRC applies a somewhat similar approach in understanding effective control over a territory. However, while the Committee emphasizes that it exercises its authority over people, at the time the Convention itself states that jurisdiction extends to the territory. That's what scientists say: "…the criteria for extraterritorial applicability of the ICCPR are a bit muddled and not as refined as in the case law of the ECtHR, which may be explained by the sheer volume of cases involving the issue of extraterritoriality dealt with by the ECtHR as opposed to the HRCee.[76]" They consider this to be a poor understanding of the issue of extraterritoriality, as the committee has encountered fewer cases involving extraterritoriality.

The Commeette outlined what action should be taken by state representatives to protect human rights effectively.

> "The HRCee has also not offered a principled view on what corresponding obligations states have when they exercise extraterritorial jurisdiction. In the concluding observations of reporting procedures, the HRCee has recommended that states should train their officials properly for extraterritorial operations, ensure independent modes of oversight for drone-strikes, provide victims of human rights abuses with access to remedy and prosecute state officials responsible for human rights abuses abroad.[77]"

2.4 Summary on chapter

The VCLT is one of the fundamental ones on the regulation of international law. However, it does not address the issue of extraterritorial application of the rules. Territorial action is defined by Article 29 and has exclusive competence only within the territory of the State. The Commission said in its comment that the definition of the term at the level of international law would render the phenomenon ineffective.

---

[75] UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para 10. Accessed 27 February 2020, https://www.refworld.org/docid/478b26ae2.html

[76] Nienke van der Have,.*The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 105.

[77] UN Human Rights Committee (HRC), *Concluding observations on the fourth periodic report of the United States of America*, 23 April 2014, CCPR/C/USA/CO/4, quoted Nienke van der Have, *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 105.

The issue of extraterritoriality in the ECHR is governed by Article 1. This article is interpreted broadly, which allows it to be applied to different situations depending on the context. We have considered several court cases that raised issues of extraterritorial application. The evolutionary development of extraterritoriality has been analyzed. We have identified that there are two models of extraterritorial jurisdiction across people and the territory. They noted that these jurisdictions could be regarded as separate from each other and in some situations, they could not be distinguished. The disadvantages we have identified in this section are the precedent method for applying Article 1 and the lack of a uniform system for applying that rule.

ICCPR one of the few human rights instruments which established extraterritorial applicability. Article 2(1) established those rules. Directly quoting the norm of the article may not establish the principle of extraterritoriality. However, the Committee has broadened its interpretation of this provision and is actively implementing it Although the text of the article does not provide for the extraterritoriality of the rules, however, the Committee is expanding its application and using it as an effective mechanism for protecting human rights. We have reviewed some examples of how this rule applies. The Court thus establishes two forms of extraterritorial jurisdiction, noting some difference from the ECtHR approach. They determine that jurisdiction is mainly exercised through the actions of state representatives. The Commission also outlined what action should be taken to protect convention norms and protect human rights adequately.

3. ESTABLISHMENT OF MODELS OF THE EXTRATERRITORIAL JURISDICTION

This section will examine the model by which the extraterritorial effect of human rights treaties is determined. We will determine models of extraterritoriality. It should be noted the responsibilities that are incumbent upon States in the establishment of jurisdiction. We will analyze the advantages and disadvantages of relevant models and how they are applied in practice.

3.1 Establishment of territorial model of extraterritorial jurisdiction.

This section will look at one of the extraterritorial models. We will look at what criteria are set to define this model as the court determines that the state exercises extraterritorial jurisdiction in the relevant territory of the state. Let us analyze the evolutionary path of this theory. Also, determine what sweats the territory in this model and what the state has to do with protecting human rights.

3.1.1 Defenition of territorial model

First of all, it is necessary to consider the territorial model of jurisdiction, as this particular type of extraterritorial jurisdiction comes from the textual interpretation of human rights treaties. This type of jurisdiction is widely used in the jurisprudence and is considered as control over the territory. Loizidou case established the definition of the territorial model of extraterritoriality.

> "…it stressed that under its established case-law the concept of "jurisdiction" under Article 1 of the Convention (art. 1) is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. Of particular significance to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.[78]"

The definition of the jurisdiction, in this case, is fundamental to the territorial understanding of extraterritoriality. This statement reflects the requirements of Article 1 of the Convention. It places the obligation on States to protect the population outside the country, regardless of the legal cause of these actions. Besson established this principle as: "The ECtHR's practice identifies territory or the 'effective control over an area' as the main shorthand for jurisdiction: jurisdiction over territory is indeed an indirect and general form of jurisdiction over

[78] "Case of Loizidou v. Turkey, Application no. 15318/89", Judgment, Eur. Ct. H. R, 18 December 1996, para 52. accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58007%22]}

people.[79]" According to this statement, the scientist points out the somewhat narrowed responsibilities of the territorial model of extraterritoriality. It also determines that the territorial model of extraterritoriality is derived from the personal model of jurisdiction, which we will consider in the following sections. However, it should be understood that this division is theoretical and made to determine the characteristics of each model. From a practical point of view, it is inefficient to formulate appropriate jurisdictional models because they are complementary. "The spatial test for triggering applicability, then, is "effective control of an area," and the consequences of this are a generalized "obligation to secure the rights" in the area in question.[80]" It should be noted that the issues of extraterritoriality, as we have noted in the last section, usually relate to conducting military operations. Therefore, this issue resonates with another area of law, namely international humanitarian law. The very concept of exercising control is regarded by humanitarian law as an occupation. "… exercise of authority … permits at least two different interpretations. It could, first, be read to mean that a situation of occupation exists whenever a party to a conflict is exercising some level of authority or control over territory belonging to the enemy. So, for example, advancing troops could be considered an occupation, and thus bound by the law of occupation during the invasion phase of hostilities.[81]" So the issue of exercising control over the territory intersects with the law of occupation is precisely this factor influences the problems in assessing the actions of states and determining their application of the rules of law.

Like any theory, a territorial model of extraterritoriality has some disadvantages. Milanovic said:

> "… is that on a deeper look it does not reconcile universality and effectiveness all that well. Adhering to it strictly would lead to numerous morally intolerable situations—intolerable from the standpoint of universality in which a state acts extraterritorially but the relevant human rights treaty would not apply, as with most of the scenarios that I have just outlined above. Even if it is better than just saying that human rights treaties cannot apply extraterritorially at all, it is still simply far too rigid. As we will see, this has invariably led either to the rejection of the spatial model in favour of other approaches by the more adventurous human rights bodies, or to its attenuation and the carving out of relatively unprincipled exceptions by the more faint of heart.[82]"

---

[79] Samantha Besson. "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To." *Leiden Journal of International Law* 25, 4 (2012): 874, https://core.ac.uk/download/pdf/20660691.pdf

[80] Ralph Wilde, "Triggering State Obligations Extraterritoriality: The Spatial Test in Certain Human Rights Treaties." *Israel Law Review* 40, 2 (2007): 509. https://poseidon01.ssrn.com/delivery.php?ID=225088106066099000099004126103103122063069081044038058081116097113066087069125098065019050096119055113011093031003101097102066008047028029049109127073114121070123007023013031089100082024013020083092018023000122108125107087087017096098064025125093003&EXT=pdf

[81] Ibid, 510.

[82] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 128.

We have identified in the previous section, the question of the establishment of extraterritoriality is of precedent nature and should be determined according to the situation. The same should be applied to determine the spatial model of extraterritoriality. The scientist also argues that this model should be adapted to every situation, since the direct application of the rules may preclude the application of the human rights treaty. He also emphasized the weakness of this type of jurisdiction compared to other models. Despite the weakness in the theoretical fitting of the relevant model, it plays an essential role in the case-law of the court.

To sum up, the territorial model of extraterritoriality comes from the verbal interpretation of human rights treaties, namely Article 1 of the Convention. The application of the spatial model is closely linked to the issue of occupation governed by humanitarian law. The issue of determining this model of extraterritoriality should be determined according to the situation. Scientists point to the lack of effectiveness of the current model due to the lack of representatives who would perform state actions.

3.1.2 Understanding of "area" due to territorial model

In order to understand the spatial model of extraterritorial jurisdiction, it is necessary to analyze the individual elements that reveal the extent of this form of jurisdiction. Questions about understanding the concept of territory are complex. Consider the litigation in which this concept is revealed. The context of case: "This case concerned the decision of the Court as to the admissibility of the application of two Iraqi nationals who had been detained in Iraq by the British government as criminal detainees and then transferred by it to the Iraqi authorities.[83]" As we have noted earlier, the issue of extraterritoriality is usually interrelated with other areas of law. In the present case, the issue of the definition of extraterritoriality is linked to humanitarian law in the context of hostilities and the occupation of part of Iraq by Britain. Issues related to refugee law are also being raised.

The main issue, in this case, was what exactly should be understood under the territory to which the jurisdiction extends. The concept of territory has not been clearly defined before. Some people understood this as a particular area that did not fit into the premises. That is why this case is critical because it raises the issue of keeping people in a particular room, and the court has established jurisdiction in the case as:

> "The United Kingdom exercised control and authority over the individuals detained in them initially solely as a result of the use or threat of military force. Subsequently, the United Kingdom's de facto control over these premises was reflected in law. […] The

[83] "Al-Saadoon and Mufdhi v the United Kingdom", Application No. 61498/08, Decision Eur. Ct. H. R, 20 November 2014.Accessed 12 March 2020, https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AL-SAADOON%20AND%20MUFDHI%20v.%20THE%20UNITED%20KINGDOM.pdf

> Court considers that, given the total and exclusive de facto, and subsequently also de jure, control exercised by the United Kingdom authorities over the premises in question, the individuals detained there, including the applicants, were within the United Kingdom's jurisdiction…[84]"

In the instant case, the court established the notion of territory to which extraterritorial jurisdiction does not extend, as a geographically defined territory, but as a clearly defined place where persons were held. The argument in this regard is that Britain had full access to it and was able to operate its premises unimpeded. The Court emphasized that the issue of the regulation of the premises concerned was defined at a legal level and therefore placed positive obligations on the state in order to ensure the effective implementation of human rights standards. Due to this Milanovic said:

> "If we conceive of state jurisdiction in human rights treaties in spatial terms, we can observe that space or area to which it refers on a continuum from something that we would broadly call a 'territory,' such as Northern Cyprus, to what we would generally call a 'place,' such as a UK-run prison in Iraq or that riding school in Vilnius. The question is whether that continuum extends even further, to even smaller areas or places. I, for one, cannot discern a clear cut-off one way or the other. What is certainly true is that there is a degree of artificiality to this approach, and that the artificiality increases as the size of the area decreases. […] In other words, the spatial concept of state jurisdiction as control over an area tends to collapse into the personal model of jurisdiction as control over individuals, or indeed into the absence of any threshold at all.[85]"

He notes that the issue of territorial determination does not have a clear fix, so in the case of the cases we have dealt with in this and past sections, jurisdiction may extend to well-defined geographical territories as well as to premises that fall under the jurisdiction of States. He also noted that the status of these territories would be equal. In his statement, he noted the artificiality of this approach due to the narrowing of the understanding of the territories covered by the relevant jurisdiction. We do not agree with this approach, because in its practice, the court seeks to reduce the number of gaps in human rights treaties. These actions are aimed at the adequate protection of human rights. Foremost is the last sentence in his statement, which can determine that the issue of a spatial model cannot exist on its own, but must exist in conjunction with the personal model of jurisdiction, which we will consider in the following sections. Scientists established that "area" should be understood due to the practical approach. "…only something over which state can exercise a sufficient degree of control can count as an area.[86]"

[84] "Al-Saadoon and Mufdhi v the United Kingdom", Application No. 61498/08, Decision Eur. Ct. H. R, 20 November 2014.Accessed 12 March 2020, https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AL-SAADOON%20AND%20MUFDHI%20v.%20THE%20UNITED%20KINGDOM.pdf
[85] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 134.
[86] Ibid, 135.

To sum up, analyzing the theory and jurisprudence, they found that the concept of territory is very important in terms of the definition of extraterritorial action, but does not have a clear definition of what falls into a particular category. This concept may cover both geographically defined regions and buildings and premises.

3.1.3 Understanding of "effective overall control" due to territorial model

The issue of control plays an essential role in the spatial model of jurisdiction.. However, as we have already established in this model, the fact of establishing the legality or illegality of jurisdiction is irrelevant. Due to this scientists established:

> "Arguing that the applicability of human rights law obligations is dependent on whether the agents were acting with consent of the territorial state leads, in effect, to the unsavoury conclusion that a state whose agents act with consent of the territorial state must conform to human rights law obligations in its dealings with individuals, while the state that acts unlawfully in respect of the inter-state relationship is rewarded with being outside the purview of human rights law in respect of the measures it takes. In other words, by breaching the sovereignty of the territorial state, the outside state would shed itself of responsibilities under human rights law. This interpretation is at best problematic, if not highly dubious, in that it creates an incentive for states to act unlawfully. Lack of authority for the initial action cannot be grounds for evading responsibility for the results.[87]"

In this statement, the scientist notes that when different approaches to assessing the legality of actions of the state, gaps can arise, the use of instruments will protect human rights. Emphasizing that when applying a differentiated approach, States that breach their international obligations would avoid being held accountable for their actions.

One of the main features that identify this type of jurisdiction is the Loizidou case. Court established "effective overall control[88]" as the reason for activation extrateritoriality. Let us look at how ECtHR identified the term "overall" due to the facts of the case.

> "It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the "TRNC". It is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the "TRNC" Those affected by such policies or actions therefore come within the "jurisdiction" of Turkey for the purposes of Article 1 of the Convention (art. 1). Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus. In view of this conclusion the Court need not pronounce itself on the arguments which have been adduced by those appearing before it concerning the alleged lawfulness or unlawfulness under international law of

[87] Noam Lubell, *Extraterritorial Use of Force against Non-State Actors* (Oxford: Oxford University Press, 2011), 215.

[88] "Case of Loizidou v. Turkey, Application no. 15318/89", Judgment, Eur. Ct. H. R, 18 December 1996, para 56. Accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58007%22]}

> Turkey's military intervention in the island in 1974 since, as noted above, the establishment of State responsibility under the Convention does not require such an enquiry (see paragraph 52 above). It suffices to recall in this context its finding that the international community considers that the Republic of Cyprus is the sole legitimate Government of the island and has consistently refused to accept the legitimacy of the "TRNC" as a State within the meaning of international law.[89]"

This assertion states that the court does not thoroughly consider the concept of "overall". He only stated that the issue of extraterritoriality, in this case, would be eliminated regardless of the legality of the grounds. He also noted that the Turkish authorities had sufficient capacity to exercise effective control, as they managed the occupied administrative infrastructure.

The issue of determining the territorial model of jurisdiction has been applied in other court cases. For example, Cyprus v. Turkey case also considered the term "overall." Due to the spatial model court established "effective overall control[90]" differently than in Loizidou case as:

> "It is of course true that the Court in the Loizidou case was addressing an individual's complaint concerning the continuing refusal of the authorities to allow her access to her property. However, it is to be observed that the Court's reasoning is framed in terms of a broad statement of principle as regards Turkey's general responsibility under the Convention for the policies and actions of the "TRNC" authorities. Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's "jurisdiction" must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.[91]"

Comparing the two decisions, we can determine that, for one purpose, these court cases use slightly different approaches to implement a human rights protection mechanism. So the goal is to protect human rights effectively. The court prescribes protection methods somewhat differently if, in the Loizidau case, human rights protection is attributed automatically, since Turkey exercises control over the territory. In the case of Cyprus v. Turkey, the court imposes positive obligations on Turkey to protect the population in its territory, as it controls not only the armed forces but also its administrative resources.

The next question that comes from the analysis of relevant solutions, which is understood as the term "effective." Theoretically, scientists have defined this as: "In the most general terms, the state needs to have enough power over the territory and its inhabitants to

[89] "Case of Loizidou v. Turkey, Application no. 15318/89", Judgment, Eur. Ct. H. R, 18 December 1996, para 56. Accessed 15 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58007%22]}
[90] Ibid, para 56.
[91] "Case of Cyprus v. Turkey", application no. 25781/94, Judgment, Eur. Ct. H. R, 10 May 2001, para 77. Accessed 18 March 2020, https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CYPRUS%20v.%20TURKEY%20%282001%29.pdf

broadly do as it pleases. That said, control over territory is a fluid thing, and is not limitless even under the best of conditions.[92]" Since, as we have already defined, the issue of the establishment of extraterritoriality is determined in the indebtedness of the case, the absence of a unified system creates specific problems. One of the problems with this statement is the lack of a threshold for establishing control in the case of extraterritorial jurisdiction. The question of the threshold function of extraterritoriality is also considered in the Bankovich case. In this case, the court established "effective control" fundamental definition which was bases for future cases.

> "…the case-law of the Court demonstrates that its recognition of the exercise of extra territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad, as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory exercises all or some of the public powers normally to be exercised by that Government.[93]"

Compared to the previous cases we have considered in this section in the Bankovich case, the court has expanded the requirements for exercising control and defined them more precisely. One of the requirements was the presence of public authority. Due to those statements enshrines a State that temporarily occupies the territory in question will be held responsible in the event of a violation of human rights in the presence of appropriate authorities governed by that State. "Whereas the statement from Banković touches on some of the factual circumstances in relation to which the Court had previously found the exercise of jurisdiction (cf. the phrase "it has done so"), it would be wrong to conclude that the capacity to exercise public authority was actually one of the salient facts, and thus part of the test for jurisdiction as territorial control, in those previous cases.[94]" Scientists say that the inclusion of the exercise of power over the territory is not a mandatory criterion for establishing extraterritoriality. After all, given the facts of the case, it was one of the elements that created the situation in which human rights were violated.

In his work, Milanovic summarized the jurisprudence and determined:

> "First, the threshold of effective overall control of a territory is set relatively high. As a general matter, it requires boots on the ground. Secondly, though the threshold is set high, that level of control still need not be as high as the one that the state has over its own territory in peacetime or during normalcy. Thirdly, effective overall control is itself a spectrum, ranging from the more entrenched and visible exercise of de facto government,

---

[92] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 137.

[93] "Case of Banković and others v. Belgium and others, application no. 52207/99", Decision Eur. Ct. H. R, 12 December 2001, para. 71. Accessed 17 March 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}

[94] Ralph Wilde, "Triggering State Obligations Extraterritoriality: The Spatial Test in Certain Human Rights Treaties." *Israel Law Review* 40, 2 (2007): 516.

administration, or public powers, to the more borderline cases of less permanent or overt state control…[95]"

Due to this statement, he characterized the criteria for establishing "efficiency". He asserted that in order to establish extraterritoriality, it is necessary to have agents outside the territory of one's state. The question of the exercise of public authority must be regulated, but this criterion should not be set at too high a level since it must be borne in mind that this power is exercised outside the limits of one's state. It also shows a somewhat narrower understanding of the issue of extraterritoriality and its application in the local context. The issue of becoming a spatial model of jurisdiction is always contiguous with the fact of effective control of the territory. Therefore, the issue of territorial jurisdiction is also determined in terms of the effective functioning of human rights protection mechanisms. As we mentioned earlier, the issue of establishing extraterritoriality does not have clearly defined criteria and is set according to the situation. Scholars have identified the reasons for the lack of relevant criteria in terms of the spatial model of jurisdiction.

"First, the state's ability to comply with its negative obligation to respect human rights does not depend on its control over territory. Rather, the state by definition has control over its own agents. Secondly, even with respect to the state's positive obligation to secure human rights, that obligation is not as onerous as is it sometimes made out to be. It is an obligation of due diligence, of the state doing all that it could reasonably be expected to do to protect a territory's inhabitants even from third parties.[96]"

The difficulty in defining clear criteria for defining extraterritoriality is the impossibility of defining rigid prescriptions for positive and negative states obligations. It is also noted that the State, no matter fact of control over the territory or not, should not violate human rights. For positive obligations, the criterion for determining the extent of the State's human rights obligations may be different, but it does not remove states from their obligation to protect human rights.

To sum up, establishment of the "effective overall control" is one of the key point of spatial model of the extraterritoriality. This concept has come to a long evolutionary path of development. The primary driving mechanism was the jurisprudence in which it follows how the court defines the concept of the extraterritorial spatial model. Each word "effective", "overall", "control" were analysed. We have analyzed each of these definitions and determined how they are applied in practice.

[95] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 141.
[96] Ibid, 141.

3.1.4 Summary on subchapter

Like any theory, the territorial model of extraterritoriality has its advantages and disadvantages. As we have defined, this model is widely applicable in jurisprudence. The spatial model is an effective mechanism for protecting the territories of the state that are under the control of other states. However, the absence of well-defined universal criteria for extraterritoriality precludes the fact that the establishment of this model may differ depending on the situation.

We looked at how the concept of territory evolved in the course of court cases. Initially, the term "territory" refers to vast territories to which states exercise their jurisdiction through military forces or administrative bodies exerting influence over that territory. Subsequently, the court tried to close the gaps in the appropriate approach. It narrowed the notion of “territory” to now fall within the building or premises to which the state may exercise its jurisdiction.

In this section, we established that the court recognised the spatial model of jurisdiction as “effective overall control.” The understanding of those rule has come to a long evolutionary path of development. Nevertheless, the essence of those definitions was to proper protection of human rights. We analysed each element from that structure.

We have also identified the positive and negative responsibilities of the State in protecting human rights in the event of the establishment of extraterritorial jurisdiction. Negative obligations mean that the State should not violate human rights, regardless of the fact of establishing control. Due to positive obligations state no matter established extraterritorial jurisdiction or not should take active measures for protecting human rights.

Territorial model of extraterritoriality has an essential drawback. This model cannot exist without representatives of agents of the state who will exercise competence in a specific territory. Therefore, we need to take a closer look at the continuity of the offshore model with the personal one, which we will analyze in the next section.

3.2 Establishment of personal model of extraterritorial jurisdiction

This section will describe the following model of extraterritoriality, namely personal. We will determine what this model means and how the personal model differs from the territorial one. Let us analyze what are the types of a personal model of extraterritoriality and determine what elements of this model

3.2.1 Definition of personal model

Before analyzing the relevant model, we should understand that separation is necessary for theory since it helps to illustrate the advantages and disadvantages of each of these models or

to identify certain obligations of states on matters of extraterritoriality. In practice, however, these models need to be mostly presented together, and their delineation is not necessary.

In the last section, we have partly addressed the issues of the personal model of extraterritoriality. One of the scientists who researched the personal model is Samantha Besson; she defines it as: "jurisdiction is recognized without territorial control and merely by reference to direct personal control, i.e., the effective overall normative power over people.[97]" This model prioritizes control over the individual, not the territory. We fully agree with this view, because it must be understood that the territory itself is not capable of protecting or violating human rights, but the actions of persons who are in the relevant territory and fall under the jurisdiction of the state. Due to her statement, she prescribed that all persons within the territory of the State are subject to a personal model and defines it as "presumption of jurisdiction.[98]"

"The lack of conceptual clarity concerns precisely, but not only, the notion at the centre of the debate, namely 'jurisdiction'. Absent an express definition of its geographical scope, the ECHR applies to persons who come 'within [the] jurisdiction' of a Member State. Since the early practice of the Convention organs, jurisdiction was defined as the exercise of actual 'authority' and 'control' over persons.[99]" This statement emphasizes that the personal model of jurisdiction plays an important role and is paramount over others. "The personal model of jurisdiction establishes the jurisdictional link between a state and individual based on forms of authority and control exercised over the individual.[100]" An essential element in the personal model of jurisdiction is the connection between the individual and the state. It is this element that emphasizes the peculiarity and importance of this model. It follows that the subjects of this model are the individual and the state.

Scholars have noted such problems concerning the personal model of extraterritorial jurisdiction. "First, it is entirely doubtful that the personal model is reconcilable with the text of at least some of the relevant treaties. […] More fundamentally, even if the personal model presented a legitimate option in principle, what would actually count as state control over an individual?[101]" It follows from the preceding that the treaties essentially enshrine the spatial jurisdiction of the action. Also, the issue in establishing the personal model is not sufficiently

[97] Samantha Besson. "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To." *Leiden Journal of International Law* 25, 4 (2012): 875, https://core.ac.uk/download/pdf/20660691.pdf
[98] Ibid, 876.
[99] Michael Duttwiler, "Authority, Control and Jurisdiction in the Extraterritorial Application of the European Convention on Human Rights," *Netherlands Quarterly of Human Rights* 30, 2 (2012): 138, http://www.corteidh.or.cr/tablas/r28821.pdf
[100] Nienke van der Have. *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 112.
[101] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 173.

settled because there is no clear concept of control over a person. Scholars propose a series of actions to address the problem of regulating a personal model of jurisdiction.

> "…we could adopt the broadest possible definition of control, and consequently, of jurisdiction over a person—a state would have such control whenever it had the ability to substantively violate an individual's rights. […] It would serve no useful purpose as a threshold for the application of a human rights treaty, since the treaty would apply whenever the state could actually infringe it. Secondly, to prevent this collapse we could try limiting the notion of personal control, for instance by saying that only physical custody over an individual could satisfy the threshold. As we will see, however, such a limitation is not possible by reference to any non-arbitrary criterion.[102]"

The issue of establishing control over a person is very complex, as extending the concept of control or narrowing it can have negative consequences. Thus, if this concept is expanded, it will create several problems and be excessively abused, as all actions of the state can be interpreted as being subject to legal control, i.e. carried out on a legal basis. On the contrary, severe constriction also has a negative effect, because, if additional criteria are applied, the inclusion of a control issue, their application may exclude a control mechanism, which will lead to inefficiency of the system. An important issue that has not yet been resolved is the moment when personal jurisdiction is activated.

One of the first court cases where a clearly defined personal model of extraterritorial jurisdiction was the Bankovich case.

> "The Court considers that the applicants' submission is tantamount to arguing that anyone adversely affected by an act imputable to a Contracting State, wherever in the world that act may have been committed or its consequences felt, is thereby brought within the jurisdiction of that State for the purpose of Article 1 of the Convention. The Governments contend that this amounts to a 'cause-and-effect' notion of jurisdiction not contemplated by or appropriate to Article 1 of the Convention. However, the Court is of the view that the wording of Article 1 does not provide any support for the applicants' suggestion that the positive obligation in Article 1 to secure 'the rights and freedoms defined in Section I of this Convention' can be divided and tailored in accordance with the particular circumstances of the extra territorial act in question and, it considers its view in this respect supported by the text of Article 19 of the Convention. Indeed the applicants' approach does not explain the application of the words 'within their jurisdiction' in Article 1 and it even goes so far as to render those words superfluous and devoid of any purpose. […] Furthermore, the applicants' notion of jurisdiction equates the determination of whether an individual falls within the jurisdiction of a Contracting State with the question of whether that person can be considered to be a victim of a violation of rights guaranteed by the Convention. These are separate and distinct admissibility conditions, each of which has to be satisfied in the afore-mentioned order, before an individual can invoke the Convention provisions against a Contracting State.[103]"

[102] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 173.

[103] "Case of Banković and others v. Belgium and others, application no. 52207/99", Decision Eur. Ct. H. R, 12 December 2001, para. 75. Accessed 17 March 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}

It follows that the court established a simplified rule in order to establish the fact of the activation of jurisdiction. If a state violates human rights through its extraterritorial actions, then that person falls under the jurisdiction of that state. However, being aware of the controversy of the decision, the court found that such an interpretation was incompatible with this understanding of jurisdiction. This approach would have some disadvantages. One would be to evaluate the actions of the state and its qualification as extraterritorial action. Separating this obligation would create implementation gaps and create mechanisms for avoiding liability for the offending states.

An important element in this decision, which has not been meaningfully interpreted, is the causal effect. This element plays an essential role in determining the issue of state action and the consequences of violating human rights. The absence of a well-defined form of this link is detrimental and is reflected in practice. This issue is discussed in more detail in scientific papers. One of those who paid enough attention to this phenomenon is Lawson. He established "direct and immediate link-test.[104]" Due to his theory, the necessary element for the activations should be "obvious causal connection[105]." According to the scientist, this approach has an extensive application in practice, because actions interpreting its actions by any person who violated human rights in extraterritorial terms will entail state responsibility and compliance with this test. From this, it follows that the issue of establishing control over people must be determined in order to determine this connection.

To sum up, the concept of personal jurisdiction is very complicated. To determine this, we have analyzed case law and research on this issue. They also identified the elements that characterize precisely this type of jurisdiction, namely, control over people, that is, representatives of the state and causation between actions of representatives and the consequences that arise in this case.

3.2.2 Types of personal model jurisdiction

Since the issue of establishing a personal model has a massive amount of unregulated issues, there are several approaches to how scientists differentiate understanding "control". There are two types, "… one factual and the other normative.[106]" Some scholars differ on the use of

[104] R.A Lawson, "Life after Bankovic - On the Extraterritorial Application of the European Convention on Human Rights," in the *Extraterritorial Application of Human Rights Treaties*, Fons Coomans and Menno (M.T) Kamminga (Antwerp – Oxford: Intersentia, 2004), 104.
[105] Ibid, p 104
[106] Nienke van der Have. *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 112.

this or that approach. We will now look at each of them and determine what they have advantages and disadvantages.

Under the normative approach, scientists said that the state is responsible following the obligations it has assumed. "As an element of Article 1 ECHR, jurisdiction needs to be attributed a distinct meaning which justifies its inclusion in the Convention. The term cannot be interpreted so as to become obsolete. In the interpretation of treaties, it has to be assumed that every element of the wording serves a distinct purpose, for it would otherwise not have been retained by the drafters.[107]" Jurisdiction is clearly defined in international treaties, and States must, therefore, make every effort to ensure that it is adequately enforced. This statement emphasizes that human rights instruments should not be used to create legal loopholes. All the terms used in these treaties are intended only for their useful application.

Below is how this approach will be put into practice.

> "Activities of the controlling state may obviously have a notable impact on the persons residing there and the very fact that a state is 'in control' logically implies that the state has it, at least to some extent, within its abilities to ensure the human rights of persons living there. Moreover, to consider the state not bound to respect human rights in that territory could result in the creation of a human rights vacuum, because the original sovereign will normally have become unable to fulfil its function as the human rights guarantor in that territory. By contrast, in situations of ad hoc activities of a state in foreign territory, or where activities of and within a state produce effects in foreign territories, the existence of a 'jurisdictional link' between the acting state and the affected individual may be less obvious.[108]"

However, this type has a significant drawback. It does not provide clearly defined threshold criteria. "It would serve no useful purpose as a threshold for the application of a human rights treaty, since the treaty would apply whenever the state could actually infringe it.[109]" In practice, this approach may be ineffective, since there are situations where human rights treaties do not provide sufficient protection, due to the many likely situations. Despite the broad interpretation of the rules of law, as we have previously defined, this type has many exceptions to the application of the relevant model of jurisdiction. Scientists generalised those approach as: "claim that a relationship between the duty bearing state and individual must amount to something more.[110]"

---

[107] Michael Duttwiler, "Authority, Control and Jurisdiction in the Extraterritorial Application of the European Convention on Human Rights," *Netherlands Quarterly of Human Rights* 30, 2 (2012): 155, http://www.corteidh.or.cr/tablas/r28821.pdf

[108] Maarten den Heijer. *Europe and Extraterritorial Asylum* (Oxford: Hart, 2012), 41.

[109] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 173.

[110] Nienke van der Have. *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 115.

In contrast, there is another type of personal jurisdiction. The actual model focuses more on the issues that the practice faces. Lawson described this law in his writings through his "direct and immediate link-test,[111]" and Judge Bonello in his view that the Al-Skeini. We were familiar with the ideas that Judge Bonello had identified in a separate opinion, but it was necessary to pinpoint what human rights protections he envisaged. "(i) By not violating a right; (ii) By having systems in place which prevent breaches; (iii) By investigating complaints of breaches; (iv) By prosecuting and punishing state agents who commit breaches; and (v) By compensating the victims of breaches.[112]" In theory, all these conditions are spelt out and distinctive. However, in practice the application of this model undergoes some changes, the judge himself noted that to prove the fact that it was a person under the jurisdiction of the state committed human rights violations and a very problematic issue. The special element of factual approaches established as: "… a state always exercises jurisdiction if an act attributable to it affects an individual's rights.[113]"

To sum up, scholars note that there are two types of personal jurisdiction. The normative approach is broadly defined and prescribes that the state is considered to have an impact on people. However, the widespread use of this approach can have negative consequences. In contrast, it has a factual approach that proposes to resolve matters of personal jurisdiction more from a practical point of view. Thus, we have identified which states' actions fall under their personal jurisdiction and what shortcomings these approaches have.

3.2.3 Understanding of "control" due to personal model jurisdiction

The issue of determining control is different from the previous sections we have discussed. It focuses on the authority of the state and its relationship with agents who perform the tasks of the government. In its practice, the court has focused on determining the attribution of responsibility. It is this question, as we have already identified from the Bankovich case, that causes the most misunderstanding in practice. Through these gaps, states avoid responsibility. Many scientists have analyzed the fuzziness of the settlement and the issue of avoiding gaps in the protection of human rights. They defined it as: "Alternatively, the Court's reference to the concept of legal space can be understood more narrowly as meaning that the 'vacuum in protection' argument can be used only in cases when the territory in question is one of another State Party and cannot lead independently to the establishment of jurisdiction in other cases. In

[111] R.A Lawson, "Life after Bankovic - On the Extraterritorial Application of the European Convention on Human Rights," in the *Extraterritorial Application of Human Rights Treaties*, Fons Coomans and Menno (M.T) Kamminga (Antwerp – Oxford: Intersentia, 2004), 104.
[112] Nienke van der Have. *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 113.
[113] ibid, 115.

other cases this argument does not apply, but jurisdiction can be established on other bases than 'the ordrer public mission of the Convention'.[114]" Evolutionary understanding of the definition "control" in the Jaloud case, where the court raised the issue of attribution of state responsibility.

> "The Court reiterates that the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under general international law. Furthermore, in Al-Skeini the Court emphasised that "whenever the State through its agents exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section 1 of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Convention rights can be 'divided and tailored.[115]"

This statement raises several issues, one of these issues being the responsibility of States under treaties. The very concept of responsibility we analyzed in part one of our work and determined that the modern concept of responsibility does not require availability, harm as one of the necessary elements for the application of the mechanism of state responsibility. Scholars define jurisdiction according to a personal model of extraterritoriality as: "Jurisdiction in human rights treaties describes the link between the duty-bearing state and the rights-holder(s), whereas attribution describes the link between the state and the (wrongful) conduct of its official.[116]" The main elements in establishing jurisdiction are the extraterritorial state, its representatives officially engaged in the territory concerned, and the causal link between them. "…the practice refers to 'effective control' as one of the criteria of attribution of the acts of individual agents to states parties. […] True, often in order to assess jurisdiction, the link between the actors omissions at stake and state agents needs to be assessed at once and at the same time, hence the difficulty in keeping them apart.[117]" The issue of jurisdiction and attribution is of particular importance in chronological order. Jurisdiction is a matter of priority because, in the absence of jurisdiction, no contractual obligation can be settled. Once the jurisdiction is established these obligations, the next step will consider establishing liability for the breach.

In determining control, concerning the personal model of jurisdiction, the court notes that the lawfulness or illegality of the exercise of control is not relevant to extraterritorial jurisdiction. "…a State may also be held accountable for violation of the Convention rights and

---

[114] Michal Gondek, "Extraterritorial Application of The European Convention on Human Rights: Territorial Focus in the Age of Globalization?," *Netherlands International Law Review* 52, 03 (2005): 376.

[115] "Case of Jaloud v. the Netherlands" application no. 47708/08, Judgment, Eur. Ct. H. R, 20 November 2014, para 154, Accessed 18 February 2020, https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-148367&filename=001-148367.pdf&TID=qeikrbadtm

[116] Nienke van der Have. *The Prevention of Gross Human Rights Violations under International Human Rights Law* (The Hague: Asser press, 2018), 115.

[117] Samantha Besson. "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To." *Leiden Journal of International Law* 25, 4 (2012): 867, https://core.ac.uk/download/pdf/20660691.pdf

freedoms of persons who are in the territory of another State but who are found to be under the former State's authority and control through its agents operating – whether lawfully or unlawfully – in the latter State.[118]"

On the bilateral nature of liability, the HRC opinion in the Lopez Burgos was established due to article 2(1) ICCPR. "Article 2(1) of the Covenant places an obligation upon a State party to respect and to ensure rights 'to all individuals within its territory and subject to its jurisdiction', but does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it.[119]" The scholars understand this as: "…the sovereignty of the territorial state may or may not have already been violated by the extraterritorial act of another state, depending on whether valid consent was given or whether the latter state had some other authority for its actions, such as self-defence or a Security Council resolution. But the territorial state's sovereignty is in any event immaterial for the question of whether the individuals in that state are entitled to human rights protection against a third state.[120]"

The concept of jurisdiction in the aspect of the personal model of jurisdiction is clearly defined in the Ilascu case. The court determined: "It follows from Article 1 that member States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their "jurisdiction". The exercise of jurisdiction is a necessary condition for a Contracting State to held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.[121]"

The application of jurisdiction in the event of a finding of the illegality of control is well illustrated in the case-law.

> "The Court notes that the applicant was under the control and authority of the Spanish authorities in the period between his arrest and detention in Spain on 5 August 2004 and his release on bail on 22 November 2004. In so far as the alleged unlawfulness of his arrest and detention is concerned, it cannot be overlooked that the applicant's deprivation of liberty had its sole origin in the measures taken exclusively by the Maltese authorities pursuant to the arrangements agreed on by both Malta and Spain under the European Convention on Extradition.

[118] "Case of Issa and others v. Turkey, application no. 31821/96", Judgment Eur. Ct. H. R. 16 November 2004, para 71. Accessed 16 February 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67460%22]}
[119] "Sergio Euben Lopez Burgos v. Uruguay", Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40) at 176 (1981), para 12.3. Accessed 15 March 2020, http://hrlibrary.umn.edu/undocs/session36/12-52.htm
[120] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 200.
[121] "Case f Ilaşcu and Others v. Moldova and Russia", application no. 48787/99, Judgment, Eur. Ct. H. R, 8 July 2004, para 311. Accessed 17 March 2020, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61886%22]}

> By setting in motion a request for the applicant's detention pending extradition, the responsibility lay with Malta to ensure that the arrest warrant and extradition request were valid as a matter of Maltese law, both substantive and procedural. In the context of an extradition procedure, a requested State should be able to presume the validity of the legal documents issued by the requesting State and on the basis of which a deprivation of liberty is requested. It is to be noted that in the instant case the arrest warrant had been issued by a court which did not have the authority to do so, a technical irregularity which the Spanish court could not have been expected to notice when examining the request for the applicant's arrest and detention. Accordingly, the act complained of by Mr Stephens, having been instigated by Malta on the basis of its own domestic law and followed-up by Spain in response to its treaty obligations, must be attributed to Malta notwithstanding that the act was executed in Spain.[122]"

This case illustrates that the issue of establishing control over a person who has caused human rights abuses is not crucial in establishing the legality of state action. It should also be understood that the perceptions of the offending entities are also not clearly defined. The expanded range of actors is one of their shortcomings with this model, as it creates many implementation gaps that help states to avoid being held accountable for human rights abuses. The importance of this judicial decision is also that the practice that is defined in it is the exact opposite of what was in Bankovic's case. The Court noted the State's human rights responsibilities and determined that its positive obligations could be identified in certain parts. Importantly, this decision also secures the "link test", as Lawson argued. This crucial aspect has been ultimately rejected in the outstanding issues of "jurisdiction" in the Bankovich case and states that the actions of the Malta authorities have led to the arrest of that person in Spain.

Due to this practice scientists understand "jurisdictions" as:

> "The ECHR's applicability to persons in these circumstances can be explained only with reference to a state's lawful competence. The EComHR implies that insofar as states have the lawful and factual ability to affect their nationals who are resident abroad and outside of their physical control, those nationals fall within the state's 'jurisdiction'. Thus, for example, insofar as a state can lawfully prescribe legislation controlling the behaviour of its nationals abroad based on the nationality principle of jurisdiction, those nationals are within the state's 'jurisdiction' for ECHR purposes, and such legislation must be compatible with the state's international human rights obligations.[123]"

To sum up, the issue of determining control has passed a particular stage of development and is enshrined in court decisions. Control refers to the exercise of influence over individuals. As we have previously identified the issue of personal jurisdiction, an essential element is the establishment of a cause and effect relationship. In this section, we have defined

[122] "Case of Stephens v. Malta", application no,11956/07, Judgment, Eur. Ct. H. R, 14 September 2009, para 51, 52. Accessed 19 March 2020, https://www.hr-dp.org/files/2013/09/07/CASE_OF_STEPHENS_v._MALTA_no_._2_.pdf

[123] Hugh King, "The Extraterritorial Human Rights Obligations of States," *Human Rights Law Review* 9, 4 (2009): 537.

this relationship as a state that is bound to ensure that the rights of the human being and their representatives exercising control over their respective territories are appropriately respected.

3.2.4 Summary on subchapter

The issue of defining a personal model is very complex, and considering it in isolation from other models harms the adequate protection of human rights because it narrows the competence of this method. Thus, we have determined that the territorial model is functionally broken down into a personal one since the state must exercise its powers through representatives. However, the absence of a clearly defined territory shows gaps in the application of the personal model of jurisdiction.

We have analyzed case law regarding the use of a personal model. We determine how the court identifies an understanding of the model and how it sometimes tries to avoid being held accountable for human rights abuses by creating gaps in practice. In our work, we look at the elements that make up a personal model of jurisdiction. This model consists of:

- A subject which violates human rights (State or representatives of the state which act on behalf due to the State order).
- An adversely affected subject.
- The casual link between act and violation of human rights.

In this section, we have identified that there is a model for the definition of extraterritorial jurisdiction that is normative and factual. The question of distinguishing these models is more theoretical and has been considered by scientists. Thus, under the regulatory approach, the use of extraterritoriality concerning the human rights norms defined in the treaties is hindered. However, this approach, due to its broad understanding has many gaps in implementation. This method requires the establishment of a threshold criterion for application to determine its effectiveness. The application of the actual method is more based on practical activity. Lawson and Bonello were the scholars who considered this approach in practice. It was they who defined the precise criteria for applying this approach and showed its advantages and disadvantages.

We have considered what is meant by control in the personal model of jurisdiction and how the court has determined it. We have defined how the concept of the issue of extraterritoriality is related to the modern concept of "responsibility" and how these two related definitions are addressed.

They found that the issue of control was involved and had some gaps in practical application. Characteristic of the issue of control is the chronology of actions. Thus, the extent to which the jurisdiction of the state over the relevant entities must be determined must first be

determined; the next step will be to analyze the actions that caused the human rights violations. The issue of determining the legitimacy or illegality of establishing controls is not identified in this model. The overriding objective is the effective protection of human rights.

3.3 Establishment of mixed model of extraterritorial jurisdiction

In this section, we look at the third models of extraterritoriality. This model is not fixed in any court case and is only theoretically fixed in scientific works. We will look at what a mixed model means and what its elements consist. Let us define what is meant by the non-negative and positive obligations that the state relies on upon the context of human rights protection and how states should comply with it.

3.3.1 Definition of mixed model

In our work, we have already analyzed several fixed models for determining extraterritorial jurisdiction. However, each of these models faces a number of problems in the specific analysis of this model. Some scholars propose a hybrid model for establishing extraterritorial jurisdiction. It aims to close loopholes and effectively protect human rights. The mixed model refers to the exercise of territorial jurisdiction with the imposition on the controlling State of the respective positive and negative obligations regarding the observance of human rights. This model is partially enshrined in the HRC commentary. That established as:

> "In order to be realistically complied with, the obligation to respect human rights requires the state to have nothing more than control over the conduct of its own agents. It is the positive obligation to secure or ensure human rights which requires a far greater degree of control over the area in question, control which allows the state to create institutions and mechanisms of government, to impose its laws, and punish violations thereof accordingly. This is then what my proposed third model would amount to: the notion of jurisdiction in human rights treaties would be conceived of only territorially, as de facto effective overall control of areas and places. Having now looked at the text of the relevant treaties and the treaty practice of states generally, as well as at the case law, this is indeed the most natural way of interpreting the term 'jurisdiction'. This threshold would, however, apply only to the state's obligation to secure or ensure human rights, but not to its obligation to respect human rights, which would be territorially unbound.[124]"

The Committee noted the importance of adequate human rights protection and did not identify any precise models for implementation. They have only determined that, in the case of territorial extraterritoriality, it is incumbent on its representatives to ensure the effective protection of human rights. It also mentions the number of positive obligations that the state is pushing for human rights protection. However, the broad understanding of positive obligations

[124] UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para 8. Accessed 27 February 2020, https://www.refworld.org/docid/478b26ae2.html

that would be entrusted to the state can have negative consequences. This statement was also noted in court decisions.

> "…in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[125]"

According to the comments and relevant case law, the researchers formulated a mixed model as, "…the notion of jurisdiction in human rights treaties would be conceived of only territorially, as de facto effective overall control of areas and places. Having now looked at the text of the relevant treaties and the treaty practice of states generally, as well as at the case law, this is indeed the most natural way of interpreting the term 'jurisdiction'. This threshold would, however, apply only to the state's obligation to secure or ensure human rights, but not to its obligation to respect human rights, which would be territorially unbound.[126]" This method is the most effective in human rights activities; it can be called universal. It identifies the territory to which the relevant jurisdiction of the State may apply and identifies the limits of application of the relevant model.

To sum up, the mixed model consists of territorial jurisdiction and the positive and negative responsibilities that are imposed on the state. This model is aimed at eliminating the application gaps that arise in the practical implementation of models of extraterritorial jurisdiction. The ideas of the hybrid model are reflected in the HRC's comments and court decisions.

3.3.2 Positive and negative obligations due to mixed model

Notable in this model is the determination of the number of obligations that are entrusted to the State. As we have previously determined, the absence of a threshold harms the State's human rights obligation to defy its human rights obligations. Scholars emphasize the continuity of positive and negative obligations of the state. "Negative and positive duties alike may arise from ECHR rights applicable abroad and at the same time. They are indeed necessary

[125] "Velasquez Rodriguez Case", Judgment of 29 July 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para. 172. Accessed 28 March 2020, http://hrlibrary.umn.edu/iachr/b_11_12d.htm

[126] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 210.

complements to each other: negative duties cannot be respected without positive duties to protect and to aid, and vice versa this has actually been confirmed in the ECtHR's case law itself.[127]"

The definition of human rights obligations is reflected in the treaty rules. In order to analyze the negative obligations of the state, we will need to understand the articles of the conventions, the extraterritorial application of which we have defined in the past, namely ECHR and ICCPR. Thus, under Article 1 of the ECHR, positive commitments are made to protect human rights in the event of jurisdiction. The issue of establishing negative obligations in the convention is not spelt out in any way, but it does not exempt the state from respecting human rights. In contrast to the grammatical interpretation of Article 1 of the ECHR, the ICCPR offers a broader definition of the threshold function of extraterritoriality. Article 2 (1), not only enshrines the obligation of the state to respect human rights but also stipulates that the state must respect these rights, thus enshrining negative obligations for the state.

The issue of defining responsibilities is difficult to solve only when analyzing the articles. In order to study more thoroughly, it is necessary to consider the practical consolidation of these obligations. Thus, the issue of determining negative obligations in the case of extraterritorial protection of human rights was identified in the case Alejandre v. Cuba. The court established, "…when agents of a state, whether military or civilian, exercise power and authority over persons outside national territory, the state's obligation to respect human rights continues.[128]" Notable in this decision was the identification of entities that may exercise extraterritorial authority over the territory in question and the affirmation of a negative obligation in the form of respect for human rights. However, this interpretation also has the negative features that Cerone noted. He established that, "Again, it is worth noting that the Commission referred only to the obligation to respect rights. It did not mention the obligation to ensure rights. It may be that this was not intended to imply that Cuba would be limited to negative obligations. However, to date the Commission's finding of extraterritorial application of human rights obligations has been limited to finding violations of negative obligations.[129]"

The definition of negative obligations, as well as the issue of extraterritoriality, is of precedent. Therefore, it is not possible to determine what mandatory criteria and obligations that apply universally to the state. Accordingly to this, Milanovich chanted:

> "My point is simply this—there is no inherent contradiction in implying, where necessary, the negative obligation to respect human rights into the relevant treaties and

[127] Samantha Besson. "The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To." *Leiden Journal of International Law* 25, 4 (2012): 880, https://core.ac.uk/download/pdf/20660691.pdf

[128] "Alejandre v. Cuba", report nº 86/99, case 11.589, Inter American Commission on Human Rights, para 25. Accessed 28March 2020, https://www.cidh.oas.org/annualrep/99eng/Merits/Cuba11.589.htm

[129] John Cerone, "Jurisdiction and Power: The Intersection of Human Rights Law & The Law of Non-International Armed Conflict in an Extraterritorial Context," *Israel Law Review* 40, 2 (2007): 443.

> that obligation having a broader, territorial unlimited scope of application than the positive duty to secure or ensure human rights, or prevent violations thereof. […] Likewise, under the ECHR, the state's obligation to secure human rights would be limited to areas under the state's effective overall control, but its duty to respect human rights would apply everywhere, without any territorial limitation.[130]"

According to this statement, the negative obligation of the state to respect human rights does not require specific circumstances. For establishing extraterritoriality, certain criteria are needed, such as effective control of the territory. However, compliance with negative human rights obligations does not require these criteria to be fulfilled and must always be respected. As we see the issue of defining negative obligations that the state has not clearly defined and understood in a broad sense to respect human rights.

It is important to understand that in practice, the issues of positive and negative obligations will be considered in conjunction and complementary. Therefore, our analysis will help to determine the criteria of each category and distinguish them in the theoretical aspect.

In contrast to negative obligations, the issue of identifying positive obligations that the state is relying on is more regulated and has received more discussion in the field of human rights protection. The notion of positive obligations has no clear concept. However, the ECHR pays excellent attention to this issue in its practice. So one of the judges suggested understanding this concept as, "Negative obligations require member States to refrain from action, positive to take action. The Court has repeatedly stressed that the boundaries between the two types "do not lend themselves to precise definition.[131]" As we can see, the court did not divide the obligation data, but only distributed it on a conditional functional criterion.

However, scholars have addressed the issue of delineation in more detail and attempting to distinguish specific features of these obligations. In their works, some of them rely on the grammatical interpretation of convention rules. "… the Convention is mainly concerned not with what a State must do, but with what it must not do; that is, with its obligation to refrain from interfering with the individual's rights. Nevertheless, utilising the principle of effectiveness, the Court has held that even in respect of provisions which do not expressly create a positive obligation, there may sometimes be a duty to act in a particular way.[132]" Based on this statement, the establishment of positive obligations is restrictive for the state. Such an important criterion in determining the issue of positive obligations is the fact of efficiency gains and the fact of

[130] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 215.
[131] "Case of Gül v. Switzerland" application no. 23218/94, Judgment Eur. Ct. H. R, 19 February 1996, Dissenting Opinion Of Judge Martens. Accessed 30 March 2020, http://hudoc.echr.coe.int/eng?i=001-57975
[132] John Merrills, *The Development of International Law by the European Court of Human Rights* (Manchester: MUP, 1993), 102–3.

establishing positive obligations may not arise directly but indirectly in relation to a particular situation.

Differences between negative and positive obligations are also their nature. Negative obligations are usually due to the regulatory misinterpretation of treaty rules that only formally ensure respect for human rights. Positive obligations differ from this, as these are usually clear procedural actions that occur depending on the situation. Examples of clear procedural actions can be found in the case-law of a European courts.

> "…the European Convention as imposing on member states substantive obligations not to take life without justification and also to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life. The European Court has also interpreted article 2 as imposing on member states a procedural obligation to initiate an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated.[133]"

This court decision underlined the necessity of the positive obligations in the practice. That obligation was prescribed due to article 2 of the ECHR where was established a right to life. In its decision, the Court details the State's positive obligation to protect the right to life. It specifies what actions the State should take to protect human rights. It also sets out a list of actions that the State must take to implement it effectively. It can be argued that the Court is attempting to create procedures for positive obligations. The aim of which is the sufficient protection of human rights.

We have already noted that the separation of positive and negative obligations of the state will come more with the theoretical purpose and to determine what actions fall into specific categories. The question of the inseparability of positive and negative obligations has often been highlighted by scholars who have stated that these responsibilities have a common purpose, namely the protection of human rights. As Milanovic established:

> "…the first category of positive obligations, which exist solely to make the state's negative obligations truly effective, should apply coextensively with the negative obligations themselves. On the other hand, those positive obligations which flow from the state's duty to secure or ensure human rights or prevent violations thereof—say prevent private violence or discrimination— require a threshold that sets out the limits of realistic compliance. And that threshold is precisely state jurisdiction, i.e. control over territory.[134]"

[133] "Regina v. Her Majesty's Coroner for the Western District of Somerset", Judgment House of Lords. Accessed 30 March 2020, https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd040311/midd-1.htm.
[134] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 217.

In this statement, the scientist also raises one of the problematic questions regarding the application of this model. The issue is the determination of the threshold criterion for the emergence of extraterritorial obligations in the form of a positive and negative obligation on the state. This statement also underlines the continuity and relationship between positive and negative obligations. The issue of the continuity of positive and negative responsibilities has been repeatedly analyzed in light of case law. This established the link between the obligations that the States had entrusted with the Bankovich case.

> "the respondent states should have been asked by the Court to justify on the merits their killing of individuals who were not within their jurisdiction territorial conceived, as the killing implicates the states' negative obligation to which some positive obligations may attach. In doing so, the Court should have taken into account the relevant rules of international humanitarian law and the extraordinary circumstances of armed conflict, and adopted a more flexible approach to Article 2 than in a situation of normalcy.[135]"

In this statement, the scientist stated that the ECtHR case law is not sufficiently flexible in its application. There are some drawbacks to this. Thus, the issues of establishing positive and negative obligations have gaps in application. Also, there is a lack of adaptability to the situation that would determine the obligation of States to protect human rights.

To sum up, we have analyzed the issues of positive and negative obligations that the state has concerning the implementation of human rights protection. We have determined that the issue of establishing these obligations goes beyond the grammatical interpretation of the norms of the relevant international treaties. We were enshrined how the court determines commitment data for states. Although the statutory definition of positive and negative obligations is not enshrined, the court in its practice seeks to distinguish between these definitions and to give evidence of these actions in order to protect human rights by states effectively.

3.3.3 Mixed model efficiency

Starting with the analysis of this model, we argued that, although it does not have a clear record in practice, it is, from a theoretical point of view, of the advanced model aimed at extraterritorial protection of human rights. It reinforces this understanding of this model, which is not exhaustive when applied in practice. However, some scholars point out that this model has drawbacks. "…appear to include liability for any lack of vigilance by the state in preventing

[135] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 218.

violations of human rights... by other actors present in areas under military occupation, including rebel groups acting on their own account.[136]"

As we have defined in the last section, the State may have quite broad commitments to human rights protection. According to some scholars, this is a disadvantage of this approach, because there is a wide range of actions for which the State should be responsible. In the example, the scientists argued that this model enshrines a wide range of actors for actions that the State can be held responsible if extraterritorial jurisdiction is established. This statement emphasizes that the occurrence of positive and negative obligations for the State can sometimes occur regardless of the State's actions.

This model exists so far only in theory, but the practicality of its application in practice, scientists say.

> "…this third model provides us with the best balance between universality and effectiveness with regard to the extraterritorial application of human rights treaties. Instead of being artificially limited, universality is brought to its logical (and moral) conclusion. States would have the same obligation to respect human rights both within and outside their territories. […] This model would, in principle, be able to accommodate all of the effectiveness concerns that generally militate against the extraterritorial application of human rights instruments…[137]"

The scientist emphasizes two essential features that characterize this model, namely "universality and efficiency.[138]" It is these two criteria that make this model useful in practical use. This extraterritorial model does not interfere with the limitations that we considered in the spatial or personal model; it will depend on the actual circumstances. Also noteworthy is that the scientist argued that the negative obligation of the state, which is manifested in respect for human rights, should be exercised in the same way, both within the territory of its state and beyond its borders. We believe that it is this approach to understanding the negative obligations that the state is entrusting that will lead to a positive trend in the field of extraterritorial protection of human rights.

The question of consolidation in the practice of this model has been reflected in scientific works. So the scientist claimed that this model is the most functionally effective.

> "The 'functional' test provides the right balance between universality and effectiveness. On the one hand, it does not place any arbitrary limitation on jurisdiction, either in the case of negative or positive obligations. On the other, the ability to 'divide and tailor' rights means that jurisdiction extends only in so far as the state has the authority and control to respect, protect or ensure any particular right, no further. Regarding legal certainty, the 'functional' test is no different, in theory, than the 'personal'

---

[136] Michael Dennis and Andre Surena, "Application of the International Covenant on Civil and Political Rights in times of armed conflict and military occupation: the gap between legal theory and state practice," *European Human Rights Law Review* 6 (2008): 724-725.
[137] Marko Milanovic. *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 219.
[138] Ibid, 219.

> test; its strength is that it spells out 'state agent authority and control' in more detail by identifying specifically the ways in which states secure rights, thereby preventing generalisations regarding jurisdiction. In addition, it is a flexible approach that applies in the same manner to any particular set of facts.[139]"

However, like any theory, this model, in our opinion, has drawbacks. Versatility can have a positive impact on this model, as well as negatively. Establishing extraterritoriality for states is of precedent, and there is still no transparent system for establishing this issue. We support opinion of Judge Bonello, who has determined that in order to develop the issue of extraterritoriality further, it is necessary to define a transparent system for establishing the extraterritoriality of states. Indeed, as we have seen in practice, states can sometimes shy away from fulfilling their obligations to protect human rights. Comprehensive understanding of extraterritoriality and its application can also have negative consequences. In the case of imposing an extensive range of obligations on the state, it will not always be able to protect human rights effectively.

The problem with the current application of extraterritorial jurisdiction is the uncertainty of obligations concerning specific actions. The case of Bankovich can be cited as an example, in the absence of a particular extraterritorial jurisdiction, the question of establishing the responsibility of states for specific actions is impossible. Scientists have repeatedly emphasized the problem of the lack of a clear delineation of appropriate actions.

> "This uncertainty creates the twin risks that states will either under-estimate the jurisdictional scope of the Convention and violate human rights which might otherwise be protected, or that they will over-estimate the Convention's reach and refrain from actions which are strategically essential. Either way, the Court's doctrinal ambivalence prevents signatory states from accurately weighing the legal liabilities associated with particular extraterritorial actions, to the detriment of both human rights protection and security.[140]"

With this claim, the scientist argues that currently, the jurisprudence of establishing extraterritoriality is not sufficiently developed. In this way, obligations for states can have two paths. The first is the imposition of too broad a mandate, as we have indicated earlier, which will render the defence mechanism ineffective. Second, it is a deliberate reduction of state obligations. Exemption from duty will create artificial gaps and make this model ineffective in practice. Obligations in extraterritorial jurisdiction raised questions in O'Boyle's work. He established, "… had the Convention been intended to look only to state responsibility, it could

[139] Alastair Stewart, "Back to the Drawing Board: Al-Skeini v. UK and the Extraterritorial Application of the European Convention on Human Rights," *UCL Human Rights Review 4* (2011): 119.
[140] Sarah Miller, "Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention." *European Journal of International Law* 20, 4 (2009): 1230, http://www.ejil.org/pdfs/20/4/1937.pdf

easily have omitted the words 'within their jurisdiction' entirely. Signatory states are clearly responsible under international law for acts outside the espace juridique of the Convention in violation of international human rights law, yet the European Court is not necessarily obliged to seize jurisdiction over all such violations.[141]"

The mixed model still exists only in theory, but it is not much different from the models we considered earlier. It seeks to counteract the gaps that arise from the use of these models. So Milanovich argued about the possible positive implementation of this rule in practice. "This would be an adequate solution for interpreting the jurisdiction clauses in some treaties, such as in the First Optional Protocol to the ICCPR, which limit the right to individual petition only to those persons subject to the state's jurisdiction.[142]"

To sum up, the mixed model is not fixed in practice. It is defined only by theory. This model is an effective mechanism for the protection of human rights, and the criteria for its application satisfy the requirement of universality. Despite these advantages, there is a discussion about certain disadvantages. This model defines a somewhat different vector for the development of the issue of establishing extraterritoriality for states. However, a pivotal point to consider when analyzing this rule is that in the case of establishing extraterritoriality, the state is thoroughly bound to fulfil its obligations equally, both within its territory and beyond its borders.

3.3.4 Summary on subchapter

We have analyzed a mixed model of extraterritoriality. This model is purely theoretical and has no support in court decisions. The purpose of this model is to eliminate germs and reduce thresholds for the application of extraterritorial human rights protection. We have defined what is meant by this model and characterized the elements of which it consists. These elements are the territory under the jurisdiction of the controlling state, as well as the positive and negative obligations that the state relies on.

We have established what is meant by both positive and negative obligations and how they are enshrined in international human rights treaties. Because of the multifaceted nature of these obligations, this model has both advantages and disadvantages. A comprehensive understanding of non-negligent obligations, which in the future will impose positive commitments on the state and will be proactive, may be problematic for the court in terms of determining extraterritoriality. They also noted that there is still no clear distinction between positive and negative obligations.

---

[141] M. O'Boyle, "The European Convention on Human Rights and Extraterritorial Jurisdiction: A Comment on "Life After Banković" ," in the Extraterritorial Application of Human Rights Treaties, Fons Coomans and Menno (M.T) Kamminga (Antwerp – Oxford: Intersentia, 2004), 135.

[142] Marko Milanovic. *Extraterritorial Application of Human Rights Treaties Law, Principles, and Policy* (Oxford: Oxford University Press, 2011), 219.

In the last part, we analyze the effectiveness of this model. Scientists are conceiving that it represents the next stage in the development of the understanding of extraterritoriality. We agree with Judge Bonello's opinion and emphasize that, as in any evolutionary process, it has several avenues of development. One of them, in our opinion, is not effective enough, because, with a broad understanding of negative obligations, the state will not be able to effectively protect human rights, which makes the whole mechanism useless. Another approach is Judge Bonello's suggestion is to create a unified system and to establish clear criteria for the use of extraterritoriality. This approach may also have the disadvantages of not properly securing the responsibilities that will lead to gaps in the security mechanism. However, the laxity of this system will simplify the mechanism of extraterritorial protection of human rights.

4. HUMAN RIGHTS VIOLATIONS BY THE RUSSIAN FEDERATION ON THE TERRITORY OF UKRAINE

In this section, we analyze the conflict between Ukraine and Russia regarding the issue of human rights abuses. We will determine how the international community treats this situation. We will analyze how international judicial authorities seek to resolve this dispute. The main issue that will be addressed in this section is the establishment of extra-territorial jurisdiction of the Russian Federation over the territory of Donetsk and Luhansk regions.

4.1 Context of conflict

First, we give a brief description of the actions that took place in the peninsula to understand the context of the events. In this section, we will not determine the legitimacy of the actions of the authorities of the Crimea or the Russian Federation. We will only state them. After all, our ultimate goal is to establish the existence of extraterritoriality and to protect human rights effectively.

> "The hastily organized "self-determination" referendum that followed on 16 March, an illegal act under Ukrainian state law, gave the following choice to local Crimeans: "Do you support reunifying Crimea with Russia as a subject of the Russian Federation?" Or "Do you support the restoration of the 1992 Crimean constitution and the status of Crimea as a part of Ukraine?". The then-existing status quo, namely Crimea as an autonomous republic within Ukraine, was not an option. The following day, local election authorities announced that 96.77% of the recorded vote, from a reported electorate turnout of 83.1%, favored joining Russia. The people of Crimea, it seemed, had spoken with a near unanimous voice. They wanted their peninsula of Crimea to break from Ukraine and to join the Russian Federation. On that same day, the Crimean Supreme Council declared the peninsula's independence from Ukraine. This cleared the way for the Russian Federation to initiate the process of formally admitting Crimea as a republic and the city of Sevastopol as a federal district into the Russian Federation on 18 March 2014.[143]"

Russia controls the authorities and has armed forces in the territory. According to the models we have discussed above, it effectively controls the area in question. "The Russian Federation became the 39th member State of the Council of Europe on 28 February 1996.[144]" This statement specifies that Russia, as a member of this organization, must comply with the ECHR.

> "The international community has stood up for the protection of Ukraine and found the illegality of the Russian Federation's actions to annex the territory of the peninsula. General Assembly in resolution was established.

[143] John O'Loughlin and Gerard Toal. "The Crimea Conundrum: Legitimacy and Public Opinion after Annexation." *Eurasian Geography and Economics* 60, 1 (2019): 6-7.
[144] "Russian Federation - Member State". Accessed April 3, 2020. https://www.coe.int/en/web/portal/russian-federation.

1. Noting that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 was not authorized by Ukraine, 1. Affirms its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders;

[…]

5. Underscores that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol;[145]"

With this decision, the UN enshrined that the referendum that took place over the annexation of Crimea to Russia was sanctioned illegally, leading to its invalidity. The territory of Ukraine is indivisible. The referendum is not recognized by the international community.

The conflict in the territory of Ukraine did not end in Crimea. Following the referendum, the situation in Ukraine was destabilized by the self-proclamation of the Donetsk People's Republic (henceforth – DPR) and Luhansk People's Republic (henceforth – LPR). In the spring of 2014, some Ukrainian regions disagreed with Ukraine's European integration course. For example, "We, the people of the Donetsk People's Republic, according to the results of the referendum held on May 11, 2014, and based on the declaration of the sovereignty of the DPR, declare that from now on the DPR is a sovereign state. [...] Based on the will of the people of the Donetsk People's Republic and to restore historical justice, we ask the Russian Federation to consider the issue of the entry of the Donetsk People's Republic into the Russian Federation.[146]" In a similar scenario, the DPR self-proclaimed on May 12, 2014. Both territories express a desire to integrate into Russia and find it a subject of support for their inescapability. "The Supreme Council of the LPR, city, district Councils of people's deputies, public associations appeal to the Russian Federation with a request to decide on the recognition of the LPR as a sovereign independent state.[147]" The issue of recognizing the territories of these "republics" is very complicated, "the Donetsk People's Republic and the Luhansk People's Republics in Ukraine. These two newest additions to the universe of de facto states have started to create some of the trappings of statehood, although the extent of „indigenous roots" is still debatable.[148]"

To sum up, in 2014, a referendum was held on the territory of the Crimea, according to the decision which territory of the peninsula joins the Russian Federation. The international community has not recognized this decision and considers it a violation of the integrity of the territory of Ukraine. These events led to the self-proclamation of several oblasts in Ukraine. In

[145] "A/RES/68/262" General Assembly, Accessed April 3, 2020. https://undocs.org/en/A/RES/68/262.
[146] РИА Новости,. "ДНР Провозгласила Себя Суверенным Государством.", Accessed 15April 2020. https://ria.ru/20140512/1007507367.html.
[147] "Луганская Народная Республика Обратилась к России с Просьбой о Признании Ее Независимости." ТАСС, Accessed 16 April 2020. https://tass.ru/mezhdunarodnaya-panorama/1253083.
[148] Nina Caspersen, "Making Peace with De Facto States," T*he Annual of Language and Language of Politics and Identity*, 10 (2016): 8. https://www.webcitation.org/mainframe.php

May 2014, they announced their creation of the DPR and LPR, which see their development through close cooperation with Russia.

4.2 Consideration by the international courts of issues related to conflict

Unfortunately, the issue of settling the dispute between Ukraine and Russia has not yet arisen. The territory of the Crimean peninsula is under the control of the Russian Federation. However, the international community has also not made much progress on this issue. At the moment, no court decision would resolve disputes on the peninsula and bring this dispute to a logical conclusion. There are currently two court cases pending before the international courts regarding the conflict between Russia and Ukraine. These courts are ICJ and ECtHR.

First, let us consider the case that is pending in ECtHR. This trial began on March 13, 2014, with the filing of an application by Ukraine in connection with the annexation of the territory of Crimea. The next stage of development was the first trial in court, which took place five years after Ukraine made the application 11 September 2019.

Ukrainian side in the application established: "The Ukrainian Government maintains that the Russian Federation has from 27 February 2014 exercised effective control over the Autonomous Republic of Crimea and the city of Sevastopol, integral parts of Ukraine, and has exercised jurisdiction over a situation which has resulted in numerous Convention violations. The Government alleges that the violations are a result of a general administrative practice by the Russian Federation.[149]" Ukraine claims that the Russian Federation exercises effective control over the territory of the peninsula. This argument is essential because it is one of the necessary conditions for the application of extraterritorial human rights protection. The obligations imposed on the State controlling the relevant territory are discussed in section 3.1.3, and we have taken the Loizidou case as an example. Drawing an analogy between the two, one can say that Russia has to protect human rights in the Crimea. The negative is that the Russian Federation respects the people in the territory. It will be a positive responsibility for Russia to take action to effectively protect human rights, as it controls administrative bodies and directly influences its territory.

In its statement, the Ukrainian side outlined a list of rights violated by the Russian Federation in the Crimea.

> "The applicant Government relies on several Articles of the European Convention on Human Rights, including Article 2 (right to life), Article 3 (prohibition of inhuman treatment and torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private life), Article 9 (freedom of religion), Article 10 (freedom of expression), and Article 11 (freedom of assembly and association). It also

[149] "Grand Chamber hearing on inter-State case Ukraine v. Russia (re Crimea)", Eur. Ct. H. R, 11 September 2019, Accessed 16 April 2020, http://hudoc.echr.coe.int/eng-press?i=003-6498871-8572177.

complains under Article 1 of Protocol No.1 to the Convention (protection of property), Article 2 of Protocol No. 1 (right to education) and Article 2 of Protocol No.4 (freedom of movement).[150]"

Thus, the court emphasized the complexity of the issue: "Ukraine has lodged a number of other inter-State cases against Russia, and there are more than 5,000 individual applications concerning events in Crimea, Eastern Ukraine and the Donbass region.[151]" The Grand Chamber decided to postpone resolving of the issue related to case Ukraine vs Russia due to the reason for the precise discover of evidence.

The next court case we will consider is the case of Ukraine v. Russia, which was considered by the ICJ. The Ukrainian side had applied in violation of two international conventions: "the International Convention for the Suppression of the Financing of Terrorism (henceforth – ICSFT) and of the International Convention on the Elimination of All Forms of Racial Discrimination (henceforth – CERD).[152]" The issue of violation of these conventions can be divided territorially. The ICSFT applies to violations in eastern Ukraine. CERD concerns discrimination against the Crimean Tatar population of Crimea.

In 2017, when Ukraine filed a lawsuit. The court took several precautionary measures to stop Russian aggression. ICJ established:

"(1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, (a) Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis; (b) Ensure the availability of education in the Ukrainian language; (2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.[153]"

In the instant case, the court established the jurisdiction of the ICSFT and determined its admissibility.

"The Court notes that one aspect of the subject-matter of the dispute is whether the Russian Federation had the obligation, under the ICSFT, to take measures and to co-operate in the prevention and suppression of the alleged financing of terrorism in the context of events in eastern Ukraine and, if so, whether the Russian Federation breached such an obligation. […] The Court states that, at the present stage of the proceedings, an examination by it of the alleged wrongful acts or of the plausibility of the claims is not generally warranted. Its task is to consider the questions of law and fact that are relevant to the objection to its jurisdiction.[154]"

[150] "Grand Chamber hearing on inter-State case Ukraine v. Russia (re Crimea)", Eur. Ct. H. R, 11 September 2019, Accessed 16 April 2020, http://hudoc.echr.coe.int/eng-press?i=003-6498871-8572177.
[151] ibid
[152] "Ukraine v. Russian Federation", ICJ Judgment 8 November 2019, Accessed 16 April 2020, https://www.icj-cij.org/files/case-related/166/166-20191108-SUM-01-00-EN.pdf
[153] ibid.
[154] Ibid.

The Court found that Russia had evaded its obligations under the Convention. The issue of terrorist financing is not raised in this case. The Court merely notes that the Russian Federation has failed to take any preventive action aimed at preventing the financing of terrorists located on the territory of Ukraine. We will consider in more detail the issue of aiding the terrorists with the Russian side in the next subchapter.

The court next considered the application of the CERD. The Russian Federation is violating the rights of national minorities, namely the Crimean Tatars, through its actions in the territory of Crimea. The Court also describes what human rights have been violated, namely the right to self-determination, the right to freedom of speech and freedom of assembly. "The Court explains that, in order to determine whether it has jurisdiction ratione materiae under CERD, it needs only to ascertain whether the measures of which Ukraine complains fall within the provisions of the Convention. In this respect, the Court notes that both Parties agree that Crimean Tatars and ethnic Ukrainians in Crimea constitute ethnic groups protected under CERD.[155]" The ICJ found that Russia's objections to the jurisdiction were not relevant. The Court noted that the arguments of the Russian Federation would be irrelevant in the present case since the central element in the application of this Convention was the existence of violations of the rights of national minorities. The Court found that the Crimean Tatars and Ukrainians fall under the category of national minorities identified in the CERD. It also found that the Convention would extend its jurisdiction in the case.

In the course of the vote, the court found that the jurisdiction of the convention would be extended and rejected the claims of the Russian side regarding the inadmissibility of Ukraine's statement.

> "Rejects the preliminary objection raised by the Russian Federation to the admissibility of the Application of Ukraine in relation to the claims under the International Convention on the Elimination of All Forms of Racial Discrimination;
>
> [...]
>
> Finds that it has jurisdiction, on the basis of Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination, to entertain the claims made by Ukraine under this Convention, and that the Application in relation to those claims is admissible.[156]"

To sum up, the court has not yet resolved the merits of the case, as it has just established. The ECtHR found that it needed more time to resolve the case because of the heavy workload. The ICJ has accepted the fact for consideration and will decide the case by applying the ISCFT and CERD. The Court found that Russia had violated the ICSFT without action to

[155] "Ukraine v. Russian Federation", ICJ Judgment 8 November 2019, Accessed 16 April 2020, https://www.icj-cij.org/files/case-related/166/166-20191108-SUM-01-00-EN.pdf
[156] Ibid.

prevent financing of terrorists on the Ukraine territory. Also, the Court established that the Russian side in the Crimea discriminates against the Crimean Tatar people due to CERD.

4.3 Establishment of Russian extraterritorial jurisdiction on the territory of Ukraine

Therefore, one of the main tasks of our research is to establish the fact of extraterritorial jurisdiction of Russian Federation over the territory of Crimea, as well as of Donetsk and Luhansk regions.

International organizations established exercise of control over Russia on the territory of the peninsula, the issue of illegality of division of the Ukrainian territory was considered by the UN and determined that Russia violates the territorial integrity of Ukraine. Due to the facts of the presence of the Armed Forces of the Russian Federation and an administrative structure directly under the control of the Russian authorities. We can say that Russia exercises jurisdiction over the territory. From this, it emerges that one of Russia's responsibilities, in this case, is to protect human rights. The issue of human rights violations in the territory of the Crimea has repeatedly been the cause of disputes. As we can see, Ukraine notes a significant list of rights that the Russian Federation has violated under the Convention. This statement does not set out the specific circumstances of the case. For a more detailed understanding of the current situation on the territory of the peninsula, we will analyze the report of the Ukrainian Ombudsman for 2019.

> "As of the beginning of 2019, there were 68 citizens of Ukraine who were detained in detention facilities located in the territory of the Russian Federation, as well as in the temporarily occupied territory of the Autonomous Republic of Crimea. In particular, 38 persons were detained in the territory of the Russian Federation, of which 2 persons were at the stage of preliminary investigation, 12 persons were tried, 24 persons were sentenced and punished. In the temporarily occupied territory of the Autonomous Republic of Crimea there were only 30 persons, of which 17 persons were at the stage of preliminary investigation, the trial took place against 2 persons, convicted and served sentences - 9 persons.[157]"

According to this report, the issue of human rights abuses in the territory continues to this day. These data refer to persons who are being held illegally because of their political views. The difficulty in resolving this case for the court also lies in the large number of applications that have come to court over the issue of the Ukraine-Russia conflict. Establishing extraterritorial jurisdiction over Crimea is visible, the international community recognizes the illegality of annexation of the peninsula. Due to the existing administrative structure of the Russian Federation in the Crimea, it exercises jurisdiction over the territory.

[157] Уповноважений Верховної Ради України з прав людини: *Щорічна доповідь про стан додержання та захисту прав і свобод людити і громадянина в Україні за 2019 рік* (Україна, 2019), 166, http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf

The situation regarding self-proclaimed republics in the territory of Ukraine is somewhat different way. The Russian Federation does not exercise control over the area directly as it established in Crimea. It has no authorities in this territory and denies any involvement. Still, by applying the models that we have described in previous part, we will attempt to establish the extraterritorial jurisdiction of the Russian Federation over the DPR and LPR.

The Russian Federation claims that its soldiers are not on the territory of these "republics" and that Russian authorities did not take participation in those conflict, but the clashes involving Russian soldiers have been repeatedly recorded. So at the beginning of the conflict in 2014, the Ukrainian Armed Forces seized 2 Russian special forces soldiers. "Commander of the Special Forces Group of the 3rd Brigade of the Armed Forces of the Russian Federation (permanent station - Togliatti), Captain Yevgeny Yerofeev, as well as Deputy Commander of the Special Forces Group Sergeant Alexander Alexandrov were wounded and captured. Both Russian commandos…[158]" Some Russian soldiers have admitted to participating in hostilities in Eastern Ukraine. "He says he was sent to Ukraine at the end of August last year and returned to Russia in early September during the first peace talks. His crew drove the modernized Russian tank T-72B3.[159]"

With this statement, we confirm the presence of the Russian Armed Forces in the respective territory. The report also showed an alleged violation, which is in part pending in ICJ, for providing terrorists with weapons to the Russian Federation. At the beginning of the conflict, the Russian side is actively assisting terrorists. She provided them with weapons, so the transfer of tanks was officially proclaimed a "leadership" of the DPR. "We confirm the receipt of tanks. They will be sent to the most difficult directions.[160]" Although it has not been officially stated who provided the armaments. But we should take to the fact that transfer of equipment which is manufactured by the Russian Federation is a clear proof of involvement in the financing of terrorism. The use of Russian weapons, such as small arms and heavy weapons, has been repeatedly recorded in Ukraine.

The Council of Europe (henceforth – CoE) determines the issue of establishing extraterritorial jurisdiction of the Russian Federation over Donetsk and Luhansk regions. This statement is enshrined in Resolution 2133 of 2016. The General Assembly has established.

---

[158] "У зоні АТО загинули 3 бійців, поранено 17. Затримано двох офіцерів ГРУ РФ," Українська правда, Accessed 20 April 2020, https://www.pravda.com.ua/news/2015/05/17/7068160/

[159] Мария Цветкова "СПЕЦИАЛЬНЫЙ РЕПОРТАЖ-Российские солдаты бросают службу из-за войны на Украине", Reuters, Accessed 22 April 2020, https://ru.reuters.com/article/topNews/idRUKBN0NV06M20150510

[160] "В Донецкой народной республике рассказали о своих танках", Кореспондент.net, Accessed 22 April 2020, https://korrespondent.net/ukraine/comunity/3377417-v-donetskoi-narodnoi-respublyke-rasskazaly-o-svoykh-tankakh

> "The "DPR" and "LPR" – established, supported and effectively controlled by the Russian Federation – are not legitimate under Ukrainian or international law. This applies to all their "institutions", including the "courts" established by the de facto authorities.
>
> Under international law, the Russian Federation, which exercises de facto control over these territories, is responsible for the protection of their populations. Russia must therefore guarantee the human rights of all inhabitants of Crimea and of the "DPR" and "LPR".
>
> the Russian military presence and effective control have been officially acknowledged by the Russian authorities. In the "DPR" and the "LPR", effective control is based on the crucial and well-documented role of Russian military personnel in taking over and maintaining power in these regions, against the determined resistance of the legitimate Ukrainian authorities, and on the complete dependence of these regions on Russia in logistical, financial and administrative matters.[161]"

The CoE states that Russia exercises control over the sovereign part of Ukraine influences the work of structural bodies as they are there. The Council also asserts that Russia has a responsibility to protect human rights in connection with the exercise of this control. It is this statement that establishes the extraterritorial protection of human rights. As we have previously analyzed under the mixed model, the obligation to exercise human rights protection and partial control over the relevant territory is emerging from the state. This control in our situation occurs through the administrative bodies, which are partly under the control of Russia, as well as the presence of armed forces and the provision of weapons to these groups. Comparing this situation to the Loizidou case, we have many common features, such as the existence of a grouping which is partially controlled by another state, the occupation, division of a sovereign state, and the effective control of the relevant territory through an administrative structure.

The Council of Europe emphasized the importance of protecting civilians. They was established, "In the conflict zone in the Donbas region, the civilian population as well as a large number of combatants were subjected to violations of their rights to life and physical integrity and to the free enjoyment of property, as a result of war crimes and crimes against humanity including the indiscriminate or even intentional shelling of civilian areas, sometimes provoked by the stationing of weapons in close proximity.[162]" According to the Ombudsman report for 2019, "More than 3,000 civilians have been killed since the start of the armed conflict in eastern Ukraine, more than 7,000 civilians were injured, about 4,500 missing civilians and over 1 million 400,000 internally displaced.[163]" These statistics help us to understand that the issue of human rights protection in the territory of Northern Ukraine is very acute and that the Russian

[161] "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities," CoE resolution, 2133, https://www.refworld.org/docid/583730424.html
[162] Ibid.
[163] Уповноважений Верховної Ради України з прав людини: *Щорічна доповідь про стан додержання та захисту прав і свобод людити і громадянина в Україні за 2019 рік* (Україна, 2019), 105, http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf

Federation does not commit itself to the implementation of human rights protection in this territory. The civilian population has repeatedly been a casual victim of the conflict. Scientists confirm the claim. "Despite their protected status, civilian populations are intentionally and illegally targeted by warring parties throughout the world for both strategic tactical reasons. Civilians are also indirectly and negatively affected by the political and military decisions made by parties to conflict. It's often claimed that this is a new or worsening situation.[164]"

"The Assembly therefore urges the Russian authorities to: meanwhile, ensure the protection of the fundamental rights of all inhabitants of the "DRP" and the "LPR" and the fulfilment of their basic needs, and exercise their influence with the de facto authorities to this end;[165]" With this statement, the Council of Europe asks the Russian authorities to take a number of measures to ensure effective protection of human rights in the territory they actually control.

To sum up, The Russian Federation exercises control over the territory of the Crimea, which sets out its obligations to protect human rights in the territory, but they continue to violate them to this day. Russia exercises extraterritorial jurisdiction due to a mixed model over the territory of Donetsk and Luhansk regions. It has troops in the territory, provides armaments to terrorist groups, and the international community recognizes partial control of the administrative structures in the territory. The issue of human rights protection in this region is very acute, as evidenced by statistics.

4.4 Summary on chapter

We considered the emergence of a conflict between Ukraine and Russia in 2014, which began with a referendum on the territory of the Crimea, which led to the destabilization of the situation in the Eastern part of Ukraine in the aftermath, which some regions of Ukraine have declared themselves republics. The emergence of the DPR and LPR led to a military conflict in Ukraine. The international community does not recognize the referendum and considers the actions as a violation of the territorial integrity of Ukraine. This claim was enshrined in UN General Assembly resolution 68/262 which stated that the Ukrainian border was indivisible.

We have also considered court cases in international institutions over the conflict between Ukraine and Russia. Unfortunately, we do not have a resolution to this dispute at this time, and the entire review process is only at an early stage. Thus, the ECtHR noted that it needed more time to settle the case due to the reason that 5000 application was submitted to the Court for violations of human rights on the Crimea. The ICJ has moved further into the dispute between Russia and Ukraine. The ICJ considered the violation of ICSFT and CERD by Russia.

[164] Bertie G. Ramcharan. *Human Rights Protection in the Field*. Leiden: Nijhoff, 2006, 59.
[165] Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities," CoE resolution, 2133, https://www.refworld.org/docid/583730424.html

Under the ICSFT, the Court found that Russia, as a party to the convention, had to take steps to prevent the financing of terrorism, which it did not.The Ukrainian side has sued for violation of the CERD in the Crimea. The Court found violations of the rights of the Crimean Tatars as an ethnic group under the CERD.

We have established that the Russian Federation exercises extraterritorial jurisdiction over the territory of Crimea, as well as the Donetsk and Luhansk regions. Jurisdictional control of the Crimea proceeds from the fact that Russia considers the peninsula its territory, as well as the presence of armed forces and authorities, which are directly subordinated to the Russian Federation.

The Russian Federation de facto exercises extraterritorial jurisdiction over the territories of the DPR and LPR. We have established the facts of the presence of armed forces of the Russian Federation, which participated in the battles on the territory of Ukraine. The Russian Federation also financed terrorist groups and provided them with weapons manufactured in Russia. The Council of Europe acknowledged that Russia was exercising control over the territory and called for action to end the conflict and for human rights protection. Having analyzed these facts, we have established that the Russian Federation exercises extraterritorial jurisdiction over the DPR and LPR under the mixed model, and also avoids obligations to protect human rights.

CONCLUSION

1. The concept of responsibility has come a long way. The term "responsibility" is an integral part of international law, which is inseparable and transformed over time. In the modern sense, this term “responsibility” which established in DARS is a preventative mechanism for the protection of the international community.

2. The concept of "extraterritoriality" has not been defined legally; it is a relatively new term that has an only doctrinal understanding. It is defined as a violation of human rights outside the territorial borders of the state. The concept of extraterritoriality is usually expressed through extraterritorial models that help determine their application in practice.

3. Most treaties have a clearly defined territorial effect. This rule is enshrined in Article 29 of the VCLT. In the opinion of the committee, the application of an extraterritorial understanding of jurisdiction to the VCLT would hurt the practice of application.

4. Exceptions to extraterritorial jurisdiction are enshrined in ECHR and ICCPR. The issue of the extraterritorial application of the Convention is defined in Article 1. A broad understanding of this rule allows one to adapt this rule depending on the rights violated. The issue of extraterritoriality is determined individually depending on the case. This approach has several disadvantages, such as the instability of the case law and the lengthy resolution of the case.

5. Article 2 (1) of the ICCPR does not explicitly state in its text the extraterritorial application of the rules. However, the Committee acknowledged that restricting the implementation harmed the protection of human rights. The ICJ and HRC confirmed this opinion.

6. Models are used to establish extraterritorial jurisdiction. The first model we have considered is the territorial model of establishing extraterritoriality. This model is established because of the presence of such features as the "territory" and "effective overall control". This model has a foothold in many court cases. This model is most clearly illustrated in the Loizidou case. Territorial issues are widely understood and are set according to the situation. Establishing "effective overall control" is recognised as the presence of forces on the ground, or the effect on the administrative structures of the region concerned.

7. The personal model is established through the actions of individuals. The establishment of this model depends on the causal relationship between the act of the representative of the state and the violation. In practice, the personal model of jurisdiction was enshrined in the Bankovich case. Scholars identify two types of jurisdiction, normative and factual. The main element that characterizes this concept is the exercise of control over authorized persons.

8. A mixed model for establishing extraterritoriality is Milovanovic's idea. The purpose of this model is to eliminate the gaps that exist in other models and to ensure effective protection of human rights. The ICJ and HRC has repeatedly determined the need for this approach to assess extraterritoriality.

9. The main features of this model are the territory to which the jurisdiction of the state should apply, as well as positive and negative obligations. The issue of establishing positive and negative obligations for the state is complicated since expanding or narrowing those obligations can harm the protection of human rights.

10. This model is characterized by a universal approach to the protection of human rights. The primary purpose of this model is to change the states' approach to human rights. This model defines that the state should treat people equally in their territory and abroad.

11. As a result of holding a referendum on the territory of Crimea, this territory joined the Russian Federation. These actions are illegal and undermine the territorial integrity of Ukraine. The international community recognizes the illegality of the annexation of Crimea, a statement enshrined in UN resolution 68/262. Intervention by the Russian authorities caused the emergence emergence of self-proclaimed republics of the DPR and the LNR.

12. The conflict between Ukraine and Russia has not been resolved to this day. The dispute is currently being considered in two international courts. In 2019, the ECtHR found that due to the complexity of the case and the heavy workload, he needed more time to resolve the dispute. ICJ that Russia by its inaction, violated the ICSFT and discriminated the Crimean Tatar population in the Crimea due to CERD.

13. The Russian Federation exercises extraterritorial jurisdiction over Crimea, the DPR and the LNR. Jurisdiction over the Crimea is established through the Russian armed forces, as well as the organs of power, which are directly subordinate to the Russian authorities. Extra-territorial jurisdiction over the eastern regions of Ukraine is established through the presence of Russian Army soldiers, the provision of funding and weapons to terrorists, as well as the views of the international community. Control over the authorities and territory establishes the extraterritorial jurisdiction of Russia.

RECOMENDATIONS

1. The jurisprudence to establish the state's extraterritorial jurisdiction is not effective. We believe that these international judicial authorities need to resolve disputes more quickly regarding the issue of human rights violations. The cases we considered at the outset of our study illustrated the shortcomings of the current approach to establishing extraterritoriality and determining sanctions for violations. The international community needs to look at this approach and find a more effective way to resolve these disputes.

2. The international community has recognized the illegality of control over Crimea by the Russian Federation. Contrary to this question, the eastern regions of Ukraine have not yet been fully resolved. Through our analysis, we have determined that the Russian Federation has assisted the DPR and LNR terrorists by providing them with weapons. The Russian army also participated in the fighting in these regions. It can be stated that the Russian Federation exercises effective jurisdiction over the DPR and LPR. However, the Russian government denies participating in this conflict and takes no steps to ensure the protection of human rights. The international community must recognize Russia's extraterritorial jurisdiction over these regions and hold them accountable for human rights abuses.

LIST OF BIBLIOGRAPHY

Legal acts

1. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Accessed 11 February 2020, https://www.refworld.org/docid/3ddb8f804.html
2. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Accessed 27 February 2020, https://www.refworld.org/docid/3ae6b3b04.html
3. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, 171. Accessed 28 February 2020, https://www.refworld.org/docid/3ae6b3aa0.html
4. "A/RES/68/262" General Assembly, Accessed April 3, 2020. https://undocs.org/en/A/RES/68/262
5. "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities," CoE resolution, 2133. https://www.refworld.org/docid/583730424.html

Books

6. Crawford, James, Alain Pellet, Simon Olleson, and Kate Parlett. *The Law of International Responsibility*. Oxford University Press, 2010.
7. Hugo, Grotius. *The Rights of War and Peace* by A. C. Cambell, A. M. New York: M. Walter Dune, 1901.
8. Matsui, Y. "The transformation of the law of state responsibility" in *the State Responsibility in International Law*, René Provost, 5-65. Aldershot: Ashgate/Darmouth, 2002.
9. Borchard, Edwin M. *The diplomatic protection of citizens abroad; or, The law of international claim*. New York: The Banks co. publishing law, 1925.
10. Clyde, Eagleton, *The Responsibility of States in International Law*. New York: Kraus Reprint, 1970.
11. Milanovic, Marko, *Extraterritorial Application of Human Rights Treaties Law. Principles, and Policy*. Oxford: Oxford University Press, 2011.
12. Aust, Anthony. *Handbook of International Law*. Cambridge: Cambridge University Press, 2010.
13. Have, Nienke van der. *The Prevention of Gross Human Rights Violations under International Human Rights Law.* The Hague: Asser press, 2018.

14. Menno T Kamminga, “Extraterritoriality” in the *Max Planck Encyclopedia of Public International Law,* Rüdiger Wolfrum, 1070-1077. Oxford: Oxford University Press, 2012.
15. McGoldrick, D. “Extraterritorial Application of the International Covenant on Civil and Political Rights”, in the Extraterritorial Application of Human Rights Treaties, Fons Coomans and Menno (M.T) Kamminga,41-72. Antwerp – Oxford: Intersentia, 2004.
16. Sarah, Joseph, and Melissa Castan. *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary.* Oxford: Oxford University Press, 2014
17. Lubell, Noam, *Extraterritorial Use of Force against Non-State Actors.* Oxford: Oxford University Press, 2011.
18. R.A, Lawson, “Life after Bankovic - On the Extraterritorial Application of the European Convention on Human Rights,” in the *Extraterritorial Application of Human Rights Treaties,* Fons Coomans and Menno (M.T) Kamminga, 83-123. Antwerp – Oxford: Intersentia, 2004
19. Heijer, Maarten den. *Europe and Extraterritorial Asylum.* Oxford: Hart, 2012.
20. John Merrills, *The Development of International Law by the European Court of Human Rights*. Manchester: MUP, 1993.
21. M. O’Boyle, “The European Convention on Human Rights and Extraterritorial Jurisdiction: A Comment on “Life After Banković” ,” in the Extraterritorial Application of Human Rights Treaties, Fons Coomans and Menno (M.T) Kamminga, 125-139. Antwerp – Oxford: Intersentia, 2004.

GUIDELINES, HANDBOOKS, COMMENTS AND OTHER PAPERS

22. International Law Commisiion, *Yearbook of the International Law Commission 1971, vol. II(1), A/CN.4/246 and Add.1-3* New York, 1971, Accessed 15 February 2020, https://legal.un.org/ilc/documentation/english/a_cn4_246.pdf
23. International Law Commission, *Yearbook of the International Law Commission 1973, vol. II, A/CN.4/SER.A/1973/Add.l.* New York 1975, Accessed at 12 February 2020, https://legal.un.org/ilc/publications/yearbooks/english/ilc_1973_v2.pdf
24. International Law Commission: “*Draft Articles on the Law of Treaties with Commentaries*”, New York, 1996.
25. *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports*, accessed 15 February 2020, https://www.icj-cij.org/files/case-related/140/140-20081015-ORD-01-00-EN.pdf

26. European Court of Human Rights, Guide on Article 1 of the European Convention on Human Rights, 7, Accessed 15 February 2020, https://www.echr.coe.int/Documents/Guide_Art_1_ENG.pdf
27. UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Study on targeted killings*, 28 May 2010, A/HRC/14/24/Add.6, https://www.refworld.org/docid/4c0767ff2.html
28. UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Israel*, 21 August 2003, CCPR/CO/78/ISR. Accessed 28 February 2020, https://www.refworld.org/docid/3fdc6bd57.html
29. UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Belgium*, 12 August 2004, CCPR/CO/81/BEL. Accessed 28 February 2020, https://www.refworld.org/docid/42ce6d6ec.html
30. UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13. Accessed 27 February 2020, https://www.refworld.org/docid/478b26ae2.html
31. Уповноважений Верховної Ради України з прав людини: *Щорічна доповідь про стан додержання та захисту прав і свобод людити і громадянина в Україні за 2019 рік* (Україна, 2019), 166, http://www.ombudsman.gov.ua/files/Dopovidi/zvit%20za%202019.pdf

Journals

32. Root, Elihu. "The Basis of Protection to Citizens Residing Abroad." *The American Journal of International Law* 4, no. 3 (1910): 517-28, https://www-jstor-org.skaitykla.mruni.eu/stable/2186238?Search=yes&resultItemClick=true&searchText=ti%3A&searchText=%22The+Basis+of+Protection+to+Citizens+Residing+Abroad%22&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dti%253A%2522The%2BBasis%2Bof%2BProtection%2Bto%2BCitizens%2BResiding%2BAbroad%2522%2B%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bgroup%3Dnone&ab_segments=0%2Fbasic_SYC-5152%2Fcontrol&refreqid=search%3A4e1241a23a4bd7128250201f579c6b7d&seq=1#metadata_info_tab_contents
33. Greenman, K. “A Castle Built on Sand? Article 3 ECHR and the Source of Risk in Non-Refoulement Obligations in International Law.” *International Journal of Refugee Law* 27, 2 (2015), 264-296.

34. Ben-Naftali, Orna and Shany, Yuval. “Living in Denial: The Application of Human Rights in the Occupied Territories.” *Israel Law Review* 37, 1 (2003): 17–118
35. Hance, Bryan S., “Pilotless drones and the extraterritorial application of international human rights treaties”, *National University, OC13066*: 1-9, http://www.aabri.com/OC2013Manuscripts/OC13066.pdf
36. Raible, Lea. “ The Extraterritoriality of the ECHR: Why Jaloud and Pisari Should Be Read as Game Changers,” 2 European Human Rights Law Review, (2016): 1-19, accesed 17 February 2020, https://discovery.ucl.ac.uk/id/eprint/1477577/1/Raible%20%E2%80%93%202016%20%E2%80%93%20Extraterritoriality%20of%20the%20ECHR.pdf
37. Besson, Samantha. “The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To.” *Leiden Journal of International Law* 25, 4 (2012): 857-884, https://core.ac.uk/download/pdf/20660691.pdf
38. Wilde, Ralph. “Triggering State Obligations Extraterritoriality: The Spatial Test in Certain Human Rights Treaties.” *Israel Law Review* 40, 2 (2007): 503-526. https://poseidon01.ssrn.com/delivery.php?ID=225088106066099000099004126103103122063069081044038058081116097113066087069125098065019050096119055113011093031003101097102066008047028029049109127073114121070123007023013031089100082024013020083092018023000122108125107087087017096098064025125093003&EXT=pdf
39. Duttwiler, Michael. “Authority, Control and Jurisdiction in the Extraterritorial Application of the European Convention on Human Rights,” *Netherlands Quarterly of Human Rights* 30, 2 (2012): 137-162. http://www.corteidh.or.cr/tablas/r28821.pdf
40. Gondek, Michal. “Extraterritorial Application of The European Convention on Human Rights: Territorial Focus in the Age of Globalization?,” *Netherlands International Law Review* 52, 03 (2005): 349-387.
41. King, Hugh. “The Extraterritorial Human Rights Obligations of States,” *Human Rights Law Review* 9, 4 (2009): 521-556.
42. Cerone, John Cerone “Jurisdiction and Power: The Intersection of Human Rights Law & The Law of Non-International Armed Conflict in an Extraterritorial Context,” *Israel Law Review* 40, 2 (2007): 396-452.
43. Dennis, Michael and Surena, Andre. “Application of the International Covenant on Civil and Political Rights in times of armed conflict and military occupation: the gap between legal theory and state practice,” *European Human Rights Law Review* 6 (2008): 714-731.

44. Stewart Alastair. "Back to the Drawing Board: Al-Skeini v. UK and the Extraterritorial Application of the European Convention on Human Rights," *UCL Human Rights Review 4* (2011): 110-121.
45. Miller, Sarah. "Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention." *European Journal of International Law* 20, 4 (2009): 1223-1246, http://www.ejil.org/pdfs/20/4/1937.pdf
46. Caspersen, Nina. "Making Peace with De Facto States," *The Annual of Language and Language of Politics and Identity*, 10 (2016): 7-18. https://www.webcitation.org/mainframe.php
47. O'Loughlin, John and Toal, Gerard, "The Crimea Conundrum: Legitimacy and Public Opinion after Annexation." *Eurasian Geography and Economics* 60, 1 (2019): 6-27.

Court cases

48. "Case of the Mavrommatis Palestine Concessions. PCIJ, Ser. A, No. 2, 1924", 12. Accessed 12 Februaty 2020. https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_A/A_02/06_Mavrommatis_en_Palestine_Arret.pdf
49. "Case concerning Factory at Chorzów, PCIJ, Series A, No 17, 1927", 21. Accessed 12 Februaty 2020. https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_A/A_09/28_Usine_de_Chorzow_Competence_Arret.pdf
50. "Case concerning United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)", ICJ Reports 1980, 42-43 (para 92). accessed 13 February 2020. https://www.icj-cij.org/files/case-related/64/064-19800524-JUD-01-00-EN.pdf
51. "Case of Loizidou v. Turkey, Application no. 15318/89" Judgment, Eur. Ct. H. R, 18 December 1996. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58007%22]}
52. "Case of Banković and others v. Belgium and others, application no. 52207/99", Decision Eur. Ct. H. R, 12 December 2001. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22099%22]}
53. "Case of Al-Skeini and others v. The United Kingdom", application no. 55721/07, Judgment, Eur. Ct. H. R, 7 July 2011. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105606%22]}
54. "Case of Jaloud v. the Netherlands" application no. 47708/08, Judgment, Eur. Ct. H. R, 20 November 2014. https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-148367&filename=001-148367.pdf&TID=qeikrbadtm

55. *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004. Accessed 26 February 2020. https://www.refworld.org/cases,ICJ,414ad9a719.html
56. "Al-Saadoon and Mufdhi v the United Kingdom", Application No. 61498/08, Decision Eur. Ct. H. R, 20 November 2014. https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AL-SAADOON%20AND%20MUFDHI%20v.%20THE%20UNITED%20KINGDOM.pdf
57. "Case of Cyprus v. Turkey", application no. 25781/94, Judgment, Eur. Ct. H. R, 10 May 2001. https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CYPRUS%20v.%20TURKEY%20%282001%29.pdf
58. "Sergio Euben Lopez Burgos v. Uruguay", Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40) at 176 (1981). Accessed 15 March 2020, http://hrlibrary.umn.edu/undocs/session36/12-52.htm
59. "Case f Ilaşcu and Others v. Moldova and Russia", application no. 48787/99, Judgment, Eur. Ct. H. R, 8 July 2004. Accessed 17 March 2020, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61886%22]}
60. "Case of Stephens v. Malta", application no,11956/07, Judgment, Eur. Ct. H. R, 14 September 2009. Accessed 19 March 2020. https://www.hr-dp.org/files/2013/09/07/CASE_OF_STEPHENS_v._MALTA_no_._2_.pdf
61. "Velasquez Rodriguez Case", Judgment of 29 July 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988). Accessed 28 March 2020. http://hrlibrary.umn.edu/iachr/b_11_12d.htm
62. "Alejandre v. Cuba", report nº 86/99, case 11.589, Inter American Commission on Human Rights. Accessed 28 March 2020, https://www.cidh.oas.org/annualrep/99eng/Merits/Cuba11.589.htm
63. "Case of Gül v. Switzerland" application no. 23218/94, Judgment Eur. Ct. H. R, 19 February 1996, Dissenting Opinion Of Judge Martens. Accessed 30 March 2020. http://hudoc.echr.coe.int/eng?i=001-57975
64. "Regina v. Her Majesty's Coroner for the Western District of Somerset", Judgment House of Lords. Accessed 30 March 2020, https://publications.parliament.uk/pa/ld200304/ldjudgmt/jd040311/midd-1.htm
65. "Grand Chamber hearing on inter-State case Ukraine v. Russia (re Crimea)", Eur. Ct. H. R. 11 September 2019. Accessed 16 April 2020, http://hudoc.echr.coe.int/eng-press?i=003-6498871-8572177.

66. “Ukraine v. Russian Federation”, ICJ Judgment 8 November 2019. Accessed 16 April 2020. https://www.icj-cij.org/files/case-related/166/166-20191108-SUM-01-00-EN.pdf

Websites

67. Hennigan, W.J. “New Drone Has No Pilot Anywhere, so Who's Accountable?”. Accessed 13 March 2020, https://www.latimes.com/archives/la-xpm-2012-jan-26-la-fi-auto-drone-20120126-story.html.
68. Cedric De Koker. “Extra-Territorial Jurisdiction & Flexible Human Rights Obligations: The Case of Jaloud v. the Netherlands”. Accessed 18 February 2020, https://strasbourgobservers.com/2014/12/08/extra-territorial-jurisdiction-flexible-human-rights-obligations-the-case-of-jaloud-v-the-netherlands/.
69. “Russian Federation - Member State”. Accessed April 3, 2020. https://www.coe.int/en/web/portal/russian-federation.
70. РИА Новости,. “ДНР Провозгласила Себя Суверенным Государством.”. Accessed 15April 2020. https://ria.ru/20140512/1007507367.html
71. “Луганская Народная Республика Обратилась к России с Просьбой о Признании Ее Независимости.” ТАСС. Accessed 16 April 2020. https://tass.ru/mezhdunarodnaya-panorama/1253083.
72. “У зоні АТО загинули 3 бійців, поранено 17. Затримано двох офіцерів ГРУ РФ,” Українська правда. Accessed 20 April 2020 https://www.pravda.com.ua/news/2015/05/17/7068160/
73. Цветкова, Мария. “СПЕЦИАЛЬНЫЙ РЕПОРТАЖ-Российские солдаты бросают службу из-за войны на Украине”, Reuters. Accessed 22 April 2020. https://ru.reuters.com/article/topNews/idRUKBN0NV06M20150510
74. “В Донецкой народной республике рассказали о своих танках”, Кореспондент.net. Accessed 22 April 2020. https://korrespondent.net/ukraine/comunity/3377417-v-donetskoi-narodnoi-respublyke-rasskazaly-o-svoykh-tankakh

ABSTRACT

This thesis explores the issue of establishing the responsibility of states for human rights violations outside the territory of their state. The question of establishing jurisdiction over territories outside the borders of the State is defined by the term "extraterritoriality".

This work deals with this topic, both theoretically and practically. We have identified the main terms we use in our research and analyze their development. We have found that most contracts do not provide for the extraterritorial application of the rules provided for in them. Contrary to the general law, international human rights instruments provide for the extraterritorial use of the provisions enshrined in ECHR and ICCPR.

The practical side of the study was the establishment of extraterritoriality models, their application in practice, and the analysis of court cases. At the outset of our research, we identified the advantages and disadvantages of these modems and outlined what approach to determining extraterritoriality might be more effective.

We have considered the issue of human rights violations by Russia in Ukraine. We have analyzed the causes of the conflict and its consequences. We have examined the judgments regarding the conflict between Ukraine and Russia that are currently being considered by international courts. In the course of the study, we established the extraterritorial jurisdiction of the Russian Federation over the territories of the Crimea, Donetsk and Luhansk regions.

Keywords: extraterritoriality, human rights, protection.

SUMMARY

This paper addresses the issue of establishing the responsibility of states for human rights violations outside the territory of the state. In the course of the study, we identified the gaps in human rights activity that courts face in practice, and we have determined how the state's extraterritorial jurisdiction can be established and defined it in practice.

Our work consists of a theoretical and practical part. In the first section, we outline the basic concepts that we will use to cover our topic. We have analyzed the term "responsibility", we have defined what is meant by "responsibility", which evolutionary path has passed this mechanism. We established a modern understanding of the concept and a change in the role, as a mechanism for imposing sanctions, on the preventive means of protecting the international community. We have also analyzed the term "extraterritoriality" and have determined that this definition is only doctrinal. In the next section, we looked at which conventions have extraterritorial application. Most of the treaties are established territorial application, but the exception is ECHR and ICCPR

The 3 chapter discusses the establishment of extraterritoriality models. We looked at territorial, personal and mixed models. They identified the main features inherent in these models, which have advantages or disadvantages, and reviewed the case-law on the issue of establishing extraterritoriality. The deficiency of the system for resolving such disputes has been identified. The question of the establishment of extraterritoriality has individual character due to case, and the complexity of solving this issue takes a long time in court.

In the last chapter, we considered the issue of human rights abuses by the Russian Federation in the Crimea. We have identified the causes of the conflict that led to these violations. They considered the status of the conflict between Ukraine and Russia by international judicial bodies. This conflict has not yet been resolved since 2014. The ECHR found that it needed much more time to investigate the case more thoroughly, the ICJ found that Russia had breached ICSFT and CERD. We have established extra-territorial jurisdiction of the Russian Federation over the territories of Crimea, Donetsk and Lugansk.

The main problems we identified in our study were the lack of systematic case law on the issue of establishing extraterritoriality. This problem leads to the ineffectiveness of the human rights protection mechanism. Also, the establishment of the jurisdiction of the Russian Federation over Crimea, Donetsk and Lugansk, since the issue of human rights violations in these regions is a significant issue.

HONESTY DECLARATION

24/04/2020
Vilnius

I, Dmytro Taranenko, student of
(name, surname)

Mykolas Romeris University (hereinafter referred to University),
Faculty of Law, International and European Union Law Institute, International Law
(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

"Responsibility of states for human rights violations outside their territory":

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

(signature) Dmytro Taranenko *(name, surname)*