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FROM TERRITORY TO AUTHORITY: RETHINKING STATE RESPONSIBILITY IN HUMAN RIGHTS JURISDICTION

ABSTRACT

Borders have never fully contained power, and in today's interconnected world, they do so even less. States increasingly exercise authority beyond their territorial limits through cross-border surveillance, extraterritorial military operations, and economic sanctions, yet international human rights law continues to struggle with holding them accountable. This paper interrogates whether a state's human rights obligations end at its territorial borders. Drawing on the jurisprudence of the Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights, it traces the evolution of jurisdiction from a strictly territorial concept to one based on "effective control" and "authority and control over individuals." The paper examines three contested domains, military operations abroad, cyber and surveillance practices, and economic coercion, to assess the extent of this doctrinal expansion. It argues that a narrow, geography-based understanding of jurisdiction creates a protection gap, leaving individuals vulnerable where state action and control is most impactful. In response, the paper proposes a functional model of jurisdiction that anchors human rights responsibility in the exercise of power rather than territorial presence, thereby aligning legal accountability with contemporary realities of state action.

Keywords: Extraterritorial Jurisdiction; Human Rights Law; State Responsibility; Effective Control; ICCPR; Functional Jurisdiction

I. INTRODUCTION

When a state deploys surveillance technology to monitor a journalist in a foreign country, conducts a targeted killing in territory where it has no formal presence, or imposes economic sanctions that foreseeably deny a civilian population access to medicine — who bears legal responsibility? The instinctive answer points to the territorial state. But the state that causes harm is increasingly not the state on whose soil that harm is felt. This disjunction between the location of power and the location of consequence sits at the heart of one of the most contested problems in contemporary international human rights law.

International human rights treaties were drafted with a predominantly territorial logic. Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) obliges each state party to respect and ensure rights "to all individuals within its territory and subject to its jurisdiction."[1] The European Convention on Human Rights (ECHR) extends obligations to everyone "within their jurisdiction."[2] These formulations assumed a world in which a state's effective sphere of action coincided, more or less, with its geographic borders. That assumption no longer holds.[3] States today project power through digital surveillance, unmanned aerial vehicles, financial coercion, and proxy operations that traverse borders with increasing ease and decreasing visibility. This paper adopts a doctrinal and analytical methodology based on treaty interpretation, judicial decisions, and scholarly commentary in international human rights law.

This paper argues that a geography-bound interpretation of jurisdiction is no longer adequate to the task of human rights protection. Part II surveys the legal framework governing extraterritorial jurisdiction. Part III analyses the jurisprudential arc across three major international bodies. Part IV examines three hard cases where current doctrine is most severely tested. Part V proposes a functional model of jurisdiction. Part VI concludes.

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[1] International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171, art 2(1).
[2] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 1.

[3]Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (2nd ed., N.P. Engel, 2005) 42–45.

II. THE LEGAL FRAMEWORK: JURISDICTION AS THRESHOLD

A. Textual Foundations

The concept of jurisdiction in international human rights law functions as a threshold question: before any substantive human rights obligation can be engaged, a state must be found to exercise jurisdiction over the individual asserting a rights violation. This gatekeeper role carries significant consequences. A state that falls outside the jurisdictional threshold faces no obligation, regardless of the gravity of the harm it has caused.[4]

The foundational provision is Article 2(1) of the ICCPR, which binds state parties to respect and ensure rights "to all individuals within its territory and subject to its jurisdiction." The drafting history suggests that "jurisdiction" was not intended as a synonym for "territory" — the disjunctive structure implies that territorial presence is one basis for jurisdiction, not the only one.[5] The ECHR, in Article 1, omits any territorial qualifier altogether. The American Convention on Human Rights (Article 1(1)) and the African Charter (Article 1) similarly use jurisdictional rather than purely territorial language. The text, properly read, does not foreclose extraterritorial application. What has varied is the willingness of adjudicative bodies to fill that space.

B. Two Models of Jurisdiction

Scholarship and jurisprudence have identified two broad models. The *spatial model* holds that jurisdiction attaches when a state exercises effective control over a territory — typically through military occupation or comparable presence. The *personal model* holds that jurisdiction attaches when a state exercises effective control or authority over a specific individual, regardless of where that individual is located.[6] These models are not mutually exclusive, and courts have often blended them. Understanding the tension between them is essential to evaluating the trajectory of the case law.[7]

III. THE JURISPRUDENTIAL ARC

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[4]Marko Milanovic, Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy (Oxford University Press, 2011) 8–14.

[5] Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, N.P. Engel 2005) 43–44.

[6] Milanovic (n 5) 173–181.

[7] Ralph Wilde, 'Legal "Black Hole"? Extraterritorial State Action and International Treaty Law on Civil and Political Rights' (2005) 26 *Michigan Journal of International Law* 739, 746–752.

A. The European Court of Human Rights

The ECtHR's initial position, articulated in *Banković v. Belgium*[8], appeared to restrict jurisdiction to a regional "legal space" (*espace juridique*) constituted by Convention states. The case arose from the NATO bombing of the Radio Television Serbia building in Belgrade in 1999. The court declined jurisdiction, reasoning that nationals of a non-Convention state injured in a non-Convention territory were not within the respondent states' jurisdiction. The decision attracted sharp criticism for its geographic rigidity and was substantially qualified in subsequent decisions.

In *Loizidou v. Turkey*[9], the court held that Turkey's military control over northern Cyprus brought that territory within Turkey's Convention jurisdiction. In *Al-Skeini v. United Kingdom*[10], the court moved decisively toward the personal model: the United Kingdom, exercising public powers in southern Iraq following the invasion, was found to exercise jurisdiction over Iraqi civilians killed by British forces. The court expressly acknowledged that jurisdiction could exist in the absence of territorial control, provided there was control over the individual.

Al-Skeini represents a significant doctrinal shift — reconceiving jurisdiction as context-sensitive, tied to the actual exercise of state authority rather than fixed geographic or institutional criteria.[11] However, the court has not fully resolved the outer contours of this principle, and subsequent decisions have not always applied it consistently, leaving a degree of doctrinal uncertainty that operating states have occasionally exploited.

B. The Human Rights Committee

The Human Rights Committee has long adopted a broader jurisdictional reading than the ECtHR. In *López Burgos v. Uruguay*[12], the Committee held that Uruguay was responsible for the abduction, torture, and detention of a Uruguayan national in Argentina by Uruguayan agents. The reasoning was direct: a state cannot escape its ICCPR obligations by operating

[8] Banković and Others v Belgium and Others, App No 52207/99 (ECtHR Grand Chamber, Decision of 12 December 2001) para 80.

[9] Loizidou v Turkey, App No 15318/89 (ECtHR Grand Chamber, Judgment of 23 March 1995) para 62.

[10] Al-Skeini and Others v United Kingdom, App No 55721/07 (ECtHR Grand Chamber, Judgment of 7 July 2011) paras 130–142.

[11] Marko Milanovic, 'Al-Skeini and Al-Jedda in the European Court of Human Rights' (2012) 23 *European Journal of International Law 121, 123–127.*

[12] López Burgos v Uruguay, Communication No R.12/52, UN Doc Supp No 40 (A/36/40) at 176 (1981), para 12.3.

extraterritorially through its own agents. Jurisdiction followed the exercise of authority over an individual.

General Comment No. 31 reinforced this position, *"stating that a state party must respect and ensure the rights of anyone within its power or effective control, even if not within its territory."*[13] General Comment No. 36 on the right to life further extends this logic, affirming that states are obligated under Article 6 not to deprive any person of life arbitrarily, including through their agents operating abroad.[14] The Committee's approach is significantly more expansive than the ECtHR's, creating a fragmented doctrinal landscape in which the same state action may attract human rights scrutiny under one instrument but not another.

C. The International Court of Justice

The ICJ's advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[15] confirmed that the ICCPR applies to acts performed by a state in the exercise of its jurisdiction outside its own territory. The court applied both the ICCPR and the ICESCR to Israel's conduct in the occupied territories, rejecting Israel's argument that human rights law was entirely displaced by international humanitarian law in situations of armed conflict. This endorsement of concurrent applicability — that IHL and human rights law operate simultaneously,[16] has significant implications for the three contested domains examined below.

IV. THREE CONTESTED DOMAINS

A. Extraterritorial Military Operations and Targeted Killings

Perhaps the most visible site of the jurisdiction debate is the use of force abroad — in particular, targeted killing operations conducted through drone strikes or special forces in states with which the acting state is not formally at war. The United States, the United

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[13]Human Rights Committee, General Comment No 31: The Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004) para 10.

[14]Human Rights Committee, General Comment No 36 on Article 6 (Right to Life), CCPR/C/GC/36 (2019) para 63.

[15]*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p 136, paras 107–113.

[16]*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 168, para 216; Françoise Hampson, 'The Relationship between International Humanitarian Law and Human Rights Law from the Perspective of a Human Rights Treaty Body' (2008) 90 *International Review of the Red Cross* 549, 556.

Kingdom, and Israel have each conducted such operations, in contexts ranging from Afghanistan and Pakistan to Somalia, Syria, and Gaza. States have generally resisted the application of human rights law on two grounds: first, that *lex specialis* gives precedence to international humanitarian law in armed conflict; and second, that the individuals targeted are not within the state's jurisdiction. General Comment No. 36[17] directly challenges the second argument.

The accountability gap in this domain is acute. Where targeting decisions rely on intelligence assessments insulated from independent judicial review, the legal framework is tested precisely where accountability matters most.

The principles of necessity and distinction — between combatants and civilians — are not self-enforcing. [18] Without a jurisdictional framework that attaches human rights obligations to the act of killing rather than the location of the killed, these principles remain aspirational rather than enforceable.

B. Cross-Border Surveillance and Cyber Operations

The 2013 exposure of the NSA's PRISM programme, and subsequent revelations regarding the use of Pegasus spyware against journalists, lawyers, and political dissidents in multiple countries, brought the human rights dimensions of surveillance technology into sharp focus. A state that remotely installs surveillance software on the telephone of a person abroad exercises considerable authority over that person's communications and, potentially, their safety. The UN Special Rapporteur on the Right to Privacy has argued that states are bound by their human rights obligations when conducting targeted surveillance operations affecting persons abroad.[19]

The Special Rapporteur on Freedom of Expression has reinforced this view, noting that digital surveillance, when targeted at identifiable individuals constitutes an exercise of state authority sufficient to trigger jurisdictional responsibility.[20] Digital intrusion does not require physical presence. The challenge is that such operations are inherently difficult to

[17]Philip Alston (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), 'Study on Targeted Killings', UN Doc A/HRC/14/24/Add.6 (2010) para 85.
[18]Nils Melzer, Targeted Killing in International Law (Oxford University Press, 2008) 278–285.
[19]UN Special Rapporteur on the Right to Privacy, Report on Surveillance in the Digital Age, A/HRC/27/37 (2014) paras 34–38.
[20]David Kaye (Special Rapporteur on Freedom of Expression), 'Surveillance and Human Rights', A/HRC/41/35 (2019) para 20.

attribute, designed to operate below the threshold of armed force, and the existing human rights framework has few tools for addressing covert digital intrusion. Developing an adequate jurisdictional doctrine requires engagement with the nature of the harm, violations of privacy, exposure to persecution, chilling of expression rather than the modality of the intrusion.

C. Economic Coercion and Sanctions

The extraterritorial human rights implications of economic sanctions are perhaps the least legally developed of the three domains, yet they raise the most challenging questions. Comprehensive economic sanctions can result in severe deprivation in the targeted state: restricted access to medicine, food, banking services, and essential infrastructure. These consequences fall disproportionately on civilian populations.[21] The prevailing position among sanctioning states is that such measures are directed at state actors and institutions, and that any human rights violations are attributable to the sanctioned state's response rather than the sanctioning state's decision.

This position has traction as a matter of state practice but sits uneasily with the logical implications of the personal model of jurisdiction. If a state exercises authority over an identifiable individual — by blocking the transaction through which they would purchase essential medication — it may be difficult to maintain that the individual is not within its jurisdiction for human rights purposes. The trajectory of right to health and right to food jurisprudence under the ICESCR points toward greater scrutiny of the extraterritorial effects of economic policy decisions, but doctrinal development has lagged substantially behind practical realities.[22]

V. TOWARD A FUNCTIONAL MODEL OF JURISDICTION

A. The Inadequacy of Territorial Logic

The survey above reveals a consistent pattern: the doctrinal development of extraterritorial jurisdiction has been reactive rather than principled, responding to specific

[21] Iain Cameron, 'Targeted Sanctions and Human Rights', in Larissa van den Herik (ed), Research Handbook on UN Sanctions and International Law (Edward Elgar, 2017) 192, 204–208.
[22] Sarah Joseph, Blame It on the WTO? A Human Rights Critique (Oxford University Press, 2011) 44–52.

fact patterns as they arise without a coherent underlying framework.[23] The result is a patchwork in which the robustness of human rights protection depends heavily on the forum, the identity of the acting state, and the nature of the harm. This doctrinal fragmentation is not merely a technical concern — it translates into real gaps in protection for real people.

The core limitation of the territorial model is that it anchors legal accountability to a geographic fact — the location of the victim or the location of the action — that is increasingly irrelevant to the exercise of state power. A state that deploys a drone, a surveillance tool, or an economic restriction exercises real and consequential power over the persons affected. Denying that power a legal counterpart in the form of a human rights obligation is not a neutral interpretive choice. It is a choice that systematically advantages powerful states and disadvantages the individuals subject to their authority.[24]

B. Elements of the Proposed Model

This paper proposes a functional approach of jurisdiction grounded in three elements: first, the *directedness* of the state's action toward an identifiable individual or group; second, the *foreseeability* of the impact on that individual's enjoyment of human rights; and third, a *causal link* between the state's exercise of power and the harm suffered. This model draws on the personal model articulated in *Al-Skeini* and the Committee's General Comment No. 31[25] while extending them to contexts not yet fully addressed by international bodies.

Under this model, a state exercises jurisdiction when it takes an action directed at an identifiable person — whether through targeting, surveillance, sanction, or other mechanism — that foreseeably and directly affects that person's ability to enjoy a protected human right. The state need not occupy territory, maintain a physical presence, or exercise custodial control.[26] What matters is the exercise of effective authority over the conditions of the individual's life. This model avoids the overreach of a fully universal human rights obligation while ensuring that states cannot escape accountability simply by operating remotely.

C. Objections and Responses

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[24] Sigrun Skogly and Mark Gibney, 'Transnational Human Rights Obligations' (2002) 24 Human Rights Quarterly 781, 792.

[25] *Al-Skeini and Others v United Kingdom* (n 11) paras 130–142; Human Rights Committee, *General Comment No 31* (n 14) para 10; *General Comment No 36* (n 15) para 63.

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The principal objection is the sovereignty argument: that extending human rights obligations extraterritorially intrudes upon the regulatory autonomy of the territorial state and disrupts the Westphalian order.[27] This objection deserves respect but not deference. Sovereignty has never exempted states from all legal obligations for their extraterritorial conduct — the prohibition on the use of force, the prohibition on genocide, and obligations of non-refoulement all impose extraterritorial constraints. Human rights law is, at its core, a constraint on government control in the interest of individuals. It would be anomalous if that constraint evaporated precisely when state power is exercised at its most concentrated.

A second objection is epistemic: that expanding jurisdiction creates indeterminate obligations, since states cannot realistically account for all consequences of their actions on persons abroad. The proposed model addresses this through its directedness requirement. A state is not responsible for the diffuse background effects of its foreign policy choices; it is responsible for targeted exercises of power directed at identifiable individuals. This is a manageable and principled scope of accountability that the existing jurisprudence already points toward, even if it has not yet fully articulated it.[28]

VI. CONCLUSION

The relationship between territory and authority in international human rights law is at a turning point. The classical territorial model, which served adequately when states rarely exercised precise and penetrating power beyond their borders, can no longer provide the framework of protection that the drafters of the great human rights instruments intended.[29]

International courts and treaty bodies have made significant — if inconsistent — progress in moving toward a functional understanding of jurisdiction.[30] The three contested domains examined in this paper illustrate both the urgency and the tractability of this project. The accountability gap is real, but it is not permanent — it is a consequence of interpretive choices that can, and should, be revisited. The framework proposed here ultimately seeks to align legal responsibility with the realities of contemporary projection of authority. In an era

[27]Robert McCorquodale and Ralph Fairbrother, 'Globalization and Human Rights' (1999) 21 Human Rights Quarterly 735, 748.
[28] Ralph Wilde, 'Legal "Black Hole"? Extraterritorial State Action and International Treaty Law on Civil and Political Rights' (2005) 26 *Michigan Journal of International Law* 739, 799–804.
[29] Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, Oxford University Press 2015) 101–106.

[30] John Cerone, 'Out of Bounds? Considering the Reach of International Human Rights Law' (2006) 9 *Orbis* 15, 22–27.

where states can exercise profound influence beyond territorial borders through military, digital, and economic means, human rights protection cannot remain confined to geography alone. If international human rights law is to remain effective, accountability must evolve alongside the changing forms through which power is exercised.

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