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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 25: RULES OF JURISDICTION AND APPLICABLE LAW IN INTERNATIONAL CRIMINAL LAW

The jurisdiction of international courts is determined in accordance with litigation relating to international crimes : general litigation in the case of the ICC and litigation limited in space and time in the case of ad hoc tribunals.

As the crimes have been necessarily committed on the territory of a State, the national judge in the place the crime was committed has concurrent jurisdiction owing to the principle of territoriality. In addition, according to various criteria of extraterritorial jurisdiction, other national courts may be granted concurrent jurisdiction.

➤ *The rules of jurisdiction laid down by public international law*

- **Territorial jurisdiction**

The criterion for jurisdiction corresponds to the place where the offence was committed. The State has jurisdiction to judge offences committed on its own territory.

- **Extraterritorial jurisdiction**

The criterion for jurisdiction is not the place where the offence was committed, but rather the nationality of the perpetrator or the victim (nationality jurisdiction), or the nature of the offence whereby it constitutes harm to the fundamental interests of the state (protective principle).

✓ *Active nationality jurisdiction* : refers to the nationality of the perpetrator of the offence. The State has jurisdiction to judge offences committed by its nationals abroad.

- Conditions to which it may be subject : presence of the perpetrator on the territory, principle of double incrimination (offence considered as such in both States), threshold of gravity of the offence, victim's complaint, etc.



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-E.g. : torture, as defined in article 5 §1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987, and in cases where States have ratified the Convention.

- ✓ *Passive nationality jurisdiction*: refers to the nationality of the victim. The State has jurisdiction to judge offences committed against its nationals abroad (and in principle by foreign nationals).
 - Conditions to which it may be subject : presence of the perpetrator on its territory, principle of double incrimination, threshold of gravity of offence.
 - E.g. : taking of hostages, as defined in article 5 §1 of the International Convention against the Taking of Hostages of 1979, and in cases where States have ratified the Convention.
- ✓ *Protective principle* : the State has jurisdiction to judge offences relating to offences which harm the fundamental interests of the nation. E.g. : crimes against the security of the State, certain acts of terrorism.
 - **Derogation rule : universal jurisdiction**

This enables a State to prosecute perpetrators of certain serious crimes, wherever the crime has been committed, and whatever the nationality of the perpetrator or the victim (see file n° 26 on the principle of universal jurisdiction).

➤ *Conflicts of jurisdiction*

- ✓ *Priority of jurisdiction for international courts*: primacy of jurisdiction for the ICTY, the ICTR, the Special Court for Sierra Leone and the Special Tribunal for Lebanon, in relation to national courts.
- ✓ *Complementarity of jurisdiction for international courts*: The ICC complements national criminal courts, and cannot accept a case when it has not been the subject of an investigation or prosecution on the part of a competent State (unless said State is unwilling or incapable of bringing the investigation or prosecutions to a successful conclusion).
- ✓ *Jurisdiction determined according to national rules of jurisdiction*: case of mixed tribunals which are assimilated into the national legal system : The Extraordinary Cambodian Chambers, the War Crimes Chamber in Bosnia and Herzegovina, the Kosovo courts.

➤ *Applicable law*

Criminal offences and sanctions are both governed by international law and national law :

- The prohibited act is set out by international law.
- The repressive norm which incriminates the behaviour and defines the penalty is established by national law.

Sources:

- Henri D. BOSLY, Damien VANDERMEERSCH, *Génocide, crimes contre l'humanité et crimes de guerre face à la justice : les juridictions internationales et les tribunaux nationaux*, Bruylant, 2010.
- Web site of Trial Watch : <http://www.trial-ch.org/en/home.html>

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