Extraterritoriality reconsidered: functional boundaries as repositories of jurisdiction

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Introduction

There is a myth that states have a monopoly of force within their borders and that they may not interfere in the affairs of other states. The 'Westphalian frame' it is called, and it is in decline.[1] The structural reorganisation of the international system has challenged the fields of international law and politics, and human rights is no exception. Human rights treaties operate within this frame and their successful implementation depends upon sovereign states that are willing and able to do so.[2] The question is, as 'the Westphalian frame is notoriously fracturing,'[3] how will human rights law accommodate the tectonic shifts in the system?

This chapter addresses this puzzle, though tackling such a far- reaching question in its entirety would exceed its scope. More specifically, it examines how legal institutions have adapted to an international system whose foundational myth is shattering. Territorial sovereignty is the consecrated organising principle of the international system. Yet it is becoming clear that it is not a useful concept for understanding international politics. How do international tribunals generate solutions to current problems with such inadequate tools? I focus on how the European Court of Human Rights (ECtHR) approaches extraterritorially committed violations of human rights.

The ECtHR has changed its approach to extraterritoriality. One thing has, however, remained constant. It has been careful not to extend the application of the European Convention of Human Rights (ECHR) beyond the territories of European countries. It has devised some varyingly strict criteria to limit the extraterritorial application of the Convention. The one adopted in *Jaloud v. the Netherlands* appears to be the product of judicial

1 Koskenniemi 2011, p. 65; Koskenniemi 2016.
2 Bhuta 2016, p. 2.
3 Ibid. p. 10.

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innovation, and perhaps the most fitting approach to meet the needs of the current international system.[4]

This chapter examines closely the ECtHR's reasoning in *Jaloud*. Drawing from the logic employed in this case, I propose the concept of 'functional boundaries' in order to understand the Court's most recent jurisdictional test. I define 'functional boundaries' as repositories of authority exercised by a state on foreign soil. They are demarcation lines that establish extraterritorial jurisdiction, thereby holding states accountable for human rights violations committed on foreign soil. As the notion of neatly defined territorial borders as demarcation lines weakens, this concept may hold the potential to help us navigate in the current international order. However, one should also note that, while useful in addressing extraterritorially committed human rights violations, this is an innovation that is not produced in an entirely progressive spirit. Rather, it is a concession that strikes a balance between, on the one hand, ensuring accountability for human rights violations perpetrated beyond the territorial boundaries of European states, and on the other, not fully opening the ECHR system to claims emanating from outside Europe.

The European Court of Human Rights and the principle of territoriality

The ECtHR is certainly not the most progressive court in ensuring the extraterritorial application of human rights treaties. A progressive approach for a human rights court would entail constructing a more inclusive legal doctrine regarding states' extraterritorial human rights obligations. In this regard, the Inter- American Court of Human Rights (IACtHR) and the Human Rights Committee are generally regarded as more progressive.[5] For example, the IACtHR holds that states have extraterritorial obligations wherever they have 'authority and control over individuals or their specific situations'.[6] Similarly, the Human Rights Committee finds that an incident would fall under a state's jurisdiction as long as it was perpetrated by the agents of the state concerned.[7] By contrast, the ECtHR has followed a rather conservative line of argument. It has devised strict tests to limit the application of the ECHR to extraterritorially committed acts.

4 *Jaloud v. the Netherlands* 2014.
5 For a good analysis of how different tribunals approach extraterritorial jurisdiction, see Cleveland 2010.
6 Hathaway et al. 2011, p. 406.
7 *Lopez Burgos v. Uruguay* 1979, § 12.2.

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However, the conservative line that the ECtHR has pursued is precisely the reason the ECtHR illustrates an innovative – and inconsistent – way to understand extraterritorial jurisdiction.

The Court's meticulous attempts to limit the ECHR's territorial application are reminiscent of the days when the European human rights regime was created. This regime is now considered the most authoritative regional forum for human rights protection.[8] However, it was entangled with controversy from the beginning. The most glaring of those was the fact that some of the founding members were still colonial powers when the ECHR was drafted in 1949.[9] Indeed, it was the French and the British who took the lead in drafting the ECHR, despite being implicated in serious human rights violations in their colonies.[10] As a result, the way the ECHR was drafted gave the impression that the rights safeguarded were for 'a select groups of individuals'.[11] This is most evident in the way that Article 56 of the ECHR is formulated. This infamous 'colonial clause' acknowledges the existence of 'overseas territories' (read colonies). Member states were empowered with the decision to extend the application of the Convention to 'all or any of the territories for whose international relations it is responsible'. But this effectively meant that this protection system would be not be open to non-Europeans by default.

Does the ECtHR's approach to the ECHR's territorial application reproduce the hierarchies upon which the system was built? In order to answer this question, I turn to the ECtHR's views on jurisdiction and extraterritoriality.

The Court's view on jurisdiction and extraterritoriality

Article 1 of the ECHR, which links the contracting states' obligations to their jurisdiction, reads as follows: 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms in Section I of this Convention.' However, while Article 1 refers to the contracting states' obligations to the persons within their jurisdiction, it does not offer a working definition of jurisdiction itself. However, in *Bankovic*

8 Helfer 2008, p. 126.
9 Reynolds 2017, pp. 129–30.
10 Madsen 2007, p. 144.
11 Christoffersen and Madsen 2011, p. 1.

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and Others v. Belgium and Others, the ECtHR defined the scope of the contracting states' jurisdiction as follows:

> [J]urisdictional competence of a State is *primarily territorial*. While international law does not exclude a State's exercise of jurisdiction extra-territorially, the suggested bases of such jurisdiction (including nationality, flag, diplomatic and consular relations, effect, protection, passive personality and universality) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States.[12]

This definition underscores the idea that territoriality is the core constitutive element of jurisdiction, and extraterritorial jurisdiction is constrained by the territorial sovereignty of other states. According to Sarah Miller, this approach is 'intensely pragmatic' and reflects 'the realistic constraints of the system and a sense of comity'; it also 'eliminates some, but not all, categories of legal black holes'.[13] This approach arguably limits the complications that may arise from expanding the obligations of contracting states beyond their territorial borders, but it also leaves sufficient room for further developing the obligations if need be in the future.[14]

The ECtHR further reinforced the principle of territoriality by explaining 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'.[15] More importantly, with this statement the ECtHR established a 'rule and exception paradigm': territorial jurisdiction is the rule, extraterritorial jurisdiction only applies in exceptional circumstances, and it requires specific justifications. Such an approach sets the bar high for an extraterritorial act to fall within the jurisdiction of the state concerned. Therefore, it limits state obligations arising from such acts. Extraterritorial jurisdiction, then, is an exception to the rule that jurisdiction is primarily territorial. Although this distinction appears straightforward, establishing the existence or the absence of extraterritorial jurisdiction in specific cases is a daunting task. In practice, the ECtHR devised different tests to establish the existence of extraterritorial jurisdiction. While doing so, it has generated a rather inconsistent jurisprudence, as we will see in the next sections. Piecing different approaches adopted by

12 *Bankovic and Others v. Belgium and Others* 2001, § 59 (emphasis added).
13 Miller 2010, p. 1246.
14 Ibid.
15 *Bankovic and Others v. Belgium and Others* 2001, § 61.

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the ECtHR together, one can conclude that there are two jurisdictional tests: the spatial control model (the exercise of control over territory) and the state agent authority and control model (the exercise of control over individuals).[16]

The spatial control model: effective control over territory

According to the spatial control model, states have extraterritorial jurisdiction if they exercise effective control over territory or they assume some functions usually performed by governments. This model was first developed and deployed in cases concerning the Turkish occupation of Northern Cyprus. A particularly important case is *Loizidou v. Turkey*. A Cypriot citizen who could not access her properties in Northern Cyprus brought this case before the Court. It related to an interesting ground for defining and clarifying what extraterritorial jurisdiction entails. The ECtHR ruled that

> 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.[17]

Therefore, when a state exerts 'effective control of an area outside its national territory'—be it exercised directly by means of military forces or via a subordinate local administration – that state incurs obligations.[18]

The ECtHR supported its approach by arguing that an alternative scenario would result in '*a regrettable vacuum* in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention's fundamental safeguards'.[19] This statement laid the ground for a contentious concept: the ECHR's 'legal space' (*espace juridique*), encompassing the entire territory of its signatories. Initially introduced to extend the ECHR's protections to occupied Northern Cyprus, the statement would subsequently be used to limit the ECHR's application. In a sense, *Loizidou v. Turkey* confirmed that only persons in

16 Wilde 2010, p. 110; Rooney 2015, p. 408; Milanovic 2011, pp. 119–228.
17 *Loizidou v. Turkey* 1996, § 52.
18 Ibid.
19 *Cyprus v. Turkey* 2001, § 78 (emphasis added).

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privileged spaces are protected under the ECHR, an idea that goes back to the time of the Convention's drafting.

This 'effective overall control' test was reaffirmed in *Cyprus v. Turkey*, in which the government of Cyprus brought complaints regarding the 1974 invasion and the subsequent occupation of the northern portion of the island. The ECtHR ruled that '[h]aving effective overall control over northern Cyprus', Turkey had responsibility over the acts of the local administration, which depended on the support of Turkey.[20] This reasoning was further reinforced in *Ilascu and Others v. Moldova and Russia*.[21] With these cases, the ECtHR determined that 'effective overall control' over a given territory (through, for instance, the presence of armed forces) is a sufficient and necessary condition for the establishment of extraterritorial jurisdiction.

However, the Court revised this approach in *Bankovic*. The case was brought against Belgium and sixteen other European states that participated in the NATO airstrike on the Radio Televizija Srbije building in Belgrade in 1999. Faced with this difficult case against European NATO member states, the ECtHR chose to take a cautious step and re-emphasised that jurisdiction was, in principle, confined within the territorial boundaries of the contracting states.[22] Having reiterated that jurisdiction was territorial, the Court repeated the exception to this rule: a state has extraterritorial jurisdiction over a territory when it exercises 'effective overall control' due to the presence of large numbers of troops in that territory.[23] A state can wield such control over a given territory or population either through military occupation or by exercising all or some of the public powers with 'the consent, invitation or acquiescence of the government of that territory'.[24] Consequently, with *Bankovic*, the ECtHR refined the above-mentioned rule and its exception, making the criteria for the establishment of extraterritorial jurisdiction even more stringent. Following this formula, the ECtHR found that airspace control was not sufficient to evoke extraterritorial jurisdiction. According to this reasoning, the control gained through aerial bombing does not pass the threshold to qualify as an exception to the rule.

Moreover, the Court reiterated the *Loizidou* argument that the ECHR had a 'legal space'. The borders of this legal space were limited to the

20 Ibid. § 77.
21 *Ilascu and Others v. Moldova and Russia* 2004.
22 *Bankovic and Others v. Belgium and Others* 2001, § 59.
23 *Loizidou v. Turkey* 1996, § 56.
24 *Bankovic and Others v. Belgium and Others* 2001, § 71.

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territory of the contracting states to the ECHR. Hence, it was only normal to restrict its applicability to the 'legal space' of Europe. Not being a signatory to the ECHR at the time, Serbia was not within this space. Furthermore, the Court proclaimed 'the Convention as a constitutional instrument of *European* public order'.[25] The rights safeguarded under the ECHR could not be 'divided and tailored' for the particular circumstances of the extraterritorial act at issue.[26] According to this logic, the protection of human rights by the ECHR was an exclusive public good which only protected those who were within the borders of the European legal space.

This problematic and much-criticised decision served well for the purposes of political expediency. It evaded the complications that could arise from reviewing the acts of seventeen contracting states in a NATO operation. Thus, the ECtHR guarded itself against possible concerted criticisms coming from several of the contracting states. This also sent a message to the member states. The ECtHR effectively signalled that it would adhere to strict criteria when it came to reviewing future complaints arising from NATO operations in the region, or other similar operations in which the contracting states might participate.[27] The story, however, did not end there.

The personal control model: the state agent authority and control

The personal control model is the second model employed by the Court and it rests on a different logic. The control over an individual or a population – rather than a territory – is key here. In a nutshell, a state exercises jurisdiction over a specific individual or population under its control. A variant of this test is the 'state agent authority and control' model. According to this model, the source of jurisdiction is the state agents' extraterritorial use of force or exercise of control over persons. In other words, a state exercises jurisdiction whenever it establishes authority or control over individuals outside of its territory. Markus Mayr argues that the state agent authority and control model was initially developed to cover state agents in embassies and consulates. Subsequently, it was extend-

25 Ibid. § 80 (original emphasis).
26 Ibid. § 75.
27 The ECtHR softened this approach in *Issa and Others v. Turkey* 2004, in which it found that having overall control over a particular portion of territory was sufficient in order to establish the existence of extraterritorial jurisdiction.

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ed to the cases concerning extraterritorial arrests and detentions.[28] This model, which deals with control over persons, is more straightforward compared to the spatial model, in which one has to establish whether a state's control over a given territory exceeds a certain threshold.

An early example of the state agent authority and control model cases is found in *M. v. Denmark.* This case concerned the removal of an East German citizen from the premises of the Danish embassy in East Berlin.[29] The applicant, who wished to escape to the West, complained about the fact that the Danish authorities handed him over to the East German police. In this case, the European Commission of Human Rights (the Commission)[30] argued that 'authorized agents of a State, including diplomatic or consular agents, bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property'.[31] This reasoning was built on an established rule under public international law regarding the special legal status of diplomatic premises, or vessels on high seas carrying a flag of a particular state.[32] The ECtHR's jurisprudence invoking the personal control model also includes cases concerning extraterritorial arrests and detentions, such as *Ilich Sanchez Ramirez v. France*[33] and *Ocalan v. Turkey*.[34] In both cases, the ECtHR found that the individuals concerned were under the authority and the jurisdiction of the responding states from the moment of their arrest.

Then came *Al-Skeini v. the United Kingdom.* This case was brought against the United Kingdom and involved allegations about human rights violations committed by British forces during the occupation of Iraq. It contained five separate cases in which six Iraqis lost their lives as a result of arbitrary killings and torture employed by British soldiers. The applicants argued that 'their relatives were within the jurisdiction of the United Kingdom … at the moment of death and that … the United Kingdom had not complied with its investigative duty under Article 2'[right to life].[35] The

28 Mayr 2010, p. 7.
29 *M. v. Denmark* 1992.
30 The European Commission of Human Rights was the body that was responsible for carrying out initial screenings of applications and for establishing admissibility of cases until it was abolished in 1998.
31 *M. v. Denmark* 1992, § 1.
32 Barker 2006. This reasoning was also applied in *Hirsi Jamaa and Others v. Italy* 2012.
33 *Ilich Sanchez Ramirez v. France* 1996.
34 *Ocalan v. Turkey* 2005.
35 *Al-Skeini and Others v. the United Kingdom* 2011, § 95.

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United Kingdom invoked the above mentioned *Bankovic* case and denied having jurisdiction.

When evaluating the claims of the parties, the ECtHR began with the territoriality principle, reaffirming that jurisdiction is primarily territorial. It then listed the exceptions to this rule, starting from the state agent authority and control model. Moreover, it refined this model and expanded its application. For the Court, this model has three dimensions: first, extraterritorial jurisdiction exercised by diplomatic and consular agents in a foreign territory; second, extraterritorial jurisdiction which arises from exercising all or some of the public powers in another country; and third, jurisdiction exercised by state agents when conducting extraterritorial arrest and detention.[36]

What is interesting about these three dimensions is that the 'public powers' exception was also present in *Bankovic*, and it was conceptualised as an indication of the effective control model. However, in *Al-Skeini*, the ECtHR redefined the scope of the state agent authority and control model, and incorporated the public functions' criterion.

Having established the rules and exceptions once again, the ECtHR began assessing whether the acts concerned fell under the jurisdiction of the United Kingdom. For this purpose, it invoked the refined version of the state agent authority and control model. The next task was to establish whether the victims were under the control of British authorities. To this end, the Court turned to Security Council Resolution 1483, which designated the United Kingdom as one of the occupying powers in Iraq. The ECtHR took this resolution as a starting point, and found that the United Kingdom assumed 'some of the *public powers* normally to be exercised by a sovereign government'.[37] More specifically, the Court decided that the United Kingdom 'through its soldiers engaged in security operations in Basrah during the period in question, exercised *authority and control over individuals* killed in the course of such security operations'.[38] Thus, the jurisdictional link between British authorities and the deceased Iraqis was established.

Al-Skeini is a landmark judgment, not only because of its concrete outcome, but also due to its broader legal significance. The Court seized the chance to clarify jurisdictional matters under the ECHR. Instead of repeating the reasoning and the tests used in *Bankovic*, the Court adopted

36 Ibid. § 134–36.
37 Ibid. § 149 (emphasis added).
38 Ibid. (emphasis added).

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a different approach. Effectively, it handpicked an element from the test used in *Bankovic*: the exercise of public powers. It added this criterion to the state agent authority control model, which was the only jurisdictional test applied in *Al-Skeini*. By doing so, the Court refined and broadened the state agent authority and control model.

The turn to functional jurisdiction

One of the most significant implications of *Al-Skeini* is that it brought about an emphasis on public functions. This 'nebulous *Bankovic* reference to public power', however, changed the rules of the game.[39] To recapitulate, the model according to which 'the exercise of public powers [is] normally to be carried out by local government' was first introduced in the *Bankovic* judgment as a criterion for measuring the effectiveness of control over territory. This model was then reintroduced as a criterion for measuring state authority to establish whether the United Kingdom exercised jurisdiction in the *Al-Skeini* case.[40] The public powers at issue were the maintenance of security and stability (by assuming, among other things, the control of military and security institutions) and the maintenance of civil law and order (by supporting civil administration).[41] The public powers exercised by the United Kingdom, for example, were 'patrols, arrests, anti-terrorist operations, policing of civil demonstrations, protection of essential utilities and infrastructure and protecting police stations'.[42]

As Marko Milanovic argues, public powers mentioned above are indications of 'factual power, authority, or control that a state has over territory, and consequently over persons in that territory'.[43] Therefore, it is safe to assume that having jurisdiction indeed means exercising 'factual power'.[44] Accordingly, jurisdiction is derived from 'public power characteristic of sovereignty ('normally to be exercised by a sovereign government')'.[45] Admittedly, this conceptualisation resembles 'functionalist approaches' to sovereignty. Within this framework, inability to fulfil certain functions

39 Milanovic argues that this change is likely to cause uncertainty in the long run. See Milanovic 2012, p. 139.
40 Ibid. p. 128.
41 *Al-Skeini v. the United Kingdom* 2011, § 144.
42 Ibid.
43 Milanovic 2011, p. 32.
44 Ibid. p. 34.
45 Bhuta 2016, p. 11.

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(such as the protection of a population) would nullify sovereign prerogatives and transfer the legitimacy of authority to (international) actors that claim to undertake these functions on behalf of or instead of national governments.[46] However, what is at stake here is not legitimising authority claims. Rather, it is about attributing responsibility to those actors who enjoy authority generated through functions, and holding them accountable for the crimes committed while doing so.

What is difficult, however, is to understand the confines of this functional authority and jurisdiction on foreign soil.[47] As we will see in *Jaloud*, territorial boundaries, which are traditionally used as yardsticks, may not be able to demarcate the extent of authority at issue. Therefore, I propose the concept of 'functional boundaries' for delineating the sphere of public functions and its limits. Functional boundaries correspond to a slightly different limitation compared to territorial borders. They enclose a more fluid type of power: an assemblage of the islands of authority that a state enforces through the functions it assumes on foreign soil. Functional boundaries surround these islands of authority and demarcate zones of functional jurisdiction. Unlike territorial borders, functional boundaries can be divided and tailored within a given territory. Hence, they are arguably better tools for comprehending the extent of jurisdiction derived from exercising public functions, and for holding states accountable for violations committed while carrying out such functions.

A need for reconfiguring political space is not a new idea. For example, John Ruggie explains that there are 'nonterritorial functional spaces', such as various types of functional regimes, common markets, and political communities, where the claims for exclusive territoriality are negated. Territoriality is unbundled in such spaces.[48] However, one can observe that these spaces too are demarcated by boundaries. This is primarily because enclosure through boundaries has a constitutive role. Considering the example of medieval city walls, Wendy Brown claims that such 'walls produced a legal and political entity'.[49] Brown's observation here is directly applicable to post-modern rearrangements of political space such as the one explored in this chapter. In what follows, I discuss *Jaloud*, the latest case in which the ECtHR tackled jurisdictional matters and also clarified the idea of functional jurisdiction, as well as its limitations.

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46 Orford 2011, pp. 196–99.

47 Functional jurisdiction may also be exercised in the sea. See for example, Gavouneli 2007.

48 Ruggie 1993, p. 165.

49 Brown 2010, p. 47.

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'It all makes sense now!' Jaloud v. the Netherlands

Jaloud was heard amidst fears that the *Al-Skeini* decision would set a precedent for complaints arising from violations committed during military operations or foreign interventions.[50] The case was brought by an Iraqi national whose son had lost his life due to shots fired by Dutch forces stationed at a checkpoint.[51] The Dutch government argued that the case was inadmissible, since the acts that gave rise to the complaint did not fall under the jurisdiction of the Netherlands.[52] It further advanced that this case should be distinguished from *Al-Skeini*, because the Netherlands was not an 'occupying power' and did not exercise public functions or physical authority and control over the victim.[53]

Assessing the evidence presented, the ECtHR found that the victim lost his life when passing through a 'checkpoint manned by personnel under the command and direct supervision of a Netherlands Royal Army officer'.[54] Consequently, the ECtHR found that the Netherlands indeed exercised jurisdiction since the Dutch forces controlled the checkpoint and asserted 'authority and control over persons passing through the checkpoint'.[55] Put otherwise, the ECtHR found that the Dutch government exercised jurisdiction simply because the Dutch army operated a vehicle checkpoint, which represented a Dutch sphere of influence.[56]

What is striking about this 'checkpoint jurisdiction' approach is that it relied on an indirect deduction.[57] The ECtHR first concluded that the Dutch forces were in control of the checkpoint and served a function associated with exercising public powers. The Netherlands had authority over this checkpoint and therefore the checkpoint and the victim who lost his life in an attempt to pass through it fell under its jurisdiction. This approach is built upon the idea that the exercise of jurisdiction is linked to the exercise of public functions. It is through these functions that the Netherlands had authority and control over the persons.

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50 Cowan 2012. There were indeed other cases concerning the military operation in Iraq, see, e.g., *Hassan v. the United Kingdom* 2014.
51 *Jaloud v. the Netherlands* 2014, § 10–16.
52 Ibid. § 112.
53 Ibid. § 112–19.
54 Ibid. § 152.
55 Furthermore, the ECtHR also tackled the issue of attribution, which had not been discussed under the jurisdictional matters in its previous case law. For more on the link between attribution and jurisdiction see Rooney 2015.
56 Sari 2014, p. 301.
57 Haijer and Rynagaert 2015, p. 181.

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What is at issue here is identifying the source of the authority and then demarcating its limits. In *Jaloud*, the extent of the authority was limited to the checkpoint that was under the command of Dutch forces. This checkpoint demarcated the extent of Dutch jurisdiction. It was an island of Dutch authority in Iraq, and the Netherlands had direct jurisdiction and responsibility over what was going on at this checkpoint. And so was initiated a clear turn towards emphasising functional jurisdiction when assessing the Convention's extraterritorial application. The same logic was used again in *Pisari v. the Republic of Moldova and Russia* – another example of functional jurisdiction exercised at a checkpoint.[58]

Conclusion

The concept of functional boundaries follows from an evaluation of public functions as demarcation lines of jurisdiction. It is the outcome of a compromise between an inclusive approach, which the ECHR applies whenever a person is under the authority and control of a member state, and a stringent approach, which the ECHR applies only to the 'legal space' of Europe. It is therefore a judicial innovation and the product of a prudential attempt to prevent over-expansion of the ECHR's application, while still leaving avenues for seeking justice for extraterritorially committed human rights violations.[59]

This judicial innovation has its own complications. It sets up a different, more elusive type of boundary, and shifts the emphasis from territorial borders to functional boundaries.[60] It is a more complicated legal test compared to identifying a border (territoriality), the existence of troops on the ground (effective overall control), or whether an individual has been arrested by agents of a certain state (authority and control over an individual). It is arguably difficult to establish the existence, degree, or scope of the public functions exercised by the state on a foreign territory. As a result, it is a boundary that is harder to discern.

As for its broader impact, the concept of functional boundaries is an innovative approach to the question 'what is within and what is beyond?' The case of *Jaloud* illustrates how this notion could be used as a means of reconfiguring political space, and provides us with food for thought.

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58 *Pisari v. the Republic of Moldova and Russia* 2015.
59 De Costa 2012, p. 253.
60 Ibid. p. 247.

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As traditional approaches to attribute responsibility for extraterritorially committed violations increasingly show their limits, perhaps it is time to turn to another yardstick for understanding jurisdiction and its limits.

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My iCourts experience

Ezgi Yildiz, 1 October 2021

My iCourts story starts with the day I met Mikael Rask Madsen, the director and co-founder of iCourts. I met Mikael in the ideal way students are told to look for supervisors or mentors: by reading. I trust that the recommendation to "read a wide-array of works on your topic and approach the authors of the ones you really like" is familiar to many. I heard this advice myself as a first year PhD student at the Graduate Institute, Geneva, Switzerland. At that time, I had just set myself the difficult task of writing an interdisciplinary dissertation on the European Court of Human Rights combining theories and methods from International Relations, International Law, and Sociology. As I began digging into the literature, I encountered Mikael's long list of articles, books, and edited volumes that skillfully weave insights, theories, and methods from multiple disciplines. Mikael's approach resonated with me and inspired me to do the same in my own research.

One day I wrote to Mikael. He did not only send me an encouraging response with recommendations for my dissertation research but also agreed to serve as my external supervisor, and support my grant application to the Swiss National Science Foundation. And, as a bonus, he invited me to the first summer school to be held at iCourts in Summer 2013. The summer school, where we could enjoy talking about international courts and how to study them with leading (and rising) scholars in the field, was a real treat. Those couple of days at the summer school showcased that iCourts is one of the rare institutions that can cultivate innovative work ethos in a friendly and collaborative environment. Having experienced this firsthand – albeit for a few days only – I decided to come back to iCourts as a visitor for a semester and work closer with Mikael in Spring 2014.

My research stay was scheduled between January and June 2014. This meant that I moved to Copenhagen in the depth of Danish winter, but I experienced one of the warmest welcomes from the iCourts faculty and staff as well as other visiting scholars. iCourts immediately became a home, where I was surrounded with scholars sharing my interests. Back then iCourts was still part of the Studiegaarden complex, located on Studiestraede 6, near Norreport. The main meeting room of the center was

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looking at the Studiegaarden courtyard, which looked beautiful all year round, particularly when covered under the snow during winter. Some of my fondest memories of iCourts were made in that meeting room. I loved attending occasional breakfast briefings, lunch seminars, and seeing the presentations of leading scholars and practitioners in the field.

I particularly enjoyed and learned from my conversations with David Thor Björgvinsson, the former Icelandic judge to the European Court of Human Rights. I was lucky that my time at iCourts overlapped with that of David's, who had just taken up his professor of law position at iCourts. These conversations were one of the highlights of my time at iCourts and through them, I could take a look at Strasbourg from Copenhagen. In addition to David and Mikael, I also had the opportunity to exchange ideas with other members of the faculty such as Anne Lise Kjaer, Joanna Lam, Mikkel Jarle Christensen, Jakob Holtermann, Yannis Panagis, Urska Sadl, and Henrik Palmer Olsen. I learned a lot from the faculty and my peers and made great progress on my dissertation research. But the most important of it all is that I felt I grew as a scholar in the intellectually nurturing and collegial environment under the leadership of Mikael Rask Madsen and careful administration of Henrik Stampe Lund. In the course of the few months that I spent at iCourts, I met many wonderful scholars and made dear friends including Zuzanna Godzimirska, Juan Mayoral, Amalie Frese, Günes Ünüvar, Miriam Bak Mckenna, Salvatore Caserta, and Mihreteab Tsighe.

In 2015, I came to iCourts for a second time to discuss my dissertation work with Mikael. This time around, I could only stay for a few weeks but I could immediately feel as if I never left. What is more, I met other incredibly talented scholars and made new friends such as Marina Aksenova, Kerstin Carlson, Pola Cebulak, Jed Odermatt, Caroline De Lima e Silva, and Moritz Baumgärtel with whom I shared an office and a determination to finish our PhD projects on time. A couple of months after my second stay at iCourts, I submitted and defended my dissertation. Mikael, as my external reader, came to Geneva for my defense, and brought me support from iCourts friends.

A few years have passed since my last time at iCourts. Now I am a Senior Researcher for the Paths of International Law project at the Global Governance Center of the Graduate Institute, Geneva.

But I still remember the Center fondly and think about its impact on me as a young scholar and how it shaped my career trajectory.

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