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Criminal Jurisdiction beyond Territorial Sovereignty in the High Seas, International Airspace and Outer Space: An Analytical Study

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Abstract
The exercise of criminal jurisdiction beyond a State's territory poses complex challenges for international law. This paper examines flag-State, nationality, protective and universal jurisdiction in the high seas, international airspace and outer space, with reference to
UNCLOS 1982, the Chicago Convention 1944, the Tokyo Convention 1963 and the Outer Space Treaty 1967, and to the Indian statutory framework. It compares the three regimes and identifies their limitations, concluding that existing arrangements are fragmented and require coordination, particularly for outer space.

Keywords: criminal jurisdiction; flag-State jurisdiction; universal jurisdiction; UNCLOS; Tokyo Convention; Outer Space Treaty; extraterritoriality; aut dedere aut judicare

1. Introduction

Territorial sovereignty has conventionally been the predominant basis for the exercise of criminal jurisdiction by States, under which a State is vested with authority to prescribe, adjudicate and enforce its criminal laws within its territorial boundaries.[1] Advances in maritime navigation, international aviation and space exploration have, however, carried human activity beyond those boundaries. The high seas, airspace and outer space now constitute distinct legal domains governed by separate jurisdictional frameworks.

Under the United Nations Convention on the Law of the Sea 1982, Article 92 recognises the exclusive jurisdiction of the flag State over ships on the high seas, save for the exceptions provided.[2] In aviation, the Chicago Convention 1944 establishes State sovereignty over national airspace,[3] while the Tokyo Convention 1963,[4] the Montreal Convention 1971[5] and the Montreal Protocol 2014[6] respectively provide additional bases of jurisdiction over offences
aboard aircraft. The Outer Space Treaty 1967, Article VIII, recognises the jurisdiction and

1SS Lotus (France v Turkey) (1927) PCIJ Series A No 10, 18.
2United Nations Convention on the Law of the Sea 1982 (UNCLOS), arts 92, 97, 105, 110.
3Convention on International Civil Aviation 1944 (Chicago Convention), art 1.

4Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963 (Tokyo Convention), art 3.

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Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971 (Montreal Convention), art 5. 6

Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft 2014 (Montreal Protocol 2014).

control of the State of registry over space objects and their personnel,[7] supplemented by Article 22 of the 1998 Intergovernmental Agreement on the International Space Station.[8] The Partial Test Ban Treaty 1963 further regulates nuclear testing in the atmosphere, outer space and underwater.[9]

1.1 Traditional Principles of Criminal Jurisdiction

The territorial principle is the primary basis of criminal jurisdiction under international law, recognising a State's authority to prescribe, adjudicate and enforce its criminal laws within its territory. Jurisdiction is not, however, confined to territoriality: international law also recognises the nationality, protective, passive personality and universality principles.[10] These principles enable States to exercise criminal jurisdiction over foreign elements or conduct occurring beyond their territorial boundaries.

1.2 Criminal Jurisdiction Beyond Territorial Boundaries

The high seas, airspace beyond national territories and outer space are domains in which no State exercises ordinary territorial sovereignty, which necessitates specialised jurisdictional principles. In maritime law, flag-State jurisdiction generally governs ships on the high seas, subject to recognised exceptions such as piracy. In aviation, jurisdiction is determined through aircraft registration and other connections recognised under the relevant conventions. In outer space, it follows the State of registry of the space object.

1.3 Jurisdictional Challenges under International Law

Extraterritorial criminal jurisdiction raises complex questions of State sovereignty, overlapping jurisdictional claims, conflict of laws, investigation, prosecution and enforcement of criminal liability. Without conventional territorial authority, identifying the competent State may be difficult, especially where several States have legitimate connections with the same incident. Differences among the frameworks governing the three domains create further uncertainty over

the allocation of criminal responsibility and the effectiveness of international cooperation, and

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Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies 1967 (Outer Space Treaty), art VIII.

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Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station 1998 (ISS Agreement), art 22.

9Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water 1963.

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Harvard Research in International Law, 'Draft Convention on Jurisdiction with Respect to Crime' (1935) 29 AJIL Supp 435.

the growth of maritime, aviation and commercial space operations heightens the need to examine the adequacy of existing arrangements.

2. Criminal Jurisdiction in the High Seas

2.1 Legal Status

The high seas are the maritime areas not included within the internal waters, territorial sea, archipelagic waters or exclusive economic zone of any State, for the purposes of Part VII of UNCLOS. Article 87 recognises the freedom of the high seas, including navigation and overflight, and Article 89 prohibits any State from claiming sovereignty over any part of them.[11] Criminal jurisdiction is consequently governed primarily by international law and the nationality of vessels.

2.2 Flag-State Jurisdiction

Article 92 provides that ships shall sail under the flag of one State and, save in exceptional cases expressly provided for in international law, shall be subject to its exclusive jurisdiction on the high seas.[12] The flag State therefore exercises primary jurisdiction over criminal activity aboard its vessels, which gives legal certainty and prevents several States from exercising unrestricted authority over the same vessel. Article 94 imposes duties on the flag State, and Article 97 confines penal or disciplinary proceedings arising from collisions or other incidents of navigation to the flag State or the State of nationality of the person concerned.[13] The principle is not absolute: exceptions exist for piracy, slave trading, unauthorised broadcasting and stateless vessels.

2.3 Universal Jurisdiction over Piracy

Piracy is the clearest example of criminal jurisdiction beyond territorial sovereignty. Article 100 obliges States to cooperate to the fullest possible extent in its repression; Article 101 defines it; and Article 105 authorises every State to seize a pirate ship or aircraft on the high seas or in any place outside the jurisdiction of any State, and permits the courts of the seizing State to decide the penalties.[14] This is a significant exception to exclusive flag-State jurisdiction, justified by the international character of the offence and the community interest

in protecting navigation.

11UNCLOS, arts 87, 89.

12UNCLOS, art 92.

13UNCLOS, arts 94, 97.

14UNCLOS, arts 100, 101, 105.

2.4 Other Maritime Offences and Suppression Conventions

UNCLOS also addresses slave trading (Article 99), illicit traffic in narcotic drugs (Article 108), unauthorised broadcasting (Article 109) and boarding and inspection under the right of visit (Article 110).[15] These provisions show that international law adopts different jurisdictional arrangements according to the nature of the offence. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA Convention) creates offences of unlawful seizure of ships, violence against persons on board and acts endangering maritime safety. It requires States Parties to establish jurisdiction where an offence is committed against or on board a ship flying their flag, within

their territory, or by their nationals, and rests on the obligation to extradite or prosecute (aut dedere aut judicare), so that
offenders cannot evade accountability by crossing international boundaries.[16] The 2005 Protocol expands the offences to include terrorist acts, transport of prohibited materials and assistance to persons evading prosecution.[17] Both build on the earlier Convention on the High
Seas 1958.

2.5 The Indian Framework

The Bharatiya Nyaya Sanhita 2023 applies to offences by Indian citizens anywhere beyond India and to offences by any person on a ship or aircraft registered in India, wherever it may be.[18] Sections 208 and 209 of the Bharatiya Nagarik Suraksha Sanhita 2023 govern the inquiry and trial of offences committed outside India.[19] The Maritime Anti-Piracy Act 2022 (Act 3 of 2023) gives domestic effect to the anti-piracy regime,[20] and the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002 implements the SUA Convention.[21] The Supreme Court considered the reach of Indian
jurisdiction over a maritime incident beyond territorial waters, and its interaction with

15UNCLOS, arts 99, 108, 109, 110.

16 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA Convention), arts 3, 4, 6, 7, 10.

17 Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, arts 3, 9.

18Bharatiya Nyaya Sanhita 2023, s 1(4), (5).

19Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), ss 208, 209.

20Maritime Anti-Piracy Act 2022 (Act 3 of 2023).

21 Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002.

UNCLOS, in the Enrica Lexie case,[22] and upheld extraterritorial application of Indian criminal law in Mobarik Ali Ahmed.[23]

3. Criminal Jurisdiction in International Airspace

3.1 Legal Status

Article 1 of the Chicago Convention recognises that every State has complete and exclusive sovereignty over the airspace above its territory.[24] The airspace above the high seas, however, is not subject to the territorial sovereignty of any State, so criminal jurisdiction over aircraft in international airspace depends on registration, nationality, the place of landing and other connections.

3.2 Offences Aboard Aircraft: The Tokyo Convention

Article 3 of the Tokyo Convention recognises the competence of the State of registration to exercise jurisdiction over offences and acts committed on board, and the Convention does not exclude any criminal jurisdiction exercised in accordance with national law.[25] It thus provides the foundation for determining jurisdiction over offences occurring outside the territory of any

State.

3.3 State of Landing and State of the Operator

The 2014 Protocol expanded the framework by recognising jurisdiction in the State where the aircraft lands with the alleged offender still on board, and in the State of the operator where an aircraft is leased without crew.[26] It entered into force on 1 January 2020, illustrating the need to adapt traditional principles to modern aviation.

3.4 Hijacking and Aviation-Related Crimes

Specialised instruments address serious aviation offences: the Hague Convention 1970 on Unlawful Seizure of Aircraft, the Montreal Convention 1971 and the Protocol for the
Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1988. They establish obligations of criminalisation, jurisdiction, prosecution and extradition. The Hague Convention requires severe penalties; Article 3 fixes its scope, notably where an
aircraft takes off or lands outside its State of registration, and Articles 6 and 7 deal with custody

22Republic of Italy v Union of India (2013) 4 SCC 721.
23Mobarik Ali Ahmed v State of Bombay AIR 1957 SC 857.
24Chicago Convention, art 1.
25Tokyo Convention, art 3.
26Montreal Protocol 2014, art 3.

and the duty to prosecute or extradite.[27] Article 5 of the Montreal Convention provides for the establishment of jurisdiction.[28] Such crimes frequently involve several States: the State of registration, of landing, of the offender's nationality and of the harm.

3.5 The Indian Framework

India addresses hijacking through the Anti-Hijacking Act 2016[29] and civil aviation through the Bharatiya Vayuyan Adhiniyam 2024,[30] while offences aboard Indian-registered aircraft fall within Section 1(5) of the Bharatiya Nyaya Sanhita, with Sections 208 and 209 of the BNSS governing procedure.

4. Criminal Jurisdiction in Outer Space

4.1 Legal Status

Article II of the Outer Space Treaty prohibits national appropriation of outer space, including the Moon and other celestial bodies, by claim of sovereignty, use, occupation or any other means, and Article I provides that exploration and use shall be for the benefit and in the interests of all countries.[31] Unlike territorial sovereignty, the regime rests on freedom of exploration, international cooperation and non-appropriation.

4.2 Registration-Based Jurisdiction under Article VIII

The State Party on whose registry an object launched into outer space is carried retains jurisdiction and control over that object and its personnel while in outer space or on a celestial body.[32] This resembles flag-State and aircraft-registration jurisdiction, but the analogy is incomplete because the regimes governing ships, aircraft and space objects are distinct. Article IX adds international cooperation, mutual assistance and due regard for the corresponding
interests of other States.[33]

4.3 Registration Convention and the Wider Treaty Framework

The Convention on Registration of Objects Launched into Outer Space (adopted 1974, opened for signature 1975) supplements Article VIII by requiring launching States to maintain national registries; where two or more launching States are involved, they jointly determine which shall

27Convention for the Suppression of Unlawful Seizure of Aircraft 1970 (Hague Convention), arts 3, 6, 7.
28Montreal Convention, art 5.
29Anti-Hijacking Act 2016.
30Bharatiya Vayuyan Adhiniyam 2024.
31Outer Space Treaty, arts I, II.
32Outer Space Treaty, art VIII.
33Outer Space Treaty, art IX.

register the object, without prejudice to agreements on jurisdiction and control.[34] The wider framework includes the Rescue Agreement 1968, the Liability Convention 1972 and the Moon Agreement 1979.[35]

4.4 Criminal Jurisdiction in International Space Activities

Commercial expansion raises pressing questions. Which State has jurisdiction when an astronaut commits an offence aboard an international space station, or where crew members are of different nationalities? How is responsibility determined when a private company operates the space object, or when personnel of several States are involved? Registration-based jurisdiction alone may not resolve every dispute. Article 22 of the ISS Agreement offers a more specific model, establishing criminal jurisdiction over personnel in or on the Station on a nationality basis for partner States, with consultation mechanisms in certain circumstances.[36]

4.5 The Indian Framework

Indian citizens in space are reached through the nationality limb of Section 1(4) of the Bharatiya Nyaya Sanhita, but India has no dedicated criminal statute for outer-space activities, which reinforces the need for reform.

5. Comparative Analysis

The three domains share common features but differ in legal foundation and practical application. All require a legal connection between an object or activity and a particular State: the nationality or registration of ships, aircraft and space objects is the principal basis of jurisdiction, and international cooperation is essential for investigating and prosecuting offences involving several States.

Domain	Primary basis	Key instruments	Universal jurisdiction
High seas	Flag State (nationality of vessel)	UNCLOS arts 92, 97, 105, 110; SUA 1988 and 2005 Protocol	Express: piracy (art 105)
International airspace	State of registration; plus landing and operator States	Chicago 1944; Tokyo 1963; Hague 1970; Montreal 1971; Protocol 2014	No general rule; convention-based aut dedere aut judicare

Outer space	State of registry; nationality-based arrangements	OST arts VIII, IX; Registration Convention; ISS Agreement art 22	None

34Convention on Registration of Objects Launched into Outer Space 1975.

35
Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space 1968; Convention on International Liability for Damage Caused by Space Objects 1972; Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 1979.

36ISS Agreement, art 22.

The most significant difference concerns universal jurisdiction. In maritime law piracy is expressly subject to it under UNCLOS; in aviation jurisdiction rests principally on registration, with further connections established by convention; in outer space it is tied to the State of registry and nationality-based arrangements. The domains therefore do not provide an identical system of extraterritorial criminal jurisdiction. Conflicts arise where more than one State claims authority to prosecute the same offence, involving the State of registration, the accused's nationality, the victim's nationality and the State where the consequences occur. The absence of universally accepted priority rules in every situation creates uncertainty where several States have legitimate claims.

6. Limitations and Challenges

High seas. Enforcement is weakened by the inadequate capacity of certain flag States, flags of convenience, difficulty in collecting and preserving evidence, conflicts between flag States and
States of nationality, and the difficulty of prosecuting transnational organised criminal groups.

International airspace. Overlapping claims by several States, difficulty in identifying the appropriate prosecuting State, differences between national criminal laws, complications from aircraft leasing and registration, terrorism and unlawful interference, and difficulty in securing custody of offenders all call for a cooperative framework rather than reliance on a single connecting factor.

Outer space. Multiple launching States and complex registration arrangements, multinational crews, increasing private participation, the absence of a comprehensive international criminal code for space activities, the difficulty of investigating offences in remote and technically complex environments, and uncertainty over jurisdiction on celestial bodies involving several States remain unresolved. The absence of an agreed definition and delimitation of outer space compounds the problem.[37]

Limitations of the study. This study is doctrinal and focuses on the legal and theoretical aspects of criminal jurisdiction; it does not extend to an empirical examination of individual cases or law-enforcement practice, and it is confined mainly to conventions, domestic legislation,
customary international law and reported decisions, with emphasis on the Indian framework.

37
UN Committee on the Peaceful Uses of Outer Space, Historical Summary on the Consideration of the Question on the Definition and Delimitation of Outer Space A/AC.105/769/Add.1 (3 February 2020).
The existence of separate frameworks for the three domains also makes a uniform analysis challenging.

7. Findings and Suggestions

The analysis supports the view that existing frameworks, though sophisticated within each domain, are fragmented and strained by overlapping claims, uneven enforcement and the rise of private actors. The following suggestions follow from the findings.

1. **Harmonisation of criminal laws.** States should work towards greater harmonisation of laws on offences committed beyond territorial sovereignty.
2. **Stronger international cooperation.** Information-sharing, mutual legal assistance and extradition mechanisms should be improved.
3. **Clearer jurisdictional rules.** International organisations should encourage clearer priority rules for overlapping criminal jurisdiction.
4. **Effective registration systems.** States should ensure effective registration and supervision of ships, aircraft and space objects under their jurisdiction.
5. **Space criminal law.** As commercial and multinational space activity grows, States should consider additional international arrangements on criminal offences in outer space, and India should consider a dedicated statute.
6. **Human rights.** Extraterritorial criminal jurisdiction must remain consistent with human rights, due process and fair-trial guarantees.

8. Conclusion

The exercise of criminal jurisdiction beyond territorial sovereignty is among the most significant challenges of contemporary international law. On the high seas, flag-State
jurisdiction is the general rule, while piracy is subject to universal jurisdiction. In international aviation, registration provides the principal connection, supplemented by the State of landing and the State of the operator in specified circumstances. In outer space, Article VIII of the Outer Space Treaty establishes registration-based jurisdiction and control over space objects and their personnel.

Significant difficulties nonetheless remain: overlapping claims, differences in national criminal laws, inadequate enforcement and the growing involvement of private entities. Criminal
jurisdiction beyond territorial sovereignty therefore cannot rest on territorial principles alone. It requires a coordinated system of international conventions, State cooperation, registrationbased jurisdiction, nationality principles and universal jurisdiction where international law recognises it.

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