Universal" and "inalienable" human rights: The Third World Outsiders

Tamburello, Sofia

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"Universal" and "inalienable" human rights: The Third World Outsiders

A normative research on IHRL protection from states' extraterritorial HR violations

Student: Sofia Tamburello - s2511134

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List of abbreviations:

- **CIL**: Customary International Law
- **ECHR**: European Convention on Human rights
- **ECtHR**: European Court of Human rights
- **HR**: human rights
- **HRC**: United Nations Human Rights Committee
- **ICCPR**: International Covenant on Civil and Political Rights
- **ICESCR**: International Covenant on Economic, Social and Cultural Rights
- **IHL**: International Humanitarian Law
- **IL**: International Law
- **IHRL**: International Human Rights Law
- **PIL**: Public International Law
- **TWAIL**: Third World Approaches to International Law
- **UDHR**: Universal Declaration of Human Rights
- **UNGA**: United Nations General Assembly
- **VCLT**: Vienna Convention on the Law of Treaties

'Narrow territorial interpretation of human rights treaties is anathema to the basic idea of human rights'

- Meron (1995)

1. Introduction

Since the end of the Cold War, and especially 9/11, states' actions across borders have increased. Among the different impacts this had on the hosting states, human rights violations are, beyond any doubt, the most horrifying one. Increasing phenomena of aerial bombardments' killings, military occupations, foreign interventions and counterterrorist actions represent the ever-growing states' extraterritorial conduct (Milanovic, 2008). Overall, international law ("IL") covers those acts conducted by states abroad, or states' personnel, only when these fall under the states' "jurisdiction". The interpretation of states' jurisdiction varies among different IL frameworks. Nevertheless, its most common interpretation is territorial, meaning that states are in a position of jurisdiction when proven to control a particular area. Whether states are in actual control of such area is usually tested through the principle of "effective control". Such effective control is hardly testable in the context of extraterritorial activity because it requires a degree of control that is prevented by the native regime settled and is usually tested through a minimum amount of military resources (f.i. troops). This contrasts the international human rights law common provision that states should not be allowed to perform, abroad, acts violating human rights that are not allowed in their homeland. Even more, this is incoherent with the purpose of universality of human rights law and increasing cross-border actions.

Altogether, this highly complex debate - regarding the scope of human rights law in extraterritorial states' actions in terms of its interpretation, rationale, root causes - is of high interest for the future of international human rights law ("IHRL") extraterritorial application and remains unsolved. Consequently, this research will seek to answer the question "*To what extent does IHRL provide protection of human rights in the context of states' extraterritorial conduct?*". Answering this question would shed a light on what stage the IHRL is at in protecting from states' extraterritorial activities and on its legal consistency and certainty. Assessing so, and possibly legally formalizing an exhaustive and comprehensive legal framework, would increase states' accountability for the numerous extraterritorial human rights ("HR") violations and remedies for their victims. This thesis will be based on normative theory collaborating with, and not detached from, empirical theory. In fact, since what is ideal is constrained by what is possible, this thesis will integrate theory with consideration of its implications and outcomes for the world (Halperin & Heath, 2020).

This paper is organized as follows. Firstly, an overview of the existing literature on the topic will be presented. Secondly, this research will employ a theoretical framework based on Hall's

Neo-Gramscian hegemonic theory in conjunction with the Third World Approach to International law ("TWAIL"). Thirdly, in the methodology, the choice to focus on the European Court of Human rights ("ECtHR"), apply textual analysis to three legal cases and of the data used will be justified. It will be argued that the First World indirectly nudges the European Convention on Human Rights's ("ECHR") (1950) adjudications to maintain a restrictive interpretation of IHRL in extraterritorial conduct. Lastly, this paper will conclude that such hegemonic use of the ECHR by the First World is incoherent with their increasing extraterritorial violations and the principle of HR universality. Moreover, a legal framework will be proposed as a solution. Finally, the main implications, limitations of this research, and recommendations for future academia, are presented.

2. Literature review

This research will review the debate among legal scholars surrounding, a more or less strict, territorial and sovereignty-based notion of jurisdiction in the context of IHRL application to extraterritorial states' conduct.

2.1 The debate

The current international human rights framework is found to be applicable mostly for human rights violations that occurred on signatories' soil. Nevertheless, since the end of WWII, countries in the First World became more and more involved politically and militarily in foreign states' territories. This process is defined as increased extraterritorial conduct. These events, both politically and legally laden, led the literature to discuss (1) the role international human rights law has in preventing and safeguarding from states' violations abroad, (2) the relationship between international human rights and humanitarian law, (3) how to assess IOs' members' responsibility for actions abroad. Even if all of these matters overlap, this research will focus especially on answering the first one, while mentioning the rest. Scholars have adopted two main positions in this debate. On one hand, it is argued that international human rights law would enable HR protection by using more flexible, extensive, less territorial principle of jurisdiction and rules to assess state's responsibility (rather than "effective control") for the violations of HR perpetrated by states on foreign soil. On the other hand, scholars are against such flexibility. This review will present these positions and compare them.

2.1.1 Supporters of the restrictive scope of IHRL frameworks

One of the main scholars supporting a restrictive scope of IHRL in interpreting "jurisdiction" is Miller (2010). He specifically criticizes the failure of the ECHR to clearly define the conditions under which states' extraterritorial actions can be brought within the "jurisdiction" of the ECtHR. He sustains the narrow view according to which the ECHR's jurisdiction should be confined only to exceptional cases, instead of extending it to the presence of a state exercising control over the violation of HR. Nonetheless, the boundaries of these exceptions remain undefined. Moreover, Miller (2010) states that, even though the ECHR's jurisdiction will probably be expanded, the reason behind this would be the political interests of the signatory states pressured by the public opinion.

Similarly, Kavaldjieva (2006) states that the ECHR conception of jurisdiction is a post-WWII one, highly tied to preserving its sovereign territory and citizens. He concludes that the victims of extraterritorial violations should not be able to seek justice through the European legal system in order to make up for the democratic deficit of the civil courts (Kavaldjieva, 2006).

2.1.2 Supporters of the expansive scope of IHRL frameworks

Several scholars sustain that IHRL should expand by using a more flexible interpretation of jurisdiction, in the context of states' extraterritorial activities, to ensure HR protection. Nevertheless, scholars focus on different aspects of IHRL: (1) incoherent restrictive jurisdiction in view of current extraterritorial activities and HR universality, (2) jurisprudence uncertainty and inconsistency in interpreting jurisdiction, (3) ECtHR legal uncertainty, inconsistency and incoherence.

On one hand, some scholars sustain that the current interpretations of jurisdiction are contextually incoherent. It is stressed that, especially since 9/11, extraterritorial actions by the HR treaties' contracting states - like extraterritorial renditions, detentions, occupations, abductions and assassinations - seem to exploit a "legal black hole" and prevent human rights law application (Abdel-Monem, 2005; Gondek, 2005; Wilde, 2005). This is due to the IHRL frameworks of the ICCPR and the ECHR's interpretation of "jurisdiction" as mainly territorial, linking territory and sovereignty (De Schutter, 2006; King, 2009; Tzevelekos, 2014). Nonetheless, Tzevelekos (2014) stresses that the concept of HR led to the erosion of such sovereignty due to their legitimate collective interest.

Moreover, in line with Gondek (2005), IHRL should develop logically with IHRL fundamental principles of universality or humanity, international law jurisdiction and treaty interpretation.

On the other hand, scholars stress the lack of legal certainty in the IHRL interpretation of "jurisdiction" in cases of states' extraterritorial conduct. In this respect, Kamchibekova (2007) explains that under the ICCPR and ECHR, extraterritorial applicability of HR lacks clarifications apart from four contexts: (1) state agents' violations in a foreign country under government consent, (2) extraterritorial military prisons, embassies, vessels, aircrafts, (3) occupied territories with a clearly defined authority, (4) in presence of exercise of power and authority over persons through abduction or detainment. Within the last category, very different factors (location, individuals, vehicles) are considered and lead to different judgements, regardless of whether any persuasive reasons oppose the protection of HR.

Moreover, IHRL jurisprudence also shows inconsistency in its interpretation of jurisdiction.

King (2009) stresses that where a state has lawful competence to act in relation to a person under international law "jurisdiction", that person is considered within that state's jurisdiction under HR. This means that the state is obliged to respect and ensure his HR.

Instead, King (2009) and De Schutter (2006) believe that a state should be seen as bringing within its jurisdiction even persons directly affected by such unlawful acts and obligated to do everything practically and legally possible to ensure their HR protection. In fact, Tzevelekos (2014) explains that, according to Public International Law ("PIL"), a state is responsible whenever a wrongful act is attributable to it, ignoring where the act took place. This is in line with De Schutter (2006), according to whom jurisdiction is seen as a question of fact of "being in control to uphold obligations" (imputability), not a norm.

Consequently, jurisdiction could be interpreted in international law as territorial and non-territorial and as a factual relationship between state and individual.

Similar reflections were made on the specific ECHR scope, focus of this research.

Mantouvalou (2005) states that the special nature of HR treaties' territorial scope, due to them protecting all human beings, makes the principle of extraterritorial jurisdiction not exceptional. Indeed, jurisdiction in these conventions should be construed in view of their general character as HR frameworks. In fact, in line with Orakhelashvili (2003) and Mantouvalou (2005), in consideration of the Vienna Convention on the Law of Treaties ("VCLT"), the ECHR should be interpreted in harmony with PIL principles. Orakhelashvili (2003) believes this would show that the Convention was adopted to protect the rights of the individual human beings instead of state parties, therefore it is not reducible to reciprocal states' legal commitments. Consequently, according to Orakhelashvili (2003) and Mantouvalou (2005), the ECtHR strategically focused on the secondary and subjective intentions of the drafters, instead of

relying on the substantial ECHR object and purpose (VCLT, art. 31). This caused several cases, addressing the reach of the Convention, being adjudicated by a restrictive interpretation of issues of public order outside the signatories. This shows the ECtHR to be a tool in the hands of the governments' lawyers (Orakhelashvili, 2003).

Moreover, Roxstrom, Gibney and Einarsen (2005) believe that the ECtHR's hesitation to extend human rights law to extraterritorial states' actions can be explained by structural and cultural causes. European law was designed to maintain a sharp division between Europeans and non-Europeans. Consequently, as shown in the case law, even though the ECHR heralded human rights as universal, it still distinguishes between "insiders" and "outsiders" (Roxstrom, et al., 2005). The First World seems to apply one set of legal standards for themselves and a different one in their relations with the others. These double standards are in line with Anghie's view on colonialism in which "native law" was unable to apply and be used against the "civilized" (Roxstrom, et al., 2005).

Overall, there seems to be a lack of literature siding with a more restrictive approach towards IHRL's interpretation of jurisdiction in cases of states' extraterritorial conduct, compared to the more flexible one. This paper will bring on the arguments about a more flexible reading of jurisdiction under IHRL in the context of extraterritorial HR violations. This approach is seen as the one most in line with the purpose of IHRL and the principle of HR universality. This research will benefit the current debate due to (1) its critical theoretical approach stressing the First World hegemonic influence on the ECtHR interpretations of jurisdiction, (2) its use of case law and empirical data to grasp the positive impact that expanding IHRL jurisdiction can have on HR protection, (3) its proposition of a reading of jurisdiction inclusive of most extraterritorial actions.

3. Theoretical framework

The above-mentioned literature presents the highly politicized interpretation of international HR principles and rules in the IHRL bodies at the European and International level.

Overall, it shows the unequal level of accountability for HR violations perpetrated by countries when acting abroad between the First World and the other countries, especially the Third World. This phenomenon reasonably raises the doubt of whether the First World, especially the West - found less legally culpable - has been in a hegemonic position in the writing of IHL and therefore IHRL and in its interpretations within the HR bodies.

A theoretical perspective explaining such a phenomenon will be provided by the Neo-Gramscian post-structuralism and, in the international HR legal context in particular, by the TWAIL. In fact, the two theories complement each other because while the first one represents the specific mechanisms of hegemony in the international system, the second explains this process in the specific context of the First World influence in IL and IHRL.

3.1.1 Post-structuralism: Gramscian Hegemony and Neo-Gramscianism

Starting from the Marxist Gramscian concept of hegemony, post-structuralists expanded it to the unequal relationships between states at the international level.

Overall, according to the idea of Gramscian hegemony, at the national level there is a state maintaining consent through the least visible sources of elite power and mass quiescence, namely the institutions of civil society (Murphy, 1998). As result of the internationalization of the state, national governments create constitutional structures forcing national societies to respond to capitalism at the global level. This creates a struggle of the other economic and governing elites, outside the liberal "Free World", who try to enter that supremacy (Murphy, 1998).

This Gramscian reading of the international system has then been deepened by the Neo-Gramscian post-structuralists, who moved beyond state-centrism (Worth, 2011). The relevance of the application of the hegemony theory to the international structure stands in its diverse articulations of identity, nationhood and culture within both the nation-state and global civil society.

Hall's post-structuralist reading of hegemony is the one of greatest relevance for the scope of this thesis. His view is based on the scholar Laclau, who sustains that hegemony is discursive, therefore not based on material dominance but on the narrative of the universal status of a particular representation of world politics shaped by the "hegemonic centre" (Wojczewski, 2018; Worth, 2011). Hall believes that, although hegemony is initially created through economic materialism, it is in the social and civil society - where institutions, cultures and ideologies are formed - that identity and hegemony are constructed (Wojczewski, 2018). This view accounts for the multilayered processes within globalisation and the international system. This, together with Laclau's insights about the existing "Western-centrism", strongly supports the Third World's rewriting of the First-World centric international law (Wojczewski, 2018).

3.1.2 Third World approach to International law, First World hegemony & HR

The critical strand "Third World approach to International law" ("TWAIL") sees international law as a process in which political interests are inserted into legal claims, detached from the political conditions in which they arose (Koskenniemi, 2004). In this sense, instead of being a concept opposed to hegemony, it is seen as a hegemonic one. The aim of the hegemony is to make their point of view and preference total and therefore universal (Koskenniemi, 2004). In line with this, law is a tool used for hegemonic practices of sponsoring its rules, principles and institutions in opposition to the adversaries. As Koskenniemi (2004) shows, a striking differential treatment can be seen between the hegemonic First World and the rest, great powers and non-great powers, at the level of IHRL cases adjudication. In fact, since the Cold War, the First World project has been to administer the international society through rule of law in the image of the "Liberal West" (Koskenniemi, 2002). This mission justified the decrease of national sovereignty with the aim of HR, democracy and the global market. Nevertheless, extending the law in such a way ends up supporting causes dictated by hegemonic powers while being unresponsive to the violence and injustice sustaining the global structure (Koskenniemi, 2002). As a result, international law's interest in humanitarianism is a policy decided by those who have the means and interest to strengthen their control over everyone else (Koskenniemi, 2002).

3.1.3 Hegemony and IHRL

If hegemonic politicization is present in international law, the same can be said for the most politicized topic of IL, human rights. Even if the purpose of HR is noble, it risks being instrumentalized to justify military force and/or imperial/political purposes (Ignatieff, 2011). This leads to the common scenario of Western states intervening only in regions of vital interest for cultural, strategic or geopolitical reasons to the most powerful nations. Consequently, this leads non-Western cultures to doubt HR principles and see them as a justification for Western moral imperialism (Ignatieff, 2011). This shows how HR might be universal, but the support to protect them is not.

3.1.4 TWAIL

The hegemony exerted by the First World on the rest of the world through international law, and international human rights law specifically, has been the focus of the TWAIL (Chimni, 2006). In fact, it is argued that international law is legitimizing and sustaining the unequal structures causing the growth of the North-South divide. Specifically, international HR

discourse is being manipulated to further and legitimize neo-liberal goals by the First World and the international institutions it controls (Chimni, 2006).
For the purpose of this thesis, the international hegemony theory of Hall, in conjunction with the TWAIL perspective, will be used to show the mechanisms of inequality between the First and Third World accountability in European HR cases' adjudication in the context of states' extraterritorial activities.

4. Conceptualisation & Normative background information

This section is divided into two parts. The first seeks to conceptualize the main notions and principles present in the research question and relevant for the subsequent analysis. The second, instead, presents background information on the relevant normative framework, which will be mentioned and interpreted by the Court considered in its legal cases judgements. These frameworks will be central for the analysis to draw conclusions on the Court's position in specific legal cases and the topic of extraterritorial conduct as a whole.

4.1 Conceptualisation

The unit of analysis for this thesis will be the legal rules used under international law to assess the legal principle of states' "jurisdiction" over HR violations on foreign soil. Therefore, this leads to the conceptualization of the meaning of legal rules and principles.

Legal principles are "generalized standards of judgment for an undetermined number of cases that imply the application of the general norm" (Daci, 2010). This does not take into account specific legal facts (Daci, 2010). Among these, for the purpose of this thesis, state's "jurisdiction" is the most relevant. These principles are usually tested by using legal rules.

Legal rules are seen, instead, as "norms of behavior applicable just in well-defined circumstances or relationships and can not serve a generalization standard of judgment" (Daci, 2010). Among those rules, the most relevant one is "effective control" employed under ECHR to test states' jurisdiction. More flexible versions of such principles, like "overall control", were later on developed to overcome the shortcomings of its application to contexts similar to *Bankovic* (2001).

Moreover, it is necessary to define the principle of human rights universalism, extraterritorial conduct and the notion of First and Third World used.

Firstly, it is relevant to mention that IHRL is made of positive and negative obligations. The former "require national authorities to act…, to take necessary measures to safeguard a right or adopt measures to protect the rights of the individual" (United Nations Offices on Drugs and Crime, 2019). The latter are "a duty not to act; that is, to refrain from action that would hinder human rights" (UNODC, 2019).

Secondly, The Universal Declaration of Human Rights ("UDHR") claims and prescribes "universality". For HR universalism is meant "the rights of all human beings anywhere and anytime" (Henkin, 1989).

Thirdly, "extraterritorial conduct" represents the context in which a state extends it actions beyond its territorial boundaries (Lawson, 2015). Moreover, in this paper "extraterritorial conduct/activities" will be used to signify those "actions beyond the HR Treaty signatories' territorial boundaries, in a non-signatory country".

Lastly, since this paper seeks to identify whether the First World instrumentalized IHRL against the interests of the Third World, First and Third World are defined. The First World includes the U.S., Western Europe, and what were their allies during the Cold-War, while the Third World those countries which were not aligning with the U.S. or the Communist front (Silver, 2015).

Furthermore, for the purpose of this research, the main IHRL frameworks and their interpretation jurisdiction under the ECHR, in cases of extraterritorial conduct, are presented.

4.2 Background information on normative framework

4.2.1 The Relationship Between IHRL and IHL

International humanitarian law ("IHL") deals with armed conflicts while IHRL applies to both war and peace times, sharing the same purpose of protection of human beings in terms of safety, life, health, dignity (ICRC, 2010). Since IHL aims at protecting participants and non-participants of armed conflict, human rights are grounded in them (Mégret, 2006; UDHR, 1948). Therefore, the evolution of IHRL in the context of extraterritoriality naturally affects IHL too.

4.2.2 IHRL Frameworks under analysis

Further, the main IHRL frameworks under consideration and their mention of jurisdiction to assess their legal reach will be presented for the purpose of this research.

Universal Declaration of Human Rights: International Covenant on Civil and Political rights

The UN General Assembly ("UNGA") passed a Resolution in 1948, to prevent the atrocities of WWII, which became one of the most famous documents on human rights, namely the UDHR (Willmott-Harrop, 2001). Being only a UNGA Recommendation it is not in itself binding, therefore it represents a tool of soft law. This document inspired reforms and resolutions at the domestic and international level. The most famous instruments of HR that arose from it are the International Covenant on Economic, Social and Cultural Rights ("ICESCR") (1966) and the International Covenant on Civil and Political Rights ("ICCPR") (1966), which are both legally binding treaties. In fact, some articles are almost identical (art. 19) (Willmott-Harrop, 2001).

Once states ratify the ICCPR, it becomes binding (Willmott-Harrop, 2001). Rights and duties such as the prohibition of torture and other cruel, inhuman degrading treatment, murder and disappearance and prolonged arbitrary detention are recognised as universally mandatory even if not ratified, assuming the status of customary international law (Willmott-Harrop, 2001). Moreover, some rights, right to life (art. 6), prohibition of torture (art. 7), are non-derogable even in situations of public emergency and represent an even higher status of customary law, that of "Jus cogens" (or peremptory norm) (VCLT, Art. 53). Such status is continuously assessed through the ICJ judgements and opinions (Willmott-Harrop, 2001). Lastly, for the purpose of this research, the ICCPR notion of jurisdiction in article 2 is that "**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**" (ICCPR, 1966).

Regional level: European Convention on Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), entered into force in 1953, will be central for the purpose of this research. This is due to it being one of the most advanced HR systems (Willmott-Harrop, 2001). Its corpus was inspired by the UDHR, as stated in its preamble, and it then developed a regional court ("ECtHR"), to which contracting parties need to respond. The Court might ask governments to amend their domestic legislation. Overall, it protects the HR of people living in countries that

belong to the Council of Europe and promotes rule of law and democracy (Equality and Human Rights Commission, 2017). In the context of states' extraterritorial HR violations, to assess whether their extraterritorial activities fall under the ECHR and/or their responsibility, article 1 is the most relevant for this research. It states: "**The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention**" (ECHR, 1953).

5. Research design

5.1 Methodology

The research approach employed in this thesis is normative. This entails that this paper will seek to understand the extent to which the IHRL framework under investigation, ECHR, upholds its principles, norms and values of HR protection and HR universality in the context of states' extraterritorial HR violations.

The method will be based firstly on a textual analysis of legal cases' judgements, tracking down the arguments used to justify a certain interpretation of the ECHR in the context of HR violations resulting from states' extraterritorial conduct. This will be done to grasp the meanings, motives and purposes behind the ECtHR's interpretation of its jurisdiction, and that of its signatories', over the cases presented (Halperin & Heath, 2020). The aim is to argue in a clear, logically sound and rationally convincing way about such interpretation consistency, subjugation to power influences and coherence with the principle of HR universality (Halperin & Heath, 2020). Secondly, the implications of the moral premise of HR universality will be presented by appealing to logic and empirical evidence based on the ECHR signatories' extraterritorial conduct and HR violations.

This thesis will employ a comparative design and a small-N study. This entails that only three legal cases will be analysed in the context of the ECHR framework, therefore in-depth, intensive knowledge will be acquired (Halperin & Heath, 2020). This should ensure high internal validity, while a lack of generalizability.

5.2 Case Selection

Overall, the cases used will be legal cases concerning countries' alleged violations of human rights in other countries. The cases considered are *Bankovic* (2001), *Issa* (2004) and *Pad* (1999) and are drawn from the literature presented. The rationale for the choice of the cases is revelatory. In fact, these cases might show evidence about the ECtHR level of consistency and certainty when interpreting states and ECHR' jurisdiction over such. These differential

interpretations are particularly relevant due to the fact that these cases are fairly similar. Their similarity stands in the fact that they all concern violations perpetrated by the ECHR signatories on territories outside the legal space of the Convention. The choice to consider the ECtHR is due to it being the regime where the question of extraterritoriality arose and providing a highly developed judicial system of individual complaints (Gondek, 2005; Tzevelekos, 2014)

5.3 Data selection

The data used will be primary data regarding the international treaties of human rights legislation, such as the ECHR, UDHR and ICCPR, and the Court legal cases' judgements. This primary data will be textually analysed as a starting point for argumentation considering the interpretation of states' jurisdiction for HR violations abroad and assessing its inconsistency and uncertainty.

The secondary data consists of legal theory, legal cases facts and comments, academic articles and statistical data, registering the involvement of the First World in foreign matters and consequent extraterritorial HR violations. These are used to have a deeper understanding of the primary data presented and an empirically tested argumentation.

The legal cases will be used to examine the interpretation of "jurisdiction", in relation to the different legal facts involved, and assess the overall normative stage the ECtHR is at in ensuring states' accountability abroad. Instead, legal scholars' opinions through legal journals, case comments or academic articles will be employed to critically evaluate the current legal practice and its (de)evolution. Moreover, academic articles from international relations and politics, addressing the power-play between international HR treaties, will be used.

In addition, statistical datasets will show the increasing globalization of states' conduct abroad, while proving that the legal practice is evolving too slowly in response to that, not providing protection for violations.

6. Analysis

For the purpose of this research, the analysis will be divided into two parts. In the first, the focus will be on presenting three cases concerning ECHR signatories' HR violations abroad and the ECtHR interpretations of "jurisdiction" and adjudications. Moreover, empirical evidence will be presented depicting states' extraterritorial conduct trends and HR violations.

The second part will draw conclusions on the ECtHR coherence and consistency in interpreting jurisdiction and its *espace juridique* considering these cases. It will then present a framework enabling HR protection under different degrees of states' responsibility in extraterritorial activities, after discussing the current ECHR interpretation. Lastly, it will analyse the empirical data and assess if the ECtHR approach is coherent with its purpose of HR protection in terms of certain signatories' increasing conduct and violations abroad, paying particular attention to which states are the most involved. The latter will lead to reflections on possible power influence on the Court's jurisdiction.

6.1 Presentation

Three legal cases judged by the ECtHR are presented. The Court will base its arguments and adjudications mainly on the interpretation of Article 1 of the ECHR stating that '**The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.**" In particular, based on this, the ECtHR judges whether cases involving signatories' violations abroad are admissible and then punishable. The facts of the cases will be mentioned together with the court's interpretations of the principle of jurisdiction and subsequent tests (f.i. "effective control") used to assess states' responsibility. The cases under consideration will be three: *Bankovic* (2001), *Pad* (1999), *Issa* (2004).

6.1.1 Case 1: Bankovic & Others v. Belgium & Others (2001) - Court

In 1999, the Bankovic case was presented to the ECtHR lodging a complaint against 17 Member states about article 2 (right to life), 10 (freedom of expression) and 13 (right to effective remedy) (*Bankovic & Others v. Belgium & Others*, 2001, para. 28; ECtHR, 2018). The case regarded the conflict in Kosovo (non-signatory of the ECHR) between Serbians and Kosovar Albanians. In particular, it dealt with a NATO airstrike (whose members are signatories) on a radio station RTS which killed six civilians (*Bankovic & Others v. Belgium & Others*, 2001, para. 6). Firstly, the Court considered whether applicants and their deceased relatives were within the jurisdiction of the signatory states, in consideration of the Vienna Convention on the Law of Treaties, the governing principles of international law and the help of the *travaux préparatoires* (*Bankovic & Others v. Belgium & Others*, 2001, para. 55-58, 65; VCLT, 1969, art. 31). The Court retained that jurisdiction should follow a territorial notion, allowing exceptions according to specific circumstances, as the travaux préparatoires changed from "all persons residing within their territories" to persons "within their jurisdiction" to

include all of those on the territory, allowing exceptions according to specific circumstances (para. 19). Nonetheless, the latter do not include the Bankovic case. Moreover, the Court rejected the understanding of jurisdiction proportionate to the level of control exercised, due to it resulting in a cause-effect notion of it (para. 75). As a result, since the Federal Republic of Yugoslavia was not part of the *espace juridique* of the ECHR, the case was found inadmissible.

6.1.2. Case 2: Issa & Other v. Turkey (2004) - Court

This case, concerning the death of the husbands/sons of six Northern Iraqi women (*Issa & Other v. Turkey*, 2004, para. 10), was admitted by the Court without adjudicating whether its extraterritorial location was within the *espace juridique*. The wives (the applicants) sustained that the Turkish army ill-treated their husbands, took them, and then denied to have detained them until they were found shot dead and mutilated (para. 12-19). Even though the Turkish army admitted to having carried out military operations in the same period, it sustained that the specific location was different (para. 58). The applicants, instead, argued that the area was under the control and authority of Turkish forces at the time of the killing.

The Court restated the territorial meaning of jurisdiction, apart from certain exceptions. Nevertheless, it also mentioned that a state can be made accountable for violations towards persons in the territory of another, if under the authority and control of the former's agents operating lawfully or unlawfully (para. 69). Eventually, the Court did not find Turkey to have exercised *effective overall control* over the exact area, no matter the post-mortem reports and video of the extraction of Turkish bullets from the corpses (*Issa & Other v. Turkey*, 2004, para. 79-82). Therefore, under article 1, Turkey was not proven to exercise jurisdiction over the victims at the time (ECtHR, 2018).

6.1.3. Case 3: Pad & Others v. Turkey (1999) - Court

This case was presented in 1999 by the relatives of seven Iranians killed in North-West Iran, close to the Turkish border, by Turkish soldiers in May 1999 *(Pad & Others v. Turkey*, 1999, para. 5-10). Turkey admitted having bombed the area from a helicopter and agreed to pay compensation to the Iranian authorities, but the families refused and asked for investigations instead (*Pad & Others v. Turkey*, 1999, para. 18-20, 24, 32; ECtHR, 2018). The applicants filed a complaint about several articles, among which article 2 (right to life), 3 (torture), 5 (safety) (para. 39). The ECtHR stated that, even though jurisdiction should be understood as mainly territorial, exceptions involving acts of state agents or producing effects outside their territory may amount to the exercise of their jurisdiction under article 1 (para. 53). Therefore, a state is

held accountable for violations done in another state, outside the legal space of the former state, if its victims are found to be under its authority and control due to its agents' operating in that state (ECtHR, 2018). Nonetheless, having Turkey admitted to have shot from a helicopter and killed the applicants' relatives, the ECtHR found it unnecessary to find Turkey's jurisdiction over the fact (*Pad & Others v. Turkey*, 1999, para. 54). Consequently, the victims were considered within its jurisdiction at the material time (ECtHR, 2018). Moreover, the Court held the case inadmissible because it considered the applicants not to have exhausted domestic remedies (*Pad & Others v. Turkey*, 1999, para. 70-72). This argumentation was based on the fact that they had not sought to object to the public prosecutor's decision not to prosecute and to use a local legal representative to follow up on the case, in line with Turkish law (para. 56).

6.1.4 Empirical data on states' extraterritorial conduct and human rights violations

The consideration of empirical data is used to grasp ECHR signatories' trends in extraterritorial activities and human rights violations. According to the *International Military Interventions* dataset, foreign interventions can be seen as involving military interventions, peacekeeping, border and territorial disputes, border conflicts, air and military raids, air, naval and military incursions, troop deployments, bombardments, cross-border firing and shelling (Pickering & Kisangani, 2009). These reflect this research's notion of extraterritorial conduct.

In consideration of the trends of these activities, it is clear that they increased from 690 between 1946-89 (43 years) to 425 post-Cold War between 1990-2005 (15 years). Moreover, the data depict which state actors have been more involved in them. It is divided into major powers (USA, UK, France, USSR, China), non-major powers (all other states), international organizations (IOs, UN, NATO, ECOMOG) (Pearson & Baumann, 1993). Overall, considering the post-Cold War period, the European countries (major and non-major) and IOs together represent almost 90% of the actors intervening militarily abroad, as well as a big portion of the ECHR parties. In addition, France (between 1945 and 2003) was the second most militarily active country (23%) after the US (Sullivan & Koch, 2009). It is striking that IOs activities increased after the Cold War from representing 8.3% to 21% of the interventions and, as a probable consequence to that, non-major powers' involvement decreased. Specifics about single non-major power activities are not provided. Nevertheless, their involvement in these activities will be assumed by considering which European actors participated in the most prominent foreign interventions. These were in Afghanistan, Iraq, Sub-Saharan Africa, Congo, Sierra Leone and the Balkans.

In some of these instances, numerous HR violations can be found. Starting from the Balkans, it can be noticed that the war in Yugoslavia involved NATO members (Belgium, France, Germany, Luxemburg, Netherlands, Spain). This operation involved the violation of the right to life and humanitarian law since it caused the death of 500 Yugoslav civilians (HRW, 2000). In Iraq, the UK detained hundreds of Iraqis subjecting them to willful killing, torture, inhuman/cruel treatment, outrages upon personal dignity, and rape and/or other forms of sexual violence (*Al-Skeini and Others v. The United Kingdom*, 2011; European Center for Constitutional and Human Rights, 2003).[1] In Afghanistan, NATO was responsible for the death of over 500 civilians in 2007-2008, due to airstrikes, and for lack of investigations (Gossman, 2021). The Netherlands, in particular in the battle of 2007, in Chora Valley, allegedly killed between 50-80 people and escaped judgment till now (Van Den Berg, 2021).
This data will be discussed below in order to assess whether the ECtHR's scope of HR protection is coherent in view of these increasing trends and of its signatories' role in these.

6.2 Discussion

This second part of the analysis starts by legally assessing, through the use of textual analysis, the ECtHR coherence and consistency in interpreting jurisdiction and its *espace juridique,* under article 1, in the context of the three cases abovementioned. This shows (1) the stage the court is at in extending the ECHR legal space in situations of states' extraterritorial violations (2) its current position is upholding HR protection from its signatories and more generally the principle of HR universalism, (3) whether the ECtHR interpretations and HR protection effectiveness is influenced by power dynamics. Nevertheless, reference to other cases will be made in the context of the legal scholars' comments and opinions on the cases. Consequently, after discussing the current ECHR interpretation, it will present a framework enabling HR protection under different degrees of states' responsibility in extraterritorial activities. Lastly, the empirical data will be used to evaluate if the ECtHR approach is coherent with its purpose of HR protection and universality in view of its signatories' increasing actions and violations abroad (reflecting the cases mentioned). Conclusions will be made about which states are the most responsible for HR violations abroad and whether their political status has an impact on the ECtHR interpretations of jurisdiction.

[1] *Al-Skeini and Others v. The United Kingdom* (ECtHR, 2011). This case concerns the deaths of six relatives of the applicants caused by British soldiers in South Iraq.

6.2.1.1 Case 1: Bankovic & Others v. Belgium & Others (2001) - Legal assessments

Since 1975, coherently with Customary International Law, the European Commission of HR cause-effect notion of jurisdiction provided that authorised agents of a state - based on their nature or location - bring any persons or property within their jurisdiction if they exercise the authority over that person or property, meaning that their acts affect them (King, 2009; Milanovic, 2011). Nonetheless, *Bankovic* departed from cause-effect personal jurisdiction (Milanovic, 2011). In fact, the Court used a territorial notion of jurisdiction, allowing exceptions according to specific circumstances, under which *Bankovic* (2001) did not fall. This is contrary to *Loizidou's* case (1996).[2] In this case, the applicant was not granted access by the Turkish personnel to her private property in Northern Cyprus. Here, jurisdiction was not restricted to the national territory of the signatories. Namely, state's responsibility was considered as arising also as a consequence of military action - lawful or unlawful - when direct or indirect effective control is exercised over an area outside its national territory (ECtHR, 2018). The Court assessed that Turkey had enough troops in Northern Cyprus to exercise *effective control* and therefore jurisdiction over the violation of Loizidou's property (*Loizidou v. Turkey*, 1996). The same notion of responsibility was argued in later cases but claimed not to apply to *Bankovic (2001)*, where an instantaneous extraterritorial attack occurred. Nevertheless, the use of a tailored interpretation of jurisdiction when assessing cases' admissibility under the ECHR legal space raises reasonable doubts. Moreover, in *Bankovic*, the Vienna Convention was used to establish the intentions of the drafters, which are only secondary to the object and purpose of the ECHR (Mantouvalou, 2005). Considering the purpose of the ECHR would in fact show the protection of HR. Moreover, the fact that the drafters decided not to change the definition of jurisdiction and restrict it to territoriality shows that this was the result of a thorough discussion that favoured maintaining the ECHR scope flexible (Mantouvalou, 2005). In addition, cases like *Issa* (2004) and *Ilascu* (2004), involving violations by signatories' personnel outside their territory, were considered admissible instead.[3] Overall, it seems incoherent that states can escape responsibility under the ECHR

[2] *Loizidou v. Turkey* (ECtHR, 1996). The applicant moved to the Republic of Cyprus to escape the incursion of Turkish troops in the North, leaving there her property. When she then tried to go back to access her property, in the territory currently controlled by the Turkish Republic of North Cyprus, the applicant was not granted access by the Turkish personnel.

[3] *Ilascu and Others v. Republic of Moldova and Russia* (ECtHR, 2004). This case involved two applicants arrested in Tiraspol by people wearing USSR uniforms and being accused of anti-Soviet activities, combating the legitimate government of Transdniestria and falsely charged with two murders. This led to sentencing one of them to death and the other to 12-15 years of imprisonment. The ECtHR found Russia's continuous effective

because dropping bombs from aeroplanes over an inhabited area does not bring the victims within its jurisdiction (Roxstrom et al., 2005). Also, the Tribunal for former Yugoslavia considered the NATO bombing not worth-investigating, due to many political as well as legal reasons.

6.2.1.2 Case 2: Issa & Other v. Turkey - Legal assessments

Leaving the facts of the case aside, curiously, the Court mentioned a new notion of jurisdiction according to which a state's responsibility can arise from actions perpetrated abroad by agents under its control and authority, lawfully or unlawfully (Roxstrom et al., 2005). In addition, to prove jurisdiction, the Court introduced the concept of "temporary effective control" applicable to contexts like Turkey's actions in Northern Iraq, in which effective control is temporarily exercised over a portion of the territory (Roxstrom et al., 2005). Moreover, in view of the Human Rights Committee's ("HRC") judgement of *Lopez* (1981), the ECtHR stated that accountability in extraterritorial conduct under article 1 cannot allow a state to perpetrate violations abroad not allowed on its territory under the ECHR (Roxstrom et al., 2005).[4] On one side, contrary to *Bankovic* (2001), previous European commission and Inter-American Commission case law and the HRC cases were considered. On the other side, controversially to *Bankovic*, the Court appealed to universality to evolve out of its strict legal space, without even considering the ECHR legal space (Kamchibekova, 2007; Milanovic, 2011; Roxstrom et al., 2005). The fact that jurisdiction is not seen as primarily territorial makes such a premise diametrically opposed to *Bankovic*'s (2001). In fact, the ECtHR used a personal model of jurisdiction linking authority to the individuals over which authority is exercised, instead of the territory (Milanovic, 2011). Nonetheless, the Court kept prioritizing questions of jurisdiction, by testing *effective control*, instead of attributability (Roxstrom et al., 2005). This would imply that if Turkish forces were found responsible for shooting Iraqi civilians across the borders, they would have gotten away with killing, mutilating, torturing because of not exercising effective control. This leads to questioning whether the purpose of ECtHR is to protect human beings or states (Roxstrom et al., 2005). Being three of the judges adjudicating

authority, and therefore jurisdiction, due to its military, political, economic support to the Transdniestrian separatists in Moldova. Therefore, Russia was found responsible for the violations (ECtHR, 2018).

[4] *Lopez v. Uruguay* (UN HRC, 1981). This case concerned the kidnapping of the applicant by Uruguayan intelligence forces, aided by the Argentinian government, when he was in Buenos Aires. After, being illegally transported to Uruguay, he was detained for three months without noticing anybody and subjected to mental and physical torture and degrading treatment.

this case the same as in *Bankovic*, *Issa* (2004) seems to be a different statement of states' responsibility in a military context outside of the ECHR legal space (Kamchibekova, 2007).

6.2.1.3 Case 3: Pad & Others v. Turkey (1999) - Legal assessments

Paying attention to the Court's interpretation of the ECHR principles, more than to the facts of the case, some considerations are worth mentioning. Firstly, the Court uses a "cause-effect" notion of jurisdiction, further expanding it, which strongly contrasts with *Bankovic* (2001). Especially in consideration of the similar killing mode, missile fire from an aircraft, this seems to strongly contradict *Bankovic*. It seems to sustain that since the applicants were killed by Turkish agents, creating an effect outside their territory, the applicants were brought within their jurisdiction, regardless of where the killing exactly took place (Iran or Turkey) (Milanovic, 2011). This would imply that states do not necessarily need effective control over an area to be held accountable for their actions' effect in that area. Overall, the Court's reading of jurisdiction, in the context of states admitting the violation, seems to be highly diverting from previous case law (Milanovic, 2011). In fact, this notion of jurisdiction, adopting a cause-effect understanding, is based on a factual relationship (King, 2009).

6.2.1.4 Considerations on the ECtHR interpretations of "jurisdiction" in extraterritorial conduct

What appears from the interpretation and use of the concept of jurisdiction under article 1, in the abovementioned cases, is a lack of conceptual cohesion and consistency (Milanovic, 2008). The case law seems to implement a "legal" notion of jurisdiction (drawn from a sovereignty conception) based on a relationship between the state and the individuals due to effective control over territory or persons. This is hardly provable in extraterritorial conduct, unless in contexts of foreign occupation or custody and imprisonment within a facility. This notion of jurisdiction implies in fact both positive and negative obligations towards individuals.

Instead, a factual cause-effect relationship of state control over territory or persons is more effective and applicable to the other, and more common, instances of extraterritoriality (King, 2009). The former represents the control of a foreign territory through a testable amount of resources employed, as a consequence of military action. This concept, as it applied to *Loizidou* (1996), should have applied to *Issa* (2004) as well - in consideration of the 35000 Turkish troops, tanks, helicopters and aircrafts present in the area - and proven the case admissibility. The latter, instead, uses a cause-effect notion sustaining that authorised agents of the state bring

any other person or property within that state's jurisdiction from the moment they exercise authority over them (King, 2009). This entails that, as far as these agents' actions or omissions affect these persons/property, the State's responsibility is engaged. Therefore, jurisdiction and attribution/responsibility are intertwined. While this principle is clearly mentioned in *Pad* (1999), it was not taken into consideration when adjudicating *Bankovic's* (2001) admissibility and NATO's responsibility. In fact, according to the classic notion of jurisdiction we would need individuals' custody to prove state's jurisdiction over those individuals, therefore leaving unpunished numerous violations of the right to life perpetrated from afar, like *Bankovic* (King, 2009).

The inefficiency of the ECtHR stands in its interchangeable and inappropriate interpretation and assessment of jurisdiction, in extraterritorial contexts, as *legal-sovereign jurisdiction* - involving both positive and negative obligations - and state's *responsibility* - involving only negative obligations.

The legal uncertainty following the judgement of cases like *Issa* (2004) and *Pad* (1999) leads to several consequences. Firstly, the Court's failure to provide legal interpretation consistency of the ECHR extraterritorial reach undermines its institutional credibility and influence in HR violations protection and remedy (Milanovic, 2011). Secondly, it does not effectively guide its signatories' in the prevention of unfortunate extraterritorial undertakings. Overall, a restrictive and mostly sovereign interpretation of jurisdiction would be contrary to the system of the ECHR and the efficient accomplishment of its purpose, which should be to protect HR. The ECHR, being a living instrument up to change, should formalize the interpretation of jurisdiction under Article 1 in a manner more compatible with IL and treaty interpretation. Jurisdiction should be tested in different manners in accordance with the extraterritorial context under analysis.

On one side, in a context where there is a high level of control, *effective control*, over territory - as in an occupied region (Iraq) - or over a person - as in custody in a foreign government prison - the interpretation of jurisdiction can be expected to be similar to that applying within national territories. This would imply that within that state's jurisdiction positive and negative obligations need to be upheld. On the other side, where jurisdiction is tested in situations of lower state control, overall control, it can be expected to be interpreted as responsibility to uphold negative obligations. This means that a state exercises jurisdiction whenever it has enough control (over an area or a person) to decide whether to commit or not a violation of

HR. This more factual relationship based on cause-effect increases states' accountability for frequent cases of killings done at distance (due to weapons) or violations perpetrated in an area under hybrid control. Overall, the principle of proportionality should apply so as to hold more accountable states' exercising more control. This not strictly legal or factual relationship theory of jurisdiction might enhance HR protection and accountability.

To conclude, in view of the argument that the ECHR was not made to apply outside its espace juridique, several points can be made. Firstly, the fact that the drafters left out the notion of territoriality from jurisdiction is reason to believe that the intention was to leave open the ECHR scope to extraterritorial activities for the state to be bound by HR duties wherever its forces operate abroad and to bring persons under its de facto/jure jurisdiction (Mantouvalou, 2005). In fact, it is the link between the person affected, his nationality and the perpetrator of the violation which proves the possible responsibility of the state, not the place of the violation. Secondly, although beyond the purpose of this research, it is relevant to mention the interpretation of jurisdiction by the HRC in the context of the ICCPR, under international law (Mantouvalou, 2005). In this context, in fact, **states are required to respect the rights of the ICCPR of all the persons within their territory and subject to their jurisdiction** (Gondek, 2009). Moreover, it is specified that this principle applies to those within states forces' power or effective control acting outside their territories regardless of the circumstances of such power/control (f.i. peacekeeping). This clearly shows that territory and jurisdiction are not connected, meaning that the former is not the precondition for the latter, contrary to the ECtHR interpretations. Lastly, this reading of the ECHR seems to contradict the extraterritorial trends and risks failing to deal with the present human rights challenges (Milanovic, 2011). This point will be deepened below.

6.2.2.1 ECHR coherence with the principle of HR universalism

Starting from Henkin's definition of universality in the context of HR, some considerations can be drawn from the ECtHR approach strictly grounded on its *espace juridique*. The Court seems to not have taken into account the moral and philosophical foundation of human rights. This is that all human beings should enjoy HR by virtue of being human, therefore a good reason must be provided for denying them consistently (Milanovic, 2011). The ECtHR seems to prioritize where violations occurred, rather than how to prevent them, offer remedies for them and hold its signatories accountable.

6.2.2.2 Final considerations: First World trends in extraterritorial conduct and HR violations

The strictly territorial reading of jurisdiction of the ECtHR contradicts the ever-growing extraterritorial renditions, detentions, occupation, abductions, and assassinations in which European states are involved (Gondek, 2009). This legal approach could be changed to respond in a way coherent with fundamental principles of humanity and universality as discussed above. If we consider the data above, making sure that the ECHR framework protects human beings from European states' foreign activities becomes an ever-more pressing issue. Firstly, it is clear that not only extraterritorial activities increased after the end of the Cold War, but also that their features represent closely the facts of ECtHR cases considered inadmissible and/or left unpunished by the ECtHR (*Bankovic, Issa, Pad*) (Pickering & Kisangani, 2009). Secondly, conclusions can be made about which state actors have been more involved in such extraterritorial activities. Overall, European countries and IOs (f.i. NATO) represent the majority of the actors intervening abroad and the ECHR signatories (Pearson & Baumann, 1993). Unfortunately, specific considerations on non-major European powers' involvement in these activities are hard to grasp from the data. Thirdly, certain ECHR parties were involved in the biggest extraterritorial activities, so-called foreign interventions. This was the case of Belgium, France, Germany, Netherlands, UK independently or as part of NATO's joined forces as in Yugoslavia and Afghanistan.

This empirical data show the high involvement of certain ECHR parties in human rights violations during their extraterritorial activities and their activities resemble the facts of the analysed cases so controversially dismissed and judged by the ECtHR. In view of the ECHR parties most involved and culpable of human rights violations abroad, considerations can be made about what reasons held the ECtHR back from improving its position and importance as an HR protector abroad.

6.2.2.3 The First World's influence on the ECtHR's judgements

It seems debatable whether the ECtHR's hesitation to extend its scope comes from political power dynamics, rather than legal or moral principles. In fact, after analysing the ECHR parties increasing involvement in extraterritorial conduct, and subsequent possible human rights violations, it is clear that Western countries and IOs are the ones most under question, with ECHR Western powers representing 31% of those involved. Moreover, the fact that the ECtHR proved to interpret the principle of jurisdiction differently in cases concerning the same legal dilemmas and/or similar facts, raises reasonable doubts. It shows, in fact, a stricter approach in

cases involving Western superpowers and NATO, compared to those involving Eastern powers like Turkey. Once again, Western states seem to apply a set of legal standards for themselves, and another to those dealing with them. Their influence is shown in the narrative used by the Court to retain cases like *Bankovic* (2001) as exceptional, even though, or better precisely because, the data show how common these events are, and therefore Western European states' HR violations abroad (Milanovic, 2011). On the other side, states like Turkey, not technically Western but deeply entrenched in Western frameworks (UN, NATO), even if subjected to a more flexible interpretation of the ECHR principles, are often left unpunished showing a privileged status under the ECHR.

To conclude, if both Western superpowers and their allies, like Turkey (First World countries), seem to be highly protected by the ECtHR judgements, it remains clear that the Third World is left exposed to violations and injustices caused by the First World. To go back to our theoretical assumptions, this phenomenon is in line with Hall's concept of hegemony constructed in international institutions (Wojczewski, 2018). Moreover, in line with Koskenniemi (2004), the ECHR can be seen as a process in which the political interests of the hegemonic First World are translated into legal arguments against the interests and protection of the Third World. This leads to conclude that human rights have been used by the First World as a justification for the expansion of their control (Chimni, 2006; Koskenniemi, 2002). As a consequence, human beings, whose safety and freedom should be central to the ECHR, are the ones left to be violated by its powerful signatories who, by pulling the strings of the Court, ensure to maintain a legal black hole around their extraterritorial conduct.

Overall, it can be concluded that the ECtHR interpretations of jurisdiction and its *espace juridique* under article 1 are incoherent with its purpose, the general principle of HR universality and the current trends of extraterritorial activities of its signatories. The centre of the ECHR framework, human beings, are left suffering from this.

7. Conclusion

This research looked into the topic of IHRL protection from states' human rights violations when acting across borders. The extent of such protection is based on IHRL bodies' interpretation of "jurisdiction" in such instances.

Firstly, this paper presented the existing debate in the literature, positioning itself on a more flexible and context-coherent reading of jurisdiction under IHRL. Secondly, the Neo-

Gramscian theoretical approach, in conjunction with TWAIL, tested the First World hegemonic influence on IHRL. Thirdly, the methodology justified the normative approach and comparative analysis of ECtHR legal cases. Lastly, this research analysed textually the different ECtHR interpretations of "jurisdiction", in the mentioned cases, and the empirical evidence on states' extraterritorial conduct and HR violations trends.

The findings of this research show that the ECtHR's interpretation of jurisdiction and its *espace juridique* under article 1 has been expanding to include states' mere control over territory and persons and, going further, states' actions affecting others. Nevertheless, such flexibility seems to be absent when First World parties are involved, due to their political leverage. This contrasts the principle of HR protection and universality (at the expense of the Third World) and the increasing trends of extraterritorial activities. Therefore, the research question can be answered as "*IHRL protects from human rights violations resulting from states' extraterritorial conduct, when such violations are not perpetrated by, and HR protection does not infringe upon, First World countries' power*".

This research, even if it sustains an opinion common in the legal literature, addresses this topic in an innovative manner. Firstly, it decides to combine two critical theoretical approaches evidencing hegemonic influences, by the First World, at the international level. Secondly, it combines legal cases' evidence and empirical evidence to address the full HR consequences of extraterritorial activities. Lastly, it provides a comprehensive and exhaustive framework as a solution for addressing IHRL inconsistency.

Nevertheless, this paper is not without limitations. Firstly, the substantial impact of the US in this hegemonic dynamics was not examined, due to this country having reserved in IHRL from HR extraterritorial obligations. Secondly, the literature addressing a restrictive approach to jurisdiction under IHRL was scarce, due to most scholars supporting the opposite view. Thirdly, the cases addressed do not present the same facts, making them less valuable for speculation on the ECtHR interpretations' inconsistency. Lastly, including in the analysis soft-law frameworks, ICCPR and HRC general comments, would have depicted power dynamics at the international, and not regional level.

Coming from this, future literature should analyse, for instance, the impact that First World hegemonies, in particular the US, have at the international level on the protection of HR, in the extraterritorial context, through soft-law frameworks such as the HRC.

Overall, it can only be hoped that over-time research, legal and political contestation will start really shifting the focus of HR bodies to the entities they were made for in the first place, human beings, irrespective of time and space.

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