

Chapter 6

Anti-Money Laundering Regime and Its Challenge to Criminal Jurisdiction

6.1. Introduction

Beside the internationalization as elaborated in the previous chapter, the regime of anti-money laundering has developed towards criminalization. The criminalization of the regime affects particular problems concerning the existing rules and principles of criminal jurisdiction. These problems arise mainly because of the complexity and transnational characters of money laundering that may be committed across the boundaries of multiple jurisdictions. In such a case, the offenders could be subject to the money laundering laws of several jurisdictions. This in turns may lead to the jurisdictional conflict because two or more sovereign entities have a right to assert criminal jurisdiction over the same crime. In addition, it may also lead to the difficulty in prosecuting non-resident defendants outside the boundaries of the state. This chapter will analyze the dynamic aspect of criminal jurisdiction in responding such conditions. The evolving theory of criminal jurisdiction from a territorial to an extraterritorial, and then to a long-arm jurisdiction will be explored and critically analyzed. The adequacy of traditional doctrine of criminal jurisdiction in dealing with cross-border money laundering is examined. A new approach in settling complicated crime situations such as money laundering is also discussed in this chapter.

6.2. The Notion of Jurisdiction

The term ‘jurisdiction’ encompasses several definitions and possible meanings.¹ Malanczuk, for example, pointed out that at times jurisdiction simply refers to territory, whereas at other times refers to the power exercised by a state over persons, properties, or events.² This means that the nature and

¹Scott Dodson, “In Search of Removal Jurisdiction”, *Northwestern University Law Review*, Vol.102, No.1, 2008, p.55; Michael Hirst, *Jurisdiction and the Ambit of the Criminal Law* (Oxford: Oxford University Press, 2003), p.7; J.H. Beale, “The Jurisdiction of A Sovereign State”, *Harvard Law Review*, Vo.36, 1923, p.241.

²Peter Malanczuk, *Akehurst’s Modern Introduction to International Law*, Seventh Edition (London: Routledge, 1997), p.109; Christopher L. Blakesley & Dan E. Stigall, “The Myopia of U.S. v. Martinelli: Extraterritorial Jurisdiction in the 21st Century”, the *Geo. Wash. Int’l L. R.*, Vol.39, 2007, p.5; Anthony J. Colangelo, “Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law”, *Harvard International Law Journal*, Vol.48, No.1,

scope of jurisdiction vary depending on the context in which it is to be applied.³ From such a perspective, jurisdiction has different forms that may involve the authority of a State to establish prescriptive, judicial, and enforcement jurisdiction.⁴ Prescriptive jurisdiction is the power to criminalize a certain conduct; adjudicative jurisdiction is the authority to subject persons or things to a judicial process; whereas enforcement jurisdiction refers to the right to enforce rules in a concrete situation.⁵ This means that the term ‘jurisdiction’ concerns the legal competence of any state to make, apply, and enforce rules of conduct upon persons, properties, or events.⁶ As such, Justice Holmes pointed out that jurisdiction addressed ‘the right of a State to apply the law to the acts of men’.⁷

As a substantial basis, every State has its rights claim its own territorial jurisdiction, giving it the authority to establish a jurisdiction over a given conduct taking place in its own territory.⁸ Two aspects of territorial jurisdiction include substantive and procedural jurisdiction. The first aspect is the power of a State to define any conduct as a crime and to enact substantive criminal law regarding the conduct. The second aspect is the power of a State to investigate, prosecute, and try a defendant who violates the substantive criminal law. In this case, any State has the power if the State in question has a personam jurisdiction over a particular defendant.

2007, p.126. ‘... the ability of the state to exercise some form of power, coercive or otherwise, over persons, places of things (including property) and events. This power may be exercised by various agencies of the state – the legislature, the executive, the courts or regulatory bodies that receive delegated power from one of those sources – and is defined and delimited by whatever the powers of those agencies happen to be’.

³Christopher L. Blakesley, “United States Jurisdiction over Extraterritorial Crime”, the Journal of Criminal Law and Criminology, Vol.73, No.3, 1982, p.1109.

⁴Restatement (third) of the Foreign Relations law of the United States § 401 (1987); Anthony J. Colangelo (2007), *Supra* note 2, p.123; Steve Coughlan, at al, *Global Reach, Local Grasp: Constructing Extraterritorial Jurisdiction in the Age of Globalization*, Prepared by the Law Commission of Canada, Dalhousie Law School, 2003, p.4.

⁵Restatement (third) of the Foreign Relations law of the United States § 401 (1987), at § 401(a), § 401(b), and § 401(c).

⁶V. Lowe, “Jurisdiction” in M. Evens, Ed, *International Law*, 2nd Edition (Oxford: Oxford University Press, 2006), p.335.

⁷Leonardo Borlini, “Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization”, “Paolo Baffi” Centre Research Paper Series No.2008-34, 2008, p.47.

⁸‘The Lotus Case (1927) is the classic authority on the subject of jurisdiction. But dicta in the case are capable of broad interpretation to support virtually any theory of jurisdiction. The emphasis was on state sovereignty and the ability of a state to espouse any theory of jurisdiction it wished so long as other states did not protest. The case excluded the idea that territoriality was the only basis of jurisdiction and expressly accepted the passive nationality principle and the effects doctrine’. See M. Soranajah, “Globalization and Crime: The Challenges to Jurisdictional Principles”, Singapore Journal of Legal Studies, 1999, p.411.

6.3. Territorial Jurisdiction in Respect of Money Laundering Offence

This section elaborates on the evolving development of territorial jurisdiction over time. In the 19th Century, there was a rigid restriction of the territorial principle. During that time, it was prohibited to apply criminal law outside the territory of a state. In the 20th Century, a more elastic approach was taken towards the territorial principle, which was extended into two categories: subjective territoriality or the acts doctrine and objective territoriality or the effects doctrine. Finally, in the 21st Century, due to advancing technology and subsequent development of crimes, the territoriality principle is considered inadequate to settle complicated and sophisticated crimes such as money laundering criminalities.

6.3.1. Rigid Restriction of Territorial Jurisdiction

Territorial jurisdiction is applied when a government has control over a specific geographic location. Lord Halsbury succinctly declared, ‘all crime is local’.⁹ In the same vein, Justice Holmes pointed out that jurisdiction addresses ‘the right of state to apply the law to the acts of men’.¹⁰ Justice Story also affirmed that ‘every nation possesses an exclusive sovereignty and jurisdiction within its own territory’.¹¹ The territorial principle permits an authority to establish its jurisdiction over a given conduct taken place in its own territory.¹² Recognizing these, the laws of sovereign authorities are limited to the boundaries of its state.

In the case of *Pennoyer v. Neff*¹³, the Court asserted on the strict judicial view of territorial jurisdiction. In this case, the Supreme Court relied on two related principles in international law: every state possesses exclusive jurisdiction over persons and properties within its territory; and no state can exercise direct jurisdiction over persons and properties without its territory.¹⁴

⁹*McCleod v Attorney General for New South Wales*. Cited in M. Soranajah, “Extraterritorial Criminal Jurisdiction: British, American, and Commonwealth Perspective”, *Singapore Journal of International and Comparative Law*, Vol2, 1998, p.13.

¹⁰Leonardo Borlini (2008), *Supra* note 7, p.47.

¹¹Balazs Fekete, “Recent Trends in Extraterritorial Jurisdiction- The Sarbanes-Oxley Act and Implications on Sovereignty”, *Acta Juridica Hungarica*, Vol.49, No.4, 2008, p.412.

¹²The territorial principle is the most common basis of jurisdiction over crime in the United States. The criminal law, as it has developed in the nation-state, is territorial in principle; it has its basis in the conception of law enforcement as a means of keeping the peace within the territory’. See Christopher L. Blakesley (1982), *Supra* note 3, p.1114.

¹³In *Pennoyer v. Neff*, 95 U.S. 714 (1878), the Court had stated that ‘no state can exercise direct jurisdiction and authority over persons or property without its territory.’

¹⁴Gary B. Born, “Reflexions on Judicial Jurisdiction in International Cases”, *Georgia Journal of International and Comparative Law*, Vol.17, 1987, p.2; Lani Cossette, “New Long-Arm

Here in this case, the Court argued that a state was prohibited by the Constitution to exercise personal jurisdiction over persons who conducted unlawful activity outside the state's territory.

Over time, through the case of *American Banana Company v. United Fruit Company* (1909), Justice Holmes proclaimed the presumption of the principle of jurisdiction.¹⁵ It was noted that, in general, the country in which a criminal act occurred must determine the lawfulness of the act.¹⁶ Thus, based on this case, it can be assumed that every offender must be prosecuted where the offence was committed.

The basis of the territorial principle sprung during the nineteenth century, where international law prohibited the extraterritorial application of national laws.¹⁷ It considered nation-states to prescribe laws and to prosecute the offender who committed an offence, in whole or in part, within their territory.¹⁸ Committed 'in whole' occurs when every essential constituent element is consummated within the territory. Committed 'in part' within the territory occurs when any essential constituent element is consummated there. If it is committed either 'in whole' or 'in part' within the territory, then the case follows a territorial jurisdiction.¹⁹

Authority over Foreign Bank Raises Due Process Concerns but Remains A Viable Tool to Prevent Money Launderers from Abusing the U.S. Financial System", George. Washington Law Review, Vo.71, 2003, p.275.

¹⁵*American Banana Company v. United Fruit Company*, 213 U.S. 347, 356 (1909). This view held fast into the early twentieth century, with cases like *American Banana Company v. United Fruit Company* further articulating the notion that: "Another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent". *Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909). Cited in Anthony Colangelo (2007), *Supra* note 2, p.7.

¹⁶Austen L. Parrish and Irwin R. Buchalter, "Reclaiming International Law from Extraterritoriality, p.143; available at: <http://ssrn.com/abstract=1013740>; Garry B. Born, "A Reappraisal of the Extraterritorial Reach of the United States Law", *Law and Policy International Law Business*", Vol.24, 1992-1993, p.61. 'An extraterritorial jurisdiction would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might result'.

¹⁷'Because international law authorities during the nineteenth century adhered to strict territorial limits on national jurisdiction, the Supreme Court adopted a canon of statutory construction that is best described as a presumption of territoriality: federal law would not be applied extraterritorially unless Congress clearly expressed an intention to regulate conduct abroad'. See Gary B. Born (1992-1993), *Ibid.*, p.10.

¹⁸'The power or jurisdiction of the state to charge, arrest, prosecute and ultimately punish those who commit crimes is founded on the connection between the crime and the states's territory, usually the fact that the crime was committed, in whole or in part, within the states's boundaries'. See McLachlin, "Criminal Law: Towards an International Legal Order", *Hongkong Law Journal*, Vol.29, 1999, p.448.

¹⁹*Ibid.*

It is at this point where a relationship between territoriality jurisdiction and State sovereignty is established.²⁰ It could be said that State sovereignty is the claim of any State to have an exclusive jurisdiction over individuals or activities within its borders.²¹ The very essence of sovereignty began with the nation-state, which by definition is competent to proscribe any conduct that occurs in whole or in part within its territory.²² Likewise, the relationship functions as the extent and limit of a State's power to proscribe any conduct in relation to other States.²³ In the case of *Schooner Exchange v. MacFaddon*, Chief Justice Marshall made a statement about this relationship:

"The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself."²⁴

In reference to the *Antelope* case, which occurred thirteen years later, Chief Justice Marshall completed the notion of a relationship between sovereignty and territorial jurisdiction over crime. He declared that "[the] courts of no country execute the penal laws of another".²⁵ It would thus seem that the territoriality principle can be said as a manifestation of a state's sovereign powers within its own territory. From this perspective, no nation could apply and conduct its criminal laws within the physical territory of another nation. However, under international law, there is an exception or a fiction of territory in which the scope of territorial jurisdiction also includes the

²⁰"The notion of jurisdiction is closely intertwined with such concept as sovereignty and territoriality". See I. Brownlie, *Principles of International Public Law*, Oxford, 2003, pp.105-6.

²¹Jeffrey T. Gayton, "From Here to Extraterritoriality: The United States Within and Beyond Borders", Paper presented at the International Studies Association Conference, Toronto, Canada, 18-22 March 1997, p.3; Sompong Sucharitku, "International Terrorism and the Problem of Jurisdiction", *Syracuse Journal of International Law and Comparative*, Vol.14, 1987-1988, p.156. "Jurisdiction may be said to constitute one aspect of 'sovereignty' or governmental authority of the State".

²²Rolin M. Perkins, "The Territorial Principle in Criminal Law", *Hastings Law Journal*, Vol.22, 1970-1971, pp.1155, 1157.

²³M. Cherif Bassiouni, "Theories of Jurisdiction and Their Application in Extradition Law and Practice", *California Western International Law Journal*, 1974-1975, p.2.

²⁴"If a given crime can be localized exclusively in state A, no other state can take jurisdiction since to do so would involve an 'infringement of the sovereignty of state A'. See Christopher L. Blakesley (1982), *Supra* note 3, p.1115; Wendell Berget, "Criminal Jurisdiction and the Territorial Principle", *Michigan Law Review*, Vol.30, 1931-1932, p.240, 242.

²⁵*Antelope*, 23 U.S. (10 Wheat), 30, 53-53 (1825). Cited in Christopher L. Blakesley, "A Conceptual Framework for Extradition over Extraterritorial Crime", *Utah Law Review*, No.4, 1984, p.689.

floating territory principle or ‘law of the flag’.²⁶ The rationale behind this fiction is that the law must be present on board vessels and aircrafts. If there is an offence committed in the floating territory, the state that flies the flag on that territory has jurisdiction to prosecute the offence.

6.3.2. Towards More Elastic Application of Territorial Jurisdiction

If a criminal offence affects a single territory, in which it purely takes place within the territory of one State, then there is no problem in determining the *locus delicti* of the crime. However, if the criminal offence is a cross-border crime, which affects a number of States, it then poses problems in exercising the *locus delicti* and in determining which State has jurisdiction to prosecute the crime. In dealing with this problem, the territoriality principle might be applied by categorizing it into subjective territoriality, or the acts doctrine, and objective territoriality, otherwise known as the effects doctrine.²⁷ In other words, Williams had defined these as ‘initiatory’ and ‘terminatory’ theories, where the potential criminal activity began or where it was concluded.²⁸

The first refers to a State that has jurisdiction over an act that initiated or occurred within its territory. Here in this context, at least one constituent element of an offence occurred within the territorial state. Under this doctrine, an offence is deemed to have taken place on the territory of a State as soon as constituent element(s) of the offence has taken place on that territory. The second doctrine, on the other hand, refers to the State that has jurisdiction over an act that caused harm in its territory. In this case, a State has jurisdiction over any conduct that took place in another State but had either been completed or

²⁶In *Lauritzen v. Larsen*, 345 U.S. 571, 584-85 (1953), the Court describes the principle and the reasons for it. See *Wendel Berget* (1931-1931), *Supra* note 24, p.239-241. See also Paul D. Empson (1967-1968), *Op.Cit.*, p.38.

²⁷See i.e, H.D. Walswijk, “*Locus Delicti* and Criminal Jurisdiction”, *Netherlands International Law Review*, 1999, p.366; Michael Hirst, *Jurisdiction and the Ambit of the Criminal Law* (Oxford: Oxford University Press, 2003), p.118; Council of Europe, European Committee on Crime Problems, “Extraterritorial Jurisdiction”, *Criminal Law Forum*, Vol.3, No.3, 1992, p.446; M. Sornarajah (1998), *Supra* note 8, p.13. See also V. Lowe, “Jurisdiction” in M. Evens (2006), *Supra* note 6, p.343; Harvard Research in International Law; ‘Jurisdiction with Respect to Crime’, *Am.J.Int’l law*, Supplement (1935),484. ‘A conduct crime consist of specified prohibited act on the offender’s part, irrespective of its consequences. In the case of such crimes, a court has jurisdiction only if the conduct takes place within jurisdiction. A result crime consists not only of specified conduct but also of its consequences. In the case of result crimes, it was suggested, at least by Lord Diplock, that it would be sufficient if either the conduct and the circumstances occur within England for English courts to have jurisdiction’.

²⁸G. Williams, “Venue and Ambit of Criminal Law”, 81 L.Q.R, p.276. Cited in Troy Lavers, “Jurisdictional issues in Extraterritorial Criminal law”, in Christopher P.M. Waters (Ed), *British and Canadian Perspective on International Law*, Leiden/Boston: Martinus Nijhoff Publishers, 2006, p.89.

produced harmful consequences to its own territory.²⁹ The *locus delicti* according to this doctrine is a place where the constituent effect(s) has occurred directly or indirectly in the territory of any State.³⁰ Thus, the effects doctrine is designed to allow the State to take jurisdiction and to prosecute, convict, and punish the perpetrator of conduct that causes harm within the territory of the forum State, even if the conduct did not occur there.³¹ Realizing the existence of the acts and effects doctrine, the ‘overlapping’ or ‘concurrent jurisdiction’ cannot be hindered. In this case, jurisdiction must be shared between the State where the activity occurs and the State where the activity has its effects. Subsequently, two additional requirements for the acts and the effects doctrine are:

- (a) the conduct and its effects are generally recognized as constituent elements of a crime or tort under the law of states that have reasonably developed legal systems; or
- (b) (i) the conduct and its effect are constituent element of activity to which the rule applies;
- (ii) the effect within the territory is substantial;
- (iii) it occurs as a direct and foreseeable result of the conduct outside the territory; and
- (iv) the rule is not inconsistent with the principles of justice generally recognized by states that have reasonable developed legal systems.³²

However, in the implementation level of certain cases, it is not always an easy task to ascertain the *locus delicti* of a criminal conduct because several states can claim territorial jurisdiction that is called ‘concurrent jurisdiction’. Within this context, Felkenes points out that:

‘In most instances an offence is considered to have been committed in a place where part of the offence has been committed. Furthermore, some states treat the offensive act itself as determining the place of commission while others look at the effects of the offence to determine the place of commission’.³³

²⁹‘Statutes providing for the punishment of offenses commenced outside the state and consummated within the state. These statutes are based upon the so-called ‘objective principle’, i.e., the principle that the offense is punishable at the place where it is consummated’. See Wendel Berget, *Supra* note 24, p.253.

³⁰Cedric Ryngaert, *Jurisdiction in International Law*, Oxford University Press, Oxford, 2008, p.p.42, 76. “U.S. Judge Learned Hand, in the 1945 Alcoa Case, reasoned that they indeed are, holding that: ‘it is settled law [...] that any state may impose liabilities [may exercise jurisdiction over], even upon persons not within its allegiance [foreigners], for conduct outside its borders that has consequences [effects] within its borders which the state reprehends, and these liabilities other states will ordinarily recognize”.

³¹Christopher L. Blakesley (1982), *Supra* note 3, p.1125.

³²Restatement (Second) of Foreign Relation Law of the United States §17 (1965).

³³George T. Felkenes, “Extraterritorial Criminal Jurisdiction: Its Impact on Criminal Justice”, *Journal of Criminal Justice*, Vol.21, No.6, 1993, p.584.

In terms of practice, the application of these doctrines is difficult, especially in determining the acts and effects, and when the offence began and ended.³⁴ Other difficulties include how to define the constituent elements of an offence, and how direct or immediate the effect of foreign conduct must be before they can legitimately give jurisdiction to the State within which it has been felt'.³⁵ Regarding these difficulties, Walswijk identifies two issues that may be raised when applying both the acts and the results doctrines. In his words, he propounds that:

'Applying the acts doctrine, the question may arise, for example, whether a particular act should be regarded as a constituent act; in other words, whether the acts doctrine actually forms the 'beginning' of the offence (and not just a preparatory act). Applying the result doctrine raises the question of which effect or result completes the offence, because only the place of a constituent effect is to be regarded as the place of the offence'.³⁶

6.3.3. The Limits of Territorial Jurisdiction in Dealing with Money Laundering Offence

Up to this point, the question remains regarding the adequacy of territorial jurisdiction in settling the case of money laundering offences. George Kris describes the complexities of the crime of money laundering and the involvement of multiple jurisdictions in the following hypothetical case below.

'If the proceeds derived from a drug trafficking operation are physically carried out in country A in which it was obtained and deposited into a financial institution in country B (placement); transfer from the financial institution through various other financial institutions in various countries to another financial institution in country C (layering); and finally paid into a number of corporations in various countries in purported payments of shared transfers (integration); then the investigators/prosecutors in country A would not have much hope in tracing, let alone, confiscating, the proceeds of the drug trafficking without using mutual legal assistance'.³⁷

The following is an illustrative example that describes the complexity of money laundering in which multiple jurisdictions involved in it.

..... Franklin Jurado, a Harvard-educated Colombian economist, pleaded guilty to a single count of money laundering. By using the tools he learned at one of America's top universities, he moved \$36 million in profits from cocaine sales in the United States, for the

³⁴H.D. Walswijk (1999), *Supra* note 27, p.369. See also Vaughan Lowe (Ed), *Jurisdiction in International Law*, Oxford University Press, Oxford, 2008, p.76.

³⁵*Ibid.*

³⁶*Ibid.*, p.368.

³⁷George J. Kriz, "International Cooperations to Combat Money Laundering: The Nature and Role of Mutual Legal Assistance Treaties", *Commonwealth Law Bulletin*, Vol.18, 1992, p.724.

late Colombian drug lord Jose Santacruz-Londono, in and out of banks and companies in an enormous effort to make it appear legitimate.

Jurado purified the \$36 million by wiring it out of Panama, through the offices of major financial institutions, to Europe. In three years, he opened more than 100 accounts in 68 banks in nine countries: Austria, Denmark, the United Kingdom, France, Germany, Hungary, Italy, Luxembourg and Monaco. He shifted assets between the various accounts and kept balances below \$10,000 to avoid suspicion and investigation. Some of the accounts were opened in the names of Santacruz's mistresses and relatives, others using fictitious European-sounding names.

He established European front companies with the eventual aim of transferring the "clean" money back to Colombia to be invested in Santacruz's holdings, which included restaurants, construction companies, pharmacies and real estate. The scheme was interrupted when a bank failure in Monaco exposed suspicious accounts linked to Jurado. About the same time, in Luxembourg, the noise from a money-counting machine in Jurado's house prompted a neighbour to alert the local police. Empowered by new laws against money laundering, the police initiated a wiretap in April 1990, and Jurado was arrested two months later and convicted of money laundering in a Luxembourg court in 1992. Based on their investigations into Jurado's illegal activities, the United States authorities had him extradited from Luxembourg in 1994 to face charges for money laundering in a New York federal court.³⁸

The complexities of money laundering offences, which involve multiple jurisdictions, raise difficulties in prosecuting the defendant and may lead to jurisdictional conflicts between countries. In the above case, the act of money laundering occurred in Panama where Jurado transferred illegal funds to more than 100 accounts in 68 banks across nine European countries. In Monaco, suspicious accounts linked to Jurado were exposed. He was convicted of money laundering in Luxemburg, extradited to the United States, and then faced charges for money laundering in a New York federal court. From this case, three kinds of problems may be identified: problems in punishing the perpetrator of predicate offence(s) and money laundering, problems in gathering evidence which might be spread throughout several jurisdictions, and problems in recovering the proceeds of crime.

The first problem concerns the punishment of the perpetrator of the predicate offence and money laundering. Certain questions may rise in this regard, such as whether money laundering is an autonomous crime or continuation of its predicate offence; whether the author of the predicate offence can be treated as the author of money laundering; and whether the perpetrator of the predicate offence can be convicted as a subsequent launderer. In answering these questions, different opinions of legal scholars and practitioners are used and divided into two categories.

³⁸UN General Assembly Special Session on the World Drug Problem 8-10 June 1998. Available at <http://www.un.org/ga/20special/featur/launder.htm>

The first category considers that money laundering is the continuation of the primary offence. It considers that money laundering is identical to concealment, in which the author of the primary offence cannot be the author of the laundering. According to this opinion, concealing illegal funds is intended merely to avoid being detained. Accordingly, it assumes that there is no new legally protected interest in the laundering offence except for those that have existed in the primary offence.³⁹ Another reason for this is that it is not allowed to apply two offences for a single action because of *ne bis in idem*.⁴⁰ As such, this opinion assumes that as a derivative offence, money laundering remains unpunished. This is because the conduct is considered to be a co-penalized act where the punishment of money laundering is already included in the punishment of the primary offence.⁴¹

The second category considers that there is a real distinction between the primary crime and the laundering offence. As a consequence, contrary to the first opinion, it is possible to punish the laundering as a separate offence and thus is separately punishable. According to this opinion, there are different protected interests between the primary crime and money laundering.⁴² Here in this context, money laundering interests are not only for the administration of justice, but also for the national and international economic order. Several countries as well as international legal instruments follow this opinion. Switzerland, for example, prosecutes money laundering committed in this country even though the principal crime is perpetrated abroad.⁴³ They consider that any person conducts money laundering if criminal proceeds are converted or transferred for the purpose of concealing its source from unlawful activity. As a consequence, the laundering offence is separated from the predicate crime, thus meaning that the punishment can be cumulated.

The second problem concerns gathering evidence, such as bank records that may be spread out in several jurisdictions. Opening bank records in foreign countries poses problems if the country concerned follows a strict bank secrecy law. Even though there is mutual legal assistance, in a practical level, it is not an easy task to realize. This is because the requested country may be reluctant or unwilling to meet the request. At this point, Hinterseer identified two reasons why foreign governments may have an uncooperative stance.

³⁹Ricardo Pinto and Ophelie Chevalier, "Money Laundering as An Autonomous Offence: Analysis of the Consequences of the Autonomy of the Money Laundering Offence – the Perpetrator of the Predicate Offence as the Perpetrator of the Offence of Money Laundering", Inter-American Drug Abuse Control Commission, CICAD, 2006, p.27.

⁴⁰Ricardo Pinto and Ophelie Chevalier (2006), *Ibid*.

⁴¹*Ibid*, p.30.

⁴²*Ibid*, p.35.

⁴³Nathali Kohler, "The Confiscation of Criminal Assets in the United States and Switzerland", *Houston Journal of International Law*, Vol.13, No.1, 1990, p.12.

‘The first is the foreign government does not view the assistance request as valid within the context of its own laws. It is because they don’t know precisely the fact that the request is legitimate and the relevant differences that exist between the legal systems of the requested and requesting country. The second is the government may view the foreign request as a direct threat to its sovereignty’.⁴⁴

The third problem concerns the recovery of criminal proceeds. Here in this context, finding, freezing, forfeiting, and confiscating the proceeds of crime as well as instrumentalities are necessary steps. In seeking the existence of the criminal proceeds, a ‘paper trail’ is essential for a successful prosecution. Wilke noted that ‘the use of stored transaction data for backtracking functions as evidence in the subsequent proceedings’.⁴⁵ However, this method is not easy to realize because the launderer tries to obscure the audit trail by converting it from dirty money into an apparently legitimate income, and then using it to buy property or invest in business industries.

6.4. Extraterritorial Jurisdiction in Respect of Money Laundering Offence

It is apparent that money laundering has a cross-border nature involving multiple jurisdictions in the conduct crime and the effect crime. To address the issue, any state can extend its territorial jurisdiction beyond its borders. This means that a state uses extraterritorial jurisdiction to expand its domestic laws regarding criminal conduct committed outside the territory of the state. However, its use is limited under certain circumstances. Given this situation, the question is: how is the extra-territoriality principle applied to the money laundering offence? This section will answer the question by elaborating on the progressive extension of extraterritorial jurisdiction in settling various cases of money laundering criminalities.

6.4.1. Applying Extraterritorial Criminal Jurisdiction to the Crime of Money Laundering

The United States of America actively applies extraterritorial jurisdiction through the anti-money laundering regime. Section 1956(f) of the 1986 Money Laundering Control Act regulates in detail the extraterritoriality of the United States anti-money laundering laws. Extraterritorial jurisdiction in this provision

⁴⁴Kris Hinterseer, *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context*, (The Hague-London-New York: Kluwer Law International, 2002), p.377.

⁴⁵Marie Wilke, “Emerging Network Structures in Global Governance: Inside the Anti-Money Laundering Regime”, 77 *Nordic Journal of International Law*, 2008, p.512.

can be applied to actions of United States citizens abroad and non-United States citizens who conduct within or partly within the United States. United States citizens and companies, along with their foreign subsidiaries, are included in the former. The latter consists of foreign citizens and entities that are placed within the boundaries of the United States. Section 1956(f) reads as follows:

- There is extraterritorial jurisdiction over the conduct prohibited by this section if
- (1) The conduct is by a United States citizen or, in the case of non-United States citizen, the conduct occurs in part in the United States;
 - (2) The transaction or series of transaction involve funds or monetary instruments of a value exceeding \$10,000.⁴⁶

The extraterritoriality of the U.S. money laundering laws exemplifies in the *Banco De Occidente* case. The case went as follows:

‘Banco De Occidente was a Columbian bank with absolutely no connection to or presence in the U.S. The U.S. government alleged that Panamanian branch of Banco de Occidente have received transfers of drug money from another bank located within the U.S., and then it had subsequently wired the transfers abroad. Pursuant to this allegation, the U.S. persuaded the relevant authorities in West Germany, Canada, and Switzerland to joint it in freezing Banco de Occidente assets, amounting to about \$80 million. The frozen assets bore no relationship to the funds tainted by the money laundering activities. The U.S. justified its action on the theory that the \$80 million represented substitute funds. The worldwide seizure of Banco de Occidente’s funds represented approximately one half of its total assets, and the action almost immediately forced the bank into insolvency. Even though the allegedly guilty parties were two subordinate employees operating independently and without the knowledge of the banks management, the bank pleaded guilty and agreed to forfeit \$5 million over a period of four years’.⁴⁷

In the above case, part of the transaction occurred in the territorial jurisdiction of the United States. Therefore, it was reasonable if the court charged under the United States money laundering law as mentioned in Section 1956(f). The essential component of the extraterritoriality principle of the provision is the conduct of non-United States citizen occurs at least ‘in part’ in the United States.

Over the years, the application of exterritorial jurisdiction has been extended to the criminal conduct occurred outside the United States. In the case

⁴⁶18 U.S.C. §1956(f) (2004). Cited in Marian Hagler, International Money Laundering and US Law: “A Need to Know Your Partner”, Syracuse Journal of International Law and Commerce, 2004, p.231.

⁴⁷Criminal indictment filed in United States v Banco de Occidente, S.A, on Mar.1989. Cited in Matthew S. Morgan, “Money Laundering: The United States Law and Its Global Influence”, Essay in International Financial and Economic Law No.5, 1996.

*United States v. Stein*⁴⁸, the perpetrator who was outside the United States, initiates a transfer of funds from a place within the United States to a place outside the United States. In this case, the Court assumed that a transfer of funds across the United States border is considered to be ‘in part in the United States’ even if the defendant ordered such transfer without setting foot in the United States.⁴⁹ A foreign citizen conducting the illicit transfer of funds whilst being abroad is still liable under the affected country. This is defined in section 1956(f) of the Money Laundering Control Act. It is due to the fluid nature of the criminal conduct of money laundering as Heba Shams described it below.

‘The very fluid nature of the actus reus in money laundering, this territorial link to the U.S. jurisdiction can be stretched very far. For example, if illicit money was wired through a U.S. bank as part of a cross-border process of laundering, this transit will be sufficient to give the United States criminal jurisdiction over the whole process of laundering. Any foreign bank involved in this process shall thus be subject to the criminal jurisdiction of the US’.⁵⁰

This case is reflected in the argument by Hagler that it is not necessary for the defendant to have a physical presence within the United States borders at the time the offence was committed.⁵¹ Thus, it is possible to convict someone under Section 1956(f) of the Money Laundering Control Act if the illicit funds were transferred to or from the United States even though the perpetrator is being abroad. Observing the characteristics of this case, it is apparent that the court interpreted the extraterritorial criminal jurisdiction very broadly. From this perspective, there has been a shift of jurisdictional theory over money laundering from extraterritorial jurisdiction to a new theory of criminal jurisdiction. The following section will analyze this development by giving detailed hypothetical cases in order to create better understanding of this matter.

⁴⁸*United States v. Stein*, No.93-375-Sec.’N’, 1994 U.S. Dist. LEXIS 8471, at *13-14 (E.D. La.1994). See also *United States v. Approximately \$25,829,681.80 in Funds*, No.98 Civ.2682, 1999 U.S. Dist. LEXIS 18499 (S.D.N.Y. 1999), aff’d, 2003 U.S. App. LEXIS 2994 (2nd Cir.2003). (‘Following *Stein* and finding that wire transfers activated from abroad that caused a transfer of funds from the United States constitutes conduct ‘occurring in part in the United States’ for purposes of #1956(f).

⁴⁹In the case *United States v. Stein*, the court concluded that: ‘[S]ection 1956 was not intended to only apply when the defendant acts within the borders of this country. Rather it was intended to reach situations in which the transaction occurred in whole or in part in the United States.... It is the entire transaction that forms the offence conduct, not merely its initiation or conclusion.... If, as it is alleged in this case, a defendant, who never enters this country, initiates a transfer of funds from a place within the United States to a place outside the United States, there will be extraterritorial jurisdiction, because a portion of the conduct occurred in this country’. See Marian Hagler, *Supra* note 46, p.234, 248.

⁵⁰Heba Shams, *Legal Globalization: Money Laundering Law and Other Cases*, International Financial Law Series, 2004, p.p.129-30.

⁵¹Marian Hagler, *Supra* note 46.

6.5. Towards a New Theory of Criminal Jurisdiction over Money Laundering Offence

In the previous sections, it is apparent that there is an inadequacy of territorial as well as extraterritorial jurisdiction in coping with the acts of money laundering. Courts in several countries, particularly in the United States, aggressively solve the problem by proposing a new theory of criminal jurisdiction. The theory arises as a response to the various methods used in conducting the acts of money laundering. Initially, the theory extends extraterritorial jurisdiction by shifting the requirement from an ‘actual present’ basis of a defendant in certain jurisdictions to ‘minimum contact’ between the defendant and the forum state. Over time, extraterritorial jurisdiction has expanded the reach of courts to defendants beyond their borders as a new long-arm authority. The following will explain the shifting of jurisdictional theories in responding transnational money laundering.

6.5.1. From ‘Actual Presence’ to the ‘Minimum Contact’ Requirement

As elaborated earlier, the United States is a country that aggressively responded the development of money laundering offences that have a transnational character. Here in this context, the United States founded the extraterritorial jurisdiction in the Money Laundering Control Act of 1986 particularly in section 1956(f). It regulates the extraterritorial jurisdiction of conduct by a United States citizen or a non-United States citizen when it occurs in part in the territory of the United States. This means that the legislation requires an ‘actual presence’ of the crime within the territory of the United States. However, due to the development of international trade and technology, foreign persons or corporations are able to commit any crime beyond the territory of the United States - a so-called long-arm jurisdiction.

The term long-arm jurisdiction refers to the ability of state authorities to prosecute foreigners outside its own state boundaries. The case of *International Shoe v. Washington*⁵² demonstrates this development. A foreign corporation was exercised by the Washington State Court despite the principle of place of business occurring outside the forum state. The Supreme Court changed the personal jurisdiction from having a physical presence within the affected country to having minimum contact. In order to satisfy due process, the Court required that minimum contact be continues and systematic. The Court

⁵²In *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), the Court stated that due process requires only that... a defendant... have certain minimum contacts with [a forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice’. See Christopher Gooch, “The Internet, Personal Jurisdiction, and the Federal Long-Arm Authority: Rethinking the Concept of Jurisdiction”, 15 *Ariz. J. Int’l & Comp. L.* 1998, p.643.

reasoned that agents acting on behalf of a foreign corporation are still liable in the affected country. The Court also reasoned that a corporation is liable under the country it selects to conduct business with. If there is sufficient contact between the affected country and the foreign defendant, then the Courts have the authority to exercise jurisdiction. In this case, the court applied a two-step test in determining whether the case was liable to its activities. This was done through, at first, analyzing the connections between the defendant and the forum state, and then through determining whether the actions of the defendant took place within the authorizing jurisdiction.

6.5.2. Modern Law of Personal Jurisdiction: The Movement towards Anti-Money Laundering Long-Arm Authority

It is apparent that Section 1956(f) of the Money Laundering Control Act requires that the conduct by a United States or foreign citizen occur in part in the territory of the United States. However, over time, the extraterritorial jurisdiction developed beyond the framework of section 1956(f) of the Act. In its development, the extraterritoriality of the United States money laundering laws may also be applied to foreign entities even though these are operating with no subsidiaries or branches within the United States boundaries. The *Banque of Leu* case is a clear example of the extraterritorial jurisdiction applied by the United States. The case reads as follows.

'On December 1993, a Luxembourg bank, Banque Leu (Luxembourg), S.A., entered a plea of guilty to money laundering in United States District Court in San Francisco, California. The bank agreed to forfeit \$2.3 million to the United States and more than \$1 million to Luxembourg. According to the court papers filed at the time of the plea agreement, Banque Leu wanted to expand its private banking deposit base. As part of its efforts to accomplish this objective, the bank hired an experienced account manager fluent in Spanish who had South American contacts. The new manager's efforts led to the opening of various accounts by Colombians. Two of these accounts were the basis of the criminal charge. The two accounts were related U.S. dollar accounts and were opened in Luxembourg with cash. Thereafter, more than \$2.3 million was deposited into the account over a one-year period. The deposits were in the form of cashier checks were sent from the bank's customer in Colombia to Luxembourg for deposit. The bank, in turn, sent these U.S. dollar cashier checks to its correspondent bank in New York City for collection. The U.S. correspondent bank then sent the cashier checks to Bank of America's check processing center, located in Northern California, where they were finally paid'.⁵³

In the above case, the criminal act has been committed outside the United States. However, the United States court claimed a criminal jurisdiction

⁵³Information and Plea Agreement filed in *United States v. Banque Leu (Luxembourg), S.A.*, on Dec.13, 1993. Cited in Kirk W. Munroe, "Surviving the Solution: The Extraterritorial Reach of the United States", 14 *Dickinson Journal International Law*, Vol.14:3, 1995-6, p.521.

over this case by arguing that the Banque of Leu used U.S. dollars as a negotiable instrument. As a consequence, the court assumed that the bank is susceptible to the United States criminal jurisdiction. The legal justification of the court, as one author commented that the used of U.S. dollar notes by banks as a negotiable instrument deems them susceptible to United States criminal jurisdiction in money laundering.⁵⁴

Over time, through the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (The USA PATRIOT ACT)⁵⁵, the Court established a general personal jurisdiction over foreign banks that maintain bank accounts at United States financial institutions.⁵⁶ In this context, Congress assumed a long-arm authority over foreign banks, which has correspondent accounts in the United States, because the significance of such accounts is sufficient to invoke personal jurisdiction within the bounds of the Constitution.⁵⁷ The notion is that ‘the foreign bank will then make itself whole by debiting the customer’s foreign account, letting the customer take his objections to the court in the United States that authorized the seizure’.⁵⁸ An example of this matter is found in the USA PATRIOT ACT 2001, title 18, section 981(k), which states that ‘if criminal proceeds are deposited in a foreign account in a foreign bank, and that bank has a correspondent U.S. based account at a U.S. bank, the U.S. government can seize an amount of money equal to the criminal proceeds from the correspondent account’.

In conclusion, the above circumstances show us the dynamic aspect of criminal jurisdiction in dealing with cross-border money laundering offences. Here in this context, criminal jurisdiction has shifted from territorial to extraterritorial jurisdiction, and then to a long-arm jurisdiction. These types of jurisdiction allow a state court ‘to gain personal jurisdiction over an out-of-state defendant who transacts business within the state, commits a tort within the state, commits a tort outside the state that causes an injury within the state,

⁵⁴Kirk W. Munroe, *Ibid*, p.301.

⁵⁵The USA PATRIOT Act adopted in October 2001 created, among many other provisions, the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001. The purpose of this section, as stated in the Act, is to "prevent, detect and prosecute international money laundering and the financing of terrorism." See Pamella Seay, "Practicing Globally: Extraterritorial Implications of the U.S.A. PATRIOT ACT's Money Laundering Provisions of the Ethical Requirements of U.S. Lawyers in International Environment", South Carolina Journal of International Law and Business, Vol.4, 2007, p.29.

⁵⁶Lani Cossette, *Supra* note 14, p.274.

⁵⁷“The Act’s long arm authority creates straightforward rule of thumbs: if the defendant has a correspondent account in the United States and faces money laundering charges, the assertion of general personal jurisdiction is warranted”. See Lani Cossette, *Supra* note 13, p.274, 283, 286.

⁵⁸Stefan D. Cassella, “Restraint and Forfeiture of Proceeds of Crime in International Cases: Lessons Learned and Ways Forward,” Proceedings of The 2002 Commonwealth Secretariat Oxford Conference on the Changing Face of International Cooperation in Criminal Matters in the 21st Century (Commonwealth Secretariat, 2002), p.183.

or owns, uses, or possesses real property within the state'.⁵⁹ This condition was made clear in the case of *U.S. v. Stein*. In this case, the district court found that 'a foreign citizen who causes or orders a transfer of proceeds from or to the United States by telephone or other means while abroad is deemed to have acted 'in' the United States for purposes of section 1956(f)'.⁶⁰

6.6. International and Domestic Statutory-based Approach: The Need for Extending Criminal Jurisdiction

This section elaborates on the international and domestic legal systems concerning the criminal jurisdiction for money laundering offences. As an international legal system, it focuses on several international instruments such as the Vienna Convention, the Strasbourg Convention, and the Palermo Convention. As a domestic legal system, it focuses on the Indonesian legal system in establishing jurisdictional authority on money laundering. The questions that will arise in this context are how do international and domestic legal systems in addressing the issue of criminal jurisdiction in respect of money laundering offence? In this section, the establishment of criminal jurisdiction by those legal systems in respect of money laundering is analyzed. The adequacy of jurisdictional authority within these legal systems in response to money laundering will also be examined.

6.6.1. International Statutory-based Approach

As noted above, international documents concerning money laundering involve the Vienna Convention, the Strasbourg Convention, and the Palermo Convention. All of these Conventions established a relatively identical jurisdictional principle, namely, the territoriality principle.⁶¹ These Conventions extend to the crimes committed on board vessels flying its flag or an aircraft registered under its law at the time the offence was committed. These Conventions also extend the territorial jurisdiction for the participation in, association, or conspiracy to commit, attempts to commit, or aiding, abetting, facilitating, and counseling of crimes that are committed outside the country. However, these international instruments are silent when it concerns the possibility of establishing extraterritorial jurisdiction to the crime of money laundering. This could be due to either those international documents wanting

⁵⁹<http://legal-dictionary.thefreedictionary.com/jurisdiction>

⁶⁰Marian Hagler (2004), *Supra* note 46, p.234.

⁶¹ Article 4(1) of the Vienna Convention, Article 15(1) of the Palermo Convention, and Article 7(1) of the Strasbourg Convention, for example, have identical formulations.

to let individual countries regulate for themselves with their own statutes, or due to the doctrine of extraterritorial jurisdiction is still being debated among states.

Regarding the doctrine of territorial jurisdiction, it has been in existence ever since civilization began. However, due to the development of knowledge and technology, which subsequently led to the development of crimes, the territorial jurisdiction is considered inadequate for countering cross-border crimes such as money laundering. When observing the nature of money laundering, this type of crime has a transnational or cross-border character involving multiple jurisdictions. Within this context, the offenders are subject to the money laundering laws of several jurisdictions. This condition may lead to a jurisdictional conflict among states in determining which country has the right to assert criminal jurisdiction over the same crime. Furthermore, this condition may lead to the difficulty in prosecuting the perpetrators.

In avoiding or reducing the possibility of conflict between or among countries, the provision of jurisdictional authority in those Conventions should be regulated in detail. Beside the territoriality principle, it should be considered to regulate jurisdiction based on extraterritoriality principle. Therefore, the international instruments could be a role in giving guidance or guidelines for participating states in determining the appropriate jurisdictional model in settling money laundering offences. Several reasons and advantages for establishing the principle of extraterritorial jurisdiction in the international Conventions are as follows: Firstly, as stated earlier, money laundering is a crime that has an international dimension that involves several countries. Secondly, the Conventions provide a guide for countries to establish such principles in their legal systems. Thirdly, if it is regulated in detail, it will reduce the possibility of jurisdictional conflicts between or among countries.

6.6.2. Domestic Statutory-based Approach: The Indonesian Perspective

Indonesia had its first Statute for money laundering in 2002, namely Law of 2002 No.15 concerning the Crime of Money Laundering. The Statute was amended by Law of 2003 No.25. Considering the need for law enforcement, practice, and international standards, the Indonesian government amended Law of 2003 No.25 and enacted a new law, namely, Law of 2010 No.8. This Statute consists of 12 Chapters and 100 Articles, including both substantive and procedural laws. Regarding the substantive law, the Statute regulates the crime of money laundering by individuals as well as corporations and other criminal acts related to the crime of money laundering. It also regulates reporting by financial institutions and non-financial institutions including customer identification, record keeping, bringing cash into or out of the Republic of Indonesia, and the establishment of the PPATK (Center for Financial

Transactions and Reporting Analysis). In relation to procedural law, the Statute regulates the investigation, prosecution, examination before the Courts, and protection of reporting parties and witnesses. The Statute also regulates international cooperation regionally as well as internationally through bilateral or multilateral forums in accordance with prevailing laws and regulations. Observing the above Statute, there is no provision regulating the criminal jurisdiction concerning the crime of money laundering.

With regards to the Indonesian legal system, two categories of criminal law can be identified, namely general criminal law and special criminal law. General criminal law consists of two sorts, substantive criminal law which is codified in the Indonesian Criminal Code; and procedural criminal law which is codified in the Indonesian Criminal Procedure. Meanwhile, special criminal law consists of several types of crimes such as corruption, subversion, economic crime, banking crime, immigration crime, money laundering, and so on. These Statutes are independent and regulate substantive as well as procedural law. If the special criminal laws do not regulate substantive or procedural law, the Criminal Code or Criminal Procedure would then be referred to as the general law. Returning to the criminal jurisdiction of money laundering, since it is not regulated by Law of 2010 No.8, it automatically refers to the Criminal Code as a general law. According to Article 2 of the Code, regulations in the Code prevail for each person committing a criminal act in the territory of the Republic of Indonesia. This means that Law of 2010 No.8 follows the doctrine of territoriality principle.

The problem, however, lies in how a money laundering case is dealt with that has a transnational dimension. Territorial jurisdiction is regarded inadequacy in settling the problem. Compared with the United States of America, the U.S. Statute regulates explicitly the jurisdictional authority of the Statutes. As an example, the Anti-Money Laundering Control Act of 1986, especially Section 1956(f), clearly stated that the Act established an extraterritorial jurisdiction. In this Statute, the conduct by non-US Citizens occurs in whole or in part in the United States. Over time, the USA PATRIOT Act 2001, through its amendment of 18 U.S.C. §1956, expanded the notion of territorial jurisdiction to a long-arm jurisdiction of foreign money launderers.

6.7. Final Remarks

In the 18th Century, countries around the world adhered to the territoriality principle very strictly. During that time, there was no opportunity to use the extraterritorial jurisdiction in criminal cases. The reason for this was that applying the extraterritorial jurisdiction violated the authority and sovereignty of a state. In the 19th Century, however, conditions have changed whereby the use of the territoriality principle did not seem to be able to offer solutions to the

problem of criminal jurisdiction. In the 20th Century, with advancements in technology, communications, and international commerce, jurisdictional theory has developed even further by implementing a new form, called the long-arm jurisdiction. From this development, it is clear that dynamic aspects of criminal jurisdiction are being faced in money laundering offences which have cross-border dimension.

Due to the development of technology which followed by the increasingly complicated and sophisticated methods used in conducting cross-border money laundering, the United States of America has formulated the extraterritoriality principle in its statutes and long-arm authority implemented through its judicial interpretations. This condition is a new phenomenon where a country like the United States formulated its extraterritorial jurisdiction in its statutes explicitly. In this point, the United States does not hand over the interpretation of criminal jurisdiction to the Courts. Other countries may consider the United States' laws and Supreme Court decisions concerning the formulation and implementation of extraterritorial and long-arm jurisdiction in its money laundering laws as benchmark models. However, in formulating and implementing the extraterritorial and long-arm jurisdiction, further inquiries are important being made to ensure that the implementation of this type of criminal jurisdiction is in accordance with, and not contrary to, the long standing principles of legal systems of the states in question****