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To What Extent, If at All, Should One Country Enforce the Criminal Law of Another? A Doctrinal Analysis of Extraterritorial Jurisdiction, Structural Impunity, and Multilateral Legitimation

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Abstract

This study examines the extent to which one state may legitimately enforce the criminal law of another, a question that sits at the intersection of territorial sovereignty, democratic legitimation, and the structural imperatives of transnational criminal justice. The analysis proceeds in three stages. It first establishes the normative objections that speak against the reception of foreign criminal law—grounded in the territoriality principle, the structural incommensurability of legal systems, and the constitutional guarantee of nulla poena sine lege. It then examines the mechanisms of extraterritorial jurisdiction in German law—the flag, active and passive personality, protective, and universality principles, together with vicarious criminal justice—demonstrating that, whilst sophisticated, these mechanisms leave structural impunity vacuums that advancing globalisation and digitalisation render increasingly acute. Drawing on case studies including the OLG Koblenz Syria judgment, the BGH piracy decision, and the prosecutions of Maduro and the US-Israeli attack on Iran, the study further reveals how extraterritorial criminal jurisdiction risks degenerating into an instrument of geopolitical power projection. The study concludes that a state should have recourse to foreign criminal law exclusively within multilaterally legitimated, contractually secured, and institutionally controlled frameworks—and only where no less sovereignty-impairing means is available.

Keywords

Extraterritorial Criminal Jurisdiction, Territoriality Principle, Transnational

Impunity, Multilateral Legitimation, Geopolitical Power Projection

1. Introduction

International criminal law is presently confronted with a fundamental contradiction. Criminal law has historically been national in orientation—an orientation most clearly expressed in the principles of state sovereignty, territorial authority, and the state's monopoly over the exercise of prosecutorial power. At the same time, the accelerating processes of globalisation and digitalisation have progressively eroded state borders as natural barriers to criminal conduct, rendering offending increasingly transnational in character. The emergence of a borderless digital space has, in particular, enabled perpetrators to commit offences irrespective of physical location and without disclosing their identity, to organise transnational criminal networks, and to exploit deliberately the lacunae between national legal systems.

This study addresses the guiding question: "To what extent, if at all, should one country make use of another country's criminal law?" Answering this question requires a redefinition of the relationship between state sovereignty and transnational responsibility. It calls for an analysis of the tension between the historically national orientation of criminal law and its increasingly international dimensions in the twenty-first century. At the heart of this inquiry lies a deep fault line in international criminal law: whether a legal system inherently confined to the territory of a single state can rise to the challenges posed by a world in which perpetrators traverse borders whilst the law remains bound by them.

The terms of the question may be decomposed into three constituent elements. The 'should' focuses on the grounds upon which one country ought to make use of another's criminal law. This dimension is examined in conjunction with the qualifier 'if at all': it must be determined whether the grounds for such application are sufficiently compelling to justify it or, conversely, to preclude it. The guiding question further demands systematic engagement with the legal and practical frictions that arise when foreign criminal law is applied—notwithstanding that there may be weighty normative arguments in favour of such application. The third constituent element follows from the outcome of the second: should the application of foreign criminal law be deemed permissible, the 'to what extent' determines the limits and conditions governing that application.

A terminological distinction of foundational importance must be drawn at the outset, one that structures the entire analysis. The guiding question asks when a state should make use of another country's criminal law, that is, when it should apply foreign criminal law as such, receiving and enforcing the offence definitions, sentencing ranges, and culpability principles enacted by a foreign legislature for a foreign community. This must be sharply distinguished from the exercise of extraterritorial jurisdiction, whereby a state applies its own domestic criminal law to offences committed abroad by virtue of a recognised connecting factor such as the nationality of the perpetrator, the nationality of the victim, or the nature of the protected legal interest. The two operations are formally distinct. The former imports foreign norms into the domestic legal order; the latter merely extends the spatial reach of domestic norms beyond the state's territory. As the analysis of Sections 3.1 and 3.2 will demonstrate, the established mechanisms of extraterritorial criminal jurisdiction in German law, encompassing the flag, active and passive personality, protective, and universality principles together with vicarious criminal justice, belong exclusively to the second category. They apply German criminal law to facts with a foreign element, but do not receive foreign law. The significance of this distinction is not merely taxonomic. The normative objections that speak against the reception of foreign criminal law, elaborated in Section 2, do not bear with equal force upon extraterritorial jurisdiction, which precisely preserves the domestic chain of democratic legitimation and the guarantees of the nulla poena sine lege principle. The paper's central claim, namely that recourse to foreign criminal law is permissible only within multilaterally legitimated and institutionally controlled frameworks, turns upon this distinction throughout.

The study proceeds as follows. It first examines the principles underpinning the historically national orientation of criminal law, together with the grounds that militate against the application of foreign criminal law. It then considers the challenges arising from the increasingly transnational nature of crime. In this connection, the study addresses both the mechanisms established by the legislature for extending criminal jurisdiction to offences committed abroad, and the residual lacunae that persist notwithstanding these frameworks—lacunae that the application of foreign criminal law might serve to close. The study subsequently examines the difficulties that arise when one state applies the criminal law of another, including the interaction of such application with existing legal instruments. It concludes with proposals for resolving those difficulties and with a reasoned position on the guiding question posed at the outset.

The study focuses primarily—though not exclusively—on the German legal system. This focus follows from a methodologically sound consideration. The German Criminal Code (Strafgesetzbuch, StGB) codifies the mechanisms of extraterritorial criminal jurisdiction in a systematic and technically differentiated manner—specifically in sections 3 to 7 and section 9 StGB—and thereby constitutes one of the few legal systems to have legislatively defined with precision the reach of its prescriptive criminal jurisdiction, rather than leaving such development to judicial law-making. German law thus offers not only an analytically refined model for engaging with extraterritorial criminal jurisdiction, but also a rich body of case law which, through concrete precedents to be examined in the course of this study, confronts theoretical principles with lived legal practice, rendering the inquiry amenable to an empirically grounded analysis.

2. Objections to the Application of Foreign Criminal Law

Before the grounds upon which a state ought to apply foreign criminal law can be analysed, it is first necessary to engage systematically with the normative objections that speak, as a matter of principle, against any such application. These objections constitute the doctrinal frame of reference against which any opening of national criminal legal orders to foreign law must be measured. Only once their full weight has been appreciated can it be determined under what conditions such an opening is compatible with the rule of law, and where its insurmountable limits lie.

2.1. The Territoriality Principle

The historically national orientation of criminal law rests primarily upon the territoriality principle. Under the territoriality principle, all offences committed within the domestic territory are subject to the criminal law of that state (Ambos, 2024; Fischer, 2025). The nationality of the perpetrator or the victim is irrelevant in this regard (Ambos, 2020; Fischer, 2024).

The territoriality principle therefore speaks fundamentally against the application of foreign criminal law. In the German legal system, the territoriality principle is enshrined in section 3 StGB and has applied in its current form since 1 January 1975 (Fischer, 2024). However, this principle has considerably deeper roots in German law: it was already established in the Criminal Code of 1871 (Reichsstrafgesetzbuch) (Vormbaum, 2016). The development of modern criminal law in eighteenth- and nineteenth-century Germany—associated with Beccaria and Feuerbach—was inextricably bound up with the consolidation of the nation-state (Beccaria, 1988; Feuerbach, 1799). Criminal law displaced private vengeance and the fragmented justice of feudal particularism, replacing both with a uniform, territorially defined system of sanctions. This territorialisation is constitutive of the modern conception of statehood.

The historical significance of the territoriality principle is further illuminated by comparison with the English common law tradition. In the English legal system, a significant statutory codification of the territoriality principle was effected by the Criminal Justice Act 1993, which introduced an express territorial framework, in particular for property offences. The Offences Against the Person Act 1861, however, already implied territorial connecting factors. Viewed historically, both legal systems therefore reflect the foundational ideas of the territoriality principle from the second half of the nineteenth century onwards. The principle rests on the consideration that every person is bound to observe the laws of the state in whose territory he finds himself (Ambos, 2020; Satzger, 2020). It is grounded in several distinct strands of legitimation.

2.1.1. The Public International Law Basis of the Territoriality Principle

The territoriality principle draws part of its legitimation from public international law. The principle finds its foundation in international law in the sovereignty principle, which constitutes one of the foundational pillars of the international legal order (Dahm et al., 1989). The Lotus case of the Permanent Court of International Justice (PCIJ) of 1927 established that states may not, as a general rule, exercise sovereign authority beyond their territory without being able to invoke a permissive rule of international law authorising such exercise (Kunig & Uerpmann, 1994). Territorial sovereignty signifies not merely the right, but also the duty of the state, to legislate and to enforce the law within its territory. Under the classical threeelement doctrine of Georg Jellinek, state sovereignty is constituted by territory, population, and governmental authority (Staatsgebiet, Staatsvolk, and Staatsgewalt) (Jellinek, 1914; Schubert & Klein, 2020). The power to punish—the ius puniendi—forms the core of this governmental authority and is, in its historical and genetic dimension, inextricably bound to the state's monopoly on the use of force (Jescheck & Weigend, 1996; Roxin & Greco, 2020). Criminal law is accordingly understood as an expression of territorial supremacy. The sovereignty under international law referred to above manifests itself in three dimensions:

a) Negative sovereignty (defensive right): No state may perform acts of sovereign authority on the territory of another state (Heintschel von Heinegg, 2005). The application of foreign criminal law by a state's own organs could be characterised as a usurpation of the sovereign prerogatives of another state.

b) Positive sovereignty (regulatory prerogative): Each state possesses the exclusive competence to regulate its internal affairs. Criminal law, as the ultima ratio of the state's ordering authority, embodies this regulatory prerogative in its most acute form (Roxin & Greco, 2020).

c) Sovereign equality (Article 2(1) UN Charter): The subordination of a state to a foreign criminal legal order implicates the principle of the sovereign equality of states, inasmuch as it implies a normative hierarchy between them (Herdegen, 2023).

2.1.2. The Constitutional and Democracy-Theoretical Basis of the Territoriality Principle

The second strand of legitimation underpinning the territoriality principle is constitutional in nature. The Federal Constitutional Court (Bundesverfassungsgericht) has developed, through its doctrine of essentiality (Wesentlichkeitstheorie), that all decisions of fundamental importance—in particular those affecting fundamental rights—must be taken by the democratically legitimated legislature itself (Schulze-Fielitz, 2015). Criminal law constitutes precisely such a decision of fundamental importance, given that it encroaches upon personal liberty and the general right of personality (allgemeines Persönlichkeitsrecht), amongst other fundamental rights. The democratic chain of legitimation therefore requires that the criminal legislature, to which the populace has conferred legitimacy through elections, enacts precisely those norms that are to apply within its territory. A foreign legislature possesses no such democratic legitimacy in relation to the domestic population. The application of foreign criminal law would accordingly sever the democratic chain of legitimation and would be incompatible with both the rule-of-law principle and the democratic principle enshrined in Article 20 of the Basic Law (Grundgesetz) (Maurer & Waldhoff, 2020).

This democratic and rule-of-law legitimation may further be linked to the political-philosophical all-affected principle—the congruence principle. This principle postulates that the scope of political decision-making authority and the class of persons affected by a given decision must be congruent (Christiano, 2008; Dahl, 1989; Möllers, 2008). This condition is satisfied only where those who are subject to a legal order have also participated in its creation, and vice versa. Transposed to criminal law, this signifies that the territorial state is legitimately empowered to punish precisely because its population has both participated democratically in shaping its norms and constitutes their primary addressee. A foreign legislature, by contrast, has enacted its criminal norms for a different community, under different social and political conditions. The application of foreign criminal law thereby generates a democratic asymmetry that is structurally incompatible with the congruence principle.

2.1.3. The Functional-Pragmatic Basis of the Territoriality Principle

A third strand of legitimation derives from functional-pragmatic considerations. The territoriality principle is capable of justification not only on normative grounds, but also on teleological ones: the territorial state is structurally best placed to prosecute offences committed within its territory. It enjoys direct access to evidence, witnesses, and locations relevant to the offence, thereby enabling effective fact-finding. Moreover, the spatial proximity between the events constituting the offence and the forum seised ensures a contextually sensitive assessment of the circumstances that is closely attuned to the facts (Ambos, 2022; Satzger, 2022). Not least, territorial prosecution serves the interests of victim protection: those who have suffered harm can be more effectively involved in proceedings conducted within their own immediate legal order. Finally, criminal law exerts a general deterrent effect most powerfully where the offence was committed and where the social community has experienced the breach of the norm (Fischer, 2025; Roxin & Greco, 2020). The territorial state is thus not merely normatively entitled, but also functionally predisposed, to exercise prosecutorial jurisdiction within its territory.

Intermediate conclusion: The three strands of legitimation are not to be considered in isolation; they develop their full persuasive force only in their interaction. The sovereignty principle constitutes the external dimension, the democratic and rule-of-law legitimation supplies the internal dimension, and the functional-pragmatic legitimation provides the instrumental dimension. Moreover, the strands are mutually reinforcing. The sovereign authority underpinning the territoriality principle would be devoid of content were it not democratically anchored; the democratic chain of legitimation would remain abstract were it not to correspond to the functional superiority of territorial prosecution; and pragmatic effectiveness alone could not furnish a normative justification for the punitive claim of the state without recourse to its foundations in public international law and constitutional law. The territoriality principle thus emerges as a structural principle sustained by multiple, mutually reinforcing forms of legitimation, defensible from distinct perspectives—in terms of public international law, democratic theory, and functional coherence alike.

2.2. The Structural Incommensurability of Different Legal Systems as an Obstacle to Application

A further objection to the application of foreign criminal law—one that has been considerably underestimated in academic discourse—lies in the structural incommensurability of different legal systems. Criminal law is not a context-neutral body of rules capable of being readily detached from its systematic origins and transplanted into a foreign legal order. It is, rather, deeply embedded in the particular legal culture, procedural tradition, and doctrinal methodology from which it derives. This is most strikingly apparent in the relationship between the Anglo-American common law system and continental European codification systems. The common law is shaped by judicial decision-making, develops through precedent (stare decisis), and is characterised by an adversarial procedural structure in which the ascertainment of truth is achieved through the contest between the parties (Langer, 2015; Zweigert & Kötz, 1996). The continental European system, by contrast—paradigmatically embodied in German criminal procedure—operates on the inquisitorial principle (Untersuchungsgrundsatz), under which the court is obliged, of its own motion, to conduct a comprehensive investigation of the facts (Beulke & Swoboda, 2020).

To this must be added the divergence at the level of substantive law. Whereas continental European criminal law rests upon precise legislative codifications and the judge functions primarily as an applier of the law, the common law judge possesses considerably more far-reaching law-creative powers (Kötz, 2009; Zweigert & Kötz, 1996). The transposition of such a system into a legal order bound by the strict principle of legality and the doctrine of separation of powers would give rise to systemic frictions irresolvable by mere interpretation. Foreign criminal law cannot, therefore, be applied in isolation: it would invariably import a systemic context that may be structurally incompatible with the receiving legal order.

2.3. The Principle of Nulla Poena Sine Lege as a Constitutional and Convention-Law Barrier to the Application of Foreign Criminal Law

Finally, the application of foreign criminal law encounters a fundamental objection rooted in both constitutional and convention law: the principle of nulla poena sine lege—no punishment without law—enshrined in Article 103(2) of the Basic Law and Article 7 of the European Convention on Human Rights. This principle is not merely a formal criterion of competence; it forms part of the inviolable core of criminal justice under the rule of law. By virtue of Article 79(3) read in conjunction with Article 20(3) of the Basic Law, it is placed beyond the reach of the constitutional legislature, and under Article 15(2) of the International Covenant on Civil and Political Rights (ICCPR) and Article 7 ECHR it enjoys absolute protection even in times of public emergency.

The principle requires that the addressee of a norm be able to ascertain, *ex ante* and solely on the basis of the wording of the criminal provision and recognised methods of interpretation, which conduct is subject to criminal sanction (lex certa) (Beulke & Swoboda, 2020; Bott & Krell, 2010; Kindhäuser, 2011). The individual must be able to orientate his conduct by reference to the law in force, without being dependent upon future judicial concretisation. The requirement of sufficient precision (Bestimmtheitsgebot) is addressed both to the legislature—as a duty to formulate the constituent elements of an offence with adequate precision—and to those who apply the law—as a prohibition on the creation of criminal liability by analogy.

The application of foreign criminal law undermines this requirement in two respects. First, it cannot reasonably be expected of an ordinary addressee of the norm that he should be acquainted with the criminal law of a foreign state and orientate his conduct accordingly—particularly where linguistic barriers impede access to the primary legislative source and where the addressee would, moreover, be required to monitor foreign legislative processes on a continuous basis. Second, the reception of foreign offence definitions into a different legal order inevitably generates interpretive lacunae and systemic discontinuities that further erode normative foreseeability. The principle of nulla poena sine lege thus emerges as a weighty constitutional and convention-law argument against the application of foreign criminal law.

Synthesis: The rejection of the application of foreign criminal law rests upon a coherent structure of mutually reinforcing arguments. Under public international law, criminal jurisdiction is bound to territorial sovereignty. From the standpoint of democratic theory, a foreign legislature lacks the requisite chain of legitimation in relation to the domestic population—a deficiency further underscored by the congruence principle. In functional terms, the territorial state is structurally predisposed to prosecute offences committed within its territory. The methodological incommensurability of divergent legal systems and the nulla poena sine lege principle enshrined in Article 103(2) of the Basic Law and Article 7 ECHR complete this picture. The territoriality principle thus reveals itself not as a historical relic, but as a normatively indispensable structural principle of criminal justice under the rule of law.

On the basis of the foregoing analysis, it may therefore be concluded, from the perspectives of public international law, constitutional law, and functional pragmatism alike, that the territoriality principle stands in fundamental opposition to the application of foreign criminal law. The constituent element of 'if at all', considered in light of the analysis thus far, accordingly tends towards a negative answer. An empirically sound response to the guiding question does, however, presuppose a comprehensive assessment of all three constituent elements. The analysis to this point has illuminated only the restrictive side of the balance. In order to assess the normative weight of these restrictions with validity, an equally systematic engagement with the grounds that speak in favour of the application of foreign criminal law is required. The following chapter therefore addresses the constituent element of "should" and analyses under what conditions and on what basis a state might have recourse to the criminal law of another state.

3. The Transnationalisation of Crime as a Structural Challenge to National Criminal Law

Notwithstanding the historically national orientation of criminal law and the normative indispensability of the territoriality principle established above, criminal law is presently undergoing a profound structural transformation. The accelerating processes of globalisation and digitalisation have progressively eroded state borders as natural barriers to criminal conduct. Persons, capital, and information now move across national boundaries with a speed and ease that would have been inconceivable only a few decades ago. As a result, offences are increasingly committed without regard to physical location, without identifiable attribution, and across national borders within the shortest of timeframes. Against this background, both the frequency and the societal reach of offences committed by international criminal organisations are steadily increasing.

A paradigmatic illustration is afforded by the ransomware group LockBit, which, according to the assessment of the German Federal Office for Information Security (Bundesamt für Sicherheit in der Informationstechnik, BSI), represented the most significant ransomware threat worldwide. In the course of the international Operation Cronos, 34 of the group's servers were seized in February 2024 and thousands of decryption keys were secured. Prior to that point, the group had extorted more than one billion US dollars from enterprises around the world—an attack that could not be attributed to any single crime scene, but which simultaneously paralysed infrastructure across dozens of states. Equally significant is the phenomenon of 'Violence-as-a-Service' (VaaS), in which organised criminal groups deliberately recruit children and young persons to carry out threats, assaults, or killings on their behalf—a transnational business model of violence that confronts conventional prosecutorial structures with considerable jurisdictional difficulties.

In the wake of digitalisation, the frequency and scale of cybercrime have also intensified markedly. Particularly grave is the fact that, owing to their immaterial nature, the effects of cyberattacks are frequently neither immediately perceptible to those outside the targeted systems nor capable of being classified in a timely manner. The attack on Change Healthcare in 2024—one of the most significant billing platforms in the United States healthcare system—is paradigmatic of the societal dimension of this threat. Although the services of UnitedHealth Group had largely returned to normal by June 2024, the downstream effects persisted nationwide (UnitedHealth Group, 2024). Among the most consequential state-sponsored cyberattacks is the SolarWinds attack, in which Russian foreign intelligence compromised the SolarWinds Orion network monitoring software widely used by the US federal government, thereby infiltrating multiple federal agencies (Smith, 2020). This attack illustrates vividly how state and criminal actors alike can conduct cross-border attacks against digital infrastructure without ever being physically present in the target state.

Global communication, transport, and network structures have, moreover, substantially facilitated illicit trade conducted via the internet. Particularly acute in this regard is the divergent legal status of certain goods and services across different jurisdictions. Whilst cannabis has been subject to a tolerance regime in the Netherlands for decades, its trade remains a criminal offence in Germany—notwithstanding the legalisation of acquisition and consumption since 1 April 2024 (Hofmann, 2021). This normative conflict bears directly on criminal law practice and will be examined separately below.

The international dimension of criminal offending is also of growing significance in other areas of law, most notably commercial law, where the global interconnection of corporate structures enables offences—in particular corruption, money laundering, and tax evasion—that are structurally resistant to territorial attribution. In the field of corruption, the Wirecard scandal is instructive: the DAX-listed company Wirecard AG had concealed fictitious revenues running into the billions through an international network of subsidiaries and payment service providers, with alleged bribery payments flowing to foreign partners in order to obscure audit procedures—a case that engaged prosecutorial authorities in several countries simultaneously.

In the fields of money laundering and tax evasion, the cum-ex transactions illustrate the transnational dimension of financial criminality with particular clarity. In February 2024, the Bonn Regional Court (Landgericht Bonn) convicted two London-based fund managers of the Duet Group of aggravated tax evasion, sentencing them to terms of imprisonment of four years and ten months and three years and six months respectively, following their organisation of cum-ex transactions through a fund structure established at the Hamburg-based Varengold Bank, causing a tax loss of approximately 92 million euros. By decision of 29 October 2024, the Federal Court of Justice (Bundesgerichtshof, BGH) further confirmed the conviction of a lawyer and tax adviser to a term of eight years and three months' imprisonment for tax evasion in three cases connected with cumex transactions (Ferner, 2024). This case illustrates with particular clarity how internationally interconnected corporate structures are deliberately deployed to circumvent national control mechanisms and to combine tax evasion and money laundering within a single criminal transactional framework.

Normative conflicts constitute, in the context of globalisation, one of the central challenges of international criminal law more broadly. The BGH was already confronted with a pertinent conflict in its judgment of 21 February 2001. The accused had acquired cannabis in the Netherlands, where it was legally available for retail purchase under the so-called Gedoogbeleid—the official state tolerance policy—and had subsequently transported it to Germany. Whilst the conduct was entirely lawful in the state of action, it satisfied the constituent elements of the offence of importing controlled substances under section 30(1) no. 4 of the Narcotics Act (Betäubungsmittelgesetz, BtMG) in Germany. The BGH applied German criminal law consistently, relying on the territoriality principle under section 3 StGB in conjunction with the active personality principle under section 7(2) no. 1 StGB. The determinative factor was held to be the law of the state in which the offence was completed—that is, Germany as the place where the importation took effect. This case illustrates paradigmatically one of the deepest fault lines in international criminal law: the same conduct may be lawful or criminal depending solely on the location in which it occurs. In the field of drug law in particular, no international consensus exists to this day, rendering such normative conflicts structurally inevitable.

The converse constellation—where conduct is criminalised abroad but not under German law—gives rise to constitutional constraints of a different order. The principle of nulla poena sine lege enshrined in Article 103(2) of the Basic Law prohibits punishment under German law where the relevant offence is not established in German criminal legislation. Conduct that is exclusively criminalised under foreign law cannot therefore be prosecuted in Germany, irrespective of how seriously it is assessed by the legal order of the state in which it was committed. Whilst this principle protects those subject to the norm, it simultaneously prevents the closing of prosecutorial lacunae in the context of cross-border offences.

A more nuanced situation arose in the judgment of the BGH of 18 June 2015, which concerned tax evasion in a transatlantic context (Joecks et al., 2023). The conduct in question was criminalised under both German and United States law; however, the applicable sentencing ranges, limitation periods, and procedural guarantees differed substantially between the two jurisdictions. Germany ultimately applied its own criminal law, whilst recognising, under the ne bis in idem principle, a lenient judgment already handed down abroad, so as to preclude impermissible double jeopardy. This principle, enshrined in Article 103(3) of the Basic Law and Article 4 of Protocol No. 7 to the ECHR, ensures that an offender is not prosecuted twice for the same act, including across state borders.

From all of these developments there arises the central question of whether, notwithstanding the territoriality principle and its well-founded normative legitimation, the shift towards increasingly international criminal conduct can furnish grounds upon which a state might exceptionally apply the criminal law of another state. This question engages the constituent element of 'should' within the guiding question. The legislature has already responded to these challenges and has, through the established mechanisms of extraterritorial jurisdiction, formulated answers for the application of criminal law with a foreign element—mechanisms to be examined in greater detail below. In addition, it will be considered which lacunae persist notwithstanding these mechanisms and whether they are capable of justifying a more extensive opening towards the reception of foreign criminal law.

3.1. The Mechanism of Extraterritorial Jurisdiction

The territoriality principle, as elaborated in the preceding section in its threefold legitimation—grounded in public international law, democratic theory, and functional pragmatism—constitutes the unshakeable point of departure for the German law on the scope of criminal jurisdiction (Strafanwendungsrecht). It would, however, be a category error to conclude from this that offences committed abroad are invariably and unconditionally beyond the reach of state criminal authority. On the contrary, the international legal order as received into German law recognises a range of legitimating connecting factors that permit states to extend their criminal jurisdiction beyond their own borders. This extension does not, however, occur arbitrarily or without constraint; it is, for the most part, conditional upon the establishment of a genuine link—a sufficiently substantial domestic connecting factor—that supports the assertion of extraterritorial jurisdiction under international law and lends it rule-of-law legitimacy (Ambos, 2020; Herdegen, 2023; Satzger, 2020; Ziegenhain, 1991).

The concept of the genuine link, as developed by the International Court of Justice in the Nottebohm judgment of 1955 and since established as an integral element of general international law, denotes the qualified relationship of proximity that must exist between the regulating state and the subject-matter to be regulated, in order for the former to legitimately claim legal authority (Herdegen, 2023; Makarov, 1955/56; Menzel et al., 2005). In the context of criminal law, this signifies the following: a state may subject offences committed abroad to its criminal jurisdiction only where the offence injures or threatens domestic legal interests (Rechtsgüter)—the protective principle (sections 5 and 7(1) StGB)—where the perpetrator is a national of that state—the active personality principle (section 7(2) no. 1 StGB; section 1 VStGB)—where the victim is a member of the state's population—the passive personality principle (section 7(1) StGB)—or where the offence is committed on stateowned 'floating territory'—the flag principle (section 4 StGB). Where no such connecting factor is present, the assertion of extraterritorial criminal jurisdiction is impermissible under international law. This would constitute an encroachment upon the sovereign sphere of foreign states, in violation of the fundamental principle of nonintervention in international law (Ambos, 2022).

The following section sets out the mechanisms of extraterritorial jurisdiction in their normative depth and doctrinal consequence, demonstrating how German law seeks to strike the balance between the aspiration to comprehensive prosecution and the imperative of sovereign restraint.

3.1.1. The Flag Principle

Section 4 StGB codifies the so-called flag principle by means of a construction drawn from public international law: German criminal law applies, irrespective of the law of the place where the offence was committed, to offences committed on board a vessel or aircraft entitled to fly the federal flag or bear the national identification mark of the Federal Republic of Germany (Ambos, 2020; Fischer, 2024). This provision does not merely establish a domestic connecting factor by analogy;

it creates one by legal fiction. Under section 4 StGB, a German-flagged vessel is treated as equivalent to German territory itself.

The doctrinal classification of the flag principle remains a matter of academic debate. Historically, the vessel was understood as a 'moving part of the territory' of the flag state, such that the flag principle appeared as a mere extension of the territoriality principle (Jescheck, 1956). The more recent scholarship—most notably Ambos in the Münchener Kommentar—argues persuasively, by contrast, that flag nationality constitutes an independent, sui generis form of connecting factor for the exercise of state authority, attributable neither to territorial nor to personal jurisdiction, but standing alongside them as a tertium genus (Ambos, 2020; Hoog, 1986; Wolfrum, 2006). This view is to be preferred, since it more precisely captures the specific nature of flag jurisdiction—a pragmatic extension of state criminal authority over a permanently mobile legal space that is not geographically fixed.

Under international law, the flag principle is rooted in Article 92 of the United Nations Convention on the Law of the Sea (UNCLOS), pursuant to which vessels on the high seas are subject to the exclusive jurisdiction of the state whose flag they fly. The ratio legis is apparent: the high seas are not subject to the territorial sovereignty of any state. Absent the flag principle, a legal vacuum would arise in which offences would go unprosecuted. The flag principle closes this lacuna by way of fiction and, in that respect, constitutes not an expression of territorial overreach, but a necessary response to a structural deficit in the spatial ordering of international law. The genuine link consists here in the state registration of the vessel and the responsibility for its proper operation thereby assumed, which simultaneously entitles and obliges the flag state to prosecute offences committed on board. It is noteworthy that section 4 StGB imposes no additional requirements as to the nationality of the perpetrator or the victim. The provision applies irrespective of the law of the place of commission and irrespective of whether the perpetrator is German, foreign, or stateless. The sole requirement is that the offence be committed 'on board' the German vessel or "within" the German aircraft (Ambos, 2024; Fischer, 2025). The vessel thus functions, in full doctrinal consequence, as "floating territory", to which German criminal law attaches in every direction and on every ocean (Ambos, 2024; Eser & Weißer, 2025).

The most significant and most widely discussed decision of the Federal Court of Justice on the flag principle is BGHSt 53, 265—the so-called piracy case of 2009. The facts were as follows: on 5 April 2008, the container vessel MS Courier, flying the German flag, was attacked and boarded in the Gulf of Aden—on the high seas—by a group of Somali pirates. The perpetrators overpowered the crew, seized control of the vessel, and demanded a ransom. In doing so, they committed acts constituting, under German criminal law, robbery (section 249 StGB), aggravated extortion (section 255 StGB), deprivation of liberty (section 239 StGB), and causing grievous bodily harm (section 224 StGB).

The BGH affirmed the applicability of German criminal law under section 4

StGB without hesitation. The decision is significant in several respects. First, the BGH made clear that the flag principle admits of no exception for piracy and applies in full even in respect of perpetrators with no connection whatsoever to Germany—the Somali pirates held neither German nationality nor domicile in Germany. The application of German criminal law under section 4 StGB requires no connecting factor beyond the flag nationality of the vessel. Second, the BGH clarified that the place of commission within the meaning of section 4 StGB is to be located on the vessel itself, and not at the geographic location of the vessel at the time of the offence—the high seas do not, accordingly, constitute 'foreign territory' within the meaning of sections 5 et seq. StGB; rather, the place of commission is the German vessel itself. Third, the BGH elaborated the practical significance of the flag principle as a protective provision for the maritime economy: absent section 4 StGB, attacks on German merchant vessels would remain largely unpunished, since the states with jurisdiction over the place of commission—the high seas, or Somali territory—are subject either to no criminal jurisdiction at all or to one that is practically incapable of acting (Fischer, 2025). The judgment thereby confirmed the systemic function of section 4 StGB as a subsidiary safety-net provision addressing maritime impunity gaps.

3.1.2. The Active Personality Principle

The active personality principle, enshrined in section 7(2) no. 1 StGB, permits German criminal law to extend to offences committed abroad by German nationals, provided that the act is subject to criminal sanction at the place of commission or that the place of commission is not subject to any criminal jurisdiction, and that the perpetrator was a German national at the time of the offence (Ambos, 2020; Fischer, 2024; Satzger, 2020). The active personality principle in German law is characterised by a remarkably restrictive constituent structure, which confines its application to a narrow core and stands in deliberate contrast to the more expansive regulatory models of other legal orders. This restrictiveness is not a legislative oversight; it is an expression of sovereign respect for the criminal legal orders of other states and a principled scepticism towards the unilateral extrapolation of national normativity into foreign legal spaces.

The constituent requirements of section 7(2) no. 1 StGB must be satisfied cumulatively. The absence of even a single requirement excludes the applicability of German criminal law to the offence committed abroad. They are as follows.

First, the perpetrator must have been a German national within the meaning of Article 116 of the Basic Law at the time of the offence (Ambos, 2020; Fischer, 2024). Nationality must exist at the time the offence is committed (Fischer, 2025; Reinbacher, 2018). Subsequent naturalisation suffices only under the alternative ground in section 7(2) no. 1 StGB (the so-called new-citizen clause, Neubürgerklausel), which rests upon the principle of vicarious criminal justice (stellvertretende Strafrechtspflege) and has a distinct doctrinal foundation, to be elaborated below. German legal persons cannot be perpetrators within the meaning of section 7(2) no. 1 StGB; the provision applies exclusively to natural persons (Ambos, 2024; Satzger, 2022).

Second, the act must be subject to criminal sanction at the place of commission, or the place of commission must not be subject to any criminal jurisdiction—the so-called lex loci requirement (Reinbacher, 2018; Satzger, 2022). This requirement is of fundamental rule-of-law significance: it protects the perpetrator against sanction under German law for conduct that is permitted or even expressly authorised at the place of commission. A person acting abroad is entitled, as a matter of principle, to rely on the law of the place of action; conduct that is lawful at the place of commission may not subsequently be criminalised by the criminal authority of the home state. The lex loci requirement thereby implements a principle of legitimate expectation in the context of international criminal law (Ambos, 2024; Niemöller, 1993; Satzger, 2022). Complete normative identity of the constituent elements of the offence is not required. It suffices that the act is "subject to criminal sanction in some form or another" at the place of commission (Fischer, 2025)—that is, that it is punishable under at least one legal characterisation. Mere regulatory offences (Ordnungswidrigkeiten) under the law of the place of commission do not satisfy this requirement (Ambos, 2024; Fischer, 2025).

Third, the act must be punishable under German criminal law (Ambos, 2024; Fischer, 2025). Whilst this follows as a matter of course—German criminal law can only be applied where the relevant offence exists in German law—it merits emphasis, since it underscores the character of the active personality principle as an application of German, not foreign, criminal law. The German court does not examine whether the perpetrator is punishable under the law of the place of commission, but whether the conduct would be punishable under German law.

Fourth, there must be no violation of the prohibition on double jeopardy. Article 103(3) of the Basic Law prohibits the multiple punishment of a person for the same act. Where the perpetrator has already been finally convicted or acquitted in the state of commission, this as a general rule precludes renewed prosecution in Germany. The BGH has, however, in several decisions, permitted limitations on this principle where the foreign conviction failed to meet German standards of fair trial or where the sentence imposed was manifestly disproportionately lenient (Fischer, 2025)—a sensitive area of doctrine that risks appearing as an assertion of superiority over foreign legal systems.

Fifth—and this is a matter of paramount practical importance—the satisfaction of all of the foregoing requirements does not give rise to a duty to prosecute, but merely to a power to do so (Ambos, 2024; Fischer, 2025; Satzger, 2022). The public prosecution office may institute proceedings, but is not obliged to. Section 153c(1) no. 1 of the Code of Criminal Procedure (Strafprozessordnung, StPO) expressly confers upon the prosecution a discretion to refrain from pursuing offences committed abroad where the sentence imposed or to be expected abroad corresponds to the gravity of the offence, or where prosecution is inexpedient for other factual or legal reasons (Ambos, 2024; Beulke & Swoboda, 2020; Satzger, 2022). The principle of expediency

(Opportunitätsprinzip) thus displaces the principle of mandatory prosecution (Legalitätsprinzip) that governs offences committed domestically—a deliberate legislative choice, reflecting the recognition that the prosecution of offences committed abroad is frequently practically difficult, politically sensitive, and ambivalent in its policy effects.

In the practice of the German prosecutorial authorities, extraterritorial jurisdiction under section 7(2) no. 1 StGB is exercised with remarkable restraint—a restraint that is neither coincidental nor the product of administrative inertia, but rather the expression of a considered policy orientation grounded in several constitutional and international law considerations. The initiation of investigations into offences committed abroad typically requires substantial consular, diplomatic, and logistical resources: evidence must be secured abroad, witnesses must be identified, letters rogatory must be submitted, and the cooperation of the state of commission must often be painstakingly negotiated. These practical obstacles lead prosecutorial authorities to exercise a degree of selectivity, deploying prosecutorial capacity preferentially where there is a sufficiently weighty interest in prosecution.

In substantive terms, extraterritorial prosecution under section 7(2) no. 1 StGB is regarded as particularly warranted in three categories of case: first, serious offences at the upper end of the spectrum of criminality—in particular homicide, serious bodily harm, sexual offences against children, human trafficking, and serious property offences—where the gravity of the wrong commands vicarious prosecution; second, offences touching upon German interests—economic, political, or institutional—even where the place of commission and the victim are situated abroad; and third, cases in which the state of commission fails to prosecute notwithstanding an obligation to do so, or in which the sentences to be expected in that state would violate fundamental human rights or constitutional standards (Ambos, 2024; Fischer, 2025; Satzger, 2022).

A paradigmatic decision of the BGH on the active personality principle is BGHSt 42, 275. The BGH was called upon to determine the criminal liability of a German national who had committed fraudulent acts of insolvency abroad and had subsequently returned to Germany. The state of commission had not initiated any prosecution. The BGH affirmed the applicability of German criminal law under section 7(2) no. 1 StGB and, in doing so, clarified the lex loci requirement: it is not necessary that the act be punishable at the place of commission under the same offence definition as in Germany. It suffices, rather, that the conduct of the perpetrator is 'subject to criminal sanction in some form or another' at the place of commission, even if it is subsumed under a different offence under the law of that place. This decision substantially enhanced the practical utility of the active personality principle by reducing the threshold of the lex loci requirement from a requirement of identity to a mere requirement of punishability. The interpretive approach thereby adopted is methodologically persuasive: what matters is not the congruence of the catalogue of offences, but the substantive worthiness of the conduct for punishment.

3.1.3. The Passive Personality Principle

Section 7(1) StGB codifies the so-called passive personality principle: German criminal law applies to offences committed abroad against a German national, provided that the act is subject to criminal sanction at the place of commission or that the place of commission is not subject to any criminal jurisdiction (Eser & Weißer, 2025). The connecting factor here is not the perpetrator, but the victim: the German nationality of the victim legitimates the extension of German criminal law to an offence that would otherwise fall exclusively within the jurisdiction of the state of commission.

The passive personality principle is the most contested of all jurisdictional titles in the doctrine of public international law (Ambos, 2024; Satzger, 2022; Werle & Jeßberger, 2021b). Its starting point is the idea that the home state has a legitimate interest in protecting its nationals against offences committed abroad, and that it may enforce this protective obligation through criminal law where the state of commission fails to provide adequate protection. The legitimating basis lies accordingly in the particular relationship of responsibility between state and citizen: the citizen owes the state loyalty and fiscal contribution, whilst the state owes the citizen protection—protection that, in an era of global mobility, must extend beyond its own borders.

Critics argue, however, that this principle reflects a structural distrust of foreign legal systems. When a state claims the right to prosecute offences against its nationals committed in another state, it implies that the state of commission does not afford sufficient protection—a position that may be perceived as an affront to the sovereignty and the capacity of foreign legal systems, and which is indeed not uncontested under international law (Böse, 2023; Reinbacher, 2018). The Permanent Court of International Justice did not recognise the passive personality principle without qualification in the SS Lotus case of 1927 (Ambos, 2022). In international legal scholarship, it continues to be regarded as the weakest of all jurisdictional titles, precisely because it predicates jurisdiction not on the conduct of the perpetrator or the characteristics of the place of commission, but on the fortuitous nationality of the victim (Cassese & Gaeta, 2013; Satzger, 2022).

In German law, this scepticism contributes to the extreme restrictiveness with which the provision is framed. Section 7(1) StGB is applied in practice and in the case law even less frequently than the active personality principle (Ambos, 2024; Fischer, 2025). The lex loci clause further circumscribes the provision: a perpetrator who injures a German national abroad must also have acted in a manner subject to criminal sanction in that jurisdiction—with the consequence that conduct that is lawful at the place of commission but criminalised under German law falls outside the reach of the passive personality principle. This implicitly acknowledges that the state of commission holds primary jurisdiction and that Germany intervenes only on a subsidiary basis.

An instructive illustration of the passive personality principle is furnished by the BGH's case law on sexual offences committed abroad to the detriment of German nationals. In a leading judgment, the BGH affirmed the applicability of German criminal law under section 7(1) StGB in a case in which a foreign national had, in a state with a comparatively lenient sexual offences regime, committed sexual acts against a German victim that were to be classified as serious sexual offences under German law (Eser & Weißer, 2025). The BGH emphasised that the lex loci requirement was satisfied because the acts were subject to criminal sanction "in some form or another" at the place of commission—notwithstanding that the specific offence structure and sentencing range of the state of commission were considerably more lenient than those applicable under German law. The fact that the sentence imposed by the state of commission appeared marginal by German standards does not preclude the applicability of section 7(1) StGB. It does, however, once again demonstrate that vicarious prosecution in Germany is particularly warranted where the prosecution by the state of commission fails adequately to reflect the gravity of the wrong.

3.1.4. The Protective Principle

Section 5 StGB codifies the so-called protective principle (also referred to as the state protection principle or real principle, Staatsschutzprinzip, Realprinzip) and provides for the applicability of German criminal law, irrespective of the law of the place of commission, to a range of offences committed abroad that are directed against vital domestic legal interests (Rechtsgüter) (Eser & Weißer, 2025; Fischer, 2025). Unlike sections 7(1) and 7(2) no. 1 StGB, the protective principle imposes no lex loci requirement. German criminal law applies by operation of statute, without the conduct being required to constitute a criminal offence at the place of commission. This is the most far-reaching form of extraterritorial jurisdiction in German law and therefore demands particularly weighty justification.

The ratio legis of the protective principle lies in the elementary self-protective interest of the state. A state whose constitutional order, state institutions, or essential state functions are attacked through offences committed abroad has an overriding interest in prosecution that supersedes the jurisdiction of the state of commission (Ambos, 2024; Satzger, 2022). This interest is not merely political in character; it is grounded in the rule of law. A state that is precluded from defending its constitutional order when attacks against it originate from abroad would be structurally defenceless against destabilising conduct deliberately situated beyond its borders so as to evade the reach of its criminal law.

Section 5 StGB encompasses a broad spectrum of offences: high treason against the Federal Republic of Germany (sections 81 et seq. StGB); treason and endangerment of external security (sections 94 et seq. StGB); attacks on constitutional organs (sections 105 et seq. StGB); certain offences against public order (section 130(2) no. 1 StGB); offences involving the bribery of public officials (sections 331 et seq. StGB) where directed against German officials; and a range of further offence categories sharing the common feature that they are directed against the institutional integrity or the functional capacity of the German state (Eser & Weißer, 2025; Fischer, 2025; Werle & Jeßberger, 2021b).

The legitimation of the protective principle follows a clear logic: the genuine link here consists in the effect upon domestic legal interests, not in the nationality of the perpetrator or the victim. This fundamentally distinguishes the protective principle from the personality principles. It does not attach to persons, but to legal interests. The state does not protect its nationals (passive personality principle) nor does it pursue its nationals (active personality principle); rather, it defends its own institutional and constitutional foundations—a domain widely regarded as lying at the very core of state sovereignty and one whose protection cannot adequately be assumed by any other authority.

One of the foundational decisions of the BGH on the protective principle is BGHSt 30, 1 (Eser & Weißer, 2025; Fischer, 2025). The BGH was called upon in that case to assess the applicability of German criminal law to an instance of treason in which state secrets of the Federal Republic of Germany had been transmitted to a foreign power by both German and non-German perpetrators operating abroad. The act of commission—the transmission of classified information—had taken place exclusively abroad, and the place of commission was accordingly subject to foreign jurisdiction.

The BGH affirmed the applicability of German criminal law under section 5 no. 2 StGB (treason) without further ado and without examining the lex loci requirement—for section 5 StGB contains no such requirement. In its reasoning, the BGH emphasised that, in cases of treason, the protected legal interest—the external security of the Federal Republic of Germany—is exclusively domestic in character and cannot be adequately protected by a foreign state. A foreign state that receives information intended to cause harm to Germany has manifestly no interest in punishing the person who transmitted it; in the event of a political conflict, such information may even be deliberately deployed to Germany's detriment. The connecting factor constituted by the domestic legal interest is therefore the only conceivable basis for effective prosecution. The decision stands for the principle that where the genuine link lies in the violation of the state's own inherent interests, no deference need be paid to the law of the place of commission. The state protects itself, and this self-protective competence is inherent in sovereignty.

The significance of BGHSt 30, 1 extends beyond the specific treason case before the court. It establishes the principle that the protective principle in section 5 StGB possesses an autonomous scope of application, independent of foreign legal orders. German criminal law protects its vital legal interests even where the state of commission regards the same conduct as lawful.

Intermediate conclusion: It may be concluded that none of the mechanisms of extraterritorial jurisdiction—the flag principle (section 4 StGB), the active personality principle (section 7(2) no. 1 StGB), the passive personality principle (section 7(1) StGB), and the protective principle (section 5 StGB)—involves the application of foreign criminal law. What is applied is exclusively German criminal law: German offence definitions, German sentencing ranges, German principles of culpability-based criminal liability (Schuldstrafrecht), and German procedural guarantees. Moreover, extraterritorial jurisdiction under the subsidiarity principle—as reflected in sections 4, 5, 7(1), and 7(2) no. 1 StGB—is subordinate to the primary jurisdiction of the state of commission (Satzger, 2022; Werle & Jeßberger, 2021b). It is activated if and insofar as the state of commission does not act or is incapable of acting.

An examination of the mechanisms of extraterritorial jurisdiction is nonetheless indispensable to the analysis of the guiding question, since, wherever a legitimate genuine link exists between the facts to be assessed and the German state, these mechanisms connect German criminal law to an offence committed abroad. The genuine link legitimates the assertion of German criminal authority. The law applied, however, remains at all times German law. Extraterritorial jurisdiction therefore does not signify the extraterritoriality of criminal law, but rather the territorially anchored application of domestic law to facts with a foreign element that are connected to the domestic legal space by a substantial connecting factor.

Viewed from this perspective, the system established by sections 4, 5, 7(1), and 7(2) no. 1 StGB reveals itself as a framework of criminal prosecution that is, in principle, respectful of sovereignty. It does not compete with the criminal authority of other states; it complements that authority on a subsidiary basis. This understanding of subsidiarity is not only doctrinally sound but also sound as a matter of criminal justice policy: it minimises jurisdictional conflicts, respects the primary criminal authority of other states, and legitimates extraterritorial prosecution as a contribution to the international administration of criminal justice rather than as a form of unilateral projection of power.

Derivative Criminal Jurisdiction Beyond the Genuine Link

The foregoing analysis has demonstrated that the mechanisms established by sections 4, 5, 7(1), and 7(2) no. 1 StGB each rest upon a substantial genuine link between the German state and the facts to be assessed—whether by virtue of flag nationality, the nationality of the perpetrator or victim, or the violation of domestic legal interests. The universality principle (section 6 StGB; section 1 of the Code of Crimes against International Law (Völkerstrafgesetzbuch, VStGB)) and the principle of vicarious criminal justice (section 7(2) no. 2 StGB), by contrast, occupy a structurally distinct position within this system and therefore require separate examination. Both mechanisms sever criminal jurisdiction from every classical connecting factor: the universality principle does not attach to national connections, but to the universal worthiness of protection of certain legal interests; vicarious criminal justice does not attach to a material nexus with the facts, but to the mere presence of the perpetrator on domestic territory combined with the impossibility of extradition. What both have in common is that they establish not original, but derivative criminal jurisdiction—jurisdiction exercised not in the interest of the German state itself, but in the interest of the international community or of the primarily competent state of commission.

3.1.5. The Universality Principle

The universality principle—codified in German criminal law in section 6 StGB and, for the core of international criminal law, in section 1 VStGB—represents the most radical departure from the territoriality paradigm known to national criminal law. It permits every state of the international community to prosecute certain offences notwithstanding that they were committed neither on its territory, nor by or against one of its nationals, nor in a manner affecting domestic legal interests (Ambos, 2024; Satzger, 2022). Under the universality principle, every state becomes a potential guardian of a universal body of law whose validity rests not upon national legislative competence, but upon recognition by the international community.

The normative foundation of this extraordinary jurisdictional title lies in the nature of the legal interests protected. The universality principle does not apply to serious offences generally, but exclusively to acts directed against legal interests whose protection lies in the interest of all civilised states and which have been recognised by the international community as core crimes of international criminal law (Cassese & Gaeta, 2013; Fischer, 2025; Werle & Jeßberger, 2021a). The catalogue in section 6 StGB (nos. 1–9) covers offences including nuclear and explosive weapons crimes (nos. 1–2), attacks on air and maritime traffic (no. 3), human trafficking (no. 4), the unlawful distribution of narcotic drugs (no. 5), the dissemination of child sexual abuse material (no. 6), counterfeiting of currency and securities (no. 7), subsidy fraud against supranational institutions (no. 8), and—as a general clause—acts that, by virtue of binding international agreements, are subject to prosecution even where committed abroad (no. 9) (Eser & Weißer, 2025; Fischer, 2025). For the absolute core of the universality principle—genocide, crimes against humanity, and war crimes—section 1 VStGB supplements this framework; it imposes no genuine link requirement whatsoever and gives effect to the universality principle in its purest, unqualified form (Ambos, 2024; Werle & Jeßberger, 2021a).

The theoretical basis of legitimation for the universality principle is both sophisticated and compelling in the scholarship of public international law. Certain crimes—notably crimes against humanity, genocide, and grave war crimes—violate not merely the immediate victims and the state of commission, but humanity as a whole. They negate fundamental legal interests that are subject to no state reservation, but constitute universally recognised preconditions of civilised human community: human dignity, the right to life, the prohibition of torture, the prohibition of ethnic extermination. Those who attack these legal interests render themselves hostes humani generis—enemies of all mankind (Randall, 1988; Werle & Jeßberger, 2021a). It follows with inner logic that every state of the international community has the right, and according to the prevailing view even the duty, to act against such perpetrators, irrespective of where the offence was committed and of the identity of perpetrator or victim. The genuine link in these cases is not the particular proximity of any given state to the facts, but every state's membership of the community of civilised nations.

In practice, the universality principle performs its most significant function as a safety net in constellations of institutional failure: where the state of commission—whether because it is itself the author of the crimes or because its judicial system has collapsed (failed states)—cannot guarantee effective prosecution, and where international criminal jurisdiction (in particular that of the International Criminal Court, ICC) is also unable to act for legal or political reasons, the universality principle opens the way for national courts in third states to assume responsibility for the prosecution of the gravest human rights violations. The universality principle is in this respect not merely an extension of national criminal authority, but a structural element of the global system of accountability—a system premised on the principle that no one who commits international crimes shall permanently evade criminal justice through geographic flight or political protection.

The judgment of the Koblenz Court of Appeal (Oberlandesgericht Koblenz, OLG Koblenz) NStZ 2021, 580, of 24 February 2021 is of a historical significance that extends far beyond the particular case before it (Ambos, 2021; Jeßberger, 2021). It constitutes the first conviction in the world in which a state court determined that the conduct of the Syrian regime satisfied the constituent elements of crimes against humanity—not in an international tribunal, but in a German regional court, adjudicating the fate of a man apprehended in the German city of Koblenz.

The accused, Anwar R., was an officer of the Syrian intelligence service who had served, in the context of the Syrian civil war in 2011 and 2012, as a member of Branch 251 of the General Intelligence Directorate (mukhabarat). He had ordered the arrest of demonstrators who had protested against the Assad regime and arranged for their transfer to the Al-Khatib detention centre in Damascus—a facility documented in numerous human rights reports as notorious for systematic torture, extrajudicial executions, and other grave inhumanities (Amnesty International, 2016). The OLG Koblenz found that Anwar R. had acted as an accessory to crimes against humanity, by knowingly contributing to the transfer of detainees into a system of systematic torture and unlawful detention that formed part of a state-organised, widespread, and systematic attack against the civilian population.

The court sentenced the accused to four years and six months' imprisonment for aiding and abetting crimes against humanity in the form of torture and deprivation of liberty, pursuant to sections 7(1) no. 5 and 7(1) no. 9 VStGB read in conjunction with sections 27 and 25 StGB. What renders the case of particular doctrinal significance from the perspective of the law on criminal jurisdiction—and for the purposes of answering the guiding question—is the complete absence of any traditional genuine link between the German state and the facts to be assessed. The relevant acts were committed exclusively outside the territory of the

Federal Republic of Germany—in Syria, a foreign state that has at no point been subject to German jurisdiction. The accused is a Syrian national, not a German citizen, and had no legal connection to the German legal order at the time the offences were committed. The victims—the tortured and detained Syrian demonstrators—are likewise exclusively Syrian nationals. The sole point of contact with Germany consisted in the fact that the accused had fled to Germany following the Syrian civil war, been granted asylum, and was subsequently identified and arrested in Koblenz.

The absence of any classical connecting factor renders the jurisdictional foundation of the Koblenz judgment all the more remarkable. The sole legal basis for German criminal authority was the universality principle under section 1 VStGB read in conjunction with section 6 no. 9 StGB. Section 1 VStGB expressly provides that the Code of Crimes against International Law applies to all offences designated therein, even where the act was committed abroad, the perpetrator is not a German national, and no domestic connecting factor exists.

The judgment is equally significant in historical perspective. Although the universality principle has been anchored in customary international law for decades and has been recognised and implemented into national law by numerous states, the OLG Koblenz judgment marked the first occasion in the history of international criminal law on which the universality principle was applied by a state court in a concrete case, with the effect of a binding conviction, to the crimes of a foreign regime against its own civilian population (Ambos, 2021; Human Rights Watch, 2022; Jeßberger, 2021; Kaleck & Kroker, 2018). All prior recognitions of the universality principle in national legal orders had been either abstractly normative—legislation without practice of application—or had not resulted in an actual final conviction for international crimes committed by a foreign state actor.

The Koblenz judgment thereby demonstrated that the universality principle is not an empty promise of international law, perpetually rendered ineffective in practice by considerations of state sovereignty, but a viable legal basis for the criminal prosecution of the gravest human rights violations, even where those violations are committed by a foreign state against its own population. It is—in the words of the court—a signal that gross violations of international law can give rise to severe sanctions, irrespective of where those violations were committed (Ambos, 2021).

3.1.6. The Principle of Vicarious Criminal Justice

The principle of vicarious criminal justice (stellvertretende Strafrechtspflege), enshrined in section 7(2) no. 2 StGB—also expressed by the maxim aut dedere aut iudicare (extradite or prosecute)—completes the catalogue of mechanisms of extraterritorial jurisdiction in German law and closes a specific impunity gap arising from the combination of two structural factors: the presence of a foreign perpetrator on domestic territory on the one hand, and the impossibility of extraditing him to the competent state of commission on the other. Section 7(2) no. 2 StGB provides that German criminal law applies to offences committed abroad by a foreign national where that perpetrator is apprehended domestically and, although the Extradition Act (Auslieferungsgesetz) would permit extradition having regard to the nature of the offence, extradition does not take place because no extradition request has been made within a reasonable period, the request has been refused, or extradition is not practicable (Eser & Weißer, 2025; Fischer, 2025).

The ratio legis of this provision follows from the interest in ensuring that a foreign offender does not escape just prosecution merely by entering the state that apprehends him but is unable or unwilling to extradite (Ambos, 2024; Satzger, 2022). Criminal justice must not become a product of geographic fortuity. The underlying idea is to prevent a perpetrator who flees to a state that maintains no extradition relations with the state of commission, or that cannot extradite for legal or factual reasons, from going unpunished on that account alone. The apprehending state assumes, in a vicarious capacity, the punitive claim of the state of commission that is properly the primary jurisdiction. It adjudicates not in its own interest, but as a subsidiary guarantor of the international administration of criminal justice (Ambos, 2024; Satzger, 2022; Werle & Jeßberger, 2021b).

The principle is carefully circumscribed in its doctrinal scope. It does not constitute an authorisation for the uncontrolled extension of German criminal law to arbitrary offences committed abroad by foreign nationals. The provision applies only where the following requirements are satisfied cumulatively: the perpetrator must be present on domestic territory and "apprehended" there; the offence must be one that is in principle extraditable under the Extradition Act; and extradition must nonetheless fail—whether for want of an extradition request within a reasonable period, refusal of the request by the German state, or factual impracticability of extradition (Böse, 2023; Eser & Weißer, 2025; Fischer, 2025). The impracticability of extradition may arise for legal reasons—such as the prohibition on extradition to states that provide no guarantees against the death penalty or treatment incompatible with human rights—or for factual reasons, in particular where no extradition arrangements exist between Germany and the state of commission because the latter no longer maintains a functioning judicial system (Ambos, 2024; Fischer, 2025).

The decision BGH NStZ 2019, 460 illustrates the practical application of the principle of vicarious criminal justice with particular clarity and simultaneously provided a foundational clarification on the applicability of section 7(2) no. 2 StGB in the context of so-called failed states (Böse, 2023; Fischer, 2025). The proceedings concerned the conviction by the Hamburg Regional Court (Landgericht Hamburg) of a Somali national for attacks on maritime traffic (section 316c StGB) in concurrence with aggravated kidnapping for the purpose of extortion (section 239a StGB) and aggravated robbery with extortion (section 255 read in conjunction with section 250 StGB). The offences in question had been committed on board a vessel sailing in international waters and therefore lay outside the territorial domain of any state. (The question of why the flag principle did not apply in the present case will be addressed in the further course of the analysis.)

The accused, a Somali national with no connection to Germany, had been brought to Germany following his apprehension at sea. The question of the applicability of German criminal law to an offence committed abroad by a foreign national against non-German victims arose with particular acuity. The BGH grounded the applicability of German criminal law in section 7(2) no. 2 StGB and, in doing so, developed the concept of the failed state as an independent category of cases in which extradition is not practicable. The court held that Somalia was, at the time of the offence, to be characterised as a state whose judicial system had factually collapsed and that no longer maintained a functioning criminal justice apparatus (Ambos, 2024). A state that is incapable of conducting extradition proceedings and imposing criminal sanctions cannot meaningfully be regarded as a potential addressee of an extradition request. No extradition arrangements accordingly exist with Somalia. Extradition within the meaning of section 7(2) no. 2 StGB was therefore not practicable—with the consequence that German criminal law applies on a subsidiary basis.

The decision is significant not only for piracy proceedings, but establishes an important precedent for all constellations in which the state of commission is to be classified as a failed state. Structurally collapsed state entities cannot be addressees of extradition requests; consequently, where the remaining requirements of section 7(2) no. 2 StGB are satisfied, Germany may and must exercise vicarious criminal jurisdiction.

Synthesis: The analysis of the universality principle and the principle of vicarious criminal justice reveal a structural commonality that is of central doctrinal significance for answering the guiding question. Both principles operate exclusively on the basis of national criminal law. Neither section 1 VStGB nor section 7(2) no. 2 StGB authorises the application of foreign criminal law. Rather, they merely extend the spatial scope of application of the domestic legal order to facts with a foreign element that present a sufficient connecting factor. In both constellations, foreign law appears at most as a factual frame of reference, without itself becoming the object of judicial application of the law.

The engagement with these principles was nonetheless essential to answering the guiding question. It demonstrates that existing international and criminal law already possesses differentiated mechanisms for closing impunity gaps in the context of transnational crime, and that these mechanisms are deliberately confined to the application of domestic law, so as to preserve the rule-of-law guarantees of democratic legitimation, normative certainty, and procedural fairness. This in turn raises the question of whether, notwithstanding the established mechanisms of extraterritorial jurisdiction, impunity vacuums persist that could be resolved were one state to apply the criminal law of another—and whether, in that connection, one would be prepared to sacrifice precisely those rule-of-law guarantees secured by the mechanisms of extraterritorial jurisdiction in order to close international impunity gaps efficiently.

3.2. Impunity Vacuums Notwithstanding Extraterritorial Jurisdiction: Structural Limits and Their Doctrinal Consequences

A doctrinal examination reveals that there are indeed constellations in international criminal law in which impunity vacuums arise that deliberately exploit the lacunae of the established mechanisms of extraterritorial jurisdiction. The following analysis examines four significant impunity vacuums.

3.2.1. Positive Conflicts of Jurisdiction, Safe Heavens, and Forum Shopping: The Structural Failure of Extraterritorial Jurisdiction in Third-State Relations

The question of where a criminal offence is deemed to have been committed within the meaning of German criminal law is governed by section 9 StGB through the so-called ubiquity principle (from the Latin ubique—everywhere) (Eser & Weißer, 2025; Fischer, 2025). This provision constitutes the systematic hinge between the territoriality principle (section 3 StGB) and all extraterritorial jurisdictional titles, in that it does not fix the spatial location of an offence at a single point, but extends it to every place at which a constituent element of the offence manifests itself. Under section 9(1) StGB, an offence is committed at every place where the perpetrator acted or, in cases of omission, ought to have acted, as well as at every place where the result forming part of the constituent elements of the offence occurred or where, according to the perpetrator's intention, it was to occur. The provision thereby establishes a tripartite locating formula: the place of action, the place of result, and the intended place of result as conceived by the perpetrator (Ambos, 2024; Fischer, 2025).

The latitude that section 9 StGB accords to German criminal law in the spatial attribution of offences is the precise mirror image of a latitude that other states confer upon their own legal orders (Ambos, 2024; Satzger, 2022; Werle & Jeßberger, 2021b). Where a perpetrator acts from State A and the result of his conduct occurs in State B, both states may, under the ubiquitous place-of-commission principle, claim jurisdiction: State A as the state of action, State B as the state of result. Both simultaneously assert a genuine, internationally lawful punitive claim over the same facts and the same person. This is referred to as a positive conflict of jurisdiction—a phenomenon that surpasses the negative conflict of jurisdiction (in which none of the states involved asserts criminal authority) in both quantitative significance and doctrinal complexity (Ambos, 2022; Satzger, 2022; Zimmermann, 2014). International law permits multiple jurisdiction, provided that each state can demonstrate a genuine link to the facts (Ambos, 2022; Satzger, 2022).

For positive conflicts of jurisdiction within the Schengen Area, European law has developed a partially effective response in Article 54 of the Convention Implementing the Schengen Agreement (CISA). That provision stipulates that a person who has been finally convicted or acquitted by a Schengen contracting state may not be prosecuted by another Schengen state for the same acts, provided that the sanction has been enforced, is currently being enforced, or can no longer be enforced under the law of the sentencing state. Article 54 CISA thereby goes substantially beyond the domestic ne bis in idem protection afforded by Article 103(3) of the Basic Law, since it binds not only the sentencing state but all Schengen contracting states (Ambos, 2022; Satzger, 2022).

What is tolerably regulated within the Schengen Area by Article 54 CISA remains without normative answer for all states outside that framework—that is to say, virtually all states in Asia, Africa, the Americas, and the postSoviet space (Ambos, 2022; Satzger, 2022). The situation becomes critical in constellations of positive jurisdictional conflict where no extradition arrangements exist between the state of action and the state of result. Perpetrators deliberately select so-called safe havens for the commission of their offences—states that either, as failed states, maintain no functioning judicial and extradition apparatus, or that have structurally refrained from concluding extradition treaties with the state of result (Ambos, 2022; Böse, 2023; Fischer, 2025). This deliberate exploitation of jurisdictional lacunae is referred to in legal scholarship as forum shopping: the perpetrator consciously selects the place of action so as to remain factually beyond the reach of the prosecutorial authorities of the state of result (Ambos, 2022; Satzger, 2022; Zimmermann, 2014).

Particularly instructive in this context is the observation that the impunity vacuums arising in third-state relations are by no means to be understood exclusively as unintended regulatory lacunae of international criminal law. A substantial proportion of these gaps are the product of deliberate regulatory choices rooted in the political and economic interests of particular states (Palan et al., 2010; Shaxson, 2011). In the fields of tax law, banking secrecy, and the regulation of special economic zones, numerous states have consciously established regulatory regimes that, from the perspective of the state of result, facilitate conduct that is relevant not only under civil law but also under criminal law. Classic tax havens such as the Cayman Islands, Panama, or certain EU Member States (Luxembourg, Cyprus) have, through low tax rates, the absence of transparency obligations, and a rigid banking secrecy regime, created structures that, from the standpoint of German tax criminal law, enable or facilitate conduct satisfying the constituent elements of criminal offences—tax evasion, money laundering, aiding and abetting tax evasion—without the state of action providing for criminal consequences or offering extradition assistance (Ambos, 2022; Joecks et al., 2023; Schönke & Schröder, 2019). The impunity vacuum here is not a failure of the system but its deliberate product. The safe haven architecture is, in its economic functional logic, directed towards attracting capital and transactions that would not occur in states of result with stringent regulatory regimes.

The conventional mechanisms of German criminal law on jurisdiction confront this impunity vacuum with structural incapacity. The universality principle assists only where the perpetrator is present on German territory. The flag principle is inapplicable for want of any connection to a vessel or aircraft. The principle of vicarious criminal justice under section 7(2) no. 2 StGB is precluded by the fact that its scope of application presupposes the domestic presence of the perpetrator—where the perpetrator resides permanently in his safe haven, the basic requirement of being "apprehended" domestically is already absent. The active personality principle requires German nationality on the part of the perpetrator; where the perpetrator is a foreign national acting in a foreign state of action, it does not apply. The passive personality principle could theoretically intervene where the victim is a German national, but equally affords no remedy so long as the perpetrator factually evades German jurisdiction by virtue of permanent residence abroad.

It is at this point that the profound doctrinal debate arises as to whether the application of foreign criminal law—specifically, the law of the state of action—by German courts could close this lacuna. The following section systematically examines the foundational doctrinal problems raised by the reception of foreign criminal law and analyses them in their mutual relationship to the impunity vacuums identified above.

3.2.2. Human Rights Protection as a Limit on Extraterritorial Criminal Authority: The Case of Abu Qatada

The case of Abu Qatada (Omar Mahmoud Othman) offers an instructive paradigm of the tensions that arise when international criminal law encounters the protection of human rights (Mowbray, 2012). It constitutes one of the most significant and protracted extradition and deportation cases in modern British legal history. The Jordanian-born Islamic cleric had been resident in the United Kingdom since the 1990s and had been convicted in absentia in Jordan of terrorism offences and sentenced to a term of imprisonment. The British Government classified him as a security risk and pursued his deportation to Jordan with considerable vigour. Both British courts and the European Court of Human Rights (ECtHR) repeatedly stayed the deportation, however, on the ground that there was a real risk that evidence obtained through torture would be used in the Jordanian criminal proceedings—a risk held to be incompatible with Article 6 ECHR (the right to a fair trial). The case dragged on for years, marked by repeated detention orders, bail hearings, and intense political controversy, before the United Kingdom and Jordan concluded a bilateral agreement in 2013 intended to guarantee the non-use of evidence obtained by torture in the Jordanian proceedings (Cameron, 2013). Only thereafter was Abu Qatada deported to Jordan in July 2013, where he was ultimately acquitted on the principal charges. The total public costs of the years-long legal proceedings—legal assistance, court costs, and security measures—amounted to approximately £1.716.306 (BBC News, 2013).

Viewed through the taxonomic lens established in the Introduction, the Abu Qatada case does not involve the application of foreign criminal law in the strict sense, nor does it concern extraterritorial domestic jurisdiction. It raises instead a prior and more fundamental question, namely whether the apprehending state may instrumentalise foreign criminal law as a source of legitimation for proceedings it cannot itself conduct under its own norms. The case accordingly functions in this analysis not as an illustration of either category, but as a warning about the structural limits that human rights guarantees impose upon any attempt to close impunity gaps through recourse to foreign criminal norms.

Whether the United Kingdom ought to have applied Jordanian criminal law to the acts alleged against Abu Qatada and conducted its own fair criminal proceedings in accordance with British procedural standards, rather than insisting on his transfer to Jordan, is a question with a clear pragmatic dimension. The substantial costs of the years-long litigation, caused by the deportation impasse, might have been considerably reduced through an independent British criminal prosecution, with the result that public funds could instead have been directed towards the general welfare of the United Kingdom. Against this, the application of Jordanian criminal law by British courts would sever the democratic chain of legitimation and imperil the principle of nulla poena sine lege in its manifestation as lex scripta. The Abu Qatada case thereby illustrates with paradigmatic clarity that the limits of international criminal law are reached where foreign criminal law is sought to be instrumentalised as a source of legitimation for the exercise of one's own criminal authority.

3.2.3. The Country-of-Origin Principle as a Structural Source of Asymmetric Criminal Liability in the Digital Single Market

A distinct category of impunity gaps is generated by the country-of-origin principle of the E-Commerce Directive, transposed into national law by section 3(2) of the Telemedia Act (Telemediengesetz, TMG), which has acquired considerable practical significance with the progressive digitalisation of commerce and the growing importance of e-commerce. Under this principle, service providers established in another Member State within the scope of the E-Commerce Directive (ECRD) and complying with the legal requirements of that state may not, as a general rule, be held liable in Germany in respect of those services—even where the services are offered to users in Germany and would be unlawful under German law (Fischer, 2025). The countryof-origin principle thereby protects the free movement of services in the European Single Market by conferring exclusive regulatory competence over a given provider upon the state of establishment (Satzger, 2022; Spindler & Schuster, 2019).

The criminal law dimension of this regime is substantial and has been the subject of considerable academic controversy (Ambos, 2024; Hilgendorf, 1997; Satzger, 2022). A particularly vivid illustration is furnished by online gambling law. An online gambling operator established and licensed in Gibraltar that makes its services accessible to German users acts lawfully under the law of its state of establishment. Under German criminal law, the organisation of gambling without a German licence satisfies the constituent elements of the offence under section

284 StGB. In a widely noted decision of 26 September 2014—the first conviction ever for mere participation in such an offering—the Munich District Court (Amtsgericht München) convicted a German user who had gambled at a Gibraltar-licensed online casino and won a six-figure sum (Hambach & Hettich, 2014). The court held German criminal law to be applicable, imposed a fine, and ordered the forfeiture of the winnings without crediting the stakes paid. The operator itself, however, acting from Gibraltar in compliance with the legal requirements of that jurisdiction, remained beyond the reach of German criminal law. The countryof-origin principle thereby produced an asymmetric criminal liability: the participant in Germany is subject to German criminal law, whilst the organiser in the state of establishment goes unpunished.

Analogous tensions arise in the field of hate speech and incitement to hatred (Volksverhetzung) on social media platforms established in other EU Member States. The BGH affirmed, in a leading judgment (the so-called Auschwitz lie case), the applicability of German criminal law to content posted by an Australian perpetrator on a website hosted in Australia that was accessible from Germany, on the basis that the website had been made available to German internet users, thereby establishing a domestic place of result within the meaning of section 9(1) StGB (Ambos, 2024; Fischer, 2025). For providers established within the EU who may invoke the country-of-origin principle, however, the question of the applicability of German criminal law presents itself in a considerably more complex manner: the country-of-origin principle is capable of suspending the German punitive claim even where the inciting content would be criminalised under section 130 StGB in Germany (Hilgendorf & Valerius, 2012; Satzger, 2022). A solution cannot, admittedly, be found here through the direct application of foreign criminal law. It is conceivable, however, that Germany could—once services or products that are criminalised under German law are offered domestically—intervene in the e-commerce regulatory framework and requirements of the state of establishment and pursue the offering under criminal law, notwithstanding that the providers are in full compliance with the legal requirements of their state of establishment.

3.2.4. The Absence of Cooperation as a Structural Impunity Vacuum: The Limits of Cooperative Reciprocity

A fourth category of impunity vacuums arises in constellations in which a state simply fails to support, or deliberately disregards, the established mechanisms of extraterritorial jurisdiction. International criminal law is structurally premised upon a minimum degree of cooperative reciprocity: extradition treaties are honoured only where both parties cooperate; requests for mutual legal assistance are answered only where the requested state considers it to be in its interest to do so; and international sanctions regimes function only where a sufficient number of states sustain them. Where a state withholds cooperation for political, economic, or ideological reasons, the instruments of the active and passive personality principles, the protective principle, and vicarious criminal justice are rendered ineffective. Whilst they establish the applicability of German criminal law in the abstract, they afford no basis for prosecution so long as the perpetrator remains under the protection of the non-cooperating state.

The practical significance of this constellation is considerable. Where a state fails to comply with a German prosecutorial request—whether on account of political considerations or the absence of extradition treaties—the active personality principle and the protective principle may theoretically establish criminal jurisdiction, yet are factually incapable of producing criminal justice. The perpetrator remains permanently beyond reach under the protection of the non-cooperating state, unless he enters the territory of another state willing to cooperate. Even arrest warrants and Interpol notices produce effect only where the perpetrator is encountered in a state prepared to arrest and surrender him (Ambos, 2022; Bassiouni, 2013; Werle & Jeßberger, 2021a).

In this constellation too, the direct application of foreign criminal law affords no solution. It is conceivable, however, that the state supporting the mechanisms of extraterritorial jurisdiction could intervene in the criminal law of the state that withholds or deliberately disregards those mechanisms and enforce its criminal law in order to close this impunity gap.

Synthesis: The comprehensive examination of the four impunity vacuums analysed above reveals that certain constellations of transnational crime structurally exceed the normative reach of nationally constituted criminal legal orders, and that the established mechanisms of extraterritorial jurisdiction are, in those constellations, insufficient to close the resulting gaps. This insufficiency supplies the normative pressure that animates the constituent element of ‘should’ within the guiding question. It demonstrates that there are indeed grounds upon which a state is called upon to respond beyond the confines of its existing jurisdictional toolkit. What form that response may legitimately take is, however, a separate and more exacting question. The analysis now turns, in Section 3.3, to the problems that arise when the most obvious candidate for closing these gaps, namely the direct application of foreign criminal law, is tested against the rule-of-law guarantees that the established mechanisms of extraterritorial jurisdiction are precisely designed to preserve. It is only through that confrontation that the connecting point between the elements of ‘should’ and ‘if at all’ can be identified with doctrinal rigour.

3.3. The Problems of Applying Foreign Criminal Law: Between Closing Impunity Gaps and Rule-of-Law Guarantees

The foregoing analysis has demonstrated that the established mechanisms of extraterritorial jurisdiction leave structural impunity vacuums that might be closed through the application of foreign criminal law. Before the normative question of whether a state ought to apply the criminal law of another state can be answered, however, the doctrinal and rule-of-law problems raised by such reception must be examined. For the closure of impunity gaps through the application of foreign criminal law is not a value-neutral technical operation; it is an intervention in the fundamental architecture of nationally constituted criminal legal orders that collides with precisely those rule-of-law guarantees that the mechanisms of extraterritorial jurisdiction seek to preserve. The following section analyses three paradigmatic problem constellations that illustrate, by way of example, the full range of this collision.

3.3.1. The Collision of Extraterritorial Jurisdictional Mechanisms: The Piracy Case as a Paradigm of Competing Criminal Jurisdictions

It must first be noted that the various mechanisms of extraterritorial jurisdiction may themselves come into conflict with one another, giving rise to complex application conflicts between them. The piracy case already examined in detail in the context of vicarious criminal justice, illustrates such an application conflict with paradigmatic clarity (Böse, 2023; Fischer, 2025). As noted above, the BGH convicted the accused—a Somali national—of attacks on maritime traffic in concurrence with aggravated kidnapping for the purpose of extortion and aggravated robbery with extortion, and sentenced him to seven years' imprisonment, relying on the principle of vicarious criminal justice under section 7(2) no. 2 StGB on the basis that Somalia was to be classified as a failed state with which no extradition arrangements existed (Eser & Weißer, 2025; Fischer, 2025). The purpose was to ensure that a foreign offender does not escape just prosecution merely by entering the state that apprehends him but is unable or unwilling to extradite. It is necessary to examine, however, whether other mechanisms of extraterritorial jurisdiction might also have applied on the facts and what conflicts might have arisen between them.

The first question is whether the case falls within the scope of section 6 no. 3 StGB (universality principle). The wording of that provision confines the scope of the universality principle to attacks on air and maritime traffic (Ambos, 2024; Satzger, 2022). An ancillary competence (Annexkompetenz) in respect of the concurring offences—aggravated kidnapping for the purpose of extortion and aggravated robbery with extortion—cannot be derived, since the requisite close constituent nexus with the attack on maritime traffic is absent. No conflict with section 6 no. 3 StGB therefore arises.

Of greater significance is the question of whether a conflict exists with the home states of the injured crew members in connection with the passive personality principle under section 7(1) StGB (Eser & Weißer, 2025). It remains unresolved whether the accused could have been extradited to a home state of an injured crew member that would be competent to prosecute on the basis of the passive personality principle (Heine, 2015; Oehler, 1983; Schmitz, 1999). The principle of vicarious criminal justice is by its nature subsidiary: it applies only where no primary criminal jurisdiction of another state can effectively be brought to bear. Where the Philippines, Romania, or India—as the home states of the injured crew members—are entitled by virtue of the passive personality principle to prosecute and are both willing and capable of exercising that jurisdiction, the principle of vicarious criminal justice under section 7(2) no. 2 StGB would recede into the background (Satzger, 2022; Werle & Jeßberger, 2021b). The resolution of this conflict depends materially on whether the states concerned have in fact incorporated the passive personality principle into their national legal orders and whether, if jurisdiction exists, they would genuinely pursue prosecution.

A further dimension of tension arises in connection with the flag principle: the tanker that was attacked sailed under the Greek flag (Ambos, 2020; Fischer, 2024). Greece is, under the equivalent of section 4 StGB in its national criminal law and under Article 97 UNCLOS, both entitled and obliged as the flag state to exercise criminal jurisdiction over offences committed on board its vessel, irrespective of the nationality of perpetrators or victims (Ambos, 2022; Fischer, 2025). This gives rise not only to a conflict between the principle of vicarious criminal justice and the passive personality principle of the victims' home states, but also to a conflict between vicarious criminal justice and the Greek flag principle, as well as a parallel conflict between the passive personality principle of the victims' home states and the Greek flag principle.

This threefold collision presupposes, however, that the states concerned actually give effect to the respective jurisdictional mechanisms in their national legal orders. Neither the Philippines, nor Romania, nor India possesses a comprehensive codification of extraterritorial criminal jurisdiction comparable to the German system of sections 3 to 7 StGB (Ambos, 2022; Cassese & Gaeta, 2013). Insofar as these states have not enacted the passive personality principle or do not apply it in practice, the conflict to that extent falls away. The conflict with the Greek flag principle merits separate consideration, however, since it—unlike the jurisdictional claims of the victims' home states—does not depend on the question of national implementation of extraterritorial criminal jurisdiction. Greece, as the flag state, is called upon to prosecute by virtue of customary international law and Article 97 UNCLOS, originally and directly. This competence requires no special implementing provision in national law; it follows from the equivalence of the vessel with state territory under international law (Ambos, 2022). The Greek jurisdictional claim accordingly rests upon a doctrinally stronger connecting factor than those of the victims' home states. Had Greece submitted an extradition request or initiated its own prosecution, the subsidiarity of German vicarious criminal justice under section 7(2) no. 2 StGB would have been directly engaged. Since Greece neither submitted an extradition request nor initiated prosecutorial measures in the case at hand, Germany remained in the role of subsidiary prosecutor.

The case nonetheless illustrates paradigmatically that the complexity of international criminal law does not arise solely from the multiplicity of possible jurisdictional titles available to any individual state, but from their simultaneous convergence in the same set of facts—a phenomenon for which international law recognises no overarching order of precedence and which is accordingly relegated to the level of diplomatic coordination.

3.3.2. Extraterritorial Power Projection, Legitimacy *Ex Ante*, and Justification *Ex Post*: International Criminal Law as an Instrument of State Interest Politics

In the context of the comprehensive answer to the guiding question, it is necessary to address in particular the structural problems that arise when a state applies its criminal law extraterritorially to persons who have never been present on its territory. These problems can be demonstrated with no greater precision than by reference to the arrest and prosecution of Venezuelan head of state Nicolás Maduro by the United States. The United States grounded its jurisdiction in domestic drug legislation which, under the so-called effects doctrine (also referred to as the protective principle, or Schutzprinzip, in its American manifestation), extends to foreign nationals acting abroad insofar as their conduct affects United States interests (Ambos, 2022; Mann, 1964). The 2020 indictment for so-called "narcoterrorism" against Maduro constitutes the paradigmatic application of this expansive jurisdictional doctrine (Roth, 2021).

This approach raises a series of fundamental questions of international criminal law that extend well beyond the individual case. The first is the question of when a state is permitted to apply its own criminal law to persons who have never been present on its territory. Classical international criminal law recognises only the established genuine link criteria for this purpose—territoriality, nationality, victim nationality, and violation of state legal interests—and in every case demands a substantial nexus. A mere "touching of interests"—particularly where economically motivated—does not satisfy the threshold of international law as a connecting factor (Ambos, 2022; Cassese & Gaeta, 2013). Furthermore, the principle of male captus, bene detentus—that is, the question of whether an unlawful apprehension invalidates a prosecution—has been a matter of intense international controversy since the decision of the United States Supreme Court in United States v. Alvarez-Machain (1992) (Ambos, 2022; Bassiouni, 2013). United States courts have traditionally tended to assume jurisdiction even in cases of irregular arrest, decoupling the lawfulness of the apprehension from the question of prosecutorial competence (Bassiouni, 2013)—a position rejected by the overwhelming majority of international lawyers and the community of states, since it creates a structural incentive to circumvent international extradition procedures under international law (Ambos, 2022; Cassese & Gaeta, 2013). There is the further problem of the immunity of incumbent heads of state: customary international law confers absolute immunity from foreign jurisdiction upon serving heads of state (Ambos, 2022; Cassese & Gaeta, 2013)—a principle deliberately disregarded by the United States in the Maduro case. Moreover, the allegation in the indictment that Maduro headed his own cartel has since been substantially abandoned by the United States Department of Justice—a circumstance that underscores the thinness of the criminal law foundation relative to the political and economic motivation. Trump made publicly clear that Venezuelan oil constituted a central motive for the intervention (Reuters, 2020). International criminal law is accordingly no longer exclusively a matter of law; it is also a matter of power.

Similar tendencies of extraterritorial power projection are currently visible in the deployment of ICE (Immigration and Customs Enforcement) units abroad. In the context of the 2026 Winter Olympic Games in Milan and Lombardy, the announcement that a unit of the ICE division Homeland Security Investigations (HSI) was to be sent to Italy to provide security support for the United States delegation generated considerable political tensions: hundreds of demonstrators protested in Milan against the presence of an agency whose aggressive conduct—including lethal use of firearms in Minneapolis—had caused international outrage (Human Rights Watch, 2026; The Guardian, 2026a). Italy's Interior Minister Matteo Piantedosi was compelled to clarify before Parliament that the HSI agents would operate exclusively in an advisory capacity within the United States Consulate and would conduct no operations on Italian soil (Ansa, 2026; Il Corriere della Sera, 2026). This incident illustrates how the progressive politicisation and expansion of the ICE mandate under the Trump administration has durably undermined the confidence of European partners in the United States' respect for their sovereignty, and has made the operational reach of United States law enforcement agencies abroad a subject of international controversy.

For the purposes of the guiding question, the Maduro prosecution falls squarely within the category of extraterritorial application of domestic law rather than the application of foreign criminal law. The United States applies its own drug legislation to a foreign national acting abroad, relying on the effects doctrine as a connecting factor. What makes the case analytically significant here is not its formal category but what it reveals about the pathologies of that category when deployed without multilateral legitimation, namely that extraterritorial domestic jurisdiction, unconstrained by institutional oversight, degenerates structurally into an instrument of geopolitical power projection.

Of particular analytical significance is the structural difference the case reveals between legitimacy *ex ante* and justification *ex post* in the international criminal law practice of powerful states. Legitimacy *ex ante* denotes the requirement that state action—in particular action in the field of criminal prosecution—must, before it is undertaken, rest upon a recognised normative foundation that sustains the encroachment upon foreign sovereignty and protects those affected (Ambos, 2022; Hart & Honoré, 1985; Werle & Jeßberger, 2021a). Justification *ex post*, by contrast, denotes the phenomenon whereby interventions are first carried out on the basis of power and are subsequently furnished with legal narratives intended to legitimise the action already taken (Kennedy, 2006; Koskenniemi, 2005; Roth, 2021). The normative distinction is fundamental: whilst legitimacy *ex ante* constitutes the legal order as a pre-existing limit on state action, justification *ex post* degrades the law to an instrument of state power interests. In this logic, powerful states capable of enforcing their criminal law universally use law as a retrospective construction to legitimise interventions that actually serve other interests and have no genuine criminal law foundation. In the Maduro case, the indictment was first filed and political and economic pressure on Venezuela intensified accordingly; only subsequently, when the criminal law basis proved too thin, were central charges abandoned—without, however, the political consequences of the original course of action being reversed. The charge of narco-terrorism served as a legal vehicle for an intervention whose true motivation lay in resource control and regime change (Roth, 2021).

The same structure of justification *ex post* recurs in an even more pronounced form in the context of the United States–Israeli attack on Iran in February 2026. Article 2(4) of the UN Charter prohibits the use of military force against the territorial integrity or political independence of other states. Departure from this prohibition is permissible only pursuant to a mandate of the UN Security Council or within the framework of legitimate selfdefence under Article 51 of the UN Charter—that is, in the event of an armed attack or an imminent attack, the so-called war of necessity (Ambos, 2022; Cassese & Gaeta, 2013; Crawford, 2019). In the absence of a Security Council mandate, the central question is whether a war of necessity under Article 51 UN Charter or a war of choice was at issue. The preponderant view in international legal scholarship points towards a violation of the prohibition on the use of force: Pierre Thielbörger characterised the attack as "clearly contrary to international law" (Thielbörger, 2026); Christoph Safferling attested to a "fairly unambiguous" breach of international law (Safferling, 2026); and Marko Milanovic qualified it as "manifestly" unlawful (Milanovic, 2026). David E. Sanger analysed the attack in the New York Times as unambiguously a war of choice on the part of Trump, not triggered by any immediate threat (Sanger, 2026).

Particularly illuminating for the structure of justification *ex post* are the multiple, mutually contradictory justificatory narratives advanced by the United States. Trump initially relied upon a nuclear argument: it could not be permitted for Iran to acquire nuclear weapons (Reuters, 2026). United States Secretary of State Rubio then justified the attack as preventive self-defence: the United States had been aware that Iran would immediately act against United States forces in the event of an Israeli attack—and had therefore been compelled to act pre-emptively (AP News, 2026). This argument, however, rests upon a circular logic: the anticipated reaction to one's own attack is invoked as the justification for that very attack. Finally, under a regimechange argument, Trump called upon the Iranian people to 'take back' their country and described Khamenei as 'one of the most evil people in history' (The Guardian, 2026b). Three mutually incompatible justifications are thus advanced simultaneously, none of which withstands scrutiny under international law.

The US-Israeli attack on Iran does not involve the application of criminal law, whether foreign or domestic, in any conventional sense. It is included in this analysis as a broader structural warning. It demonstrates the logic of justification *ex post* in its most acute form and shows how the same asymmetry of power that distorts extraterritorial criminal jurisdiction can, at its furthest extreme, displace the prohibition on the use of force altogether. The case thereby marks the outer boundary of the pathology that the paper's central claim is designed to prevent.

The structure of justification *ex post* can be illustrated with particular clarity by reference to the preventive selfdefence argument. Article 51 UN Charter legitimises anticipatory self-defence against an imminent attack. For this, three requirements must be satisfied cumulatively: first, Iran must have had the intention to attack the United States or Israel; second, Iran must have actually been capable of doing so; and third, action must have been necessary at precisely that moment, because only at that juncture did the final window of opportunity to prevent the future attack remain open (Ambos, 2022; Cassese & Gaeta, 2013). Whilst the first and third requirements remain deeply contested and are difficult to analyse objectively owing to the absence of adequate information, the following may be said in respect of the second requirement: the attacks carried out by the United States and Israel in 2025 substantially curtailed Iran's capacity to develop a nuclear weapon—Trump himself stated that the Iranian nuclear programme had been 'wiped out' (BBC News, 2026). This circumstance speaks decisively against the self-defence argument. What is visible here is the classic structure of justification *ex post*: the interventions are first carried out, law is then deployed as a retrospective justificatory narrative, and where one justificatory ground proves unsustainable, attention is redirected to the next. In the present case, this is apparent in the nuclear argument and the regimechange argument being advanced alongside the preventive self-defence argument.

3.3.3. Structural Asymmetry between Institutional Legitimation Requirements and State Freedom from Accountability: The ICC as Both Instrument and Victim of International Power Politics

The pathologies of United States extraterritorial criminal authority described above culminate in a overarching structural problem that strikes at the foundational architecture of international criminal law: the systematic asymmetries between the International Criminal Court (ICC) and powerful states, which in contemporary practice constitute a fundamental contradiction between institutional legitimation requirements and state freedom from accountability (Cowell, 2017; Koskenniemi, 2005; Schwöbel-Patel, 2021; Zolo, 1997). The complementarity principle, enshrined in Article 17 of the Rome Statute, provides that the ICC may act only where a state is unwilling or unable genuinely to investigate or prosecute. Normatively, this rule respects state sovereignty and deploys international criminal jurisdiction as an ultima ratio. In contemporary practice, however, it exhibits a structural asymmetry that perverts its normative architecture. The ICC must demonstrate that national prosecution has failed (Ambos, 2022; Buisman, 2025; Werle & Jeßberger, 2021a); it depends upon state cooperation for arrests; it is subjected to sanctions by major powers when it turns its attention to their nationals or allies; and it possesses no independent enforcement capacity (Ambos, 2022; Scheffer, 2012). It is thus subject to a multi-layered legitimation and subsidiarity requirement that renders it structurally incapable of action when powerful actors withhold their cooperation.

Powerful states, by contrast, require no subsidiarity test, no institutional review, and no enforcement preconditions. They require only the military capacity to carry out their interventions. This structural asymmetry is vividly illustrated by the OLG Koblenz case BeckRS 2021, 580, already examined above (Ambos, 2021; Jeßberger, 2021): although the ICC would theoretically have had jurisdiction over the prosecution of Syrian state crimes, a referral of Syria to the ICC by the UN Security Council was blocked by permanent members' vetoes—thereby neutralising not only the ICC's jurisdiction but the entire institutional architecture of international criminal prosecution on the chessboard of power politics (Ambos, 2022; Werle & Jeßberger, 2021a). The OLG Koblenz acted as a subsidiary safety net, which renders its judgment both a demonstration of the functional capacity of the universality principle and an indicator of the systemic failure of the institution with primary jurisdiction.

These constraints on the ICC by powerful states assumed a new and particularly alarming dimension in December 2025. United States Secretary of State Rubio imposed, on the basis of Executive Order 14203—which employs IEEPA powers to sanction ICC activities directed against United States or Israeli interests—punitive measures against two ICC judges: Gocha Lordkipanidze of Georgia and Erdenebalsuren Damdin of Mongolia, characterising their work as 'politicised and illegitimate measures against Israel' (The New York Times, 2025). Notably, this targeted neutralisation of a central element of the institutional infrastructure of international criminal prosecution occurred shortly before the United States and Israel attacked Iran on 28 February 2026—thereby pre-emptively disabling the very institution that would have had jurisdiction over the criminal prosecution of that attack. This is referred to in the relevant literature as institutional immunisation: the deliberate dismantling of enforcement mechanisms before the norms those mechanisms are designed to protect are violated (Kennedy, 2006; Koskenniemi, 2005).

Viewed comprehensively, the structural asymmetry between the ICC and powerful states reveals that extraterritorial jurisdiction in contemporary practice does not function as a universal principle of law, but as an instrument of power available to strong states (Chimni, 2017; Jouannet, 2012; Koskenniemi, 2005).

Intermediate conclusion: Where the United States prosecutes Maduro under American drug law, attacks Iran militarily, and simultaneously sanctions the ICC the moment it turns its attention to United States nationals or allies, what is revealed is a system in which neo-colonialism and legal imperialism are not mere rhetoric but structural reality. In this system, it is not legitimacy that determines whose criminal law applies and whose conduct is prosecuted, but asymmetry of power.

4. Between Effectiveness and the Rule of Law: Normative Approaches to Overcoming Transnational Impunity

The definitive answer to the guiding question inevitably requires a confrontation with the significant challenge currently facing international criminal law. The analysis must turn, in conclusion, to the constituent element of 'to what extent' within the guiding question, since the foregoing analysis has established two propositions in sequence. First, the established mechanisms of extraterritorial jurisdiction leave structural impunity vacuums that demand a normative response beyond the existing jurisdictional toolkit. Second, the most immediate candidate for closing those vacuums, namely the direct application of foreign criminal law, cannot be reconciled with the rule-of-law guarantees that legitimate criminal prosecution requires. The challenge accordingly lies not in choosing between effectiveness and the rule of law, but in identifying mechanisms that structurally unite both requirements.

The study has demonstrated that the identified impunity vacuums can be closed neither through the application of foreign criminal law nor through an unreflective expansion of extraterritorial criminal jurisdiction, without imperilling the rule-of-law guarantees that constitute the foundation of legitimate prosecution. The difficulty accordingly does not lie in choosing between effectiveness and the rule of law, but in developing mechanisms that structurally unite both requirements. Four such mechanisms are examined below with particular attention.

4.1. Bilateral Mutual Legal Assistance and Extradition Agreements as the Contractual Foundation of Cooperative Prosecution

The most immediate and doctrinally least problematic approach lies in the conclusion of bilateral mutual legal assistance and extradition agreements that respond directly to the cooperation lacunae identified above. Such agreements are concluded through inter-state negotiations in which both parties assume reciprocal obligations—typically the obligation to extradite specified categories of offenders in exchange for assurances of compliance with minimum rule-of-law standards in the criminal proceedings of the receiving state—and become binding under international law in accordance with the Vienna Convention on the Law of Treaties (VCLT) (Ambos, 2022; Bassiouni, 2013). The agreement concluded between the United Kingdom and Jordan in 2013 in the Abu Qatada case discussed above illustrates paradigmatically how such an instrument can close an impunity gap without requiring the apprehending state to apply foreign criminal law (Mowbray, 2012). The United Kingdom did not need to receive Jordanian criminal law into its own legal order; rather, it was able to effect extradition to Jordan under the contractually guaranteed condition that no evidence obtained through torture would be used in the Jordanian proceedings. The solution lay not in the expansion of national criminal jurisdiction, but in the contractual securing of minimum rule-of-law standards in the receiving state.

This approach avoids the democratic asymmetry that arises upon the application of foreign criminal law, respects the primary criminal authority of the state of commission, and preserves the principle of nulla poena sine lege, since the perpetrator is prosecuted under the law of the state whose norms he knew or ought to have known. Its structural advantage lies in the fact that it does not depend upon the reception of foreign law; rather, it leaves prosecutorial jurisdiction with the primarily competent state and merely secures the rule-of-law quality of that jurisdiction by contractual means.

4.2. Multilateral Cooperation Pressure as a Structural Counterweight to Jurisdictional Flight

Where bilateral agreements cannot be concluded for want of political will on the part of the state of commission, an instrument is required that structurally reduces the incentive for non-cooperation. Diplomatic pressure and economic sanctions can fulfil a complementary function in this context by imposing tangible political and economic costs upon the refusal to cooperate. It is decisive, however, that these instruments are deployed not unilaterally but within the framework of multilateral structures—notably the United Nations, the Financial Action Task Force (FATF), or the European Union (Ambos, 2022)—so as to avoid the charge of power projection and legal imperialism that has delegitimised the unilateral United States practice in the Maduro case.

The strengthening of multilateral cooperation structures—in particular the further development of the European Arrest Warrant and the creation of comparable instruments at the global level (Satzger, 2022)—is directed towards reducing the structural incentive for jurisdictional flight through a denser network of international cooperation, without requiring any state to extend its punitive claim unilaterally into foreign legal spaces.

4.3. Supranational Regulation as an Alternative to the Reception of Foreign Criminal Law in the Digital Space

The asymmetric criminal liability generated by the country-of-origin principle of the E-Commerce Directive cannot be resolved through the application of foreign criminal law without violating the principle of nulla poena sine lege (Satzger, 2022). The structurally superior approach lies in replacing the country-of-origin principle with a supranational regulatory regime that enforces uniform standards of conduct directly and without reference back to the national law of the state of establishment. The Digital Services Act, fully applicable since 17 February 2024, represents a significant step in this direction (Spindler & Schuster, 2019). It obliges platform providers, irrespective of their place of establishment, to comply with Union-wide due diligence obligations, to remove unlawful content, and to cooperate with national law enforcement authorities pursuant to Article 18 DSA. The particular merit of this approach lies in the fact that it closes the impunity gap not through the application of foreign national criminal law, but through the creation of an independent, supranationally legitimated normative framework applicable to all providers with a substantial connection to the Union. The democratic chain of legitimation remains intact, since the DSA was enacted by democratically legitimated Union institutions and is directly applicable (Ambos, 2022; Scheffer, 2012; Werle & Jeßberger, 2021a).

4.4. Strengthening the ICC and Reforming the Complementarity Principle as an Institutional Response to Structural Asymmetries

The most profound and simultaneously most difficult challenge concerns the structural asymmetry between the ICC and powerful states. So long as the ICC remains dependent upon the cooperation of precisely those states against whose nationals or allies it is investigating, and so long as it can be institutionally paralysed through sanctions against its judges—as demonstrated by the United States in December 2025—the complementarity principle remains a normative aspiration without enforcement capacity (Satzger, 2022).

A structural response to this asymmetry requires two distinct approaches: first, a reform of the ICC's financing mechanism that renders it less dependent upon the voluntary cooperation of individual major powers; and second, a codification in international law of the prohibition on subjecting ICC judges and prosecutors to national sanctions—a prohibition derivable from the immunity of international judges under Article 48 of the Rome Statute, but hitherto unenforceable (Ambos, 2022; Scheffer, 2012; Werle & Jeßberger, 2021a). In addition, the strengthening of the universality principle in national legal orders, following the model of the OLG Koblenz judgment (Ambos, 2021; Jeßberger, 2021), could serve as a subsidiary safety net, intervening where the ICC is structurally blocked, without severing the democratic chain of legitimation or receiving foreign criminal law. This would, for the first time, give rise to an international criminal prosecution system structurally immune to institutional immunisation by powerful individual states—a system in which criminal justice would no longer depend upon the willingness to cooperate of precisely those actors with the strongest interest in preventing it.

The four mechanisms examined in Sections 4.1 through 4.4 respond directly to the normative objections that Section 2 established against any form of recourse to foreign criminal law, and that reconciliation must be made explicit. The sovereignty objection, grounded in the prohibition on the unilateral exercise of criminal authority beyond territorial borders, is met because none of the four mechanisms authorises a state to assert criminal jurisdiction by its own fiat. Bilateral mutual legal assistance treaties, multilateral cooperation frameworks, supranational instruments such as the Digital Services Act, and a reformed complementarity regime under the ICC all derive their operative force from inter-state agreement or from a supranational normative order to which states have collectively consented. The democratic legitimation objection, which holds that a foreign legislature possesses no chain of legitimation in relation to the domestic population, is equally met. No mechanism proposed in this section requires a domestic court to apply norms enacted by a foreign legislature for a foreign community. The perpetrator is prosecuted either under the law of the state whose norms he knew or ought to have known, as in the bilateral extradition model, or under a supranational framework enacted by democratically legitimated institutions to which he was already subject, as in the Digital Services Act model. The congruence principle is thereby preserved rather than violated. The objection of structural incommensurability, which identifies the systemic frictions arising when the procedural and substantive architecture of one legal order is transplanted into another, does not arise at all under any of the four mechanisms, since none of them requires the reception of foreign law into the domestic legal order. Finally, the nulla poena sine lege objection is answered because the addressee of the norm is, in every case, subject only to legal provisions whose content was ascertainable *ex ante*, whether as domestic criminal law, as supranational regulation, or as the established norms of international criminal law incorporated into the VStGB. The four mechanisms thereby do not merely close impunity gaps efficiently; they close them in a manner that is structurally consonant with the rule-of-law architecture that Section 2 identified as the normative foundation of legitimate criminal prosecution.

Synthesis: The four approaches set out above share a common normative logic: they close impunity gaps not by extending national criminal jurisdiction into foreign legal spaces, but through the contractual densification of cooperative structures, the supranational harmonisation of standards of conduct, and the institutional strengthening of multilateral prosecution mechanisms. They thereby avoid the pathologies that the foregoing analysis has revealed as the structural reality of powerful states. Their common denominator is the principle of multilateral legitimation: impunity is overcome not through unilateral encroachment upon foreign legal spaces, but through the collective densification of an international legal space in which sovereignty and responsibility are distributed equally.

5. Conclusion and Answer to the Guiding Question

The aim of the present analysis was to make a scholarly contribution to the currently pressing challenge facing international criminal law in the context of the transnationalisation of crime, through a systematic doctrinal engagement with the guiding question. To this end, the guiding question was divided into three constituent elements, the sequential analysis of which was intended to produce a coherent overall picture of the problem and its possible resolution.

The point of departure was formed by the fundamental normative objections that speak, as a matter of principle, against the application of foreign criminal law—namely the public international law, constitutional, and functional-pragmatic legitimation of the territoriality principle, the structural incommensurability of different legal systems, and the principle of nulla poena sine lege as enshrined in constitutional and convention law. These objections initially established a weighty presumption against any form of reception of foreign criminal law.

In the context of the constituent element of ‘should’, it was then demonstrated that the legislature has responded to the increasing transnationalisation of crime with a differentiated system of extraterritorial jurisdictional mechanisms encompassing cases with a foreign element both with and without a genuine link. The subsequent analysis of the structural limits of these mechanisms revealed, however, impunity gaps that are becoming increasingly acute in the wake of advancing globalisation and digitalisation, and from which it follows that there are indeed constellations in which a state "should" apply the criminal law of another state or otherwise have recourse to foreign criminal law.

For the purposes of the overall assessment, the doctrinal and rule-of-law problems arising upon the reception of foreign criminal law were then examined, together with the geopolitical pathologies that accompany an uncontrolled expansion of extraterritorial criminal jurisdiction in the practice of powerful states. From this confrontation between impunity vacuums on the one hand, and the problems of closing them on the other, there emerged the structural core challenge of international criminal law—a challenge whose contemporary urgency is emphatically underscored by current geopolitical developments. Within the constituent element of "to what extent", approaches were finally presented that are capable of closing these vacuums without reproducing the rule-of-law and structural problems identified.

From the foregoing findings, the guiding question may be answered as follows. A state "should" make use of, or "have recourse to", the criminal law of another state if and insofar as this is strictly necessary to close impunity gaps arising from the structural limits of the established mechanisms of extraterritorial jurisdiction—gaps that are manifesting with increasing frequency and intensity in the wake of the transnationalisation of crime. In doing so, the fundamental objections that speak as a matter of principle against the reception of foreign criminal law, as well as the pathologies accompanying an uncontrolled expansion of extraterritorial criminal jurisdiction in the practice of powerful states, must not be disregarded. As regards the element of 'to what extent', a rule-of-law grounded balancing requires that only mechanisms be employed to close these gaps that structurally unite both requirements: on the one hand, the efficient overcoming of impunity, and on the other, the preservation of rule-oflaw guarantees. The guiding question is accordingly to be answered to the effect that a state should make use of the criminal law of another state not as an autonomous instrument of national criminal authority, but exclusively within the framework of multilaterally legitimated, contractually secured, and institutionally controlled mechanisms—and only insofar as no milder means less impairing of the sovereignty of the state of commission is available.

This formula may be operationalised through four cumulative factors that a competent authority ought to apply in sequence. The first factor is subsidiarity. The established mechanisms of extraterritorial jurisdiction, encompassing the flag, active and passive personality, protective, and universality principles together with vicarious criminal justice, must have been exhausted or demonstrated to be structurally incapable of closing the impunity gap in question. Recourse to foreign criminal law or to mechanisms that approximate its reception is permissible only where no existing domestic jurisdictional title can be brought to bear effectively. The second factor is multilateral legitimation. The mechanism through which the impunity gap is closed must rest upon a normative foundation that has been collectively recognised and contractually secured by the relevant states, rather than asserted unilaterally by a single state on the basis of its own criminal authority. The third factor is minimal impairment. Among all available mechanisms capable of closing the impunity gap in question, only that mechanism may be employed which least impairs the sovereignty of the state of commission and most fully preserves the rule-of-law guarantees of the persons affected, in particular the democratic chain of legitimation and the principle of nulla poena sine lege. The fourth factor is institutional control. The mechanism must be subject to independent oversight by a body that is neither the prosecuting state nor the state of commission, so as to prevent the structural degeneration of criminal jurisdiction into an instrument of geopolitical power projection, as illustrated by the Maduro prosecution and the US-Israeli attack on Iran. Only where all four factors are satisfied does the guiding question admit of an affirmative answer.

The central challenge for international criminal law in the future will consist in continuously adapting these mechanisms to those impunity vacuums that will emerge in ever new forms through advancing digitalisation, technological change driven by artificial intelligence, and globalisation, as well as in developing new institutional instruments capable of overcoming impunity efficiently and in a timely manner without sacrificing the rule-of-law guarantees that constitute the normative core of every legitimate prosecution.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

Ambos, K. (2020). Vorbemerkung zu den §§ 3-7 StGB. In W. Joecks, & K. Miebach (Eds.), *Münchener Kommentar zum Strafgesetzbuch* (Vol. 1, 4th ed., pp. 1-24). C. H. Beck.

Ambos, K. (2021). Anmerkung zu OLG Koblenz, Urteil vom 24. Februar 2021—1 StE 3/21 [Case Note]. *Juristenzeitung, 76,* 863-867.

Ambos, K. (2022). *Internationales Strafrecht* (6th ed.). Nomos.

Ambos, K. (2024). Vorbemerkung zu den §§ 3-7 StGB. In W. Joecks, & K. Miebach (Eds.), *Münchener Kommentar zum Strafgesetzbuch* (Vol. 1, 5th ed., pp. 1-24). C. H. Beck.

Amnesty International (2016). *"It Breaks the Human": Torture, Disease and Death in Syria's Prisons (Index No. MDE 24/4508/2016)*. Amnesty International.

Ansa (2026). *Winter Olympics 2026: Interior Minister Clarifies ICE Role*. Ansa.

AP News (2026). *On Iran, Trump Officials Say the US Mission Is "That Simple". It Depends Who's Doing the Talking*. AP News.
https://apnews.com/article/trump-iran-israel-changing-rationale-terrorism-missiles-1f3d3ace712d62c9fe46665ea5cf8df4?utm_source=copy&utm_medium=share

Bassiouni, M. C. (2013). *Introduction to International Criminal Law* (2nd ed.). Martinus

Nijhoff. https://doi.org/10.1163/9789004231696

BBC News (2013). *Abu Qatada Case Has Cost UK £1.7 m, Home Secretary Says*. BBC News. https://www.bbc.com/news/uk-22909465

BBC News (2026). *Trump: Iran's Nuclear Programme "Obliterated"*. BBC News. https://www.bbc.com/news/articles/c626ljyvmg3o

Beccaria, C. (1988). *Über Verbrechen und Strafen [On Crimes and Punishments]* (W. Alff, Ed.). Insel Verlag.

Beulke, W., & Swoboda, S. (2020). *Strafprozessrecht [Criminal Procedure Law]* (15th ed.). C. F. Müller.

Böse, M. (2023). Vorbemerkung zu den §§ 3-7 StGB. In U. Kindhäuser, U. Neumann, & H.-U. Paeffgen (Eds.), *Nomos Kommentar zum Strafgesetzbuch* (6th ed., pp. 1-79). Nomos.

Bott, I., & Krell, P. (2010). The Principle "nulla poena sine lege" in Light of Constitutional Court Decisions. *Zeitschrift für das Juristische Studium, 6,* 694-700.

Buisman, C. (2025). Complementarity (Un)fairness: Powerful States and Their Ability to Avoid ICC Proceedings by Conducting Domestic Investigations. *Journal of International Criminal Justice, 23,* 227-261.

Cameron, I. (2013). The ECHR, Due Diligence and Positive Obligations. In G. Zyberi (Ed.), *An Institutional Approach to the ECHR* (pp. 119-144). Intersentia.

Cassese, A., & Gaeta, P. (2013). *International Criminal Law* (3rd ed.). Oxford University Press.

Chimni, B. S. (2017). *International Law and World Order* (2nd ed.). Cambridge University Press. https://doi.org/10.1017/9781107588196

Christiano, T. (2008). *The Constitution of Equality: Democratic Authority and Its Limits*. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780198297475.001.0001

Cowell, F. (2017). Inherent Imperialism: Understanding the Legal Roots of Anti-Imperialist Criticism of the International Criminal Court. *Journal of International Criminal Justice, 15,* 667-687. https://doi.org/10.1093/jicj/mqx041

Crawford, J. (2019). *Brownlie's Principles of Public International Law* (9th ed.). Oxford University Press.

Dahl, R. A. (1989). *Democracy and Its Critics*. Yale University Press.

Dahm, G., Delbrück, J., & Wolfrum, R. (1989). *Völkerrecht [Public International Law]* (Vol. I/1, 2nd ed.). De Gruyter.

Eser, A., & Weißer, B. (2025). Vorbemerkungen zu den §§ 3–9 Internationales Strafrecht. In A. Eser (Ed.), *Tübinger Kommentar zum Strafgesetzbuch (Formerly Schönke/Schröder)* (31st ed., pp. 1-87). C. H. Beck.

Ferner, H. (2024). *Guarantees of Art. 6 ECHR in German Criminal Procedure*. Ferner Alsdorf. https://www.ferner-alsdorf.de/garantien-des-art-6-emrk-im-deutschen-strafprozess/

Feuerbach, P. J. A. von. (1799). *Revision der Grundsätze und Grundbegriffe des positiven peinlichen Rechts [Revision of the Principles and Basic Concepts of Positive Criminal Law]* (Vol. 1). Hennings.

Fischer, T. (2024). *Strafgesetzbuch mit Nebengesetzen [Criminal Code with Ancillary Statutes]* (71st ed.). C. H. Beck.

Fischer, T. (2025). *Strafgesetzbuch mit Nebengesetzen [Criminal Code with Ancillary Statutes]* (72nd ed.). C. H. Beck.

Hambach, W., & Hettich, P. (2014). Anmerkung zu AG München, Urteil vom 26. September 2014 [Case Note]. *Zeitschrift für Wett-und Glücksspielrecht,* 477-480.

Hart, H. L. A., & Honoré, T. (1985). *Causation in the Law* (2nd ed.). Clarendon Press.

Heine, K. M. (2015). *Die Möglichkeiten und Grenzen der Übernahme von Verfahren im Rahmen der stellvertretenden Strafrechtspflege [The Possibilities and Limits of the Transfer of Proceedings within the Framework of Vicarious Criminal Justice].* Cuvillier Verlag.

Heintschel von Heinegg, W. (2005). *Casebook Völkerrecht [Casebook Public International Law].* C. H. Beck.

Herdegen, M. (2023). *Völkerrecht [Public International Law]* (22nd ed.). C. H. Beck. https://doi.org/10.17104/9783406803864

Hilgendorf, E. (1997). Strafrechtliche Überlegungen zur strafrechtlichen Interpretation des Ubiquitätsprinzips im Zeitalter des Internet [Reflections on the Criminal Law Interpretation of the Ubiquity Principle in the Age of the Internet]. *Neue Juristische Wochenschrift,* 1873-1878.

Hilgendorf, E., & Valerius, B. (2012). *Computer-und Internetstrafrecht [Computer and Internet Criminal Law]* (2nd ed.). C. H. Beck.

Hofmann, R. (2021). *Das Cannabis-Dilemma: Rechtliche Hürden der Cannabis-Legalisierung in Deutschland und Europa*. Verfassungsblog. https://verfassungsblog.de/das-cannabis-dilemma/

Hoog, G. (1986). *Deutsches Flaggenrecht [German Flag Law].* Helios N.V.

Human Rights Watch (2022). *Germany: Conviction for State Torture in Syria*. Human Rights Watch. https://www.hrw.org/news/2022/01/13/germany-conviction-state-torture-syria

Human Rights Watch (2026). *USA: ICE Abuses Must Be Investigated*. Human Rights Watch. https://www.hrw.org/news/2026/01/09/us-minneapolis-killing-by-ice-unjustified

Il Corriere della Sera (2026). *Piantedosi: gli agenti ICE solo in consolato, nessuna operazione in Italia*. Corriere della Sera. https://video.corriere.it/politica/piantedosi-ice-non-operera-mai-in-italia-polemica-per-milano-cortina-sul-nulla/8361dc61-b99e-40cb-a9c2-9ab6e7d34xlk

Jellinek, G. (1914). *Allgemeine Staatslehre [General Theory of the State]* (3rd ed.). O. Häring.

Jescheck, H.-H. (1956). Zur Reform der Vorschriften über das internationale Strafrecht [On the Reform of the Provisions on International Criminal Law]. *Internationales Recht und Diplomatie, 1,* 75-95.

Jescheck, H.-H., & Weigend, T. (1996). *Lehrbuch des Strafrechts: Allgemeiner Teil [Treatise on Criminal Law: General Part]* (5th ed.). Duncker & Humblot.

Jeßberger, F. (2021). Anmerkung zu OLG Koblenz, Urteil vom 24. Februar 2021—1 StE 3/21 [Case Note]. *Juristenzeitung, 76,* 507-511.

Joecks, W., Jäger, M., & Randt, K. (2023). *Steuerstrafrecht [Tax Criminal Law]* (9th ed.). C. H. Beck.

Jouannet, E. (2012). *The Liberal-Welfarist Law of Nations*. Cambridge University Press. https://doi.org/10.1017/cbo9781139093583

Kaleck, W., & Kroker, P. (2018). Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe? *Journal of International Criminal Justice, 16,* 165-191. https://doi.org/10.1093/jicj/mqy014

Kennedy, D. (2006). *Of Law and War*. Princeton University Press.

Kindhäuser, U. (2011). *Strafrecht Allgemeiner Teil* (5th ed.). Nomos.

Koskenniemi, M. (2005). *From Apology to Utopia: The Structure of International Legal Argument* (2nd ed.). Cambridge University Press. https://doi.org/10.1017/cbo9780511493713

Kötz, H. (2009). Rechtsvergleichung [Comparative Law]. In J. Basedow, K. J. Hopt, & R. Zimmermann (Eds.), *Handwörterbuch des Europäischen Privatrechts [Concise Encyclopedia of European Private Law]* (Vol. II, pp. 1286-Endseite ergänzen). Mohr Siebeck.

Kunig, P., & Uerpmann, R. (1994). Der Fall des Postschiffes Lotus [The Case of the Steamship Lotus]. *Jura, 16,* 186-194.

Langer, M. (2015). *In the Beginning Was Fortescue: On the Intellectual Origins of the Adversarial and Inquisitorial Systems (UCLA School of Law Research Paper No. 15-38).* https://ssrn.com/abstract=2703126

Makarov, A. (1955/56). Das Urteil des Internationalen Gerichtshofes im Fall Nottebohm [The Judgment of the International Court of Justice in the Nottebohm Case]. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, 16,* 407-426.

Mann, F. A. (1964). The Doctrine of Jurisdiction in International Law. *Recueil des Cours, 111,* 1-158.

Maurer, H., & Waldhoff, C. (2020). *Allgemeines Verwaltungsrecht [General Administrative Law]* (20th ed.). C. H. Beck. https://doi.org/10.17104/9783406758973

Menzel, J., Pierlings, T., & Hoffmann, J. (2005). *Völkerrechtsprechung [International Case Law]*. Mohr Siebeck.

Milanovic, M. (2026, February 28). *The American-Israeli Strikes on Iran Are (Again) Manifestly Illegal*. EJIL: Talk! https://www.ejiltalk.org/the-american-israeli-strikes-on-iran-are-again-manifestly-illegal/

Möllers, C. (2008). *Demokratie: Zumutungen und Versprechen [Democracy: Demands and Promises]*. Wagenbach.

Mowbray, A. (2012). *Cases, Materials and Commentary on the ECHR* (3rd ed.). Oxford University Press.

Niemöller, M. (1993). Zur Geltung des inländischen Strafrechts für Auslandstaten Deutscher [On the Application of Domestic Criminal Law to Offences Committed Abroad by German Nationals]. *Neue Zeitschrift für Strafrecht,* 171-173.

Oehler, D. (1983). *Internationales Strafrecht [International Criminal Law]* (2nd ed.). Carl Heymanns.

Palan, R., Murphy, R., & Chavagneux, C. (2010). *Tax Havens: How Globalization Really Works*. Cornell University Press.

Randall, K. (1988). Universal Jurisdiction under International Law. *Texas Law Review, 66,* 785-841.

Reinbacher, T. (2018). Auslandstat eines Ausländers, der nach der Tat Deutscher wurde (§ 7 Abs. 2 Nr. 1 Alt. 2 StGB). *Zeitschrift für das Juristische Studium, 2,* 142-147.

Reuters (2020). *U.S. Indicts Venezuela's Maduro on "Narco-Terrorism" Charges*. Reuters. https://www.reuters.com/article/world/us-indicts-venezuelas-maduro-a-political-foe-for-narco-terrorism-idUSKBN21D2A5/

Reuters (2026). *Trump Justifies Iran Attack with Nuclear Argument*. Reuters. https://www.reuters.com/commentary/breakingviews/trumps-new-iran-attack-opens-up-big-global-risks-2026-02-28/

Roth, B. (2021). Extraterritorial Jurisdiction and the Drug War. *Harvard International Law*

Journal, 62, 1-11.

Roxin, C., & Greco, L. (2020). *Strafrecht Allgemeiner Teil [Criminal Law General Part]* (Vol. I, 5th ed.). C. H. Beck.

Safferling, C. (2026). *[Interview] (T. Berendonk, Interviewer).* https://www.tagesschau.de/ausland/asien/angriffe-nahost-iran-israel-usa-100.html?at_medium=mastodon&at_campaign=tagesschau.de

Sanger, D. E. (2026). Trump's War of Choice. *The New York Times.* https://www.nytimes.com/2026/02/28/us/politics/trump-iran-attack.html

Satzger, H. (2020). *Internationales und Europäisches Strafrecht [International and European Criminal Law]* (9th ed.). Nomos. https://doi.org/10.5771/9783748904519

Satzger, H. (2022). *Internationales und Europäisches Strafrecht [International and European Criminal Law]* (10th ed.). Nomos. https://doi.org/10.5771/9783748913238

Scheffer, D. (2012). *All the Missing Souls: A Personal History of the War Crimes Tribunals.* Princeton University Press.

Schmitz, R. (1999). § 7 II Nr. 2 StGB und das Prinzip der stellvertretenden Strafrechtspflege [Section 7(2) No. 2 StGB and the Principle of Vicarious Criminal Justice]. In W. Frisch, H. Frister, & W. Reiß (Eds.), *Festschrift für Gerald Grünwald zum Siebzigsten Geburtstag* (pp. 635-843). Nomos.

Schönke, A., & Schröder, H. (2019). Vorbemerkungen zu den §§ 3 ff. StGB [bearbeitet von A. Eser & B. Weißer]. In *Strafgesetzbuch: Kommentar* (30th ed., pp. 1-88). C. H. Beck.

Schubert, K., & Klein, M. (2020). *Das Politiklexikon [The Politics Lexicon]* (7th ed.). Dietz.

Schulze-Fielitz, H. (2015). Art. 20 GG. In H. Dreier (Ed.), *Grundgesetz-Kommentar [Commentary on the Basic Law]* (Vol. II, 3rd ed., pp. 1-78). Mohr Siebeck.

Schwöbel-Patel, C. (2021). *Marketing Global Justice: The Political Economy of International Criminal Law.* Cambridge University Press. https://doi.org/10.1017/9781108697651

Shaxson, N. (2011). *Treasure Islands.* Bodley Head.

Smith, B. (2020). *A Moment of Reckoning: The Need for a Strong and Global Cybersecurity Response.* Microsoft on the Issues. https://blogs.microsoft.com/on-the-issues/2020/12/17/cyberattacks-cybersecurity-solarwinds-fireeye/ URL bitte kurz gegenprüfen

Spindler, G., & Schuster, P. (2019). *Recht der elektronischen Medien [Law of Electronic Media]* (4th ed.). C. H. Beck.

The Guardian (2026). Federal Prosecutors Reportedly Blocked from Investigating Renee Good's Killing—As It Happened. *The Guardian.* https://www.theguardian.com/us-news/live/2026/jan/23/ice-immigration-protests-trump-minnesota-economic-blackout-latest-news?page=with%3Ablock-69739f1a8f08311ded619f53

The Guardian (2026). Trump Calls for Regime Change in Iran. *The Guardian.* https://www.theguardian.com/world/2026/mar/02/trumps-war-on-iran-and-regime-change

The New York Times (2025). International Court Criticizes New U.S. Sanctions against Its Judges. *The New York Times.* https://www.nytimes.com/2025/08/21/us/politics/international-criminal-court-us-sanctions.html

Thielbörger, P. (2026). *[Statement] In USA/Israel: Angriffe auf Iran und das Völkerrecht.* Legal Tribune Online.

https://www.lto.de/recht/hintergruende/h/usa-israel-angriffe-iran-voelkerrecht-gewaltverbot

UnitedHealth Group (2024). *Update on Change Healthcare Cyberattack*. UnitedHealth Group. https://www.unitedhealthgroup.com/newsroom/2024/2024-04-22-uhg-updates-on-change-healthcare-cyberattack.html

Vormbaum, T. (2016). *Einführung in die moderne Strafrechtsgeschichte [Introduction to Modern Criminal Law History]* (3rd ed.). Springer.

Werle, G., & Jeßberger, F. (2021a). *Völkerstrafrecht [International Criminal Law]* (5th ed.). Mohr Siebeck.

Werle, G., & Jeßberger, F. (2021b). Vorbemerkung zu den §§ 3-7 StGB. In *Leipziger Kommentar zum Strafgesetzbuch* (13th ed., pp. 19-24). De Gruyter.

Wolfrum, R. (2006). Hohe See und Tiefseeboden (Gebiet) [Kapitel 4]. In W. Graf Vitzthum (Ed.), *Handbuch des Seerechts* (pp. 293-354). C. H. Beck.

Ziegenhain, H.-J. (1991). *Extraterritoriale Rechtsanwendung und die Bedeutung des Genuine-Link-Erfordernisses [Extraterritorial Application of Law and the Significance of the Genuine Link Requirement]*. C. H. Beck.

Zimmermann, F. (2014). *Strafgewaltkonflikte in der Europäischen Union [Conflicts of Criminal Jurisdiction in the European Union]*. Nomos. https://doi.org/10.5771/9783845253626

Zolo, D. (1997). *Cosmopolis: Prospects for World Government*. Polity Press.

Zweigert, K., & Kötz, H. (1996). *Einführung in die Rechtsvergleichung [Introduction to Comparative Law]* (3rd ed.). Mohr Siebeck.

Appendix

Appendix A. Legislation, Treaties and Other Normative Instruments

Germany

Grundgesetz für die Bundesrepublik Deutschland (Basic Law) of 23 May 1949, BGBl. I, 1, as amended—Arts. 1(1), 2(1), 2(2), 20(1)-(3), 79(3), 103(2), 103(3), 116.

Strafgesetzbuch (StGB) [German Criminal Code]—§§ 3, 4, 5, 6, 7, 9, 25, 27, 81 et seq., 94 et seq., 105 et seq., 130, 224, 239, 239a, 249, 250, 255, 284, 316c, 331 et seq.

Völkerstrafgesetzbuch (VStGB) [Code of Crimes against International Law]—§§ 1, 7(1) Nos. 5 and 9.

Strafprozessordnung (StPO) [Code of Criminal Procedure]—§ 153c(1) No. 1.

Betäubungsmittelgesetz (BtMG) [Narcotics Act]—§ 30(1) No. 4.

Telemediengesetz (TMG) [Telemedia Act]—§ 3(2).

Gesetz über die internationale Rechtshilfe in Strafsachen (IRG)/Auslieferungsgesetz [Extradition Act].

Reichsstrafgesetzbuch of 15 May 1871, RGBl. 127.

Zweites Gesetz zur Reform des Strafrechts (2. StrRG) of 4 July 1969, BGBl. I, 717.

Cannabisgesetz (CanG) of 27 March 2024, BGBl. 2024 I No. 109.

Bundestags-Drucksache 14/8524 (Explanatory memorandum to the VStGB).

United Kingdom

Offences against the Person Act 1861, 24 & 25 Vict. c. 100. https://www.legislation.gov.uk/ukpga/Vict/24-25/100

Criminal Justice Act 1993, c. 36, Part I (ss. 1-6).

United States

American Service-Members' Protection Act (ASPA), 22 U.S.C. § 7421 et seq. (2002).

Executive Order 13928 of 11 June 2020, Blocking Property of Certain Persons Associated with the International Criminal Court, 85 Fed. Reg. 36139.

Executive Order 14203 of 6 February 2025, Imposing Sanctions on the International Criminal Court, 90 Fed. Reg. 13928.

Restatement (Third) of Foreign Relations Law of the United States § 402(1)(c) (1987). American Law Institute.

European Union

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (E-Commerce Directive), OJ L 178/1.

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, OJ L 190/1.

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277/1.

Convention Implementing the Schengen Agreement of 19 June 1990 (CISA), OJ L 239/19—Art. 54.

International Instruments

Charter of the United Nations of 26 June 1945—Arts. 2(1), 2(4), 41, 51.

Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950, BGBl. 1952 II, 685—Arts. 6, 7; Protocol No. 7, Art. 4.

International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, BGBl. 1973 II, 1534—Art. 15(2).

Vienna Convention on the Law of Treaties (VCLT) of 23 May 1969, BGBl. 1985 II, 926—Art. 26.

United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982, BGBl. 1994 II, 1798—Arts. 92, 97.

Rome Statute of the International Criminal Court of 17 July 1998—Arts. 7, 17, 48, 115 et seq.

Mutual Legal Assistance Treaty between the United Kingdom and Jordan of 10 April 2013.

Appendix B. Table of Cases

German Courts

RGSt 23, 266.

RGSt 50, 218.

BVerfG, Decision of 17 January 1961—2 BvL 17/60, BVerfGE 12, 62.

BVerfG, Decision of 4 December 2007—2 BvR 38/06, BVerfGK 13, 7.

BGH, Judgment of 14 February 1952—5 StR 1/52.

BGH, Judgment of 26 November 1980—3 StR 393/80, BGHSt 30, 1.

BGH, Judgment of 22 January 1986—3 StR 472/85, BGHSt 34, 1.

BGH, Judgment of 8 April 1987—3 StR 11/87, BGHSt 34, 334.

BGH, Decision of 17 May 1991—2 StR 183/90, NJW 1991, 3104.

BGH, Judgment of 23 October 1996—5 StR 183/95, BGHSt 42, 275.

BGH, Judgment of 30 April 1999—3 StR 215/98, BGHSt 45, 64.

BGH, Judgment of 12 December 2000—1 StR 184/00, BGHSt 46, 212 (NJW 2001, 624; NStZ 2001, 305)—“Auschwitzlüge”.

BGH, Judgment of 21 February 2001—3 StR 372/00, NStZ 2001, 307.

BGH, Decision of 7 April 2009—2 ARs 180/09, BGHSt 53, 265.

BGH, Judgment of 18 June 2015—1 StR 577/14, BGHSt 60, 340.

BGH, Judgment of 3 May 2016—3 StR 449/15, NStZ 2017, 146.

BGH, Judgment of 27 June 2019—3 StR 16/17, NStZ 2019, 460.

BGH, Judgment of 21 April 2021—1 StR 447/20, NStZ 2021, 740.

BGH, Decision of 29 October 2024—1 StR 58/24 (Press Release No. 225/2024).

BGH, Decision of 27 May 2025—1 StR 364/24 (Press Release No. 121/2025).

OLG Koblenz, Judgment of 24 February 2021—1 StE 3/21, NStZ 2021, 580.

LG Bonn, Judgment of 1 February 2024—29 KLs-214 Js 16/22-1/22.

LG Mannheim, Judgment of 17 July 1995—8 KLs 30/94 (1996), NStZ-RR 1996, 147.

AG München, Judgment of 26 September 2014—1115 Cs 254 Js 176411/13, ZfWG 2014, 472.

Courts of the European Union

ECJ, Judgment of 11 February 2003, Joined Cases C-187/01 and C-385/01, Gözütok and

Brügge, NJW 2003, 1173.

ECJ, Judgment of 9 March 2006, Case C-436/04, Van Esbroeck, NJW 2006, 1781.

ECJ, Judgment of 3 May 2007, Case C-303/05, Advocaten voor de Wereld, NJW 2007, 2237.

ECJ, Judgment of 25 October 2011, Joined Cases C-509/09 and C-161/10, eDate Advertising, NJW 2012, 137.

International Courts and Tribunals

PCIJ, Judgment of 7 September 1927, The Case of the S.S. Lotus (France v. Turkey), PCIJ Series A, No. 10.

ICJ, Judgment of 6 April 1955, Nottebohm Case (Second Phase), ICJ Reports 1955, 4.

ICJ, Judgment of 27 June 1986, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), ICJ Reports 1986, 14.

ICJ, Judgment of 14 February 2002, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), ICJ Reports 2002, 3.

ICJ, Judgment of 6 November 2003, Oil Platforms (Iran v. United States), ICJ Reports 2003, 161.

ITLOS, Judgment of 1 July 1999, M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), ITLOS Reports 1999, 10.

ECtHR, Judgment of 15 November 1996, Chahal v. United Kingdom, App. No. 22414/93.

ECtHR, Judgment of 17 January 2012, Othman (Abu Qatada) v. United Kingdom, App. No. 8139/09, ECHR 2012.

Courts of Other States

House of Lords, Secretary of State for the Home Department v. Rehman [2001] UKHL 47.

United States v. Noriega, 746 F. Supp. 1506 (S.D. Fla. 1990).

United States v. Alvarez-Machain, 504 U.S. 655 (1992).

United States v. Bin Laden, 92 F. Supp. 2d 189 (S.D.N.Y. 2000).

Appendix C. Official Documents and Institutional Reports

Bavarian State Ministry of Justice (2022). *Press Release No. 02/2022: Indictment against Three Former Wirecard Managers*. https://www.justiz.bayern.de/gerichte-und-behoerden/staatsanwaltschaft/muenchen1/presse/2022/2.php

CISA, FBI, & NSA (2020). *Joint Cybersecurity Advisory AA20-352A: Advanced Persistent Threat Compromise of Government Agencies, Critical Infrastructure, and Private Sector Organizations*. https://www.cisa.gov/news-events/cybersecurity-advisories/aa20-352a

Crown Prosecution Service (2026). *Jurisdiction Guidance*. https://www.cps.gov.uk/legal-guidance/jurisdiction

Europol (2024). *LockBit Power Cut: An International Law Enforcement Operation*. https://www.europol.europa.eu/media-press/newsroom/news/lockbit-power-cut-four-new-arrests-and-financial-sanctions-against-affiliates

Europol (2025). *European Union Serious and Organised Crime Threat Assessment (EU-SOCTA) 2025: The Changing DNA of Serious and Organised Crime*. Publications Office of the European Union. https://www.europol.europa.eu/cms/sites/default/files/documents/EU-SOCTA-2025.pdf

Europol (2025). *Eight Countries Launch Operational Taskforce to Tackle Violence-as-a-*

Service.
https://www.europol.europa.eu/media-press/newsroom/news/eight-countries-launch-operational-taskforce-to-tackle-violence-service

Federal Office for Information Security (BSI) (2023). *Press Release: International Cyber Security Authorities Scrutinise Ransomware LockBit*.
https://www.bsi.bund.de/DE/Service-Navi/Presse/Pressemitteilungen/Presse2023/230614_CISA_Lockbit.html

Federal Office for Information Security (BSI) (2024). *Die Lage der IT-Sicherheit in Deutschland 2024 [Report on the State of IT Security in Germany 2024]*. BSI.
https://www.bsi.bund.de/DE/Service-Navi/Publikationen/Lagebericht/lagebericht_node.html

Financial Action Task Force (FATF) (2023). *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations* (Updated ed.). FATF.
https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html

Landeskriminalamt Niedersachsen (2025). *Violence-as-a-Service—Gewalt auf Bestellung*.
https://www.lka.polizei-nds.de/startseite/praevention/kinder_und_jugend/violence-as-a-service-vaas-gewalt-auf-bestellung-118415.html

Munich Public Prosecutor's Office I (2020). *Press Release: Wirecard—Commercial Gang Fraud*.

National Crime Agency (NCA) (2024). *The NCA Announces the Disruption of LockBit with Operation Cronos*.
https://www.nationalcrimeagency.gov.uk/the-nca-announces-the-disruption-of-lockbit-with-operation-cronos

OECD (1998). *Harmful Tax Competition: An Emerging Global Issue*. OECD Publishing.

Rubio, M. (2025). *Sanctioning ICC Judges Directly Engaged in the Illegitimate Targeting of Israel [Press Statement]*. U.S. Department of State.
https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel

Rubio, M. (2026). *Statement before the Senate Foreign Relations Committee*.
https://www.state.gov/releases/office-of-the-spokesperson/2026/06/secretary-of-state-marco-rubio-before-the-senate-foreign-relations-committee-on-the-fy27-department-of-state-budget-request

Trump, D. (2026). *Statement on the Death of Iran's Supreme Leader Khamenei [Truth Social Post]*. The White House.
https://china.usembassy-china.org.cn/president-donald-trump-issues-statement-on-the-death-of-irans-supreme-leader-khamenei/

U.S. Department of Health & Human Services, Office for Civil Rights (2024). *Change Healthcare Cybersecurity Incident FAQ*.
https://www.hhs.gov/hipaa/for-professionals/special-topics/change-healthcare-cybersecurity-incident-frequently-asked-questions/index.html

U.S. Department of Justice (2020). *Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges [Press Release]*.
https://www.justice.gov/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism

U.S. Department of Justice (2024). *U.S. and U.K. Disrupt LockBit Ransomware Variant [Press Release]*.

https://www.justice.gov/opa/pr/us-and-uk-disrupt-lockbit-ransomware-variant

U.S. Department of Justice (2024). *Indictment and Disruption of LockBit Ransomware Group*. https://www.justice.gov/archives/opa/pr/us-charges-russian-national-developing-and-operating-lockbit-ransomware

U.S. Senate Select Committee on Intelligence (2021).

UK Home Office (2014). *Home Office Annual Report and Accounts 2013-14*. HM Government. https://www.gov.uk/government/publications/home-office-annual-report-and-accounts-2013-to-2014

UN General Assembly (1970). *Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States (Resolution 2625 (XXV))*. United Nations.

UN Human Rights Council (2016). *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (UN Doc. A/HRC/31/68)*. United Nations.

UN Security Council (2014). *Draft Resolution S/2014/348*.