

EXTRATERRITORIAL APPLICATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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1 INTRODUCTION

This essay considers the circumstances in which the International Covenant on Civil and Political Rights (ICCPR) has an extraterritorial application. Part 2 examines the meaning(s) of extraterritorial application. Part 3 identifies the proper legal context for an analysis of extraterritoriality. This section seeks to identify the meaning(s) of jurisdiction and to ascertain what, in terms of legal methodology, are the right questions and what are the wrong questions to ask. Part 4 considers the provisions of the ICCPR relevant to its extraterritorial application and their subsequent interpretation and application by the Human Rights Committee (HRC) and by states parties. Finally, Part 5 concludes with a consideration of whether the analysis of the Court in *Bankovic*¹ is equally applicable in respect of the ICCPR. That is, on the same facts, *mutatis mutandis*, would the HRC have taken the same view with respect to the application of the ICCPR? The decision of the European Court of Human Rights in *Bankovic* provides the intellectual backdrop to the essay. However, it is submitted that the *Bankovic* decision has to be understood within a general framework of jurisdictional analysis in public international law. Considering it in isolation as a 'crisis case' can lead to misunderstandings of the scope of the decision and its consequences.²

2 THE MEANING(S) OF EXTRATERRITORIAL APPLICATION

It is important to be clear about what the 'extraterritorial application' of the ICCPR might mean, and to distinguish what are separate but related issues. Extraterritorial application is concerned with two questions. First,

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1 *Bankovic and Others v. Belgium and 16 Other Contracting States* (Appl. no. 52207/99), ECtHR 12 December 2001, 41 ILM (2002) 517.

2 Cf. H. CHARLESWORTH, 'International Law: A Discipline of Crisis', 65 MLR (2002) 377.