

The Concept of Jurisdiction in the Context of International and National Law of the Republic of Uzbekistan

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Abstract: the concept of jurisdiction stands at the intersection of international and national law, playing a pivotal role in governing legal relationships within and between states. This article examines the multifaceted nature of jurisdiction, with a focus on its application in both international and national contexts, particularly within the legal framework of the Republic of Uzbekistan. At the international level, jurisdiction determines the authority of courts and tribunals to adjudicate disputes arising between states or other international actors. Despite the absence of the term "international jurisdiction" in international agreements involving Uzbekistan, the concept of "competence" is commonly employed, which some scholars argue is synonymous with international jurisdiction. This discrepancy highlights the complexities surrounding the interpretation and application of jurisdictional principles in the realm of international law. However, the terminology used in Uzbekistan's legal system may differ from international standards, reflecting the unique nuances of its legal tradition and development. The article also explores the evolving understanding of jurisdiction in the context of international treaties and agreements.

Key words: jurisdiction, international law, national law, republic of uzbekistan, legal framework, competence, international agreements, legal disputes, sovereignty, territorial integrity, legal interpretation, legal principles, international treaties, judicial authority, legal terminology, international relations, legal frameworks, legal systems, judicial bodies, adjudication, legal governance.

The concepts of jurisdiction and international jurisdiction play an important role in legal systems, ensuring the effective resolution of disputes and conflicts at both the domestic and international levels. At the beginning, we consider it necessary to examine these concepts in more detail, as well as the differences between them, in order to avoid errors in interpretation.

Although they are closely related, the differences between them have profound legal and practical implications. However, some authors argue that there is not much difference between these concepts².

To determine the concept of jurisdiction, first of all, one should consider the general provisions of national legislation. Thus, jurisdiction according to the Civil Procedure Code of the Republic of Uzbekistan means the competence of which specific court is considering the case, which means the courts of the Republic of Karakalpakstan, regional, Tashkent City Court, interdistrict, and district (city) courts for civil cases. Similar definitions are also given in the Economic-Procedural and Criminal Procedure Codes, as well as in the Code of the Republic of Uzbekistan on Administrative Proceedings, etc. Thus, in national legislation, jurisdiction determines which specific court within one judicial system is competent to consider the case at first instance and make a decision on it.

Thus, jurisdiction is a term from the field of jurisprudence that defines the scope of competence of the court with respect to the consideration of specific legal issues or the resolution of disputes.

International jurisdiction, on the other hand, arises in the context of resolving legal disputes between persons or organizations located in different countries or associated with multiple jurisdictions.

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² Abova, T. E., et al. "Course of Soviet Civil Procedural Law: In 2 Volumes". Volume 2: Civil Procedure. Moscow, 1981. Page 358.



Particular difficulties arise in determining the competent court or arbitral authority for such cases due to differences in national legislation and treaty obligations between states.

In some literary sources, the concept of “international jurisdiction” is defined as a simple division of competences between the judicial authorities of different states in cases affecting foreign citizens. However, such a definition seems superficial and does not fully reveal the essence of this phenomenon.

The delimitation of competencies is, in essence, the determination of the boundaries of the powers of various judicial authorities. However, before dealing with the division of powers, it is necessary to determine the subject itself that is subject to such division. Therefore, a more accurate approach, in our opinion, is one that considers international jurisdiction as the authority (competence) of the national courts of a particular state to consider and make decisions on cases in which foreign citizens or organizations participate³.

It is also worth noting that the term “international jurisdiction” is conditional⁴. It does not take into account special international procedures or supranational courts. We are talking about cases where civil legal relations affect the legal order of several states, for example, due to the participation of foreign persons in cases or disputes located on the territory of another country. In this case, the question arises as to which courts of any state have the right to consider and resolve the dispute.

Thus, the concept of “international jurisdiction” characterizes the peculiarities of the consideration of cases that have an international component or “foreign element”. Although these cases relate to national courts, they draw conclusions taking into account the circumstances arising from the overlap of legal orders between different states.

Next, we’ll look at how not to confuse the above concepts. Thus, one of the main differences between jurisdiction and international jurisdiction is their territorial application. Jurisdiction is most often associated with the domestic legal systems of individual states, while international jurisdiction crosses the boundaries of national jurisdictions and requires a special mechanism for resolving disputes.

Another significant difference between the two is the applicable rules and procedures. Domestic jurisdiction is usually governed by national laws and procedures, while international jurisdiction is often based on international treaties, conventions, and agreements between states.

Based on the above, it can be concluded that the concepts of jurisdiction and international jurisdiction play an important role in ensuring legal protection and justice both at the domestic and international levels. Understanding and distinguishing between them not only helps improve the dispute resolution process but also contributes to the development of legal systems and international relations.

However, the term “international jurisdiction”, which is used in domestic science, cannot be found in international agreements in which Uzbekistan participates. Such agreements typically use a term such as “competence”, which, according to some authors, is identical to “international jurisdiction”⁵. This is due to the fact that international treaties determine not only justice in civil cases by the courts of the contracting states but also the justice of other bodies and the application of substantive law under appropriate conditions (“competence of laws”)⁶. When we talk about civil proceedings, we mean not only one of the powers of the court but also the process of resolving the dispute that has arisen. Courts also decide other issues, such as obtaining written evidence, conducting interrogations, inspecting premises, and issuing subpoenas and other procedural documents. Based on this, international jurisdiction can be perceived as one of the powers of the courts of a certain state to resolve a dispute on

³ Shaw, Malcolm N. “Jurisdiction”. In: *International Law*. Cambridge University Press, 2008:645-696.

⁴ Anufrieva, L. P. “Private International Law: In 3 Volumes.” Volume 3: *Cross-Border Bankruptcies*. International Commercial Arbitration. International Civil Procedure: Textbook. Moscow, 2001. Page 301.

⁵ Ponedelchenko, N. M. “Competence of Russian Courts in Cases Involving Foreign Persons.” In: *International Legal Readings*. Issue 2. Edited by P. N. Biryukov. Voronezh, 2003. Page 186.

⁶ Averin, D. D. “Jurisdiction of Cases Arising from Relations of International Civil Turnover.” *Bulletin of Moscow University*. Series XII Law, 1975, No. 1. Pages 7-8.



its merits with the participation of foreigners, as well as the competence of the courts to the extent of their powers when considering a case.

To consider this legal phenomenon, some authors introduced the term “international judicial jurisdiction”. However, the influence of Russian-language literature and, above all, American literature, where the word “jurisdiction” is often used, has contributed to the widespread use of this term in literature. English lawyers use the term “jurisdiction”, which has several bases. One of them is that it refers to the powers of the court when considering and resolving issues on which it must make a particular decision. Currently, legal science is primarily concerned with determining the competence of the relevant bodies to resolve issues related to law enforcement. This competence includes the powers of various government bodies to consider and resolve legal cases, as well as the methods by which they are implemented. From this point of view, jurisdiction and international jurisdiction are closely related categories, but they also have some differences between them. The understanding of international jurisdiction is broader than the concept of jurisdiction, since the latter relates to the work of courts, notaries, and other law enforcement agencies.

The word “jurisdiction” is often used to denote the competence of international judicial bodies in the strict sense of its content. The English version of the 1945 Statute of the International Court of Justice uses the word “jurisdiction”. This term in the Russian version, for example, in paragraph 2 of Article 36, corresponds to the expression: “States... have the opportunity at any time to declare that they recognize the jurisdiction of the Court as compulsory...”⁷.

However, it is difficult to offer a global overview of the concept of jurisdiction without paying too much attention to its theoretical aspect or practical implications. Even if previous writers may have considered it legitimate to resort to purely doctrinal reflections, it becomes increasingly important to question jurisdiction in the light of specific examples of the exercise of jurisdiction or even in contexts limited to, for example, criminal jurisdiction. According to Mann’s (1964)⁸ concept, jurisdiction is viewed as the internal power or “right” of a state to regulate behavior, thus including the power to legislate and enforce the law. Thus, jurisdiction is a concept comparable to that of sovereignty. This general doctrinal position is also confirmed in later writings by Mann. In contrast to Mann’s more doctrinal conception of the subject, Akehurst (1975)⁹ takes a more pragmatic approach to jurisdiction and examines the various cases in which a state does claim and exercise jurisdiction without much scrupulousness in questioning the philosophical underpinnings. The works of Mann and Akehurst are important contributions in English on this particular subject. Partly because of the development and accumulation of state practice, subsequent authors were less concerned with theoretical hypotheses and paid more attention to technical issues. For example, in 2008, Ringart proposed a balanced global competency perspective and adopted a very traditional approach. It begins with the Lotus case (see SS Lotus case under territorial jurisdiction) and the principle of territoriality, then considers the exercise of extraterritorial criminal jurisdiction before examining the doctrinal foundations of jurisdiction. The issue of jurisdiction is primarily seen by Cassese (2007)¹⁰ as a matter of competing claims of national and international courts, while Bantekas (2010)¹¹ views national and international courts as cooperating and complementary enforcers of law.

Thus, it seems more appropriate to give preference to the term “international jurisdiction”, which determines the competence of the national courts of a particular state to resolve conflicts involving foreigners. First of all, this term defines the limits of powers between national administrative and judicial authorities, as well as international organizations and courts, each of which has special attributes that qualify them as separate entities engaged in jurisdictional activities. As regards this term, the person concerned understands it as a special result arising from the exercise of state powers

⁷ Statute of the International Court of Justice of 1945. URL: <https://www.un.org/ru/icj/statut.shtml>.

⁸ Mann, Frederick A. "The Doctrine of Jurisdiction in International Law." *Recueil des Cours* 111 (1964): 1–162.

⁹ Akehurst, Michael. "Jurisdiction in International Law." *British Yearbook of International Law* 46 (1975): 145–257.

¹⁰ Cassese, Antonio. *International Criminal Law*. 2d ed. Oxford: Oxford University Press, 2007.

¹¹ Bantekas, Ilias. *International Criminal Law*. 4th ed. Oxford: Hart, 2010.



in a civil proceeding with foreign elements, which is apart from the other powers and duties of the court. This affects the understanding of the essence of legal connections between procedural institutions as well as the accuracy of judicial and arbitration practice, where the phrase “international jurisdiction” is also observed.

The court’s consideration of civil cases is governed by legal standards that establish its rights and responsibilities as a judicial body, define its powers, and relate to procedural matters. In modern legal understanding, international jurisdiction is a procedural structure consisting of principles that resolve conflicts over jurisdiction between courts of different governments. The main emphasis in judicial actions is on substantive legal relations, emphasizing the interaction between procedural rules and substantive law. At the same time, as N.I. correctly noted, Marysheva, the existing difference between private law and the task of distinguishing legally related civil legal relations from the corresponding methods of ensuring rights and obligations does not change the essence of legal regulation. International civil procedure is a special branch of procedural law that regulates the actions of courts when considering individual civil cases. The adverse legal consequences arising from non-compliance with the rules of international jurisdiction emphasize their procedural nature. For example, penalties for violating the rules of international jurisdiction may include denial of the request, termination of the trial, or reversal of the court's decision by a higher authority. Procedural law includes penalties that are specifically related to procedures. It follows from this that the rules that are violated and lead to the implementation of these punishments are of a similar procedural nature. According to the literature, the competence or incompetence of a court is determined only by its compliance with the most fundamental procedural rules¹².

It is worth noting that national-level laws governing international jurisdiction define the boundaries of jurisdiction exclusively for their own courts, which makes them unilateral, unlike international treaties. The latter are aimed at establishing rules for delimiting the competence of courts in different states and are of an international nature.

In our opinion, the rules governing international jurisdiction, similar to the general rules governing trials involving foreigners, belong to the corresponding area of procedural law. The inclusion of specific rules of international jurisdiction in sources often associated with sources of substantive law does not mean that they do not already exist in the sphere of substantive branches of law.

As discussed above, it is important to distinguish international jurisdiction from national jurisdiction. The concept of jurisdiction is aimed at delimiting jurisdiction in different cases between courts—not all, but those that are part of the same judicial system (ordinary courts or arbitration courts). Generally, national jurisdiction includes the jurisdiction of various courts to hear cases falling under the jurisdiction of lower courts. There are two main categories of jurisdiction: general (subject) and territorial (local). General or subject jurisdiction refers to the competence of courts at different levels of the judicial system when considering civil cases, depending on their category. Territorial jurisdiction (spatial, local): jurisdiction of homogeneous courts, that is, different courts of the same level of the judicial system, depending on the territory in which their activities extend. The rules of international jurisdiction are also territorial; they determine the spatial jurisdiction of the courts of a particular state. The conditions for establishing domestic territorial jurisdiction correspond to the conditions of international jurisdiction. For example, in most countries, the criterion of location of the defendant has precisely this double meaning.

As a rule, international treaties determine international jurisdiction without purporting to divide cases between the individual courts of contracting states, for example, without resolving issues of national jurisdiction. National legislation independently determines these issues.

Issad argues that during such a discussion, the issue of the territorial jurisdiction of the court, which is determined by its physical location, is not discussed. Domestic rules of territorial jurisdiction provide the choice between two courts within the same judicial system, while international laws of jurisdiction

¹² Чешир Дж., Норт П. Указ соч. С. 76.



determine the choice between two or more judicial systems under the jurisdiction of two different countries. Moreover, international jurisdiction is determined using inappropriate national jurisdiction criteria, such as the nationality of the parties involved in the matter. According to H. Shack, international jurisdiction and territorial jurisdiction are two separate procedural states that are interconnected but have significant differences.

Thus, international jurisdiction is a set of procedural legal principles and is a key component of civil procedural law, establishing the powers of the court in a certain geographical region. For example, give the state the power to resolve issues involving foreign citizens in order to avoid legal problems and ensure the right to judicial protection. One of the notable characteristics of this organization is its commitment to both domestic legal standards and international treaty obligations. The rules governing the international jurisdiction of national law create the exclusive boundaries within which their own courts can exercise jurisdiction. Unlike the rules set out in international treaties, which aim to determine the jurisdiction of courts in several countries, these rules are unilateral in nature.

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