EXTRATERRITORIAL JURISDICTION OVER CRIMES IN SINGAPORE, MALAYSIA AND THE COMMONWEALTH

This article surveys the attitude of Commonwealth courts to extraterritorial jurisdiction. It points out that whereas other Commonwealth courts favour the exercise of extraterritorial jurisdiction, courts in Malaysia and Singapore have adhered to a strict view based on the territoriality principle. In the context *of* the increase in transnational crime, such views should not be maintained. The article argues that existing provisions of the law could be read as admitting the exercise of extraterritorial jurisdiction. If such a course is not followed by the courts, there is an urgent need in this area for legislative reform.

THE assumption that "all crimes are local"[1] seems well entrenched in the law of Malaysia and Singapore. There has been much evidence of this assumption in recent times, particularly in Malaysia. No prosecutions were brought in connection with the Bank Bumiputra scandal and the reason given by the Attorney General for not bringing prosecutions against those involved in the events was that the fraud occurred largely in Hong Kong and therefore fell outside the jurisdiction of the Malaysian courts.[2] Recently, the Malaysian Supreme Court refused to exercise jurisdiction over a case of bigamy where the second marriage had taken place in India on the ground that the Malaysian courts do not have jurisdiction over crimes committed abroad.[3] Yet, the court has been conscious of the fact that, given the nature of the modern world with opportunities for speedy travel and communications, transnational crime is on the increase and that courts must have the power to deal with the problem caused by such crimes in order to give effective protection to society. As the Lord President put it, having regard to the modern facilities for travelling, the wealth and affluence of Malaysians which has reached a level which enables not a few but a large number of them to travel overseas every year as

1 The statement is to be found in the judgment in *McCleod v. Attorney General for New South Wales* [1891] A.C. 455.

2 For the Bank Bumiputra scandal, see P. Bowring and R. Cottrell, *The Carrian File* (1984). The High Court of Brunei had to decide recently whether it had jurisdiction over a conspiracy to defraud which took place in Singapore. It held that it had. The conspiracy was in connection with dealings with the National Bank of Brunei *(Straits Times,* 18 October 1987). Indian cases on conspiracy (s. 120 of the Indian Penal Code) have held that jurisdiction depended on the place of conspiracy and not on where the conspiracy was put in execution, *Gokaldas Amarsee* A.I.R. 1933 Sind 333, at p. 336. But, there are later cases which have decided that the place of commission of the offence which was the object of the conspiracy was the relevant place. *Banwarilal* [1963] 2 Cr.L.J. 529. For discussion of the Indian position, see Nelson, *Indian Penal Code* (7th ed. 1981) vol. 1, at pp. 319–320.

3 *Public Prosecutor* v. *Rajappan s/o Chinna Kounder* [1986] 1 Malaysian Current Law Journal 175. The Singapore courts considered the question of extraterritoriality *in A.G.* v. *Wong Yew (*1906) 10 S.S.L.R. 44, and in *Re Choo Jee Jeng* [1959] M.L.J. 217.

businessmen, tourists, holidaymakers and students, there is no reason why our criminal law should not be made extraterritorial as regards all types of offences committed abroad by our citizens and permanent residents".[4]

There are many other reasons why such extraterritorial jurisdiction[5] should be exercised by the courts of Malaysia and Singapore. Given the sophisticated nature of the electronic communications devices used to link international markets in securities and foreign exchange, the possibility of fraud initiated abroad affecting the markets of Malaysia and Singapore is great. If the courts are to give effective protection to financial markets they must devise new doctrines of jurisdiction and throw away ones formulated in more sedate times. Legislative lethargy in the formulation of such doctrines is not an adequate reason for the courts to abdicate such a role. It would appear that both the courts and the legislatures in the Commonwealth and in the United States have forged ahead in this area to fashion adequate jurisdictional devices to meet the problem while dogmatism seems to hinder the courts in Malaysia and Singapore in making departures from archaic doctrines.

This article examines in detail the views stated as to extraterritorial jurisdiction by the Malaysian court in *Public Prosecutor* v. *Rajappan* as the views stated in that case in a general manner will have a dominant influence on the courts faced, in future, with issues of extraterritorial criminal jurisdiction. It explores the basis of the decision of the Privy Council in *McCleod* v. *The Attorney General of New South Wales*[6] on which the Malaysian Supreme Court placed great reliance and concludes that the constitutional context in which the statement, "all crime is local", was made in that case, makes that case of little precedential value in Malaysia and Singapore. It then examines contemporary trends in Commonwealth jurisdictions and American law and advocates that these trends should be followed by the courts in Malaysia and Singapore. It also surveys the international law principles on jurisdiction and concludes that the exercise of a certain measure of extraterritorial jurisdiction would be consistent with the developments in international law.

I. THE SIGNIFICANCE OF *MCCLEOD'S CASE*

In *Rajappan,* the proposition that "all crime is local" made by Lord Halsbury in *McCleod* v. *Attorney General for New South Wales*[7] was

[4] *Rajappan, supra* note 3, at p. 186.

[5] The term "extraterritorial jurisdiction" is used to mean the power of a state to exercise jurisdiction over persons living in or incidents taking place outside its territorial jurisdiction. In this region, the term evokes emotive responses as colonial powers used the term to mean the exclusive jurisdiction they exercised over their citizens living within states like Thailand, Japan and China. On this type of extraterritoriality, which no longer exists, see W. Ross Johnston, *Sovereignty and Protection: A Study of British Jurisdictional Imperialism in the Late Nineteenth Century* (1973). Ching-Lin Hsia, *Studies in Chinese Diplomatic History* (1925), pp. 1–32; W.L. Tung, *China and the Foreign Powers* (1970), pp. 112–116; W. Gong, *The Standard of Civilization in International Society* (1984), pp. 157–163 (China), 190–200 (Japan), 231–237(Siam).

[6] [1891] A.C. 455; followed in *R.* v. *Hilaire* [1901] 3 N.S.W.S.R. 228; *R.* v. *Barton* (1879) 1 Q.L.J. Supp. 16; *Lander* [1919] N.Z.L.R. 305.

[7] *Supra,* note 6, at p. 457.

followed. That dictum has been used by earlier courts in this region[8] and its influence in future cases seems assured. For this reason, a detailed consideration *of McCleod is* relevant. The relevant quotation in full is as follows: "All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and, except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever".

The dictum has been taken by the Malaysian and Singapore courts, without regard to the constitutional setting in which it was made. It relates, not to the jurisdiction of the New South Wales court which had tried McCleod but to the power of the New South Wales legislature to create the offence for which he was tried. The decision in *McCleod* and the statements in it reflect principles of imperial constitutional law which do not have any significance for the courts of the sovereign states of Malaysia and Singapore.

McCleod, like *Public Prosecutor* v. *Rajappan,* involved a prosecution for bigamy. The Colony of New South Wales had enacted the Criminal Law Amendment Act in 1883. Section 54 of that Act reads: "Whosoever, being married, marries another person during the life of the former husband or wife, wheresoever such marriage takes place, shall be liable for penal servitude for seven years." The usage of the words "whosoever" and "wheresoever" made the legislation territorially ambitious for a state which had begun existence as a penal colony a few decades earlier and the Privy Council soon put an end to that ambition in *McCleod.*

The facts of the case were that McCleod. had married a woman in New South Wales in 1872. He had subsequently married another woman in St. Louis, Missouri in 1889. On his return to New South Wales, he was prosecuted for bigamy under section 54 of the Criminal Law Amendment Act. The question that was in issue in *McCleod* was whether the New South Wales Legislature had the power, in 1883, to enact legislation to control events taking place abroad. That legislature was a colonial legislature and its powers were derived from the Colonial Laws Validity Act 1865, an Act of the British Parliament, the aim of which was to give a measure of legislative competence to the legislatures of the colonies. Under the Act, the colonial legislatures did not possess the competence to legislate extraterritorially and the ratio *of McCleod* simply was that in 1883 the New South Wales Legislature could not pass legislation which could operate extraterritorially. This was the understanding leading commentators on imperial constitutional law had of the case. For example, Berriedale Keith took the view that the "decision in *McCleod's Case* referred to the power of the legislature of New South Wales to provide for the punishment of bigamy committed outside the colony."[9] Later, the Privy Council as well as the colonial courts took a more liberal view and held that colonial legislatures had a limited power of extraterritorial legislation provided such power was necessary for effective government.[10] This

[8] *Attorney General* v. *Wong Yew (*1906) 10 S.S.L.R. 44, but see also *Re Choo Jee Jeng* [1959] M.L.J. 217.

[9] A.B. Keith, *The Constitutional Law of the British Dominions* (London, 1933), p. 226.

[10] *A.G. for Canada* v. *Cain* [1906] A.C. 542; *Robtelmes v. Brenan* [1906] 4C.L.R. 395; *Semplev. O'Donovan* [1917] N.Z.L.R. 273; *Nadan* v. *The King [1926]* A.C. 482; *Queen* v. Burah[1878]3A.C. 889.

situation remained until 1932 when the Statute of Westminster was enacted which gave plenary powers of legislation to some colonial legislatures.[11]

The British Parliament, being sovereign, could enact legislation extraterritorially. Thus, in *Earl of Russell's Case,*[12] legislation dealing with bigamy in terms similar to the New South Wales legislation was given extraterritorial effect. The sovereign legislatures of Malaysia and Singapore now have as much extraterritorial legislative competence as the British Parliament. An interesting question is whether legislation like the Penal Code which was enacted during the colonial days would lack extraterritorial scope because the legislatures which enacted them did not have such competence. The simple answer would be that these existing laws are continued by the will of sovereign legislatures expressed in appropriate legislation and that any original lack of competence in the legislatures which enacted them has been cured by their subsequent adoption by fully competent legislatures.[13] In Canada, any doubt as to this proposition was removed by section 2 of the Extraterritorial Act of Canada 1952 which reads:

> "Every Act of the Parliament of Canada now in force enacted prior to the 11th day of December, 1931, that in terms or by necessary or reasonable implication was intended, as to the whole or any part thereof, to have extraterritorial operation, shall be construed as if at the date of its enactment the Parliament of Canada then had the full power to make laws having extraterritorial operation as provided by the Statute of Westminster, 1931.[14]

The absence of such a statute in Malaysia and Singapore makes no difference. Existing legislation is continued because the sovereign legislature of these states and their constitutions so desire. Hence, where necessary, these statutes could be given extraterritorial scope.

When an argument based on *McCleod's Case* was made before the Indian Supreme Court almost thirty years ago, it was dismissed in the following terms:

[11] Further see, A.C. Castles, "Limitations on the Autonomy of Australian States" [1962] Public Law 196; D.P. O'Connell, "The Doctrine of Colonial Extraterritorial Legislative Competence" (1959) 75 L.Q.R. 318. The Australian state legislatures are still restricted to the old colonial position: R.D. Lumb, *The Constitution of the Australian States* (1980), pp. 83–85; *Croft* v. *Dunphy* [1933] A.C. 156; *Trustees, Executors, and Agency Ltd.* v. *Commissioner of Taxation* (1933) 49 C.L.R. 220; *Barnes* v. *Cameron* [1975] Qd. R. 128.

[12] [1901] A.C. 446. *McCleod's Case* was rejected two years after it was decided in *Ashbury* v. *Ellis* [1893] A.C. 339. Salmond suggested that the dictum in *McCleodas* to extraterritoriality should be disregarded as *obiter.* Sir John Salmond, "Essay on the Limitations of Colonial Legislative Power" (1917) 33 L.Q.R. 117, at p. 131; also see K. Roberts-Wray, *Commonwealth and Colonial Law* (1966), p. 388 who said that "as an authority for a far reaching clog on legislative freedom, *MacCleod's Case* is no longer sound law".

[13] S. 162 of the Federal Constitution of Malaysia keeps alive provisions of laws existing at the time of independence.

[14] On the effect of the Canadian Act, see *Cooperative Committee on Japanese Canadians* v. *A.G. for Canada* [1946] A.C. 527; there is a view that the Statute of Westminster did not create powers of extraterritorial legislation in colonial legislatures but merely recognized their existence: J.G. Castel, *International Law in Canada* (3rd ed., 1976), at p. 556.

> "[T]hese concepts are no longer tenable after India became a Dominion by the Indian Independence Act of 1947 and after it became an independent free sovereign republic under the present constitution."[15]

It is necessary that courts of independent nations vigorously assert for their states jurisdiction permitted them by international law and not abdicate this task by taking refuge in ancient doctrines formulated in times of colonial dependence.

II. The Relevant Statutes

The Penal Codes of Malaysia and Singapore contain the substantive criminal law of these states. They are modelled on the Indian Penal Code. Since Indian precedents are widely used in both Malaysia and Singapore, the attitude the Indian Supreme Court has taken to the interpretation of the provisions of the Code on jurisdiction is relevant. That attitude is contained in the judgment of Jagannadhadas J. in *Mobarik Ali Ahmed* v. *State of Bombay* who was considering the interpretation of section 2 which is a section common to the Indian, Malaysian and Singapore Codes. He said:

> "It is not necessary and indeed not permissible to construe the Indian Penal Code at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs wherever this is permissible, unless there is anything in the Code or in any particular section to indicate to the contrary."[16]

In the three decades since this dictum was delivered, there have been rapid movements in the international law on jurisdiction. As indicated in the dictum, these developments must be considered by the courts in assessing the extent of their extraterritorial jurisdiction.

Sections 2, 3 and 4 in the Indian Code deal with jurisdiction. Section 4 is not reproduced in the Malaysian and Singapore Codes. Section 2 of the Code deals with crimes committed within India. Its object is to make the Code exhaustive as far as criminal law is concerned. Incidentally, it states the territoriality principle of jurisdiction by requiring that the act or omission contrary to the provisions of the Code should have been committed "within India". Section 3 which is titled "punishment of offences committed beyond, but which by law may be tried within India" provides for jurisdiction for offences committed beyond India "in the same manner as if such act had been committed within India". Section 3 clearly provides for extraterritorial jurisdiction. The contention in this paper is that a wide reading of section 2, without more, in keeping with trends in other parts of the Commonwealth and the United States, is sufficient to

[15] *Mobarik Ali Ahmed* v. *State of Bombay* A.I.R. 1957 S.C. 857, at p. 870. Also see *Wallace Bros & Co. Ltd.* v. *Commissioner of Income Tax, Bombay* A.I.R. 1948 P.C. 118, which was followed in Singapore in *Re Choo Jee Jeng* [1959] M.L.J. 217.
[16] A.I.R. 1957 S.C. 857, at p. 871.

provide for the exercise of jurisdiction over crimes committed outside the territory but having effects within the territory.

Section 4 of the Indian Code which is missing from the Malaysian and Singapore Codes is based on the nationality principle of jurisdiction. Sections 2 and 3 have a territorial basis.[17] Section 4 has no territorial base whatsoever. It is intended to create jurisdiction over crimes committed entirely abroad by nationals of India. The basis of such jurisdiction is the link of nationality.[18] Section 4 was omitted from the Penal Code when it was first introduced into the Straits Settlements in 1870.[19] The absence of section 4 in the Malaysian Code may be explained by the fact that section 4 was being redrafted in India around the time the Malaysian Code was adopted.[20] The original section 4 of the Indian Code which stood from 1860 to 1898 dealt with the liability of the servants of the Queen who commit crimes in the Princely States. In 1898, the present section 4 was introduced which dealt with jurisdiction over crimes committed by nationals whilst abroad. The original section 4 which was drafted in the context of the Indian situation would have had no relevance for the Straits Settlement. The new section 4 was not in existence at the time of the introduction of the Penal Code into the Settlement. Hence, conclusions drawn in *Rajappan's Case* on the basis of the absence of section 4 in the Malaysian Code to support the view that there is no extraterritorial jurisdiction given to the Malaysian courts under the Penal Code, except in respect of offences relating to security dealt with in Chapter VI of the Penal Code, are based on erroneous premises.

The exception relating to Chapter VI is arrived at on the basis that the Penal Code (Amendment and Extension) Act 1976 introduced a new section 4 into the Malaysian Penal Code, reproducing in effect, section 4 of the Indian Code but limiting its operation to offences in Chapter VI. From this, an inference is permissible that only offences under Chapter VI were intended by the legislature to have an extraterritorial effect on the basis of the nationality principle. Likewise, the Malaysian Parliament enacted the Extraterritorial Offences Act, 1976 and extended jurisdiction over nationals, who, whilst abroad, commit offences in violation of statutes mentioned in its Schedule. The two Acts mentioned in the Schedule are the Official Secrets Act 1972 and the Sedition Act 1948. Again, the legislation

17 S. 3 has such a basis because the law creating the offence in conjunction with s. 3 gives rise to a fiction that the offence committed abroad should be dealt with as if it had been committed within India.

18 *Central Bank of India* v. *Ram Narain* A.I.R. 1955 S.C. 36.

19 Ordinance No. 1 of 1870 enacted by the Governor with the advice and consent of the Legislative Council. This Code was repealed and replaced by Ordinance No. 4 of 1871. Apart from the analytical index contained in the second legislation, the two ordinances are virtually identical.

20 India Law Commission, 42nd Report (1971), p. 4. It is suggested in the Report that power to provide for extraterritorial crime was acquired by the Indian Legislature in 1879 by s. 8 of the Foreign Jurisdiction and Extradition Act and was enlarged by s. 99(2) of the Government of India Act, 1935.

One may also explain the absence of s. 188 of the Indian Criminal Procedure Code which enables the arrest and trial of nationals who commit crimes abroad along similar lines. The Criminal Procedure Code for the Straits Settlements was drafted, effectively, in 1892 and was enacted in 1900: A. Wood Renton, *Colonial Laws and Courts* (1907), p. 197. As any Indian commentary on s. 188 would show, that section had undergone several amendments in India before its present state.

deals with the nationality principle in that it extends jurisdiction over nationals committing crimes abroad. Another law, which makes the breach of it committed abroad by a national an offence, is the Prevention of Corruption Act 1961.[21] This course of legislative activity led the Malaysian Supreme Court to the assumption that unless the legislature specifically gives extraterritorial scope to an offence, the courts could not exercise such jurisdiction. Such a view, however, ignores the existence of section 2 and section 3 in the Penal Code and the fact that, in modern law, as long as a sufficient territorial nexus between the crime committed abroad and the state exists, jurisdiction can be exercised on the basis of the territoriality principle, (which is stated in section 2).

It is relevant to note that an argument was made before the Indian Supreme Court that because the Penal Code provided that certain of its provisions were intended to operate extraterritorially,[22] its other provisions were not intended to operate extraterritorially. This argument was rejected.[23] Likewise, the legislation enacted in Malaysia, providing for extraterritoriality in certain cases does not necessarily lead to the inference that there could not be extraterritoriality in other cases.[24] These provisions should be regarded as providing for extra-territoriality, *ex abundanti cautela,* and as designed to forestall arguments relating to jurisdiction in cases involving national security.

The jurisdiction of the High Court is provided for in Malaysia by the Courts of Judicature Act 1964. The criminal jurisdiction of the High Court is stated in section 22. Section 22(1)b incorporates changes made by later legislation and permits extraterritorial jurisdiction over offences under Chapter VI of the Penal Code and the Acts specified in the Schedule to the Extraterritorial Offences Act and specifies that the Attorney General may certify that courts should assume jurisdiction over any offence which, in his view, affects the security of the Federation committed on the high seas on board a ship registered in Malaysia or by a citizen of Malaysia on the high seas or "by any citizen or any permanent resident in any place without and beyond the limits of Malaysia". The latter clause which gives wide extraterritorial jurisdiction to courts upon the fiat of the Attorney General has been read narrowly by the Malaysian Supreme Court in *Rajappan's Case*[25] where the view was stated that the jurisdiction conferred under the clause is restricted to offences under Chapter VI of the Penal Code, those under the Extraterritorial Offences Act and those certified by the Attorney General to be security offences.

The Supreme Court of Judicature Act in Singapore does not contain similar amendments. Section 15(1) is similar to section 22(1) of the Malaysian Act. Where extraterritorial jurisdiction is deemed necessary in relation to a specific offence created by a statute in

[21] Act No. 163.
[22] The sections referred to were ss. 108A, 177, 203, 216, 216A and 236.
[23] *Mobarik Ali Ahmed* v. *State of Bombay* A.I.R. 1957 S.C., at p. 870.
[24] This is clear from the fact that the sections of the Penal Code referred to in note 20 are found in the Malaysian and Singapore Codes. The view of the Lord President in *Rajappan* limiting extraterritoriality to offences under Chapter VI of the Code is, it is submitted with respect, not correct in view of the existence of these sections.
[25] [1986] I.C.L.J. 175, at p. 188.

Singapore, the statute usually spells this out. Thus, the Hijacking and Protection of Aircraft Act requires that any act of violence committed in connection with the offence of hijacking be deemed to have been committed in Singapore.[26] As indicated earlier, the fact that it is the legislative practice to do so, does not preclude statutes, which create offences without reference to their extraterritorial operation, being given extraterritorial effect.

For the purpose of developing the thesis in this article, the statutory bases are section 2 of the Penal Code and section 22(1) of the Courts of Judicature Act of Malaysia, (the corresponding section in Singapore being section 15(1) of the Supreme Court of Judicature Act). Section 2 of the Penal Code gives courts jurisdiction over crimes committed within the territorial limits of the state. The sections in the Judicature Acts reinforce this jurisdiction. As will be demonstrated, courts in Commonwealth jurisdictions have manipulated this territorial basis of jurisdiction in order to assume jurisdiction over conduct which wholly or partially took place abroad.

Except in the case of crimes of universal jurisdiction condemned by the whole of mankind,[27] states are not keen on exercising jurisdiction over crimes committed entirely abroad unless they have an impact within their states. This impact provides the courts the basis to exercise jurisdiction on the ground that the crime was committed within their territory. The employment of this interpretation, which is well accepted in related legal systems, will enable the courts in Singapore and Malaysia to exercise extraterritorial jurisdiction over crimes initiated or committed abroad which concern these states. The next section indicates that this trend is well accepted in the Commonwealth.

III. The Commonwealth Trends

Until the complex problems of transnational crimes came to be faced, the common law had a strong territorial base. There are historical reasons for this. Quite apart from the fact that the enforcement of the criminal law in another jurisdiction would provoke hostility, notions of the common law like the Queen's Peace and trial by jury had a strong territorial base. The Queen's Peace was kept within the boundaries of her realm and protected those within it.[28] Trial by jury originated in the idea that jurymen drawn from the same locality as the accused would understand the circumstances of the crime better.[29] The view was expressed in *R.* v. *Keyn*[30] that the criminal jurisdiction of the English courts ended at the low water mark on the English coast. Offences committed beyond this point fell within the jurisdiction of the Admiralty, which was reinforced by statute.[31] Later, in keeping

26 Cap. 124, 1985 (Rev. Ed.).

27 Slavery and piracy are the earliest of such crimes. Writers have added to this list crimes against humanity, war crimes, genocide, hijacking and torture.

28 C.A. Allen, *The Queen's Peace* (1953).

29 W. Cornish, *The Jury* (1963).

30 (1876) 2 Ex. D. 63; See also *The Fagernes* [1927] P. 311.

31 Law Commission, *Report on the Territorial and Extraterritorial Extent of the Criminal Law* (Report No. 91, 1978), pp. 5–6; G. Marston, "Crimes on Board Foreign Merchant Vessels: Some Aspects of English Practice" (1972) 88 L.Q.R. 357; *Oteri* v. *The Queen* [1976] 1 W.L.R. 1272.

with international law developments relating to sovereignty over the territorial sea, the territorial limits of the kingdom, and with it, the jurisdiction of the courts were extended.[32]

A. English Law

The strong territorial base of the jurisdiction of the English courts has persisted and courts have, until recently, shown a reluctance to depart from conservative positions taken previously. Debate usually related to the tame example where an offender fires at his victim who stands on the other side of a border separating two states.[33] The question was whether the courts in which the crime commenced (the initiatory theory) or the courts in which the crime was completed (the terminatory theory) should have jurisdiction. Either theory would have satisfied the requirements of territoriality based jurisdictional tests as substantial parts of the *actus reus* would have occurred on the state claiming jurisdiction. Glanville Williams, in an article in 1965, surveyed the English cases on criminal jurisdiction and came to the conclusion that English courts apply the terminatory theory of jurisdiction, though he, himself, preferred and advocated the use of an initiatory theory.[34]

But, it is in a series of more recent House of Lords decisions that the extent of the English courts' criminal jurisdiction has been considered fully. There are difficulties in extracting any definite principles from them but a trend towards extraterritoriality by a fiction that, provided part of the crime was committed within the jurisdiction or the effects of the crime were felt within the jurisdiction, the crime should be regarded as committed within the jurisdiction, is clearly discernible. This extension of jurisdiction is in response to the clearly felt need to reach out and control events occurring abroad which may harm the interests of the community. From a purely territorial principle, the English courts can be seen to be moving towards a protective principle.[35] The protective principle has a territorial base to the extent that what the courts are seeking to prevent are harmful effects of the crime on the territory over which they have jurisdiction.

The following propositions relating to criminal jurisdiction may be elicited from the decisions of the House of Lords:

(1) *Where the clearly foreseen effects of a crime are wholly intended to be in England, though every act in connection with it committed by the accused was done overseas, English courts have jurisdiction over the offence.*

[32] *Post Office* v. *Estuary Radio Ltd.* [1968] 2 Q.B. 740; W. Edeson, "The Prerogative of the Crown to Limit Britain's Maritime Boundary" (1973) 89 L.Q.R. 364.

[33] A case involving such facts was recently decided in Victoria. See *R.* v. *Graham* [1984] V.R.649.

[34] G. Williams, "The Venue and Ambit of the Criminal Law" (1965) 81 L.Q.R. 518; see also L. Hall, "Territorial Jurisdiction and the Criminal Law" [1972] Crim. L.R. 276.

[35] For conflicting assessments, see M. Hirst, "Jurisdiction over Cross-Frontier Offences" (1981) 97 L.Q.R. 80; J.D.M. Lew, "The Extraterritorial Criminal Jurisdiction of English Courts" (1978) 27 I.C.L.Q, 168.

The case from which the proposition is elicited is *D.P.P.* v. *Stonehouse.*[36] The accused, a prominent English politician, had staged his drowning in Florida. His wife, an innocent agent, claimed on his insurance policy in England. Here, the whole object of the plan was that the innocent agent would act in England, though every criminal act involving deceit had been committed abroad. The basis of the decision is that jurisdiction is permissible if the harmful effects of the acts committed abroad were intended by the offender to be entirely in England.

(2) *There is a presumption that a statute is territorially based unless there is an express or implied indication to the contrary.*

Lord Scarman explained the nature of this presumption and the related presumption that a statute does not apply to foreigners in respect of their acts abroad in the following terms:[37]

> "There are two cannons of construction to be observed when interpreting a statute alleged to have extraterritorial effect. The first is a presumption that an offence-creating section was not intended by Parliament to cover conduct outside the territorial jurisdiction of the Crown. The second is a presumption that a statute will not be construed as applying to foreigners in respect of acts done by them abroad. Each presumption is, however, rebuttable, and the strength of each will largely depend on the subject matter of the statute under consideration … In order to determine whether a statute imposes criminal liability in respect of conduct outside territorial limits, it is necessary to put a fair and reasonable construction on the language used in the statute, bearing in mind not only the two presumptions, which are to be treated as a general guide to Parliament's purpose, but also the nature of the specific purpose served by the statute."[37]

(3) *The presumption of extraterritoriality will be readily displaced where the protection of the interests served by the statute is furthered by giving it extraterritorial scope.*

This proposition is indicated in the dictum of Lord Scarman. But there are decisions directly bearing on this point. In *Lawson* v. *Fox,*[38] a driver of a lorry was convicted for working excessive hours in one day contrary to section 98 of the Transport Act 1968. He had not exceeded the period of driving in England but on that day, he had driven in France as well. Taking the driving in France into account, the court held that he had exceeded the limit. The Divisional Court quashed the conviction but the House of Lords restored it on the ground that the aim of the legislation was to prevent excessively tired drivers being in

[36] [1978] A.C. 55; see also *R.* v. *Baxter* [1972] 1 Q.B. 1.
[37] *Air India* v. *Wiggins* [1980] 2 All E.R. 593, at p. 597: Lord Scarman cited *Cox* v. *Army Council* [1962] 1 All E.R. 880 and *R.* v. *Jameson* [1896] 2 Q.B. 425 in support of the presumptions.
[38] [1974] A.C. 803.

control by heavy trucks. This "evident purpose" would be defeated if the driving in France was not taken into account.[39]

It is relevant, at this stage, to note that the Malaysian Supreme Court stated the presumption against extraterritoriality in rather absolute terms, relying on *R.* v. *Martin*[40] which is a decision of a single judge.[41] The statement in *Rajappan* that there is a "reluctance of the British court to construe a statute as having an extraterritorial application unless there are clear words to that effect"[42] was made without a consideration of the more recent views of the House of Lords.

(4) *When a particular crime poses a serious international problem, the House of Lords has not been averse to allowing jurisdiction even if the acts in connection with the offence were committed entirely abroad.*

In *D.P.P.* v. *Doot,*[43] the conspiracy to import drugs into England had been formed abroad. Some of the conspirators entered Britain with the drugs. According to the House of Lords, all the conspirators, including the ones who stayed abroad, were subject to the jurisdiction of the English courts. Lord Salmon used expansive language in justifying this conclusion. He said:

> "I do not believe that any civilized country, even assuming that its own laws did not recognize conspiracy as a criminal offence, could today have any reasonable objection to its nationals being arrested, tried and convicted by English courts in the circumstances to which I have referred. Today, crime is an international problem — perhaps not least, crimes connected with illicit drug traffic — and there is a great deal of cooperation between nations to bring criminals to justice."

(5) *There is support for the view that all that is required for jurisdiction is that the effects of the crime committed abroad be felt in England.*

39 Compare *R.* v. *Robert Millar (Contractors) Ltd.* [1970] 1 All E.R. 577; *R.* v. *Wall* [1974] 2 All E.R. 245. For criticisms of the judgment, see Lew, 271.C.L.Q. 168, at p. 177 but for support, see Hirst, 97 L.Q.R. 80, at p. 85. Compare *U.S.* v. *Bowman* 260 U.S. 94 (1922), where, in relation to fraud, Chief Justice Taft said:

> "Some offences are such that to limit their locus to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the locus shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offence."

40 [1956] 2 Q.B. 272; the House of Lords decision in *Board of Trade* v. *Owen* [1957] A.C. 602 was restrictive of jurisdiction but since then, there has been a change.

41 The judge was Sir Patrick Devlin; yet, there is a later Court of Appeal decision directly contrary to the judgment: *R.* v. *Smith* [1973] 2 All E.R. 1161.

42 [1986] 1 C.L.J., at p. 185.

43 [1973] 1 All E.R. 940.

Support for this view comes entirely from the judgments of Lord Diplock. Using the distinction between conduct and result crimes,[44] Lord Diplock held that both crimes and attempted crimes committed abroad may be subject to English jurisdiction. He said:

> "Once it is appreciated that territorial jurisdiction over a 'result-crime' does not depend upon acts done by the offender in England but on consequences which he causes to occur in England, I see no ground for holding that an attempt to commit a crime which, if the attempt succeeded, would be justiciable in England does not also fall within the jurisdiction of the English courts, notwithstanding that the physical acts intended to produce the proscribed consequences in England were all of them done abroad."[45]

Whether Lord Diplock's view will receive general acceptance is a matter of conjecture. It is a view akin to the effects theory of jurisdiction which the Amercian courts formulated in the context of their laws on economic regulation.[46] The British government has stoutly resisted the efforts of American courts to enforce their laws extraterritorially. Lord Diplock's view, limited to ensure that jurisdiction is assumed after weighing the interests of other states affected by the crime to prosecute the offender and after ensuring that England had a substantial link with the crime, may point the future direction that developments in the area of criminal jurisdiction will take.[47] As will be demonstrated later, such a development of the law would be consistent with principles of international law.

It is instructive to note that more recent judicial thinking in England does not place as great an emphasis on the language of the statute creating the offence to determine whether the offence should have extraterritorial operation. There is an increasing readiness to find jurisdiction on the basis of some territorial link, usually provided by the fact that a part of the criminal conduct occurred in England or that its primary effects were felt in England. Even a tenuous territorial link may be sufficient. Thus, in *Smith,*[48] a parcel containing cannabis was sent by air from Nairobi to Bermuda. The plane was in transit in London. The accused who was a party to the arrangement to transport drugs was found guilty. Here the crime did not begin in England. It was not intended to harm the English community. The assumption of jurisdiction in cases like this indicates that a person becomes "amenable to English law, because his conduct possesses an English element".[49]

44 The distinction was made by Professor C.H. Gordon in his *Criminal Law of Scotland* (*2nd* ed., Edinburgh 1972). For the acceptance of the distinction, *see Air India* v. *Wiggins* [1980] 2 All E.R. at p. 597.

45 *D.P.P.* v. *Stonehouse* [1978] A.C. 55 at p. 67, see also *D.P.P.* v. *Treacy* [1971] A.C. 537.

46 See notes 50-53.

47 The Diplock view, limited in such fashion, has been approved by the Canadian Law Reform Commission. Law Reform Commission of Canada, *Extraterritorial Jurisdiction* (Working Paper 37, 1984), p. 105.

48 [1973] 2 All E.R. 1161

49 Law Commission, Working Paper No. 29, para. 88.

B. American Law

The strict principle of territoriality was followed by the U.S. courts in earlier times. In 1909, Holmes J. advocated a strict territoriality principle.[50] But, two years later, he changed his mind and stated in *Strassheim* v. *Dailey*[51] that "acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing a causer of the harm as if he had been present at the effect, if the state should succeed in getting him within its power"[52]. A series of cases have held that American courts could exercise jurisdiction over criminal acts committed abroad provided their effects were felt within the jurisdiction of the court.[53]

C. Indian Law

In India, the Supreme Court has recognised that as long as a territorial link with India and the crime committed or initiated abroad can be shown, the courts could exercise jurisdiction over the offender and regard the crime as having been committed "within India" and satisfying the jurisdictional criteria in section 2 of the Indian Penal Code. The leading case is *Mobarik Ali Ahmed* v. *State of Bombay*.[54] The accused had made representations from Karachi, Pakistan to the complainant in Bombay that he had a quantity of rice for sale. The complainant had parted with his money on the basis that the rice would be shipped to him. The shipment was not made and the accused was charged with the offence of cheating. The point was raised that the court in Bombay did not have jurisdiction to try him. The Supreme Court held that the entire offence of cheating was committed in Bombay as the communications were made by telephone to the complainant who was in Bombay. This finding would have disposed of the argument but the court went on to consider the question whether the fact that the accused was not "corporeally present" in India would have made any difference and answered the question in the negative. The judgment, some passages of which have already been quoted, indicates that Indian courts would give jurisdictional provisions in the Code wide interpretations to keep them abreast of new developments in other jurisdictions and in international law.

Much was made in *Rajappan's Case*[55] of the absence of section 4 of the Indian Code in Malaysia. The new developments extending the territoriality principle do not relate to section 4 which relates to

[50] *American Banana Co.* v. *United Fruit* Co. 213 U.S. 347 (1909).
[51] 221 U.S. 280(1911).
[52] *Ibid.,* at p. 285; see further M. Sornarajah, "The Extraterritorial Enforcement of U.S. Antitrust Laws: Conflict and Compromise" (1982) 31 I.C.L.Q. 127, at pp. 131-133.
[53] *E.g. U.S.* v. *Ricardo* 619 F. 2d 1124 (1980); *U.S.* v. *Mann* 615 F. 2d 668 (1980). For surveys of American law, see C.L. Blakesley, "United States Jurisdiction over Extraterritorial Crime" (1982) 73 J. Cr. L. & Crim. 1109; Note, "Extra-territorial Jurisdiction in Criminal Law" (1972) 13 Harv. J.I.L. 346. The territoriality principle continues to be asserted: *S.F. de Yoreo* v. *Bell Helicopter Textron Inc.* 608 F. Supp. 377 (D.C. Tex. 1985); *Cleary* v. *U.S.* 555 F. Supp. 1251 (D.N.J. 1983).
[54] A.I.R. 1957 S.C. 857.
[55] For the interpretation of s. 4, see *Pheroze Jahangir Dustoor* v. *Nanayati* A.I.R. 1964 Bom. 264.

jurisdiction on the basis of nationality.[56] Rather they relate to the territoriality principle in section 2 and it is possible to incorporate the developments taking place elsewhere simply by interpreting the phrase "within India" (or Malaysia or Singapore) broadly so that any crime committed abroad having effects within the state could be regarded as having been committed within it.

D. Canadian Law

Canadian courts have shown themselves to be responsive to changes taking place elsewhere[57] but, in order to accomodate these developments more fully, the Canadian Law Reform Commission has recommended that the general part of the new Criminal Code that is being drafted should contain the following clauses relating to jurisdiction:

> "(a) that an offence is committed in Canada when it is committed in whole or in part in Canada, and
>
> (b) that it is committed 'in part in Canada' when
>
> (i) some of its constituent elements occurred outside Canada and at least one of them occurred in Canada, and a constituent element that occurred in Canada established a real and substantial link between the offence and Canada, or
>
> (ii) all of its constituent elements occurred outside Canada, but direct and substantial harmful effects were intentionally or knowingly caused in Canada."

This formulation is an acceptance of the test of jurisdiction formulated by Lord Diplock in a series of House of Lords judgments,[58] with the refinement that the effects must be "direct and substantial".

E. New Zealand Law

The provision in the New Zealand Crimes Act 1961 has been much admired.[59] Section 7 of the Act reads:

> "For the purposes of jurisdiction, where any act or omission forming part of an offence, or any event necessary to the completion of an offence occurs in New Zealand, the offence shall be deemed to be committed in New Zealand, whether the person charged with the offence was in New Zealand or not at the time of the act, omission or event."

56 Compare *Blythe* (1895) 1 C.C.C. 263 and *Selkirk* [1965] 2 O.R. 168 with *Chapman* [1950] 5 C.C.C. 46; also see *Horbas* [1969] 3 C.C.C. 95.

57 Law Reform Commission of Canada, *Extraterritorial Jurisdiction* (Working Paper 37, 1984), p. 155; for Canada see also SJ. Whitley, *Jurisdiction in Criminal Law* (1985) and S. Zucker, "Extraterritoriality and Canadian Criminal Law" (1974-75) 17 Crim. L.Q. 146.

58 See notes 44 and 45 above; Whitley suggests (at p. 51) that in Canada, "the current trend appears to take a much wider view of territoriality ...".

59 Hirst, 97 L.Q.R. 80, at p. 101 describes it as "the best over-all solution", but he continued to point out defects in the formulation. For New Zealand, see *King* v. *McKay and Talbot* [1939] N.Z.L.R. 454.

Despite the neatness of this formulation, it does not provide for the situation in which a constituent element of the crime was not committed within New Zealand. Some amendment would have to be made to the provision in order to provide for the Diplock effects doctrine.

F. Australian Law

In the common law jurisdictions of Australia, English developments on criminal jurisdiction are likely to be followed.[60] The need to depart from the strict English position on jurisdiction was perceived quite early in Australia. Thus, Sir Samuel Griffiths, the draftsman of the Queensland Criminal Code observed, in 1897, that "in consequence, perhaps of the insular position of England, the common law appears to contain no provision as to the punishment of an offender in a case where several acts or events are necessary to constitute an offence and where some only of these acts or events occur within the jurisdiction, the rest occurring out of the jurisdiction . . ."[61] He suggested that this situation be changed. Section 12 of the Criminal Code he drafted provides jurisdiction (1) where the initial element of the offence takes place in Queensland or (2) where the whole crime takes place outside Queensland and the offender subsequently comes into Queensland. The section provides that in the second instance, "it is a defence to the charge to prove that the accused did not intend that the act or omission should have effect in Queensland."

Despite the fact that the effects test seems to be provided for in Queensland, *McCleod's Case* still continues to cast a shadow. The courts of Queensland and Western Australia (where the criminal code is similar) have shown a reluctance to depart from a strict territoriality principle.[62] But the same Sir Samuel Griffiths who became Chief Justice of the Queensland Supreme Court (and later, the first Chief Justice of the Australian High Court) observed in a case in 1899 that the Queensland courts did not have jurisdiction over crimes committed outside Queensland and cited *McCleod's Case* as authority. Courts have followed that view in the two states,[63] it is submitted in error, because section 12 of the Code clearly gives jurisdiction over offences committed outside Queensland provided its effects are felt within Queensland. The Malaysian Court in *Rajappan* may take comfort from the fact that it is not alone in its view as to *McCleod's Case.*

But *McCleod's Case* has now been confined to the corners of colonial history by the Australian High Court.[62] Considering whether the legislation of Western Australia making it an offence to catch undersized fish off the waters of the state could be valid as the offence

60 The common law jurisdictions are Victoria, New South Wales and South Australia. In *R.* v. *Graham* [1984] V.R. 649, the court formulated a strict territoriality principle.
61 Cited in R.F. Carter, *Criminal Law of Queensland* (5th ed., 1979), p. 58.
62 In *Re Garruchet* (1889) 9 Q.L.J. 122, Sir Samuel Griffith observed: "There is no doubt that the tribunals of Queensland have no jurisdiction to deal with offences committed beyond the territorial limits of Queensland. If that were ever liable to doubt, it was settled by *McCleod* v. *Attorney General for New South Wales."*
63 *R.* v. *Hildebrandt* [1964] Qd. R. 43, *R.* v. *Robinson* [1976] W.A.R. 155. The cases concentrate on the first clause of s. 12 and ignore the final clauses which refer to the effects test.

takes place outside the low watermark on which the jurisdiction of the Australian state ends,[64] Gibbs J. (who was later to become the Chief Justice of Australia) pointed out that *McCleod's Case* was no longer authority as to the powers of the former colonial legislatures. In *Pearce* v. *Florenca,*[65] the judge observed that the better authority to follow now is the view of Lord Uthwalt in *Wallace Brothers and Co. Ltd.* v. *Commissioner of Income Tax, Bombay.*[66] Lord Uthwatt observed in that case:

> "There is no rule of law that the territorial limits of a subordinate legislature define the possible scope of its legislative enactments or mark the field open to its vision."

It must be remembered that *Pearce* v. *Florenca* concerned a criminal statute of an Australian state legislature which is still a subordinate legislature. The extraterritorial scope that could be given to the legislation of sovereign legislatures by courts is limited only by principles of international comity.

It is evident that courts, legislatures and law reform agencies in the Commonwealth have extended the scope of criminal jurisdiction by placing reliance entirely on the territpriality principle. The courts of Malaysia and Singapore should similarly give up the antedeluvian notion that "all crime is local"[67] and interpret section 2 of the Penal Code in such a way that a crime committed abroad is regarded as a crime committed "within" Malaysia or Singapore if its effects are felt in Malaysia or Singapore.

III. BIGAMY AND EXTERRITORIALITY

The thesis in this article does not depend on the correctness of the analysis as to the extraterritorial operation of the bigamy provision in the Penal Code. Such an analysis is made only because of the unfortunate fact that bigamy has been an offence in connection with which Commonwealth courts have often formulated principles of extraterritorial criminal jurisdiction.[68] It is for this unfortunate reason that bigamy is singled out and this writer is conscious of the fact that the course of precedent may have been set too rigidly for the interpretations suggested here to be accepted.

It has been accepted that in determining whether a statutory provision is to be given extraterritorial effect depends on the words in it as well as the purpose behind the statute.[69] If so, the purpose behind the prohibition of bigamy is relevant. According to some, it was an offence in the common law because it involved the falsification of church records. Kenny suggested that it was an offence because "it involved an outrage upon the public decency by the profanation of a

64 This is a matter of Australian constitutional law.
65 (1936) 135 C.L.R. 507, at pp. 514-516.
66 (1948) L.R. 75 Ind. App. 86, at p. 98.
67 *Supra,* note 1.
68 *McCleod's Case* has had an influence around the Commonwealth because it was a Privy Council decision.
69 See Lord Scarman in *Air India* v. *Wiggins* [1980] 2 All E.R. 597.

solemn ceremony".[70] Both these reasons focus upon the act of the second marriage and regard the offence as completed upon the signing of the record or the completion of the ceremony.[71] These reasons cannot justify the extraterritorial operation of the bigamy provision. The falsification of records of another country need not be of much concern to the country in which the prosecution is attempted. This is particularly so in an Asian context where bigamy may be looked upon "as a measure to safeguard and strengthen the institution of monogamous marriage which is a part of the ethics of the colonial power."[72]

But, there are other justifications for the offence of bigamy. Blackstone suggested that bigamy was an offence because "it was so great a violation of the public economy and decency of a well-ordered state".[73] Kenny's editor, Turner, suggested that "at the present day the substantial justification for retaining bigamy as a serious crime is that in many cases it may cause great suffering to an innocent party to the bigamous marriage".[74] The innocent party cheated may either be the second woman or the first wife. The suffering so caused is continuous and takes effect not in the state where the second marriage takes place but in the place where the parties involved live.[75] The moral effects of the bigamy are also felt in the community where the parties live. If this be the reason for the offence of bigamy, then, in a situation like the one in *Rajappan's Case,* it is immaterial that the second marriage took place in India. The suffering of the innocent party and the moral effects of the bigamy are in Malaysia.

It does not take much effort to interprete the bigamy provision to give effect to this view. The word "marries again" could be regarded as referring to the state of being married rather than to the second ceremony. The state of "being married" is a part of the *actus reus* of the offence which is a continuous status enjoyed within Malaysia. Unless specific words against extraterritoriality appear in the statute, a court inclined to give extraterritoriality to a statute would seldom be constrained by the statutory provision. To repeat, its only limitations would be the principles of international law, which are dealt with in the next section.

IV. Criminal Jurisdiction and International Law

The bases of jurisdiction recognised in international law have been

[70] C.S. Kenny, *Outlines of Criminal Law* (15th ed. 1936), p. 361; for the development of the crime in the common law, see G.W. Bartholomew, "Origin and Development of the Law of Bigamy" (1958) 74 L.Q.R. 259.

[71] G. Williams, "Language and the Law" (1945) 61 L.Q.R. 71, at pp. 76-78, after exploring reasons for the offence concludes: "the crime of bigamy as it now stands... does not make any sense except on the supposition that the marriage ceremony is a magic form of words that has to be protected from profanation at almost any cost in human suffering".

[72] *Per* Salleh Abbas L.P. in *Rajappan* [1986] 1 C.L.J. 175, at p. 180.

[73] *Commentaries,* IV., 163.

[74] C.S. Kenny, *Outlines of Criminal Law* (18th ed. 1962), p. 214.

[75] The Harvard Research on Jurisdiction regards bigamy as a continuing offence; see (1935) 29 A.J.I.L. Supp. 491-492, M. Akehurst, "Jurisdiction in International Law" (1972) B.Y.I.L. 145, at p. 153 agrees, observing that "bigamy is a continuing offence as long as the parties bigamously cohabit".

categorized by writers.[76] The principal categories are (1) the subjective territoriality principle, which gives jurisdiction to the state in which the offence is committed, (2) the objective territoriality principle which gives jurisdiction to a state in which the effects are felt, (3) the protective principle, which is a variant of the objective territoriality principle, (4) the nationality principle which enables a state to exercise jurisdiction over its nationals who live abroad, (5) the universality principle, which enables any state to exercise jurisdiction over certain crimes considered to be so morally offensive that they should be universally condemned wherever they may have been committed. Of these principles, the first two are of immediate relevance to this article.

The starting point of any discussion on the international law relating to state jurisdiction is the judgment of the Permanent Court of International Justice in the *Lotus Case.*[77] There is unanimity among international lawyers that a widely permissive rule was formulated in that case, providing authority for any jurisdictional claim as long as it does not conflict with the claims of another state. *Lotus* was so understood by the Malaysian court in *Rajappan's Case.*[78] Lord President Salleh Abbas stated that the World Court in *Lotus* had declared that "Turkey had the power not only to punish its nationals but also to punish foreigners who committed acts outside her territory against her citizens". The inference from the judgment in *Rajappan* is that this was a power possessed by the state and the power cannot be exercised by the courts unless expressly authorized by the legislature. This raises questions as to constitutional theory. If judicial power of a state is in the courts, the question arises as to why the legislature must sanction the exercise of the power. Judicial power flows from the constitution and section 121 of the Federal Constitution vests that power in the courts of Malaysia. The legislature may create crimes having extraterritorial effect in which case courts would give it such effect. But where the legislation is silent the courts have the residual power of determining whether or not the offence should be given extraterritorial effect. This view accords with the position taken by Lord Diplock who took the view that the jurisdiction of the English courts is limited only by considerations of international comity.

In a situation where there is conflict of jurisdiction difficult questions would arise and, hitherto, no rules of international law have evolved which deal with such conflicts of jurisdiction. Much of the conflict has resulted from American efforts to enforce its regulatory legislation extraterritorially.[79] The conflict has resulted in charges of American imperialism by allies of the United States[80] and hostile

[76] F.A. Mann, *Studies in International Law* (1973), pp. 1 -139; M. Akehurst, "Jurisdiction in International Law" (1972–73) 46 B.Y.I.L. 145.
[77] [1927] P.C.I.J. Series A, No. 10.
[78] [1986] 1 C.L.J. 175, at p. 186.
[79] For antitrust law, see M. Sornarajah, "Extraterritoriality of U.S. Antitrust Laws — Conflict and Compromise" (1982) 31 I.C.L.Q. 127, *U.S.* v. *Aluminium Company of America* 148 F. 2d 416 (1946). Antitrust extraterritoriality is not confined to the U.S. For Germany, see D.J. Gerber, "The Extraterritorial Application of German Antitrust Laws" (1983) 77 A.J.I.L. 765; for the E.E.C., see the *Dyestuffs* Case [1972] E.C.R. 619.
[80] Generally see D.E. Rosenthal and W.M. Knighton, *National Laws and International Commerce: The Problem of Extraterritoriality* (1982); A.V. Lowe, *Extraterritorial Jurisdiction: An Annotated Collection of Legal Materials* (1983), A.V. Lowe, "The Problems of Extraterritorial Jurisdiction: Economic Sovereignty and the Search for a Solution" (1985) 34 J.C.L.Q. 724.

legislative reponses directed at frustrating the decrees of American courts.[81] American courts themselves have responded to these developments by formulating doctrines which would enable the courts to limit their jurisdiction in situations in which conflict with another state may be the result of an assumption of jurisdiction. Thus, in *Timberlane* v. *Mannington Mills Inc.,*[82] the court formulated certain criteria which would enable the court to balance the interests of the two states at conflict and assume jurisdiction only if the interests of the United States are the dominant ones.

But, such conflicts, largely in the sphere of economic regulation, have little relevance to criminal jurisdiction. There is general agreement that crime must be suppressed and the general trend is towards greater participation in the suppression of crime. It is unlikely, except in situations where the crime has political overtones,[83] that states are likely to contest the exercise of each other's jurisdiction, when more than one state has an interest in the prosecution of the offence or the offender. Besides, the extensions made by the English and the other Commonwealth courts regarding the crime as having a territorial base as long as its effects are felt within the territory are quite consistent with principles of international law.[84]

V. CONCLUSION

In a study of the Anglo-American practice on criminal jurisdiction, a commentator pointed out that whereas legislatures in the United States and England had adopted a conservative stance on matters of criminal jurisdiction, the courts in the two countries had adopted an avant-garde position which favoured social and economic considerations over purely legal doctrines.[85] In a world that is shrinking into a global village, crime will cross national frontiers increasingly. If the courts take a narrow view of their jurisdiction, such transnational crime will flourish. Securities frauds initiated from abroad will cripple stock exchanges. Frauds in electronic transfers of funds will destroy international banking. Such activities will thrive if jurisdictional technicalities impede the conviction of the guilty. Courts in Malaysia and Singapore, in the absence of legislative activity in the field, should adopt the same techniques adopted by the courts in other Commonwealth jurisdictions and construe the territorial basis of their criminal jurisdiction broadly. Ideally, one would expect this area of the law to become a subject of law reform and legislative activity. In Singapore, which is a financial centre likely to be affected by frauds directed from abroad, the formulation of a statute defining the extraterritorial jurisdiction of the courts is a matter of great urgency.

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81 *E.g.* the U.K. Protection of Trading Interests Act 1980.
82 595F. 2d. 1287 (1979).
83 A recent instance being the sinking of the Rainbow Warrior in New Zealand in which France was involved.
84 A Chase, "Aspects of Extraterritorial Criminal Jurisdiction in Anglo-American Practice" (1977) 11 *International Lawyer* 555.
85 *Ibid.*

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