

Case Note

FIRST FORAYS INTO EXTRATERRITORIALITY AND JURISDICTION IN SINGAPORE CRIMINAL LAW

Ng Kok Wai v Public Prosecutor [2024] 3 SLR 1516

Does the Singapore criminal law apply to acts committed outside Singapore? And do Singapore courts have jurisdiction to try accused persons who commit such extraterritorial acts? In *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516, a three-judge *coram* of the General Division of the High Court considered some of these matters. This case note analyses the main points considered in the case.

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I. Introduction

1 Generally, a person only commits an offence under the criminal law of a country if their acts are committed within the territorial bounds of that country. This principle is known as the presumption of territoriality.² The presumption exists primarily because countries are generally not concerned with foreign malefactors, and for reasons of international comity.³

2 Exceptionally, the criminal law is engaged even for extraterritorial acts.⁴ In other words, someone may have committed

1 I am indebted to Assistant Professor Benny Tan for his generous advice, comments, and encouragement over the preparation of this note. I am also grateful to the anonymous reviewer, whose comments greatly improved the piece. All errors are mine.

2 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [27].

3 *Libman v R* [1985] 2 SCR 178 at [65]; (1985) 21 CCC (3d) 206 at 228–229, cited with approval in *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 at [69].

4 One common example is s 8A of the Misuse of Drugs Act 1973 (2020 Rev Ed), which criminalises the consumption of certain drugs outside Singapore by Singapore citizens or permanent residents. For justifications, see, eg, Menno T Kamminga, “Extraterritoriality” in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2023) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1040>> (accessed 22 May 2025).

an offence under the criminal law of one country, even if all their acts took place in another country. Two issues arise here. Firstly, how do we determine if extraterritorial acts constitute offences? Secondly, even if they do, does a court have the authority, or jurisdiction, to try the case? Courts generally have jurisdiction over acts occurring in their country.⁵ But to what extent do they have jurisdiction over extraterritorial acts?

3 Much turns on statutory interpretation, and it is impossible to provide a full answer to these questions here. Instead, the aim of this note is to analyse the key points of the General Division of the High Court in *Ng Kok Wai v Public Prosecutor*⁶ (“*Ng Kok Wai*”), where the court considered some of these points.

4 This note is in four parts. Paragraphs 5 to 11 analyse *Ng Kok Wai*’s discussion of the general law on extraterritoriality and jurisdiction. Paragraphs 12 to 40 evaluate the court’s conclusion that on the facts of the case, the accused could be convicted because s 3 of the Penal Code⁷ (“PC”), and not s 180 of the Merchant Shipping Act⁸ (“MSA”), provides extraterritorial effect. It is respectfully suggested that the court got it the wrong way round. Paragraph 41 concludes with a summary of the main points.

II. *Ng Kok Wai*’s general discussion on extraterritoriality and jurisdiction

A. *The judgment*

5 The High Court began by setting out the distinction between extraterritorial and jurisdictional issues.⁹ The court held that whether an accused person may be tried and convicted in Singapore for acts committed outside Singapore turned on:¹⁰

5 For the general provisions conferring criminal jurisdiction in Singapore, see para 6 below.

6 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516.

7 Cap 224, 2008 Rev Ed. The wording of the current s 3 under the Penal Code 1871 (2020 Rev Ed) is identical.

8 Cap 179, 1996 Rev Ed. The wording of the current s 180 under the Merchant Shipping Act 1995 (2020 Rev Ed) is identical, save for non-substantive linguistic changes introduced as part of the 2020 revisions to legislation.

9 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [15]–[30].

10 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [16].

- (a) whether there is an applicable statutory provision that renders an act committed by the accused person outside Singapore an offence under a Singapore law; and
- (b) whether there is an applicable statutory provision that confers authority on the Singapore courts to try the accused person for the offence in question.

The court termed the first category of provisions “extraterritorial application provisions” and the second “jurisdictional provisions”. Interestingly, the court rejected the claim that there “was a tendency to elide the distinction between the two distinct types of provisions and to treat them as a unified inquiry into the court’s criminal jurisdiction”,¹¹ stating that the claim was not “well-founded”.¹²

6 Beginning with jurisdictional provisions, the court observed that the general provisions which gave domestic courts jurisdiction over criminal matters included s 15 of the Supreme Court of Judicature Act 1969,¹³ and ss 50 and 51 of the State Courts Act 1970¹⁴ (“SCA”).

7 As for extraterritorial application provisions, the court observed that due to the presumption of territoriality, acts committed outside Singapore do not generally engage Singapore criminal law.¹⁵ However, the court considered the circumstances in which the presumption could be defeated:¹⁶

The presumption of territoriality is, as the term suggests, only a presumption. As mentioned above, Parliament may choose to legislate extraterritorially and create a statutory offence which criminalises acts or omissions occurring outside the territory of Singapore which has consequences within its borders which the State reprehends ... Parliament may also enact a statutory provision that permits the extraterritorial application of existing domestic criminal laws to criminalise acts or omissions committed abroad in particular circumstances. Whether Parliament did any of this and intended a statutory provision to have extraterritorial application is ultimately a question of statutory interpretation. [references omitted]

B. Analysis

8 Two main points may be raised in relation to the court’s discussion on the law. One point relates to the rejection of the view that issues of

11 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [18].

12 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [19].

13 2020 Rev Ed.

14 2020 Rev Ed.

15 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [26].

16 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [30].

extraterritoriality and jurisdiction have been historically confused.¹⁷ With respect, it is not clear that this is the case. No support was provided for this assertion, and, confusingly, the court themselves later observed that the “distinction between ‘jurisdiction’ and ‘extraterritorial application’ was only developed in jurisprudence much later”.¹⁸ It is suggested that this latter view is to be preferred. It is supported by, for example, an article by Glanville Williams¹⁹ cited by the court. The upshot is that it is not necessarily clear, at least especially for older provisions, whether a provision confers extraterritoriality or jurisdiction.

9 There are two practical takeaways flowing from this point. Firstly, in terms of future analysis, provisions should not be distinguished as *either* an extraterritorial application provision *or* a jurisdictional provision. It is entirely possible that a single provision could serve both functions.

10 Secondly, the historical confusion between extraterritorial application and jurisdiction means the use of terms such as “jurisdiction” in a provision is ambiguous as to whether the provision deals with extraterritoriality and/or jurisdiction. This means that, pursuant to the approach to statutory interpretation set out in *Tan Cheng Bock v Attorney-General*²⁰ (“*Tan Cheng Bock*”), recourse to extrinsic material is permissible.²¹

11 The other point is a clarification in relation to the circumstances in which the presumption of territoriality may be defeated, as set out in the above paragraph on extraterritorial application provisions. The court’s suggestion that the presumption may be defeated if Parliament “legislates extraterritorially” or “enact[s] a statutory provision” may be read as suggesting that the presumption may only be defeated by express words.²² Such a reading would be incorrect. The better view is that of the Court of Appeal in *Public Prosecutor v Taw Cheng Kong* (“*Taw Cheng Kong*”),²³ which correctly observed that the presumption may be defeated by “implied intention to the contrary”.²⁴

17 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [18]–[19]. I am grateful to Assistant Professor Benny Tan for alerting me to this.

18 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [63] and [79].

19 Glanville Williams, “Venue and the Ambit of Criminal Law”, Part 2 (1965) 81 LQR 395 at 409.

20 [2017] 2 SLR 850.

21 *Cf Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 at [26(a)].

22 See also *Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 at [21].

23 [1998] 2 SLR(R) 489.

24 *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 at [66]. See also Diggory Bailey & Luke Norbury, *Bennion, Bailey, and Norbury on Statutory Interpretation* (LexisNexis, 8th Ed, 2020), at p 209: “Where an Act is silent as to its territorial
(cont'd on the next page)

III. The issue in *Ng Kok Wai*

A. The judgment

12 The facts of *Ng Kok Wai*²⁵ are straightforward.²⁶ The accused, a Singaporean, was on a Bahamas-registered cruise ship sailing in international waters. He broke into the victim's cabin and stole her brassiere. Thereafter, he was discovered and charged under ss 380 and 451 ("Relevant Penal Code Provisions") of the PC, for theft in dwelling and house-breaking respectively. At first instance, the Prosecution argued that the Relevant Penal Code Provisions applied because certain provisions in the MSA provided the necessary extraterritorial and jurisdictional effect.²⁷ The accused's defence was that the Relevant Penal Code Provisions did not apply to his extraterritorial acts.²⁸

13 The High Court decided as follows. Firstly, the court held that the *Tan Cheng Bock*²⁹ approach to statutory interpretation was applicable in the present case.³⁰ The court then held that the accused was liable because s 3 of the PC could extend all PC provisions, including the Relevant Penal Code Provisions, extraterritorially.³¹ However, s 3 could only be engaged if there was "some other provision of law that permits a person to be tried in Singapore for an offence committed outside the territory of Singapore".³² Here, s 50(2)(c) of the SCA satisfied that condition:³³ s 50(2)(c) conferred jurisdiction on the District Court (the trial court) for, among other things, offences committed by Singaporeans on the high seas. Finally, the court rejected the argument that s 180 of the MSA conferred extraterritoriality.³⁴

B. Analysis

14 It is respectfully suggested that s 3 of the PC does not confer extraterritorial effect. Section 3 merely states that the punishment of

application, whether (and if so to what extent) the presumption is displaced is an issue to be considered by interpreting the Act in the usual way."

25 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516.

26 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [4]–[6].

27 *Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 at [5].

28 *Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 at [6].

29 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850.

30 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [12].

31 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [49]–[57].

32 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [49(a)].

33 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [56].

34 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [67]–[94].

certain offences committed beyond Singapore are to be dealt with in the same way as if the act(s) occurred in Singapore itself.

15 The High Court's interpretation of s 3 should be reconsidered for at least four reasons. Firstly, the words of s 3 do not purport to confer extraterritoriality. Section 3 provides that:

Punishment of offences committed beyond, but which by law may be tried within Singapore

3. Any person liable by law to be tried for an offence committed beyond the limits of Singapore, shall be dealt with according to the provisions of this Code for any act committed beyond Singapore, in the same manner as if such act had been committed within Singapore.

A provision which confers extraterritorial effect, if well drafted,³⁵ should properly stipulate that extraterritorial *acts* are to be deemed as offences. However, the plain wording of s 3 alone refers to offences, meaning acts or omissions *already* deemed punishable under the PC or by some other law (as the case may be).³⁶ There is no evidence to suggest that s 3 was poorly drafted.

16 Secondly, the court's reading of s 3 is also arguably inconsistent with the section immediately preceding it. Section 2 of the PC provides:

Punishment of offences committed within Singapore

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he is guilty within Singapore.

Among other things, s 2 clarifies that the range of punishment of all offences committed within Singapore is set out under the PC. The point of s 3, which immediately follows it and has a similar title, is to say the same in relation to offences committed outside Singapore.

17 Thirdly, the argument that s 3 of the PC has nothing to do with extraterritoriality is also supported by legislative history. The court observed that the section is worded "in substantively the same language"

35 In this regard, *contra* the wording of s 4 of the Penal Code 1871 (2020 Rev Ed), introduced in 2008, with s 31(1) of the Criminal Justice Act 1948 (c 58) (UK) as interpreted in *Treacy v Director of Public Prosecutions* [1971] AC 537 at 553. See further Glanville Williams, "Venue and the Ambit of Criminal Law", Part 2 (1965) 81 LQR 395 at 415.

36 See s 40 of the Penal Code 1871 (2020 Rev Ed). See also s 2(1) of the Criminal Procedure Code 2010 (2020 Rev Ed), cited by the District Court in *Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 at [48].

as s 3 of the Indian Penal Code³⁷ (“IPC”). Strangely, however, the court considered that s 3 of the IPC provided for extraterritorial effect.³⁸ The court cited a commentary³⁹ on the IPC worth reproducing in full:⁴⁰

The section postulates that, before a person committing an offence beyond the limits of India can be dealt with under the provisions of the Penal Code, there must be an Indian ‘law’ which provides for the trial of such person in India, and that in the particular case the requirements of such provision for such trial are satisfied. Section 188 of the Criminal Procedure Code, 1973, is a provision of the above kind that enables a person who has committed an offence ‘outside India’ to be ‘tried’ in India. Hence, the provisions of that section must be satisfied before a person who has committed an offence outside India can be tried in India and subjected to a punishment prescribed by the [IPC].

Section 188 of the Criminal Procedure Code deals with two classes of persons who commit offences outside India:

(1) Indian citizens; ...

...

In the case of an ‘Indian citizen’ committing an offence outside India, he will be liable to be tried at any place where he may be found in India, ‘wherever’ he may have committed the offence. ...

With respect, it is not clear how this passage supports the court’s reading. More helpful, but at risk of flogging a dead horse, is this single sentence by a leading commentary on Indian criminal law: “[t]he words of this section postulate the existence of a law that an act constituting an offence in India shall also be an offence when committed outside India”.⁴¹

18 That s 3 of the IPC does not provide extraterritorial effect is the position taken by Indian case law. In *Sheikh Haidar v Syed Issa*,⁴² the Nagpur High Court held that certain persons had not committed offences under the Indian Child Marriage Restraint Act⁴³ because the acts had taken place outside India. Grille J held that:⁴⁴

37 Penal Code 1860 (Act No 45 of 1860) (India). See *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [52].

38 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [54]. See also M Sornarajah, “Extraterritorial Jurisdiction Over Crimes in Singapore, Malaysia and the Commonwealth” (1987) 22 Mal LR 200 at 204.

39 W W Chitaley & V B Bakhale, *Indian Penal Code (XLV of 1860)* vol 1 (The All India Reporter Ltd, 3rd Ed, 1980) at p 21.

40 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [53].

41 *Ratanlal & Dhirajlal, The Indian Penal Code* (K Kannan & Anjana Prakash gen eds) (LexisNexis, 36th Ed, 2019) at p 6, citing *Sheikh Haidar v Syed Issa* AIR 1938 Nag 235; (1939) Ngp 241.

42 *Sheikh Haidar v Syed Issa* AIR 1938 Nag 235; (1939) Ngp 241.

43 Act No 19 of 1929 (India).

44 *Sheikh Haidar v Syed Issa* AIR 1938 Nag 235; (1939) Ngp 241 at [3].

If, then, it is sought to find authority for a child marriage solemnized outside British India to be made punishable in British India, the sanction must be sought in a law passed by the Governor-General of India in Council. No such provision occurs in the Child Marriage Restraint Act, although there are provisions of the kind which S. 3, I.P.C requires in the Railways Act 12 of 1890, and the Telegraph Act 43 of 1885.

The same conclusion was later reached in a report of the Law Commission of India.⁴⁵

19 Finally, the court's interpretation possibly creates inconsistencies between the extraterritoriality of PC offences and other offences.⁴⁶ Under the court's interpretation, every single PC offence would have extraterritorial effect (to the extent provided by s 3). But the same may not be said for offences outside the PC, even if they are similar or overlapping offences.

20 Consider, for example, a Singaporean who takes an "upskirt photo". Prior to the Criminal Law Reform Act 2019,⁴⁷ these persons could be charged under *both* PC provisions and provisions under the Films Act.⁴⁸ The court's interpretation of s 3 suggests that if the acts were committed extraterritorially, the PC provisions apply but not the Films Act provisions (nothing in the Films Act provides for extraterritoriality). That distinction would surely be artificial.

21 One way around this difficulty is to say that the Films Act provisions apply extraterritorially by analogy, but this roundabout reasoning is surely too strained. The crux of the issue is that most of Singapore's offences, regardless of whether they appear in the PC or not, may have extraterritorial reach in certain cases (such as when the acts occur on Singapore ships or planes). In such cases, recourse should be to general provisions which confer extraterritoriality.⁴⁹

45 Law Commission of India, *Forty-Second Report: Indian Penal Code* (1971) at paras 1.8–1.10. Instead, it is mainly s 4 of the Indian Penal Code 1860 (Act No 45 of 1860) (India) ("IPC") which governs extraterritoriality. Certain offences in the IPC also expressly provide for extraterritoriality: see those cited in P Chandrasekhara Rao, "State Jurisdiction" in *The Indian Constitution and International Law* (Brill, 1994) ch 6 at p 47, note 40.

46 I am grateful to the anonymous reviewer for this point.

47 No 15 of 2019.

48 Cap 107, 1998 Rev Ed. See Penal Code Review Committee, *Report* (August 2018) at pp 73–75; one such case is *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222. Today the usual provision relied on is the new s 377BB of the Penal Code 1871 (2020 Rev Ed).

49 See, eg, s 3 of the Tokyo Convention Act 1971 (2020 Rev Ed), considered later.

C. *The better view*

22 On that note, it is respectfully suggested that s 180 of the MSA provides *both* the extraterritorial and jurisdictional effect required on the facts of *Ng Kok Wai*. This argument finds roots in 1981, where the predecessor of s 180 (s 686(1) of the UK Merchant Shipping Act 1894⁵⁰ (“UK MSA”)) was considered by the House of Lords.

23 In *R v Kelly*⁵¹ (“*Kelly*”), the House of Lords was faced with essentially identical facts as that of *Ng Kok Wai*.⁵² The accused persons were British subjects on a non-British ship travelling in international waters. They were charged under English criminal law⁵³ for damaging or destroying fittings on the ship. The Prosecution relied on s 686(1) of the UK MSA to establish extraterritoriality and jurisdiction; the accused persons submitted that English law had no application because their acts were extraterritorial.

24 Lord Roskill, with whom the other Lords agreed, held that s 686(1) established *both* extraterritoriality and jurisdiction. The section provided as follows:

Jurisdiction in case of offences on board ship

686(1) Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or any foreign port or harbour or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty’s dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

It was quite clear on a literal reading of the last part of the provision (that “the court shall have jurisdiction to try the offence”) that s 686(1) confers jurisdiction. The question was whether the provision also conferred extraterritoriality.

25 Lord Roskill considered that it was improbable that the provision only provided jurisdictional effect. This was for two reasons:

50 c 60 (UK).

51 [1982] AC 665.

52 *R v Kelly* [1982] AC 665 at 672–673.

53 Specifically, s 1 of the Criminal Damage Act 1971 (c 48) (UK). Nothing in the Act explicitly provided for extraterritorial effect: *R v Kelly* [1982] AC 665 at 675.

(a) Firstly, His Lordship thought that the impact of such a provision had “[negligible] practical effect”.⁵⁴ His Lordship referred to the same article by Glanville Williams cited in *Ng Kok Wai*, which had observed that reading the provision this way would “reduce it to a nullity” because there were Acts which already dealt with jurisdiction.⁵⁵

(b) Secondly, holding that the provision merely provided jurisdictional effect meant that the general English criminal law would not be applicable to British subjects on board any foreign ship.⁵⁶ His Lordship found that the other result was “infinitely more likely”.⁵⁷ Otherwise, among other things, this would mean that the only recourse was in the courts of the vessel’s flag state.⁵⁸ His Lordship found this was “hardly a satisfactory form of control of miscreants returning to the United Kingdom on a foreign ship”.⁵⁹ This was particularly so where the flag of the ship was one of “convenience”.⁶⁰

26 Lord Roskill considered that other factors supported his reading of s 686(1). Importantly, His Lordship found that his position was also supported by legislative history.⁶¹ An earlier version of the provision provided that the accused had to “[commit] any crime or offence”,⁶² suggesting that the provision originally had no extraterritorial effect.⁶³ However, s 686(1) stated that the accused need merely be “charged with having committed” an offence. His Lordship also concluded that his reading was supported by policy, that being to ensure that the offenders were “swiftly brought to justice wherever they may be found”.⁶⁴

27 Notwithstanding some legislative developments, it is suggested that this reading also applies in Singapore. In Singapore, the equivalent of s 686(1) of the UK MSA was what was then s 337 of the Merchant Shipping Act.⁶⁵ Section 337 was identical to s 686(1) of the UK MSA,

54 *R v Kelly* [1982] AC 665 at 676.

55 Such as the Admiralty Offences Act 1844 (c 2) (UK), and the Admiralty Offences (Colonial) Act 1849 (c 96) (UK): see Glanville Williams, “Venue and the Ambit of Criminal Law”, Part 2 (1965) 81 LQR 395 at 411.

56 *R v Kelly* [1982] AC 665 at 676.

57 *R v Kelly* [1982] AC 665 at 676.

58 *R v Kelly* [1982] AC 665 at 676.

59 *R v Kelly* [1982] AC 665 at 676. The facts of *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 itself provide the perfect example.

60 *R v Kelly* [1982] AC 665 at 676.

61 *R v Kelly* [1982] AC 665 at 677–678.

62 Merchant Shipping Act 1867 (c 124) (UK) s 11.

63 *R v Kelly* [1982] AC 665 at 677–678.

64 *R v Kelly* [1982] AC 665 at 677.

65 Cap 179, 1985 Rev Ed.

save that the person must be found in the jurisdiction of any court in Singapore (and not “Her Majesty’s dominions”). However, after *Kelly* was decided, Parliament later amended s 337 to what is today s 180 of the MSA. Section 180 provides:

Jurisdiction in case of offences on board ship

180. Where any person is charged with having committed any offence on board any Singapore ship on the high seas or elsewhere outside Singapore or on board any foreign ship to which the person does not belong and that person is found within the jurisdiction of any court in Singapore which would have had cognizance of the offence if it had been committed on board a Singapore ship within the limits of its ordinary jurisdiction, that court has jurisdiction to try the offence as if it had been so committed.

There does not appear to be an explanation on why s 180 was amended. All that was said in the short second reading of the Merchant Shipping Bill was that “the Marine Department had done a complete review of the previous Act”.⁶⁶

28 In so far as extraterritoriality and jurisdiction is concerned, it will be observed that s 180 did not change the wording in s 686(1). For that reason, it is suggested that s 180 should still be read to provide both extraterritorial and jurisdictional effect. The complete review of the Marine Department must have included the decision in *Kelly*, and Parliament’s endorsement of the review should be taken to likewise endorse the view in *Kelly*. It may be argued that the better approach would have been for Parliament to have rewritten the provision more clearly. However much this may be true, it must be recalled that *Kelly* had addressed the exact issue squarely, such that amendments were unnecessary.

29 As against this proposed reading of s 180, there were a number of reasons provided by the District Court in *Ng Kok Wai* at first instance, and the High Court on appeal, as to why *Kelly* should not be followed. But these reasons, with respect, may warrant further review.

30 Firstly, the first reason provided by the High Court was that the title of s 686(1) of the UK MSA provides for “[j]urisdiction in case of offences on board ship”. This, to the High Court, referred *only* to the literal meaning of jurisdiction.⁶⁷ With great respect, it is strange that this conclusion was reached. Just two paragraphs earlier,⁶⁸ the court

66 Singapore Parl Debates; Vol 64, Sitting No 11; Col 1140; [25 May 1995] (Goh Chee Wee, Minister of State for Communications).

67 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [65].

68 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [63].

had observed that the word “jurisdiction” has also referred to issues of extraterritoriality.

31 Secondly, the High Court felt that “the use of the word ‘offence’ rather than the words ‘act or omission’ suggests the existence of some other extraterritorial application provision which deems the act or omission committed abroad as having been committed in the UK and therefore constituting an ‘offence’ under UK criminal law”.⁶⁹ Given that s 180 was drafted in a period of poor draftsmanship, this point is unsatisfactory. More importantly, on this view, s 3 of the PC (which also refers to offences instead of acts or omissions) cannot have the interpretation given to it by the court.⁷⁰

32 The third and final point raised by the High Court was that reading s 180 to be an extraterritorial application provision would unduly extend the Singapore criminal law to foreign persons on foreign registered ships who were not crew members.⁷¹ The Prosecution suggested, among other things, that this would be dealt with through the sensible exercise of prosecutorial discretion,⁷² and that such an approach was analogous to Singapore’s air travel laws.⁷³ In particular, s 3(2) of the Tokyo Convention Act 1971⁷⁴ (“TCA”) deems extraterritorial acts and omissions occurring on a non-Singapore registered aircraft as if they were committed in Singapore if “the aircraft subsequently lands in Singapore with the person who committed the act or omission still on board the aircraft”.

33 The High Court disagreed for reasons which, it is respectfully submitted, deserve further reconsideration:

(a) Firstly, s 3(2) of the TCA was an extraterritorial application provision, whereas s 180 of the MSA was “more likely to be” a jurisdictional provision.⁷⁵ This, with respect, puts the cart before the horse.

(b) Secondly, “the words ‘subsequently’ and ‘still’ in s 3(2) of the [TCA] suggests that the offender’s presence in Singapore must almost immediately succeed the commission of the offence”.⁷⁶ To the court, this was a “significant temporal limitation on the

69 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [65].

70 See para 15 above.

71 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [71].

72 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [73].

73 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [73].

74 2020 Rev Ed.

75 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [74].

76 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [75].

operation of the provision”.⁷⁷ With respect, however, it is not clear how the words “subsequently” and “still” place such a temporal restriction. Rather, these words mean that if an aircraft landed in Singapore, but the would-be offender had deplaned at an earlier stop, his acts would not engage Singapore law.

(c) Thirdly, “prosecutorial discretion does not have the same institutional constraints that come with reading a statutory provision that purports to extend the usual jurisdictional ambit of the court and/or the extraterritorial reach of the criminal law in a way that sensibly limits its operation”.⁷⁸ But the approach adopted by the court arguably leaves a *lacuna* in the law in certain areas, as will be later argued.⁷⁹

(d) Finally, “the rules developed for air travel are also likely to be somewhat unique because of the particular need, by reason of safety and security concerns, to ensure that neither jurisdictional nor extraterritoriality concerns should impede effective enforcement”.⁸⁰ Unfortunately, the court did not elaborate on what exactly was “somewhat unique” about air travel. It is suggested that at least broadly, similar reasons could apply to maritime travel.

34 One final point worth considering was that s 686(1), and hence s 180, was drafted too poorly to be remedied by means of interpretation. This was the point made by Geoffrey Marston in the *Cambridge Law Journal*, and a report by the Law Reform Commission of Canada.⁸¹ However, as argued earlier,⁸² the *Tan Cheng Bock* approach to statutory interpretation is consistent with the interpretation in *Kelly*. It bears mention that Marston seems to accept that the outcome in *Kelly* was correct in so far as policy and legislative history are concerned.⁸³

77 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [75].

78 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [75].

79 See paras 36–40 below.

80 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [75].

81 Geoffrey Marston, “Crimes By British Passengers on Board Foreign Ships on the High Seas: The Historical Background to Section 686(1) of the Merchant Shipping Act 1894” (1999) 58(1) *Cambridge Law Journal* 171 at 195; Law Reform Commission of Canada, *Extraterritorial Jurisdiction* (Working Paper 37, 1984) at pp 42–43. These were cited by the District Court in *Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 at [26(d)].

82 See para 10 above.

83 Geoffrey Marston, “Crimes By British Passengers on Board Foreign Ships on the High Seas: The Historical Background to Section 686(1) of the Merchant Shipping Act 1894” (1999) 58(1) *Cambridge Law Journal* 171 at 195–196.

35 For the above reasons, it is suggested that in relation to extraterritorial acts on ships, the general Singapore position on extraterritoriality and jurisdiction should be governed by s 180 of the MSA.

36 For completeness, it may be worth briefly considering s 180's removal of the distinction between Singaporean and foreign subjects. What is to be made of this? One way to read the section is that the rules on extraterritoriality are today equally broad as between Singaporeans and foreign subjects, compared to the historically more restrictive rules for foreigners. This better accords with Lord Roskill's point on policy.⁸⁴ If the accused in *Ng Kok Wai* was not Singaporean but foreign, there would be no practical way to control or punish him.

37 The utility of this reading may be illustrated in the following hypothetical:

X, a foreigner, and Y, a Singaporean, are on a "cruise to nowhere" in the high seas. They are on a Ruritania registered ship, ordinarily based in Singapore. X murders Y.

If the hypothetical occurred under the old s 337, there is arguably no basis for Singapore criminal law to intervene. The only state with jurisdiction would thus be Ruritania, the flag-state. However, it is suggested that this result may be unsatisfactory,⁸⁵ especially if Ruritania is unwilling or unable to prosecute X.⁸⁶ This could lead to the consequence that X would be free on the streets of Singapore upon the ship's return.⁸⁷

84 See para 25(b) above.

85 Thus, see s 115 of the Australian Criminal Code Act 1995 (Cth), which criminalises the engaging of conduct outside Australia which causes the murder, manslaughter, or (if committed intentionally or recklessly) serious harm to Australian citizens or residents.

86 Countries, albeit in invoking extraterritoriality against their own citizens (*ie*, applying the "active personality" principle), have justified the exercise of extraterritorial jurisdiction on "the avoidance of impunity in respect of certain countries where particular behaviour is either not qualified as criminal, or even if it is the authorities generally fail to prosecute the offenders": Ilias Bantekas, "Criminal Jurisdiction of States Under International Law" in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2023) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1021>> (accessed 14 August 2025) at para 16. Bantekas provides "drugs and sexual offences, particularly against children" as examples.

87 Kenneth S Gallant, "The Universality Principle" in *International Criminal Jurisdiction: Whose Law Must We Obey?* (Oxford University Press, 2022) ch 8 at 477, suggests that a state in which the criminal is found may have an interest in protecting the community from the danger posed by the "unpunished criminal in the community".

38 The problem with this interpretation, however, is that it may be inconsistent with international law today. The prevailing view is that states may only enforce extraterritorial jurisdiction under one of a number of established principles.⁸⁸ For example, in the hypothetical above, extraterritorial jurisdiction is possibly at least legitimised under the passive protection principle because the victim is Singaporean. However, a plain reading of s 180, wherein no recourse is made to such principles, goes further than that.

39 But it would be incorrect to suggest that this difficulty is fatal to the conclusion that s 180 was amended to bring the position as regards foreigners to be in line with Singaporeans. It is important to note when s 180 was enacted, it was not clear that the broad interpretation was contrary to international law.⁸⁹ This means that at the time, for policy reasons, Parliament may have permissibly decided to take a more expansive approach.⁹⁰

40 One possible way to resolve the issue today is to read s 180 broadly, but *subject to international law*. This would ensure compliance with international law while allowing for Singapore criminal law to be engaged in the appropriate case.⁹¹ In all, however, whether the qualification should be implied, and if so the precise scope of that qualification, is a complex matter which falls outside this note.

IV. Conclusion

41 The key points in this note are as follows:

- (a) An accused may only be tried for their extraterritorial acts or omissions under Singapore law where provision(s) provide for the necessary extraterritorial and jurisdictional effect. Such effect may be express or implied.

88 See, eg, Menno T Kamminga, “Extraterritoriality” in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2023) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1040>> (accessed 22 May 2025) at para 10.

89 Rain Liivoja, “Criminal Jurisdiction under International Law” in *Criminal Jurisdiction Over Armed Forces Abroad* (Cambridge University Press, 2017) ch 2 at pp 52–56.

90 Other countries have similarly broad provisions: see note 91 below.

91 It has been argued that the broad extraterritorial provision in the Swedish criminal law should be similarly read: see the discussion in Kenneth S Gallant, “The Universality Principle” in *International Criminal Jurisdiction: Whose Law Must We Obey?* (Oxford University Press, 2022) ch 8 at 491. Other countries have similar provisions: see Art 8 of the Criminal Law of the People’s Republic of China (1997) (PRC).

(b) Whether a provision provides extraterritorial or jurisdictional effect is an issue of statutory interpretation. But one must be cautious in interpreting such provisions, given that these issues have often been historically elided. It is thus unnecessary to first consider whether a provision may be categorised as an “extraterritorial application provision” or a “jurisdictional provision”.

(c) The conclusion in *Ng Kok Wai* that s 3 of the PC provides extraterritorial effect in relation to the matters in this case deserves reconsideration. Rather, it is s 180 of the MSA that provides for extraterritoriality.

(d) It is an open question if s 180 of the MSA must be read subject to international law today.

Ng Kok Wai, and indeed this note, has only scratched the surface of extraterritoriality and jurisdiction. Many issues remain,⁹² and a fuller discussion on these matters will be welcome. This is especially given the increase in cross-jurisdictional crimes which engage these issues.⁹³

92 In the UK, a recent report commissioned by the UK Law Commission concluded that English law “tended to allow the inclusion of offences in a haphazard way in response to different pressures at different times, and in the absence of underlying principles against which any claim that an offence should be capable of prosecution extraterritorially might be tested”: Gemma Davies *et al*, *International Cooperation and Extradition Scoping Review* (Criminal Law Reform Now Network, June 2025) at para 518, endorsing remarks made in Home Office, *Steering Committee Report: Review of Extra-Territorial Jurisdiction* (HL 223, July 1996).

93 Gemma Davies *et al*, *International Cooperation and Extradition Scoping Review* (Criminal Law Reform Now Network, June 2025) at para 518.