

Video Transcript

Diplomatic Protection and Issues of Standing

Hi, and welcome to the mini-lecture where we introduce Chapter 11 which is on diplomatic protection, a concept through which states can protect the interest of their own citizens or nationals when something goes wrong abroad. Although a lot of what happens when a national lives abroad occurs because the national is in another country, and thus subject to the domestic law of that foreign state, the rules on when a state can intervene to protect its national are actually rules of international law. So this, like with Chapter 4 and, to a certain degree, the chapter on immunities, is an interesting interplay between international and domestic law.

So what we're talking about when we're talking about diplomatic protection is the exercise of protection by a state on its nationals. And nationality in this case serves as a bond. It serves as a bond that creates a legal interest in the state in ensuring that its citizens are treated appropriately abroad. It derives from an old fiction named after Emer de Vattel, who was a Swiss jurist, who put forward the theory that so goes international law: an injury to a national is an injury to the state. And that has been termed the Vattelian fiction in honour of his name, and is one of these foundational principles and underlying state sovereignty and the interest that the state has when acting abroad. It was confirmed in one of the earliest cases of the Permanent Court of International Justice, which was surveyed in Chapter 1 (and is also the precursor to today's International Court of Justice), in a case called Mavrommatis Palestine Concessions, where it's confirmed as a foundational principle of customary international law. So in this respect, what the idea that 'an injury to a national is an injury to a state' creates is it reinforces the centrality of the state as the legal actor upholding rights and interests on the international plane, but it also reinforces that link of nationality. Moreover, what it does is it establishes the idea that in order for an international claim to be admissible, receivable by an international court or tribunal, there has to be a sufficient legal interest. So State A can't exercise diplomatic protection for a breach committed to the citizens of State B. It needs to have the sufficient legal interest, which is established without bond of nationality.

The basic principle with respect to legal interests is that only claimants with a demonstrable interest can bring in action in respect of the law. And it used to be that the nationals had to suffer an injury and that they needed to be directly

linked to the state. Over time, the idea of the legal interest has evolved. As we saw in Chapter 3 on peremptory norms, there are certain obligations in which all states have a legal interest, those are obligations *erga omnes*, ‘owed to all’. In those cases, the legal interest is presumed by all states and the link of nationality has been attenuated somewhat. But nevertheless, the idea that legal interest is a prerequisite for the admissibility of a case remains very much at the centre.

So in this chapter, we go through those various rules. We spend considerable attention on the rules on nationality because, although the conferral of nationality, the bestowal of nationality, is primarily a prerogative of the state, over time, there have been certain international rules through which that bestowal of nationality can be unrecognised or unenforceable on the international plane. An important case in this respect, you'll see, is the Nottebohm case between Liechtenstein and Guatemala. But we'll also look at the admissibility of claims that involve multiple states. So you can have an injury committed by one state against the nationals of another state in the territory of the third state. Or again, obligations *erga omnes* through which several states might be claiming a legal interest; and there are rules on when those cases are admissible and which date may bring the case forward.

Finally, we will look at an important rule which is also there to ensure harmonious interaction between states and that is the rule on the ‘exhaustion of local remedies’. And it sounds very fancy, but simply put, all that the exhaustion of local remedies requires is that a national first seek every form of redress available under domestic law, before turning to their national state and seeking to internationalise the claim. There are several rules about how this is to be effected, but in short, those rules exist to ensure that states aren't necessarily going after each other in the first instance, but rather in the last instance.

Thank you.