

Video Transcript

Jurisdiction – Gleider Hernández

So what do we mean by jurisdiction in international law? Effectively what we mean are the boundaries, limits and extent to which a state can be competent to make, to apply, and to enforce rules of conduct upon individuals within its jurisdiction, within its control. So that control is effectively a necessary corollary for state sovereignty, for state control over a population, over a territory, its statehood generally. And the reason why jurisdiction is so important is because different states ground claims of control over different aspects of international life. And we look at those limits, we look at the limits between the jurisdictional claims of states as part of how international law accommodates and resolves potential conflicts and hopefully minimises them. And furthermore, jurisdiction, and the limits on jurisdiction, are safeguarded by fundamental obligations on non-intervention, to respect the independence and sovereignty of another state, which you can find in the UN Charter, but as we've seen from previous some from previous chapters is very much part of the DNA of international law.

So, in terms of the exercise of jurisdiction, usually it's done through the formulation of legislation or some sort of enabling rule that allows the state to do that, and that's what we call the exercise of jurisdiction prescriptively. So that is prescriptive jurisdiction, which is generally the focus and will be the remainder of this chapter.

In this introductory course on international law we don't really look at enforcement jurisdiction. By enforcement jurisdiction what we mean is the sending out of military or police officers in order to make effective the application of the law. So rather, we look at the claim of the state, through the passing of legislation or the handing down of a judgment, that it enjoys jurisdiction or it's entitled to do it.

So, on what basis do states exercise jurisdiction? There are two generally non-contested grounds. The first one is jurisdiction of a territory. A state usually claims jurisdiction over any acts or activities that occur within its territory, whether it's by natural persons, or human beings, or legal persons such as corporations, or even foreign nationals coming into your territory, foreign corporations, and in some cases, the acts of foreign states. That is jurisdiction over one's territory, and it's the least contested principle, given that a state usually has control over that territory.

And the second one, which in fact predates jurisdiction over territory, is jurisdiction over your own nationals, your own citizens. And that has to do with the bond of citizenship between an individual and their state of nationality. As I mentioned, it predates jurisdiction over territory because before the emergence of the modern state, very often the link was purely personal as people move from one territory to another, the link remained one of loyalty to your sovereign. But jurisdiction over one's nationals is generally uncontested and will apply irrespective of whether a crime or an act has been committed outside a state's territory. So long as it has been committed by its own nationals, jurisdiction can be successfully claimed.

We then move into three more controversial grounds, which are also grounds through which states claim jurisdiction, but become problematic. Briefly they are: passive personality jurisdiction, where by a state claims jurisdiction when its nationals are victims of certain acts committed abroad. Now that starts bordering on interference in the sovereign affairs of another state. So, broadly speaking, it has evolved over time to be quite tightly confined to only victims of certain types of acts, usually violations of *jus cogens*: so victims of slavery; of torture; of genocide; of crimes against humanity. Those have been the claims that have been most successful and even then, only in the last 20 years or so.

Another exercise of jurisdiction is under what's called the protective principle, through which a state claims jurisdiction over acts that threaten essential interests of the state as a whole. So these might be acts of espionage, or acts of terrorism, acts that threaten national security. They can also be, for example, the operations of certain corporations in enforcing competition law or anti-trust legislation, through which the interest of the state's economy as a whole are implicated. Nevertheless, these start to become much more controversial, as you can see, than claims of nationality or territoriality.

And finally, there is a claim to universal jurisdiction based on the substance of the offense: the idea that some acts are so heinous and are so offensive to the international community as a whole, that any state may claim jurisdiction, irrespective of whether it has a link to the act committed abroad. Broadly speaking though, although those claims were made in different times and there was a peak in the early 2000s of states claiming universal jurisdiction, gradually states seem to have been tying that to passive personality jurisdiction, where the victim must be a national of a state for it to exercise it, and it's often fused with passive personality jurisdiction now. That's of course explained in much more depth in the book itself, but I hope this brief introduction helps you to make sense of that.

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Thank you.