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The Concept of Jurisdiction in International Law

- Jurisdiction refers to the power of a state to affect persons, property, and circumstances within its territory. International law particularly addresses questions of criminal law and essentially leaves civil jurisdiction to national control.

- According to the territorial principle, states have exclusive authority to deal with **criminal issues arising within their territories**; this principle has been modified to permit officials from one state to act within another state in certain circumstances. In practice jurisdiction is not a single concept. A state's jurisdiction may take various forms.

- How far a state can practice its jurisdiction (Borderless crimes, piracy). According to Macmillan, in all persons, things whether civil and criminal matters. No state attempts to exercise a jurisdiction over matters, persons or things with which it has absolutely no concern.

What is state jurisdiction?

- The power of the state under international law to govern persons and property by its municipal law. The term "jurisdiction" can have various meanings in international cases. **This divides jurisdiction into three categories:**

(a) jurisdiction to prescribe, i.e., a country's ability to make its law applicable to persons, conduct, relations, or interests;

(b) jurisdiction to adjudicate, i.e., a country's ability to subject persons or things to the process of its courts or administrative tribunals.

(c) jurisdiction to enforce, i.e., a country's ability to induce or compel compliance or to punish noncompliance with its laws or regulations.

Forms of State Jurisdiction

1. Legislative jurisdiction

In the law of jurisdiction, most attention has been devoted to '**prescriptive' or 'legislative'** jurisdiction. Such jurisdiction refers to the power of a State 'to make its law applicable to the activities, relations, or status of persons.

Under the principle adopted by the **Permanent Court of International Justice in the 1927 Lotus case**, States are in principle free to exercise prescriptive jurisdiction over a given situation as they please, unless a prohibitive rule to the contrary could be identified.

This supremacy is entrusted to constitutionally recognized organs. The legislation may also extend its primary enforceable beyond its territorial in certain circumstances.

International law, for example, accepts that a state may levy taxes against persons not within its territory as long as there is a real link between the state and the proposed taxpayer, whether it is nationality or domicile.

All citizens of the **United States** are taxed under the same personal income tax system, regardless of whether they live in the country or abroad." As for **Eritrea**, it imposes a special 2% tax on all Eritreans abroad - dual-nationals included.

2. Enforcement Jurisdiction

Where a State imposes its laws, possibly extraterritorially, logically it also wants to have these laws enforced. Enforcement jurisdiction then refers to a State's jurisdiction 'to enforce or compel compliance or to punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other non-judicial action.'

The rules of enforcement jurisdiction are far stricter than the rules of prescriptive jurisdiction. As the **Court held in the Lotus case**, States are not entitled to enforce their laws outside their territory, 'except by virtue of a permissive rule derived from **international custom or a convention**'.

Accordingly, enforcement can only happen through territorial measures, e.g., by arresting a person who is **voluntarily present** on the territory, or by **seizing property** of the defendant located in the territory. Often, **international cooperation** will be required, e.g., to bring about the presence of the presumed perpetrator by means of **extradition**, or to have a **domestic court order enforced** against assets located abroad.

3. Judicial jurisdiction

The jurisdiction exercised by the judiciary is typically denoted by the terms ‘adjudicative’ or ‘adjudicatory’ jurisdiction, which refer to a State’s jurisdiction ‘to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings.

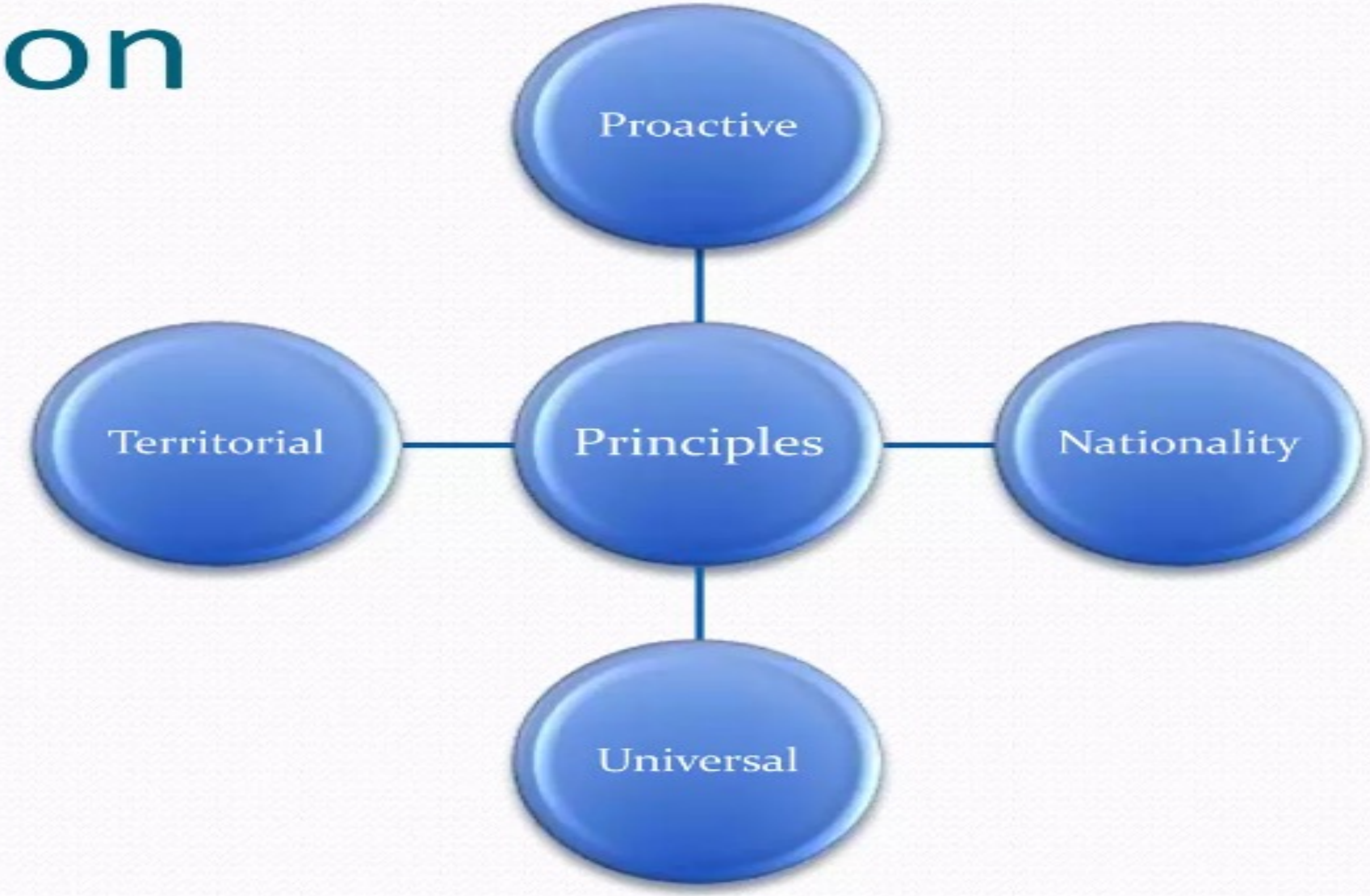
In **civil matters**, the principles range from the mere presence of the defendant in the territory of a state. For example, the **common law countries**, the usual ground for jurisdiction in civil cases is the service of a writ upon the defendant within the country, even if the presence of the defendant is temporary and incidental.

In **civil law countries**, the usual ground for jurisdiction if the habitual; residence of the defendant in the country.

In **some countries** such as Netherlands, Denmark and Sweden, generally courts asserts their jurisdiction if the defendant possesses assets in the country; however, in matrimonial cases the commonly accepted ground for jurisdiction is the domicile or residence of the plaintiff. The grounds for the exercise of jurisdiction **are not identical** in the cases of international law and conflict of laws rules (for instance as regards to the marriages or divorces)

As far as criminal jurisdiction is concerned, the grounds or principle of jurisdiction **mostly invoked by states are as follows.**

Principles governing state jurisdiction



1. Protective or security principle

Under this principle, a state can claim jurisdiction over offences committed outside its territory which are considered injurious to its security, integrity or vital economic interests. The principle remains ill-defined and there are uncertainties about how far it can extend. There remains a considerable danger of abuse. Nevertheless, a large number of states have used the principle to a greater or lesser extent.

State has the Powers to do anything i.e. jurisdiction for protective reasons. This principle can easily be abused, particularly in order to undermine the jurisdiction of other States.

The protective principle is most often used in cases involving currency and economic offences. For example, in the last **Ten years** Kenyan forces repealed attacking and destroying Hormuud Telecom, a leading telecommunication company in Somalia, alongside the border between Somalia and Kenya. The Ministry of Posts, Telecommunications, and technology of Somalia condemned the attach on Hormuud Telecom in Gedo region on 22nd August 2019.

According to the statement issued by the Company partly reads as follows '…this would be the **twelve times** in less than two years that the Kenyan forces have destroyed our Tower Stations in **Caws-Qurun village in the Gedo region**.

- Kenyan government alleges that the telecom company were financing terror groups in Somalia which can put at risk for Kenyan security and the region at large.

- The same scenario happened when Ethiopian troops invaded Somalia in December 2006 to crush the Islamic Courts Union (ICU). The Ethiopia's prime minister by then Meles Zenawi, said in a televised broadcast that he had ordered the action because he had no choice.

- "Ethiopian defense forces were forced to enter into war to protect the sovereignty of the nation," he said. "We are not trying to set up a government for Somalia, nor do we have an intention to meddle in Somalia's internal affairs. We have only been forced by the circumstances."

2. The nationality principle

- Since every state possesses sovereignty and jurisdictional powers and since every state must consist of a collection of individual human beings, **it is essential that a link between the two be legally established**. That link connecting the state and the people it includes in its territory is provided by the concept of nationality.
- The principle was also noted in the **Nottebohm case,** where the Court remarked that while a state may formulate such rules as it wished regarding the acquisition of nationality, the exercise of diplomatic protection upon the basis of nationality was within the purview of international law. In addition, no state may plead its municipal laws as a justification for the breach of an obligation of international law.
- For example, under English law, the courts have jurisdiction over British nationals who have committed murder, manslaughter, or treason outside the territory of the UK. Hence called active nationality.
- As a general rule, international law sets no limits on the right of a state to extend its nationality to whomsoever it pleases. **The nationality principle implies that a State Jurisdiction extends to its nationals and actives they take beyond its territory**.

3. Passive Principle

The passive personality principle recognizes that a sovereign can adopt laws that apply to conduct of foreign national who commit crimes against the sovereign's national while the sovereign's nationals are outside of the sovereign's territory. In other words, **a state may assert jurisdiction over activities which, although committed abroad by foreign nationals, have affected or will affect nationals of the state**.

The commonly cited example of the principle is the **Cutting case (1886**). Cutting, a US national, had published defamatory statements amounting to a criminal offence against a Mexican national under Mexican law, even though the publication had taken place in Texas. Cutting was convicted of the offence, inter alia on the ground that Mexico was entitled to exercise jurisdiction on the basis of the passive personality theory. This view was strongly contested by the US and eventually Cutting was released, although Mexico claimed that the release was due only to the fact that the victim of the defamation withdrew from the action.

4. territorial principle

The territorial basis for the exercise of jurisdiction reflects one aspect of the sovereignty exercisable by a state in its territorial home, and is the indispensable foundation for the application of the series of legal rights that a state possesses. That a country should be able to legislate with regard to activities within its territory and to prosecute for offences committed upon its soil is a logical manifestation of a world order of independent states and is entirely understandable since the authorities of a state are responsible for the conduct of law and the maintenance of good order within that state.

Thus, all crimes committed (or alleged to have been committed) within the territorial jurisdiction of a state may come before the municipal courts and the accused if convicted may be sentenced. This is so even where the offenders are foreign citizens.

5. Universal Principle

- Finally, the universality principle allows for the assertion of jurisdiction in cases where the alleged crime may be prosecuted by all states (e.g., war crimes, crimes against the peace, crimes against humanity, slavery, and piracy).
- A prime example of an international treaty, which defines an international offense yet explicitly adheres to the territoriality rather than the universality-principle, is that of **Article 6 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide**.
- Under **article 6** provides that, persons charged with genocide or any of the other acts enumerated in **article III** shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.
- **Article III**, the following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide and (e) Complicity in genocide.


THANK YOU