

STATE JURISDICTION

State jurisdiction is the Capacity of a State under International Law “to prescribe the rules of law, enforce the prescribed rules and to adjudicate”.

The term ‘jurisdiction’ Includes-

- Legislative Jurisdiction (prescribing rules)
- Executive Jurisdiction (enforcing rules)
- Judicial Jurisdiction (adjudicating rules)

PRINCIPLES OF JURISDICTION

Territorial Principle

A state shall have jurisdiction on basis of its territory over:

- i. Everything falling under its territory (all the areas i.e. the land, water and airspace covered inside a state and also all movable as well as immovable property within state).
- ii. Everybody living within its territory (all citizens and all aliens)

Territorial jurisdiction has a subjective and objective element:

- **Subjective:** State will have jurisdiction if crime is committed over its territory.
- **Objective:** State will have jurisdiction if the crime had effect over its territory.

Extra Territorial Principle - Jurisdiction over embassies abroad, state owned property abroad like (ships, planes etc.)

S.S lotus Case (France v. Turkey) (1927) – PCIJ

French Steamer –S.S. Lotus collided with a Turkish vessel- S.S. Boz-Kourt in high seas, 8 Turkish nationals drowned when The Turkish ship was hit by Lotus.

Issue – Turkey’s Jurisdiction to try the case against Monsieur Demons (French Lieutenant on watch duty) was in question.

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| - In this situation, it is impossible to hold that there is a rule of international law that prohibits Turkey from prosecuting demons just because he was aboard a French Ship. This stems from the fact that the effects of the alleged offence occurred on a Turkish Vessel. |
| - The Lotus principle or Lotus approach, usually considered a foundation of international law was laid down in this case which says that sovereign states may act in any way they wish so long as they do not contravene an explicit prohibition. |

Lotus principle as regards collisions at sea **has been overturned** by article 11(1) of the High Seas Convention, 1958, which emphasised that only the flag state or the state of which the alleged offender was a national has jurisdiction over sailors regarding incidents occurring on the high seas.

Nationality Principle

- Jurisdiction on basis of Nationality of the criminal/victim.
- The State will have a claim over Jurisdiction over its national even if he/she commits crime outside the territory of the State. This principle is the basis of the extradition laws.
- Same way state can claim jurisdiction over an alien if it commits crime against its nationals even outside its territory.

In general, the two most important principles upon which nationality is founded in states are first by descent from parents who are nationals (**jus sanguinis**) and second by virtue of being born within the territory of the state (**jus soli**).

Mavrommatis Palestine Concessions Case (Greece vs United Kingdom) (1924)

Facts: Certain concessions to Mr. Mavrommatis (Greek national) were given by Ottoman authorities for certain public works in Palestine. Later that territory of Palestine became British Mandated Territory.

Great Britain gave that concession to Mr Rutenberg, so there was an overlapping between concessions given to Mavrommatis.

Issue: Whether it is an **INDIVIDUAL VS. STATE** or **STATE VS. STATE** dispute because the injury was to a private subject and not to the state.

Held: A State is entitled to protect its subjects. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights – its right to ensure, in the person of its subjects, respect for the rules of international law.

Nottabohm case – (Liechtenstein v. Guatemala) (1955)

Facts: Friedrich Nottebohm – born in Germany – resided in Guatemala for a longtime but never took citizenship. He frequently visited Germany and also Liechtenstein where his brother live.

In 1939 Nottabohm was visiting Liechtenstein and World War II began. He applied for Liechtenstein citizenship and it was accepted and he got Liechtenstein citizenship which because of German law terminated his German Citizenship.

He returned to Guatemala on a Liechtenstein passport, Later Guatemala sided with the allies against Germany and treated Nottabohm as a German citizen and arrested him as an enemy alien in 1943 and handed over to US. All his property was seized by Guatemalian government.

All this was later claimed as unjust treatment by Liechtenstein and it filled a case against Guatemala for that. Guatemala claimed that he was not a Liechtenstein citizen as per international law.

The court Agreed and laid down the **Nottebohm Principle** which said that 'The national must prove a meaningful connection to the state in question'.

Held: The Court ruled that Nottebohm's naturalization as a citizen of Liechtenstein was not based on any genuine link with that country but for the sole purpose of enabling him to replace his status as national of a belligerent state, there was no relationship between Liechtenstein and Nottebohm, the change of nationality was merely a subterfuge mandated by the war. Under this circumstance, Guatemala cannot be forced to recognize it.

Danzig Railways Official Case (1928)

Free City of Danzig (city - state) was under the protection of League of Nations. Danzig railway employees employed by Polish Employers sued their employer over pension and pay.

- PCIJ said that treaty is there between Danzig City and Poland but this treaty cannot govern pay and pension i.e. rights or even duties for individuals. So, it recommended taking the issue to the national court.

Passive Personality Principle - Under this principle, a state may claim jurisdiction to try an individual for offences committed abroad which have affected or will affect nationals of the state.

Universality Principle - State can take jurisdiction over certain crimes by anyone anywhere in the world without any link to its territory, nationality etc.

Protective Principle - This Principle is used to exercise Jurisdiction over an alien outside the territory of the State. It is a very controversial principle because it can easily be abused to undermine the sovereignty of other state.
