

LECTURE EIGHT

STATE JURISDICTION

Contrast with the notion of state sovereignty.

Classification of State Jurisdiction

- 1) Distinction . Quasi Territorial . Personal Jurisdiction.
- 2) Jurisdiction & Jurisdiction.
- 1) **Territorial ; Quasi Territorial and Personal Jurisdiction.**

Territorial Jurisdiction. That authority exercised by a state within its National Territory. National Territory includes maritime territory viz territorial sea (12 miles), all areas of waters including the air above and sea bed below. Compare the limited sovereign rights beyond the E.E.Z.

Territories subject to Territorial Jurisdiction e.g. Namibia & South Africa viz. - dependencies - Israel and Gaza Strip (till 1994) and the occupied territory on the left bank of the Jordan.

Territorial Scope extends to whole territory and all resources and persons plus extra territorial activity of such persons both individual and corporate - though broadcasting is a grey area.

Quasi Territorial. That Authority exercised by state over ships - air craft - space craft - having nationality of the state i.e. flies flag of state (Objects of International Law are not subject to jurisdiction) and extends to the craft and personnel within it.

Personal Jurisdiction. That Authority exercised over individuals and corporate bodies with legal personality who are natives of, or owe allegiance to state.

D.P.P. v. Joyce . Lord Haw Haw Held British passport . owed allegiance . and their property and legal interests wheresoever.

(2) Jurisdiction & Jurisdiction

Jurisdiction . The legal power of the state (making the law) and the competence of the act to apply such rules. e.g. Italian Court . competence to try Italian for murder on board a United States vessel in the port of Liverpool . (Not that they have actual jurisdiction simply a potential. International competence is national ability though perhaps not in Domestic jurisdiction.

Jurisdiction ; Administration of justice and enforcement of law i.e. actual jurisdiction not its mere potential. Jurisdiction is always exclusive of any particular time and place.

Compare Territorial Sovereignty within material scope of Territorial Sovereignty

- 1) Territorial Jurisdiction implies states exclusive right of Jurisdiction -
- 2) Quasi territorial jurisdiction and its scope regarding a ship or flag. If the vessel is on or over high seas there is an exclusive right of Jurisdiction . subject only to obligations of Piracy and self defence
- 3) Personal Jurisdiction and Territory Nullius. State has exclusive right of Jurisdiction over nationals and also regarding air and space craft in such territory: e.g. Antarctica

Escamilla Case - U.S.A. Fletcher Ice Island, a floating island is not a International Law island so Personal Jurisdiction only. Compare Domestic & International Law Jurisdiction. He killed X and was taken to Virginia and tried.

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Jurisdiction . In time of peace excluding piracy and right of self defence & treaty obligations to the contrary there is the power of Jurisdiction regarding the ship - craft or individual - which belongs exclusively to one state.

There may be clashes between types of Jurisdiction.

Hierarchy of Jurisdiction

1) Territorial :

2) Quasi Territorial :

3) Personal Sovereignty.

Thus where the Italian seaman commits murder on board a U.S. ship in U.K. port:

U.K. : (1) Territorial Sovereign Jurisdiction (waiver possible).

U.S. : (2) Quasi Territorial Jurisdiction.

Italy. (3) Personal Sovereign Jurisdiction.

Personal Jurisdiction is Jurisdiction in this situation.

Jurisdiction is generally universal & concurrent

See *The Lotus Case* 1927 P.C.I.J. & Green

Legitimate Exercise of Extra Territorial Rights under I.C.L.

Could a state ban smoking world wide ? Yes for its own nationals but not for the national of other states outside its territories. No state is denied right to determine the criminal law of its citizens which may extend to National craft wherever they are under Quasi territorial jurisdiction and a states' extra territory but this is normally concurrent with the jurisdiction of other states e.g. where there are passengers of many nationalities on board. Jurisdiction may be concurrent with another state's Jurisdiction as well where the ship is in foreign state.

The problem is that jurisdiction is based on the protective principle and was an abstract question in the Lotus Case as to the extent to which a state is entitled to extra Territorial Jurisdiction regarding persons, ships & aircraft and those who are not its nationals & not persons on board or not its nationals & not subject to Quasi Territorial Jurisdiction.

The Lotus Case Stated that the starting point is Sovereignty of the State . There is a presumption that the state can do anything but then has it been limited by International Law rules ?

Regarding a dispute between France & Turkey about a collision in international waters, France claimed that Turkey should point to right to Jurisdiction under International Law. The Court denied the claim. Is there any limitation on this ? The Court did not specify what the limitation rules are.

Scope and legality of protective principles ?

A state may make law for foreign nationals for the purpose of protecting its own interests but how far can this go ? e.g. currency is obvious but what else ?

In General the Intent of the Court in Lotus confirms extra territorial Jurisdiction is not based on personal nationality. This is alright on protective principle but note that attempts of United States to improve Anti Trust Laws on extra territorial nationals have been opposed by other states. See the *Westinghouse Case*.

Other instances of extra territorial Jurisdiction include s14 Deep Sea Mining Act 1981 (Temporary); s9(4) Preliminary Working Offshore Act 1971 and the Petroleum Submarine Pipe Act 1975. s14(1) DSMA clarifies the United Kingdom claims Jurisdiction to the deep sea in the Pacific.

Westinghouse 1977 Originated in suits against Westinghouse by power companies regarding Westinghouse's failure to deliver Uranium. Westinghouse alleged in its defence that it was the victim of a cartel and that Rio Tinto Zinc was a member of the cartel. Westinghouse sought information from directors of R.T.Z. of evidence for a Court in Virginia. R.T.Z. is U.K based . Evidence in Other Jurisdiction Act 1975

PUBLIC INTERNATIONAL LAW

Proceedings held in U.K. by U.S. Judge pursuant to a U.K. Judge. Grant of interrogatories made British directors of R.T.Z. pleaded the 5th Amendment regarding self incrimination. U.S. Justice Department intervened. Informed Judge that evidence required regarding a Grand Jury Investigation. U.S. Anti Trust Laws regarding a cartel. Judge issued order to compel evidence. U.S. Agreement granted immunity from criminal prosecution in U.S.

Order required for interrogation. House of Lords questioned whether or not it should be granted? Was the U.S. exercise of jurisdiction compatible. U.K. Agreement amounted to creating wide powers to investigate by U.S. Trust Law against non U.S. citizens infringes U.K. jurisdiction and sovereignty and that the intervention of U.S. Government and order compelling testimony showed U.S. Courts exercising extra territorial jurisdiction in criminal matters.

H.L. recognised that the U.K. policy not to recognise U.S. extra territorial investigating power amounts to U.S. Public Policy versus U.K. Public Policy. Held that the order should be discharged.

British court has discretion under 1975 Act. Must ask if U.K. sovereignty prejudiced by such an order. Held. U.S. claim for jurisdiction to investigate non U.S. companies outside U.S. is invalid since its anti trust laws are penal.

See now Protection of Trading Act 1980 s1(3) Minister may make an order forbidding British companies to comply with U.S. Law. Used in 1982 regarding Siberian Gas Pipe affair. British companies - contracts to supply equipment to build the pipe line - with Soviet Union e.g. J. Brown £400 m. contract for gas turbines components bought from U.S. U.S. Law - illegal to supply to Soviet Union (whilst U.S. exported grain to U.S.S.R.) Political veto. U.K. forbade U.K. companies not to export: concerted attack by European companies.

Extraordinary Jurisdiction

Ejusdem Generis with piracy: Problem in many parts of the world. Hostis humani generis. Warships of any state may arrest and subject to their own jurisdiction. Semble: War Crimes

Immunities to Jurisdiction. Two Types

- 1) State Immunity: Heads of State: armed forces abroad e.g. Nato Warships in foreign ports
State trading vessels are immune, or claimed to be. Regarding State trading entities this has been disputed recently. at one time. immunity absolute. now restricted.
- 2) Diplomatic Immunity

FURTHER READING

Schwarzenberger & Brown Manual ch4

Cheng: Crimes on board aircraft 12 CLP 1959 Harris: Ch 6

Schreuer: Recent developments in the law of state immunity: 2 C.L.Y 1978 pp215 European Convention on State Jurisdiction.

The Le Louis 1817 2 Dods. Green 487

The Franconia 1876 2 Ex D 63: Green 3rd ed p501

Chung Chi Cheung v R 1939 AC 160 Green 2nd ed p14

Joyce v DPP 1946 AC 347: Green 3rd ed 535

B.N.S. v ICI 1953 Ch 19 1955 Ch 37

A.G of Israel v Eichmann. Green 220: Harris p223

Band of Cuba v Sabbatino 1964 Green 259

Thai Europe Tapioca 1975 1 WLRE 1485 - 1973 3 AER 961

Phillipine Admiral 1977 AC 373 Green p271

Trendtex v Bank of Nigeria 1977 1 QB 529 Green p276