



# JURISDICTION UNDER INTERNATIONAL LAW

**Introduction into International Law**



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# TYPES OF JURISDICTION

- **Jurisdiction to prescribe**
  - to make its law applicable to the activities, relations, or status of persons
- **Jurisdiction to adjudicate**
  - to subject persons or things to the process of its courts or administrative tribunal
- **Jurisdiction to enforce**
  - to induce or compel compliance or to punish noncompliance with its laws and regulations
- **Links between states wishing to exercise jurisdiction are territory and nationality (and more)**

# TERRITORIALLY PRINCIPLE

- governs jurisdiction over everyone and everything on the state's territory
- Case of the SS Lotus. PCIJ Rep. Ser.A. No 10. Judgement of 7 September 1927, p.18-19

# NATIONALITY PRINCIPLE

- State's jurisdiction vis-à-vis its national, irrespective of whether natural or legal persons by the quality of nationality of such individual or body corporate
- **Nationality in International Law**
  - *Nottebohm case* → no generally valid definition of nationality provided under international law
  - Attributes of nationality
- Natural Persons
- Legal Persons, Corporations

# NATIONALITY PRINCIPLE

- **Nottebohm case** → no generally valid definition of nationality provided under international law
- **Attributes of nationality**
  - A national (natural or juristic person) belonging to a particular State
  - Mutual rights and obligations of the State and the national
  - Rights and obligations of third States towards the State of the national and via this to the national of the respective State
- **A) Natural Persons**
- **B) Legal Persons, Corporations**

# NATIONALITY PRINCIPLE – NATURAL PEOPLE

## ■ I. BIRTH

- Jus/ius soli, the law of the soil/land/territory → in English law and spread with British colonial rule
- Jus/ius sanguinis, the law of blood → in continental Europe
- Municipal laws → principles tend to be applied in their mutual combinations
- Nottebohm case → *principle of genuine link and effective nationality*

## ■ II. NATURALIZATION

- Process of becoming a national of a particular state upon application, normally having either been a national of another state before or having been stateless (i.e. without nationality/citizenship of any state)
- Dual nationality

# NATIONALITY PRINCIPLE – LEGAL PERSONS

## ■ I. Test of Siège Social

- The place where the legal life of a corporate body is concentrated
- Not generally prevailed under customary international law
- *Delogoa Bay Company case*
- *Stirling Claim*

## ■ II. Test of Control

- To determine who is in control of the corporation, determining enemy persons in respect of corporations in time of war
- Minimal role under contemporary international law

## ■ III. Test of Incorporation

- Dominant role
- *The Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* → ICJ's new doctrine of “genuine link” or “effectiveness of nationality”

# PROTECTIVE PRINCIPLE

- To assume jurisdiction to punish acts prejudicial to national security or other vital interests of a state, even when they are committed by aliens abroad

# PASSIVE PERSONALITY PRINCIPLE

- To asserts jurisdiction to punish aliens for harmful acts committed abroad against nationals of such a state
- Criticized in common law literature

# UNIVERSALITY PRINCIPLE

- To exercise jurisdiction vis-à-vis an accused irrespective of that persons nationality and in respect to crimes committed anywhere in the world
- Considered to be customary in relation piracy