

Jurisdiction

- 5 basic principles

- territoriality
- nationality
- passive nationality
- protective principle
- universality



extraterritorial

Jurisdiction

Objective territoriality

United States v. Noriega (Florida District Court, 1990)

The objective territorial theory of jurisdiction, which focuses on the **effects or intended effects of conduct**, can be traced to Justice Holmes' statement that "[a]cts done outside a jurisdiction, but **intended to produce or producing effects within it**, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power.



Passive Nationality Principle

Hostages Convention (1979)

Article 5: Each State Party shall take such measures as may be necessary to **establish its jurisdiction** over any of the offences set forth in article 1 which are **committed... with respect to a hostage who is a national of that State**, if that **State considers it appropriate**.

United States v. Yunis (DC District Court, 1988)

Although many international legal scholars agree that the principle is the **most controversial of the five sources of jurisdiction**, they also agree that the international community recognizes its legitimacy.... the **international community explicitly approved of the principle as a basis for asserting jurisdiction over hostage takers....** Therefore, even if there are doubts regarding the international community's acceptance, there can be no doubt concerning the application of this principle to the offense of hostage taking, an offense for which Yunis is charged.



Universality Principle

Eichmann case (Israeli District Court, 1961)

The State of Israel's "right to punish" the accused derives, in our view, from two cumulative sources: a **universal source** (pertaining to the whole of mankind) which vests the **right to prosecute and punish crimes of this order in every State within the family of nations**; and a specific or **national source** which gives the victim nation the **right to try any who assault their existence**.

Torture Convention (1985)

Article 5: Each State Party shall likewise take such measures as may be necessary to **establish its jurisdiction over such offences** in cases where the alleged offender is present in any territory under its jurisdiction.

Arrest Warrant case (ICJ, 2002)

Opinion by Justice Guillaume:

International law knows only **one true case of universal jurisdiction: piracy.**

Opinion by Justice Oda:

From the base established by the Permanent Court's decision in 1927 in the "Lotus" case, the **scope of extraterritorial criminal jurisdiction has been expanded** over the past few decades to cover the crimes of piracy, hijacking, etc. **Universal jurisdiction is increasingly recognized in cases of terrorism and genocide.**

United States v. Yousef et al. (U.S. Court of Appeals, 2003)

The universality principle permits a State to prosecute an offender of any nationality for an offense committed outside of that State and without contacts to that State, **but only for the few, near-unique offenses** uniformly recognized by the "civilized nations" as an offense against the "Law of Nations." The **strictly limited set of crimes subject to universal jurisdiction** cannot be expanded by drawing an analogy between some new crime such as placing a bomb on board an airplane and universal jurisdiction's traditional subjects.

Extraordinary Rendition

Eichmann case (Israeli District Court, 1961)

The indictment in this case was presented after [Argentina had forgiven Israel](#) for that violation of her sovereignty, so that there no longer subsisted any violation of international law. In these circumstances, the [Accused cannot presume to be speaking on behalf of Argentina and cannot claim rights which that sovereign state has waived.](#)

Noriega case (Florida District Court, 1990)

[I]t is important to note that individuals lack standing to assert violations of international treaties in the absence of a protest from the offended government. Moreover, the Ker-Frisbie doctrine establishes that [violations of international law alone do not deprive a court of jurisdiction over a defendant](#) in the absence of specific treaty language to that effect.... Thus, under the applicable international law, [Noriega lacks standing to challenge violations of these treaties in the absence of a protest by the Panamanian government](#) that the invasion of Panama and subsequent arrest of Noriega violated that country's territorial sovereignty.