



TRANSCRIPT

Source: [Louv2.01x] The notion of jurisdiction

Welcome to Section 2 of this course on International Human Rights. And we will study today the notion of jurisdiction. We will ask, to which situations human rights apply, when may they be invoked against the state. The question of jurisdiction has gained in importance in recent years as a result of globalization. As a result, also, of more and more states taking part in military actions outside their national territory. And as a result of states cooperating with each other in creating situations that may lead to human rights violations being committed.

And the question arises, in such circumstances, whether a state may be held responsible for an alleged human rights violation, despite this situation complained of having arisen outside the national territory of the state concerned. Most human rights treaties contain a reference to the fact that the human rights that they guarantee, that they enunciate, are protected from violation in situations that are under the jurisdiction of the states, or under the power or competence of the state concerned.

And the question arises whether human rights may therefore be invoked also when states operate outside their national territory. Let me give, maybe, one example, which is a famous early example of this question arising in the case law of the European Court of Human Rights.

The case was *Loizidou against Turkey*. Turkey had invaded the northern part of the island of Cyprus in 1974. And Mrs. Loizidou sought to have access to her house, which was located on the part of the island that was under the control of the Turkish troops. Although Turkey had established in that part of the island a sort of local administration called the Turkish Republic of Northern Cyprus, really the Turkish military were in control of that part of the island.

And Mrs. Loizidou complained that she was unable to have access to her property and alleged that this was in violation of Article One of the First Additional Protocol to the Convention that

protects the rights to property. And the Court was asked whether the duties of Turkey under the European Convention on Human Rights extended to that situation.

It adopted two judgments. One on preliminary objections of Turkey alleging that it had no jurisdiction on that issue. And the other judgment was on the merits of the case, adopted on the 18th of December, 1996. And in the first of the two judgments, one adopted on 23rd of March, 1995, the European Court of Human Rights says very clearly that because Turkey occupies, effectively, the northern part of the island of Cyprus, it is bound to comply with the requirements of the European Convention on Human Rights.

It would not be acceptable for a state, simply because it occupies foreign territory, to be able to ignore the human rights instruments that it has ratified. And the court says the following in a very, I believe, telling expression. It says that, "Bearing in mind the object and purpose of the Convention, the responsibility of a Contracting Party may also arise when, as a consequence of military action, whether lawful or unlawful, it exercises effective control in an area outside its national territory. The obligation to secure," says the court, "in such an area. The rights and freedoms set out in the Convention derives from the fact of such control, whether it is exercised directly through the armed forces of the state concerned, or through a subordinate local administration."

And so that was a landmark judgment in which, very clearly, the European Court of Human Rights decided that the applicability of the Convention, its invocability by individuals aggrieved, alleging to be victims of violations of the Convention, could be invoked, also, outside the national territory of the state concerned.

This reading of what human rights instruments require was, to a large extent, vindicated at the highest level by the International Court of Justice in its Advisory Opinion adopted on 9th of July, 2004, when the International Court of Justice answered a question of the General Assembly of the United Nations on the legal consequences of the construction of a wall in the Occupied Palestinian Territory.

And this very important Advisory Opinion was one in which the International Court of Justice considered that Israel, because of its building a wall that was, in part, erected on the Occupied Palestinian Territory, was in violation of a number of rights of the Palestinian people, including violations of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Convention on the Rights of the Child.

And so the International Court of Justice confirmed this idea, that human rights instruments also oblige states outside what is their national territory, when they are in effective control of a situation located outside that territory. The question, of course, arises, how far does this go? And to which extent does this mean that a state may be held responsible for whichever consequences its actions may have outside the national territory, even in the absence of territorial occupation, as in situations of military occupation?

For example, the Human Rights Committee in 1981 decided on a communication filed by the family of Sergio Lopez Burgos against the state of Uruguay. Now in the mid-1970s, Lopez Burgos was a trade unionist, and activist in Uruguay that was, at the time, dominated by a right-

wing military junta. And he was arrested. He was harassed. He finally fled the country. And he was granted the status of refugee in Argentina.

However, the Uruguayan secret services, cooperating with the Argentinian paramilitary forces, arrested Lopez Burgos, detained Lopez Burgos in the outskirts of Buenos Aires for a couple of weeks before bringing Lopez Burgos back to Uruguay where he was facing further ill-treatment and torture.

And the question that the Human Rights Committee under the International Covenant on Civil and Political Rights had to address was, could the responsibility of Uruguay be engaged for a kidnapping, an illegal detention, an arbitrary detention that took place on Argentinian territory when he was detained by the Uruguayan secret services in the outskirts of Buenos Aires?

And the Human Rights Committee answered in the affirmative, considering that the responsibility of Uruguay extended to such situations. A country, the Human Rights Committee implied, should not be allowed to do outside its territory what it is disallowed from doing within the national territory.

But of course, one wonders how far this goes. And whether this means that the notion or the condition of jurisdiction, competence, or control is autonomous? Or whether it is simply one way of saying that the state is responsible for any situation that can be imputed to that state. In other terms, is the condition of jurisdiction, the condition of competence, a condition that is distinct from the condition of attribution that is a condition for international responsibility to be affirmed?

So that is one of the questions that arise when we study this notion of jurisdiction. There is another question that arises that we will also study in this section of the course, which is, whether states may be held responsible for human rights violations even though the situation complained of, the violation that is alleged to have taken place, has occurred on their territory, but in a part of the territory over which they cannot exercise effective control?

For example, after the Turkish troops invaded the northern part of Cyprus in 1974, would Cyprus still be responsible for human rights violations committed on that part of the territory that is occupied by Turkish forces and over which the Cypriot government really cannot exercise any effective control?

That is a situation that also occur sometimes. For example, when there is a guerrilla movement that is active on part of their territory, when there is a separatist regime that claims sovereign rights over part of the national territory, may the state which is still nominally the territorially competent state, be held responsible for human rights violations that occur in such circumstances on such parts of the territory that it cannot effectively control?

So these are the questions we will study here in this section of the course. And I propose that you can now turn to the next developments within this section.