

Summary

Jurisdiction Unbound: Extraterritorial Measures to Ensure Corporate Responsibility by Nico Krisch, Graduate Institute for International and Development Studies, Geneva

1. The conceptual framework of jurisdictional boundaries in international law continues to be dominated by the principle of territoriality and its exceptions, even if calls for a reorientation have grown in recent years.
2. The principle of territoriality leads today to far wider jurisdictional claims than in the past, and its limits are being redefined through ‘territorial extensions’ in a number of areas.
3. These extensions are rarely questioned by states, and clear and consistent jurisdictional boundaries remain hard to define. Contestation arises primarily when states seek to use extraterritorial measures to counteract important policy choices of other states.
4. The result is a far-reaching overlap of different jurisdictional spheres which, if seen in conjunction with the multiple forms of transnational regulation existing today, leads to a multi-layered ‘jurisdictional assemblage’.
5. So far, there are no accepted rules governing the relationship of competing jurisdictional spheres in this assemblage. The effective exercise of jurisdiction depends, in large part, on the political and economic power of a country in a given issue area and market.
6. The wider options for action that result from this territorial extension allow for more effective responses to existing societal challenges, especially with a view to the provision of (national and global) public goods, albeit in a limited way.
7. The new jurisdictional regime accentuates hierarchies between countries, interferes with the autonomy of weaker states, and subverts the principle of sovereign equality. Yet under certain circumstances, it also allows actors in weaker states to compensate for their otherwise limited ability to hold multinational companies to account.
8. Existing procedural and substantive proposals only have limited promise for alleviating the tensions resulting from the power imbalance in the exercise of jurisdiction.
9. The territorial principle in the law of jurisdiction has always been sufficiently limited not to overly impede powerful states’ pursuit of their interests.
10. Territoriality today appears less as a principle of effective limitations than as the basis of different strategies and tactics through which states seek to hold mobile actors to account and through which they pursue their political aims in a global context.