

## **Restatement (Third) of Foreign Relations Law of the United States**

### *§ 402. BASES OF JURISDICTION TO PRESCRIBE*

Subject to § 403, a state has jurisdiction to prescribe law with respect to

- (1) (a) conduct that, wholly or in substantial part, takes place within its territory;  
(b) the status of persons, or interests in things, present within its territory;  
(c) conduct outside its territory that has or is intended to have substantial effect within its territory;
- (2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and
- (3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.

### *§ 403. LIMITATIONS ON JURISDICTION TO PRESCRIBE*

- (1) Even when one of the bases for jurisdiction under § 402 is present, a state may not exercise jurisdiction to prescribe law with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable.
- (2) Whether exercise of jurisdiction over a person or activity is unreasonable is determined by evaluating all relevant factors, including, where appropriate:
  - (a) the link of the activity to the territory of the regulating state, i.e., the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;
  - (b) the connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;
  - (c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted.
  - (d) the existence of justified expectations that might be protected or hurt by the regulation;
  - (e) the importance of the regulation to the international political, legal, or

- economic system;
- (f) the extent to which the regulation is consistent with the traditions of the international system;
  - (g) the extent to which another state may have an interest in regulating the activity; and
  - (h) the likelihood of conflict with regulation by another state.
- (3) When it would not be unreasonable for each of two states to exercise jurisdiction over a person or activity, but the prescriptions by the two states are in conflict, each state has an obligation to evaluate its own as well as the other state's interest in exercising jurisdiction, in light of all the relevant factors, including those set out in Subsection (2); a state should defer to the other state if that state's interest is clearly greater.

#### *§ 404. UNIVERSAL JURISDICTION TO DEFINE AND PUNISH CERTAIN OFFENSES*

A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where none of the bases of jurisdiction indicated in § 402 is present.