



Victoria Dhaisne

THE EXTRATERRITORIAL SCOPE OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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The contemporary mutations of international society such as globalization, the emergence of new international actors, or the growing diversity and frequency of extraterritorial situations are disrupting international law's traditional outlook. This evolution calls for a reassessment of the application of international human rights instruments, irrespective of territorial considerations. Indeed, military occupation, surveillance, migration flows, cyber-operations, transnational corporations' activities, or environmental damage may all give rise to human rights' infringements due to States' conduct outside their borders. If the international law principle of territorial application of treaties were applied, those situations would not fall under the scope of human rights conventions, resulting in a vacuum in the protection of rights.

More specifically, the application of human rights instruments often depends on the existence of a specific link between the State Party and the individual whose rights have allegedly been violated. The latter must usually be under the jurisdiction ("*jurisdiction*" in French) of the former. This jurisdictional link is a threshold that triggers the human rights obligations and is thus a necessary prerequisite to State responsibility. Yet, in international human rights law, the unclear notion of "jurisdiction" remains open to interpretation. Indeed, an essentially "territorial" (restrictive) understanding of this notion, in accordance with its ordinary meaning in public international law ("*compétence*" in French), seems to be incompatible with the object and purpose of human rights instruments, as it would absurdly allow States to infringe human rights outside their territory while they would be prevented from doing so within their borders. An extension of the extraterritorial applicability of human rights treaties has thus been initiated by the organs entrusted with their application and interpretation. However, they still adopt various obscure and inconsistent positions, hindering any legal certainty.

Therefore, my research intends to systematise the – territorial and extraterritorial – scope of international human rights instruments, in a way that would offer some foreseeability while reconciling the effectiveness of human rights with the international law principles of State sovereignty, equality and consent. To do so, in a first part, I explain how the public international law theory of State jurisdiction ("*compétence*") constitutes a relevant analytical framework to determine the applicability of human rights treaties ("*jurisdiction*"). In a second part, I investigate why and how, once the jurisdictional link is established, the content of the obligations enforceable against States can be modulated and tailored to the specific situation.



About the Speaker

Victoria Dhaisne is a PhD Candidate at the Paris Human Rights Center (University Paris Panthéon-Assas). She holds a Master's degree in Human Rights and Humanitarian Law (University Paris Panthéon-Assas) and a Diploma in Legal Studies (University of Oxford). She teaches Constitutional Law and Human Rights Law. Her main research interests include public international law, human rights law, extraterritoriality, new technologies and international investigations.

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