THE EXTRATERRITORIAL REACH OF
UNITED STATES ENVIRONMENTAL LAWS

ALI-ABA Course of Study
International Environmental Law

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I. INTRODUCTION

In recent decades, the United States has enacted numerous environmental statutes aimed at controlling the release of pollutants into the environment, protecting endangered species, marine mammals and other wildlife, and ensuring that the environmental impacts of major federal actions are evaluated by federal agencies. Many of these statutes have given rise to litigation concerning their extraterritorial reach. Questions include:

- Do particular environmental statutes regulate persons or facilities in other countries?
- Do certain United States government actions abroad trigger consultation or environmental impact assessment requirements?
- Do particular statutes authorize the United States to request information from United States corporations on affiliated facilities located in other countries?

II. PRINCIPLES OF INTERNATIONAL LAW

To understand the extent to which a particular environmental law does or does not extend extraterritorially, it is helpful to consider the basis and limitations of a state's authority to enact statutes and adjudicate claims under generally accepted principles of international law.

A. Basis of Jurisdiction to Prescribe

Generally, a state has authority to apply its laws with respect to:

- Conduct that in whole or in part takes place within its territory;
- The status of persons or things within its territory;
- Conduct outside its territory that has a substantial effect within its territory;
- Activities of its nationals both outside and inside its territory; and
- Certain conduct outside its territory by persons other than nationals that is directed against the security of the state.

**B. Limitations on Jurisdiction to Prescribe**

Even where there is a basis for jurisdiction to prescribe, the exercise of this jurisdiction by a state must be reasonable, taking into account, among other things:

- The connection between the regulated conduct and the territory of the regulating state;
- The extent to which another state may have an interest in regulating the activity at issue; and
- The likelihood of conflict with another state.


**C. Limitations on Jurisdiction to Adjudicate Claims**

The exercise of jurisdiction through the courts of a state must also be reasonable. See Section 421 of the Restatement (Third) of Foreign Relations Law of the United States (1987). The United States Supreme Court has ruled that the exercise of limited personal jurisdiction over a foreign defendant is proper when there is:

- notice to the defendant;
- constitutionally sufficient “minimum contacts” between the defendant and the forum so as to satisfy the requirements of the Due Process Clause; and
- a statutory grant of jurisdiction to the court, i.e., authorization for service of summons either in a specific statute or a state long-arm statute.

See Omni Capital Int’l Ltd. v. Rudolf Wolff & Co., 484 U.S. 97 (1987) (affirming a circuit court ruling dismissing claims against British defendants in an action under the Commodity Exchange Act because the Act did not provide for nationwide service of process and the requirements of the Louisiana long-arm statute were not met); Asahi Metal Indus. Co. v. Superior Court of California, Solano County, 480 U.S. 102 (1987) (ruling that the exercise of jurisdiction by a California court over a Japanese manufacturer of tire valves exceeded the limits of the Due Process Clause where the defendant had not purposefully availed itself to doing business in California).