

Chapter 7 & 8 Territorial Sovereignty and State jurisdiction

- oTerritorial Sovereignty is the right of a State to exercise over its own territory, to the exclusion of any other States, the functions of a State.
- oUnder the 1963 Vienna Convention on the Consular Relations, a consular officer (the head of the consular post and any person entrusted to exercise consular functions) is immune from an arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

(3) The Protective principle

- oThe protective principle implies that a State may exercise jurisdiction over an alien who commits an act outside its territory, which is deemed prejudicial to its security and interests (treason, espionage, forging a currency, economic crimes and breaking immigration laws and regulations...)
- oThe protective principle is justified on the basis of protection of State's vital interests, particularly when the alien commits an offence prejudicial to the State, which is not punishable under the law of the country where he resides and extradition is refused.

(4) The Universality Principle

- oThe universality principle, in its broad sense, implies that a State can claim jurisdiction over certain crimes (Hijacking of aircraft, violation of human rights and terrorism, have been added to the list of international crimes) committed by any person anywhere in the world, without any required connection to territory, nationality or special State interest (it was against the international law before the Second World War...)

Section 3: Immunity from Jurisdiction

- oUnder International Law, immunity from jurisdiction is granted to certain persons, namely States (sovereigns) and their diplomatic and consular representatives, and international organizations.

2- The second level concerns the immunity of a State from the execution of enforcement measures undertaken by courts of another

(2) Diplomatic Immunity

- oThey are essential for the maintenance and efficient conduct of relations between States (1961 Vienna Convention on Diplomatic Relations, diplomatic law).
- oUnder this convention, "a diplomatic agent" (the head of the mission and any member of the diplomatic staff of the mission) enjoys complete immunity from the criminal jurisdiction of the receiving State.
- oA "diplomatic agent" enjoys immunity from its civil and administrative jurisdiction, except in the case of real action relates to private immovable property situated within the receiving State, action related to succession matters in which he is involved as a private person, and action related to professional or commercial activity, in the receiving State, outside his official functions.

However, unlike a diplomatic agent, he is not concerned with political relations between the two States, but with a variety of administrative functions, such as issuing visas and passports, looking after the commercial interests of his State, and assisting the nationals of his State in distress.

- oAlthough legislation is primarily enforceable within a State territory, it may extend beyond its territory in certain circumstances (ex: taxes imposed on citizens living outside...)
- oHowever, this supremacy may be challenged in cases where a State adopts laws that are contrary to the rules of International Law.

Section 2: Principles of Jurisdiction

- othe grounds or principles of jurisdiction mostly invoked by States are as follows:

(1) The Territorial Principle:

- oit means that a State has the primary jurisdiction over all events taking place in its territory regardless of the nationality of the person responsible.
- oA diplomatic agent enjoys immunity from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs.
- oA consular officer is immune from the jurisdiction of the judicial or administrative authorities of the receiving State only in respect of acts

performed in the exercise of consular functions. Two levels of sovereign immunity

- o Sovereign immunity arises on two levels: 1- The first level concerns the immunity of a State from the jurisdiction of courts of another State; courts of a State cannot adjudicate a claim against a foreign State. (4) Immunities of International Organizations
- o Actually, immunities are granted to international organizations by treaties, or by headquarters agreements concluded with the host State where the organization is seated.
- o The territorial jurisdiction of State extends over its land, its national airspace, its internal water, its territorial sea, its national aircrafts, and its national vessels. (2) The Nationality Principle
- o The nationality principle implies that a State jurisdiction extends to its nationals and actions they take beyond its territory. o A State may prosecute its nationals for crimes committed anywhere in the world; the ground of this jurisdiction is known as active nationality principle. o Also, it may claim jurisdiction for crimes committed by aliens against their nationals abroad; the ground of this jurisdiction is known as passive nationality principle. It derives from the principles of independence and equality of sovereign States; since States are independent and legally equal, no State may exercise jurisdiction over another State without its consent. o A consular officer enjoys the immunities from the moment he enters the territory of the receiving State (same as a diplomatic agent)... State jurisdiction
- o State jurisdiction is the capacity of a State under International Law to prescribe and enforce the rules of law and to adjudicate. o It is the authority of a State over persons, property and events which are primarily within its territories (its land, its national airspace, and its internal and territorial water). Types of State Jurisdiction
- o (1) Legislative Jurisdiction
- o Legislative jurisdiction is the capacity of a State to prescribe rules of law (the power to legislate). A State has an exclusive authority to create courts and assign their jurisdiction, and to lay down the procedures to be followed. o The immunity granted to a diplomatic agent is immunity from the jurisdiction of the receiving State and not from liability. o The immunity of a diplomatic agent from jurisdiction of the receiving State may be waived by the sending State. o However, such waiver of immunity from jurisdiction does not imply waiver of immunity in respect of the execution of a judgment; in such case, a separate waiver is required. (3) Consular Immunity
- o A consular officer, like a diplomatic agent, represents his State in the receiving State. o He is immune from imprisonment or any other restriction on his personal freedom save in execution of a final judicial decision. In addition, the consular premises, archives and documents are inviolable. Immunity is regarded as functionally necessary for the fulfillment of their objectives. o It has two aspects: 1- the exclusivity of the right of the State with regard to its own territory, 2- the obligation to protect the rights of other States. In this sense, a State cannot enforce its laws upon foreign territory without the consent of the host State; otherwise, it will be liable for a breach of International Law. (3) Judicial Jurisdiction
- o Judicial jurisdiction is the capacity of the courts of a State to try legal cases. (1) Sovereign Immunity
- o Sovereign immunity means that a State may claim exemption from the jurisdiction of another State. Thus, he is not granted the same degree of immunity from jurisdiction as a diplomatic agent. o The immunities of a consular officer may be waived by the sending State (same as a diplomatic agent)... (2) Executive Jurisdiction
- o Executive jurisdiction is the capacity of a State to act and to enforce its laws within its territory. o No State has the authority to infringe the territorial sovereignty of another State. He is exempt from all dues and taxes, except in certain cases. o A State has the supremacy to make binding laws within its territory. In such cases, a State will be

liable for a breach of International Law. However, in doing so, it cannot by any means alter the way in which foreign courts operate. It is based upon the notion that the link between the State and its nationals is personal one independent of location. He is not immune from the jurisdiction of the sending State. Loading... Loading... It encompasses not only crimes committed on its territory but also crimes have effects within its territory. Loading...