



# UNIT 6. STATE ORGANS IN CHARGE OF INTERNATIONAL RELATIONS

1. The representation of the State in international relations: The Head of State, the Head of Government, and the Minister of Foreign Affairs.
2. Diplomatic relations: Diplomatic Missions, Special Missions and Representation before International Organizations and Delegations at International Conferences.
3. Consular relations.

# HEAD OF STATE, HEAD OF GOVERNMENT AND MINISTERS OF FOREIGN AFFAIRS

- A) General aspects
- B) International competition
- C) Inviolability, privileges and immunities.
- D) Spanish law

## **A. GENERAL ASPECTS**

- States do not live in isolation, but enter into relations with other subjects of international law: international relations, responsibility of the organs to which domestic law confers such powers, assigning them the representation of the State at the international level and acting in its name and on its behalf (principle of self-organization of the State).
  - Status under international law and enjoy a regime of inviolability, privileges and functional immunities recognized by this system.
  - These immunities and privileges are not personal but functional in nature, since they are granted not for the benefit of individuals but in order to ensure the effective performance of their functions as representatives of States.
- Regime of diplomatic relations based on the idea of voluntary consent and mutual benefit, as well as on respect for the balance of positions between the State sending a diplomatic mission and the State receiving it:
  - ILC codification of customary international rules (fairly detailed regulation):
    - Convention on Diplomatic Relations of April 18, 1961.
    - Convention on Consular Relations of April 24, 1963.
    - Convention on Special Missions of December 16, 1969.
    - Convention on the Representation of States in their Relations with International Organizations of a Universal Character of March 14, 1975 (not yet in force)
    - Convention on the Prevention and Punishment of Crimes against Specially Protected Persons, including Diplomatic Agents of December 14, 1973 , etc.

- The State organs of international relations are:
  - the organs of the central power endowed with competence for international relations (i.e. the Head of State, the Head of Government and the Minister of Foreign Affairs) and,
  - the specialized organs of the State's foreign administration (i.e. diplomatic missions, special missions, representations to international organizations and delegations to international conferences, as well as consular offices).

## **B. INTERNATIONAL COMPETITION**

- The Head of State (HS), the Head of Government (HG) and the Minister of Foreign Affairs (MFA) are the domestic authorities vested with the highest authority for the conduct of the State's international action.
  - Comparative constitutional practice.
  - No definition under IL. Status in accordance with domestic law.
  - International case law/conventions:
    - PCIJ Judgment of 5 April 1933, concerning the case of the legal status of East Greenland: MFA.
    - Article 7 of the Convention on the Law of Treaties of May 23, 1969: No necessary full powers.
    - ICJ Judgment of December 20, 1974, concerning the nuclear tests case: HS.
    - ICJ Judgment of February 3, 2006, in the case of Armed Activities in the Territory of the Congo (New Application: 2002): *"in accordance with its uniform case law, it is a well-established rule of international law that the HS, the President of the Government and the MFA are deemed to represent the State merely by virtue of the exercise of their functions, including the performance, on behalf of their State, of unilateral acts which have the force of international commitments"* .

## **C. INVIOABILITY, PRIVILEGES AND IMMUNITIES.**

- The Head of State, the Head of Government and the Minister of Foreign Affairs, when in a foreign State, enjoy inviolability, immunities and privileges recognized by international law.
  - Article 21 of the Convention on Special Missions of 8 December 1969: persons when they are on diplomatic mission in another State enjoy personal inviolability (they may not be subjected to any measure of arrest or coercion either in their person or in their residence, property, baggage or correspondence)+ exempt from the criminal jurisdiction of the territorial State and also enjoy immunity from civil jurisdiction.
- Likewise, the Head of State, the Head of Government and the Minister for Foreign Affairs, when they are in a foreign State, are "internationally protected persons": the State in which they are located must assume special obligations of protection.
  - Convention on the Prevention and Punishment of Crimes against Specially Protected Persons, including Diplomatic Agents, of 14 December 1973.
- Neither absolute nor for life, but cover the persons concerned only for the duration of their term of office and for acts performed in their official capacity.
  - The question of the limits for the commission of so-called "international crimes" has given rise to complex situations:
    - Pinochet case.
    - [The ICJ Judgment of February 14, 2002, in the case of the Arrest Warrant of April 11, 2000.](#)

- ❖ Absolute nature of the criminal immunity of serving Ministers for Foreign Affairs.
  - ❖ Only may cease to apply in three specific cases: when they are tried by the domestic courts of their own State under its domestic law; when their own State has decided to waive their immunity; and when they are charged before certain international criminal tribunals, when these have jurisdiction.
  - ❖ Upon the removal of the Minister concerned from office, she or he shall cease to enjoy immunity from jurisdiction in other States.
- These pronouncements, which are also applicable *a fortiori* to Heads of State and Heads of Government, imply a considerable brake on the extensive tendencies to the exercise of universal criminal jurisdiction by domestic courts.

## **D. SPANISH LAW.**

- Capacity for external action of the King, the President of the Government and the Minister of Foreign Affairs are clearly defined in our constitutional and legislative system.
  - Article 56.1 of the Constitution states that "the King is the Head of State" and as such, "assumes the highest representation of the Spanish State in international relations... and exercises the functions expressly attributed to him by the Constitution and the laws". But the powers of the King in the field of foreign relations are not substantive, but representative, being limited to solemnly formalizing the acts decided by the Government with the authorization of the General Courts if necessary.
  - Article 63 of the Constitution.
  - Article 22 of Law 25/2014, of 27 November.
  - Article 98 of the Constitution: the Head (President) of the Government is the one who directs the action of the Government, which in turn is the body that directs the foreign policy of the State (art. 97 of the Constitution).
  - Article 6.3 of Law 2/2014 on State Action and Foreign Service.
  - Article 6.5 of Law 2/2014 on State Action and Foreign Service: MFA.



# DIPLOMATIC RELATIONS

- A) Diplomatic missions
- B) Special missions
- C) Representations of States in International Organizations and International Conferences.

# DIPLOMATIC RELATIONS

## ➤ Evolution:

- Traditionally: bilateral diplomacy (establishment of stable diplomatic missions that constituted embassies of one State in another (classical diplomacy)).
- New international situations: new ways such as special missions (ad hoc diplomacy) or missions accredited to international organizations and conferences (multilateral diplomacy).

## ➤ **Diplomatic missions:**

- Definition: permanent organs of representation of a State before another State to perform a series of functions that are globally known as diplomatic relations. They are the organs of the State that are responsible for the ordinary conduct of diplomacy.
- Status rules of customary international law that have subsequently been codified by [Convention on Diplomatic Relations of 18 April 1961](#).
  - Peremptory obligations
  - Fundamental nature.
- Establishment, suspension and termination of diplomatic missions: mutual consent (art. 2), also other aspects such as the rank of the mission, the possibility of establishing mission offices in locations other than the main headquarters, the possibility of multiple accreditation (i.e., to several States) and the number of persons forming part of the mission.

- In any case, the accrediting State must ensure that the person proposed as head of the mission has obtained the assent of the receiving State (known as the placet), without the latter being obliged to give reasons for its refusal to grant it (art. 4).
- In cases of suspension of diplomatic relations, the receiving State must maintain the protection of the mission, and the sending State may entrust its custody, as well as the protection of its interests and those of its nationals, to a third State acceptable to the receiving State (art. 45).
- Functions of the diplomatic mission (Article 3 of the Convention-not *numerus clausus*):
  - representing the sending State to the receiving State;
  - protecting in the receiving State the interests of the sending State and those of its nationals;
  - negotiating with the receiving State;
  - ascertaining by all lawful means the conditions and developments in the receiving State and reporting thereon to the sending State;
  - promoting friendly relations and developing economic, cultural and scientific relations between the sending State and the receiving State.
  - Consular functions.

BUT: performed in accordance with the principle of legality, i.e., respect for international and domestic law (respect the laws and regulations of the receiving State" not interfere in the internal affairs of that State).

Declaration of *persona non grata* of those members of the mission's personnel whose continuance in office is undesirable or, if necessary, terminate diplomatic relations by severing them.

- Inviolability, immunities and diplomatic privileges:
  - to the mission itself, i.e., the premises, archives and documents, correspondence and diplomatic pouch of the mission (art. 22 Convention): inviolable (not fiction of extraterritoriality) and tax and customs exemptions, as well as immunity from jurisdiction and execution.
    - ❖ Diplomatic asylum in embassies: the Convention does not grant a *laissez passer*.
  - to the members of the staff of the mission, i.e., the natural persons forming part of the mission (diplomatic staff, the administrative and technical staff and the service staff of the mission):
    - ❖ Members of the diplomatic staff (diplomatic agents):
      - the person of the diplomatic agent is inviolable, he may not be subjected to any form of detention or arrest.
      - They are also "internationally protected persons" (application of provisions of the Convention on the Prevention and Punishment of Crimes against Specially Protected Persons, including Diplomatic Agents of 14 December 1973).

- Very broad immunities and privileges, which cover them personally for official or private acts for the duration of their accreditation and are extended to members of their household: immunity from criminal, civil and administrative jurisdiction, as well as immunity from execution, subject to certain exceptions and provided that the inviolability of their person or residence is not impaired (art. 31).
- Other exemptions such as those relating to social security provisions, in respect of services rendered to the sending State (art. 33), those relating to personal or real, national, regional or municipal taxes and duties, with certain exceptions (art. 34), as well as any personal allowances (art. 35).
- The diplomatic agent shall not engage in any professional or commercial activity in the receiving State for personal gain (Art. 42).
- ❖ Members of the administrative and technical staff:
  - they are not nationals of the receiving State and do not have their permanent residence there: enjoy similar inviolability, privileges and immunities, although the latter shall not extend to acts performed outside the performance of their duties (Art. 37.2).
- ❖ Members of the service staff of the mission (not nationals of the receiving State nor have their permanent residence there): lesser privileges and immunities (art. 37.3).

- Duties: to respect the laws and regulations of the receiving State (which is understood to include the rules of the road and the payment of fines) and are obliged not to interfere in the internal affairs of that State (Art. 41.1).
- Possibilities for receiving State: May, at any time and without having to give reasons for its decision, declare any member of the diplomatic staff persona non grata or declare that any other member of the mission's staff is not acceptable, in which case the accrediting State shall remove that person or terminate his or her functions (Art. 9).
- Possibilities for the accrediting State may waive the immunity from jurisdiction of its diplomatic agents, provided that the waiver is made expressly (art. 32).

➤ **Special missions**: forms of the so-called "ad hoc diplomacy" (new requirements of international relations--rapid solutions and growing need for direct contacts between States).

- Regulation: Convention on Special Missions of December 16, 1969
- Definition: "a temporary mission, having the representative character of the State, sent by a State to another State with the latter's consent to deal with it on particular matters or to perform a particular task before it".
- Features:
  - Temporary nature of their duration
  - Specificity of their tasks,

- Alternative mechanism or an additional to classic diplomacy.
- Establishment, suspension and termination
  - Dispatch: principle of mutual consent applies to other matters relating to the establishment of the mission
  - The parallelism of the regulations can also be observed with regard to the suspension and termination of special missions.
- Functions of special missions: principle of mutual consent of the sending and receiving States.
- Inviolability, Immunities and Privileges: Accorded, on the one hand, to the material means of the special mission, i.e. the premises, archives and documents of the special mission and, on the other hand, to the members of the special mission, similar to those applicable to diplomatic missions and diplomatic personnel.
- **Representation before international organizations.**
  - Growth of IO and proliferation of international conferences: development in the scope and content of diplomatic relations ("multilateral diplomacy"). Differences:
    - The relationship created is equivalent to a tripartite legal situation, involving the territorial or host State, the international organization or diplomatic conference and the member States of the organization or participants in the conference.
    - Need to reconcile not always coinciding interests that connect different legal orders (Headquarters Agreements , the Conventions on Privileges and Immunities of the Organization and the special agreements concluded on the occasion).

- Attempt to establish a more general regulation: the Convention on the Representation of States in their Relations with International Organizations of a Universal Character was drawn up on March 14, 1975 (representation of States before the United Nations, its Specialized Agencies, the International Atomic Energy Agency and any similar organization of a universal character (art. 1.2), and to their representation at conferences convened by such an organization or under its auspices (art. 2.1). BUT NOT IN FORCE: Case by case basis.

➤ **Representation of States before international organizations.**

- Establishment of a permanent representation or mission, to which are generally added occasional delegations that participate in the activities of their various specialized organs.
  - The missions are accredited to the Organization and not to the host State.
  - Serves as liaison between the Member State and the organs of the Organization.
  - Acts as channels of communication between their respective governments and the Organization, as well as with the other Member States on matters within the Organization's competence.
  - Regime: headquarters agreements and in the conventions on immunities and privileges of the respective organization .

➤ **Delegations to international conferences.**

- Different from missions to international organizations, since such conferences are meetings of States with an occasional character and a specific purpose.



- Status: usually specified in special agreements concluded with the host State in whose territory the conference is held.
- Applicability of the provisions of the 1975 Vienna Convention if they have been convened by one of the Organizations to which the Convention applies.

# CONSULAR RELATIONS

## CONSULAR RELATIONS

- Needs of international trade and navigation. Later, consular posts have also assumed other functions related to the defense of the interests of the sending State and those of its nationals in the receiving State.
- Consular posts: consulates general, consulates, vice-consulates or consular agencies established by a State in cities of another State, which are responsible for consular relations.
- Rules of customary international law governing this secular institution have been codified by the Convention on Consular Relations of April 24, 1963.
  - **Establishment, suspension and termination**
    - Principle of mutual consent.
    - The suspension and termination of consular relations follows similar guidelines to those applied to diplomatic relations.
  - **Functions of the Consular Posts**
    - Very broad and diverse:
      - ❖ Protection in the receiving State of the interests of the sending State and its nationals,
      - ❖ Fostering the development of commercial, cultural and scientific relations between the sending State and the receiving State
      - ❖ promoting friendly relations between them.

- ❖ The functions related to the activities of nationals:
  - consular assistance functions ("render aid and assistance to nationals of the sending State");
  - administrative and legal functions (issuing passports and travel documents, acting as a notary, civil registrar and other similar functions);
  - international judicial cooperation functions (representing nationals of the sending State before the courts of the receiving State and communicating judicial decisions and executing letters rogatory); and
  - functions related to maritime and air navigation.
- **Inviolability, Immunities and Privileges**
  - They on the status of the "consular officers" (Consular officers who are nationals or permanent residents of the receiving State have a special status) who direct the Consular Post.
    - ❖ career consular officers (or consuls missi): similar to those discussed in the case of diplomatic missions.
    - ❖ Honorary consular officers (or consuls electi): narrower in scope

- Special case of Consular officials who are nationals or permanent residents of the receiving State shall enjoy only immunity from jurisdiction and personal inviolability for official acts performed in the exercise of their functions, unless the receiving State grants other facilities, privileges and immunities.



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