



# **THE STATE AS SUBJECT OF INTERNATIONAL LAW**

**1. THE STATE AND ITS CONSTITUTIVE ELEMENTS. 2. THE SOVEREIGNTY OF THE STATE AND ITS COROLLARIES: EQUALITY, NON-INTERVENTION AND SOVEREIGN IMMUNITY. 3. THE DYNAMICS OF THE STATE. 4. THE STATE BODIES IN CHARGE OF INTERNATIONAL RELATIONS: THE HEAD OF STATE, THE HEAD OF GOVERNMENT, AND THE MINISTER OF FOREIGN AFFAIRS.**

# THE STATE AND ITS CONSTITUTIVE ELEMENTS

A. General aspects.

B. The constitutive elements.

- *B. 1. The territory*
- *B. 2. The population*
- *B. 3. The political and legal organization.*

## A. GENERAL ASPECTS

- The State is a complex reality that can be examined from various perspectives: sociological, political, legal.
  - Form of political organization arose with the European monarchies of the 15th and 16th centuries and its emergence is historically linked to the birth of international law.
  - Since Treaty of Westphalia, sovereign state is the fundamental element of international society and the quintessential subject of international law
- **Doctrine definition:** the State is "an entity endowed with a territory, a population and a government, which is sovereign and independent, in the sense that it is not subordinate to any other State or entity, depending directly on international law".
- Matter of fact not of law: **principle of effectiveness** important role. The birth of states is a relatively constant process that continues to occur in a variety of ways in today's world: as a result of a resolution of an international organization; by virtue of an international agreement; as a result of the dismemberment or dissolution of a State, or as a result of a series of armed conflicts through the exercise of the right of self-determination of the peoples; or through unilateral declaration of independence supported by the major powers.
- Diversity of States but they have the same legal status under international law as entities endowed with sovereignty and defined by the principle of sovereign equality.

## **B. THE CONSTITUTIVE ELEMENTS OF THE STATE**

- For international law, the existence of a State results from the concurrence of three constitutive elements: territory, population and political-legal organization.
  - *Example:* German-Polish Mixed Arbitral Tribunal has already stated in its Judgment of August 1, 1929: "For a State to exist, it requires as indispensable a territory, a human collectivity and a public power exercised over this collectivity and this territory".

## ***B.1. THE TERRITORY***

- Territorially based entity (IO do not possess territory): the territory constitutes the support or physical base on which the population is settled and over which it exercises its sovereignty. IL is indifferent to dimensions or configuration of the territory (micro-States).
- It comprises:
  - Terrestrial space delimited by its borders
  - Marine spaces subject to its sovereignty
  - National airspace.
- The territory is delimited by borders, which must be well determined and have a certain firmness. International jurisprudence has pointed out that for the existence of a State "it is sufficient for the territory to be of adequate consistency, even if its frontiers have not yet been precisely delimited, and that the State is currently exercising its independent public power over that territory".
  - International disputes over border areas.
- The territory of the State is inviolable against any external action.
  - UN Charter of the United Nations prohibition of the use or threat of force
  - [Resolution 2625 \(XXV\) of 24 October 1970.](#)

## ***B.2. THE POPULATION***

- **Definition:** The human community established on the territory of the State and over which the State exercises its authority. The number, density, homogeneous character or the sedentary or nomadic character of the inhabitants of the State is immaterial in IL.
  - *Example:* [ICJ 1975 Advisory Opinion on Western Sahara](#).
- **Composition:** Persons politically linked to the State by the nexus of nationality (the nationals) but, in a broad sense, it also includes foreigners residing in the territory.

### ***B.3. THE POLITICAL AND LEGAL ORGANIZATION***

- State must have a governmental and administrative structure that makes possible the effective exercise of State functions in the internal and international order.
  - It must also have a legal system capable of establishing the rights and obligations of citizens and of effectively ensuring the exercise of these rights and obligations.
- The form of organization of the State (unitary, federal, autonomous, etc.) is irrelevant for international law, which recognizes the principle of self-organization of the State.
  - Example: [ICJ Advisory Opinion 1975, concerning the Western Sahara case](#)
  - However, the political organization and its exercise ad intra and ad extra must be effective and guarantee the fulfillment of the State's own functions.
    - Art. 4 UN Charter: The membership requires a State "able to carry out" the obligations set out in the Charter.
    - Doctrine: authority in its territory and over the State's population;
      - ❖ the government must guarantee:
        - the necessary organic mechanisms to maintain relations with other States and with the other subjects of the international order
        - the necessary organs to exercise the legislative, executive and judicial functions,
        - to ensure the control of its economy, national security and other public services.

- capable of ensuring the stability of international relations vis-à-vis the other States.
- **Traditionally**, the political status of the government was indifferent to international law: Resolution 2625 (XXV) of 1970: right to choose freely the form of government as an essential element of the principle of sovereign equality and non-intervention in internal affairs.
- **Today**, universal consensus on the protection of human rights, political democracy and the rule of law: changes, but it cannot yet be affirmed that the democratic character of government is a condition for the existence of the State.



THE SOVEREIGNTY OF  
THE STATE AND ITS  
COROLLARIES:  
EQUALITY, NON-  
INTERVENTION  
AND SOVEREIGN  
IMMUNITY

- A. State sovereignty.
- B. Content of sovereignty: the competences of the State.
  - *B.1. Nature and scope of the State's competences.*
  - *B.2. Limits on the exercise of State's competences*
- C. Corollaries of sovereignty: sovereign equality, non-intervention and state immunity
  - *C.1. Sovereign equality.*
  - *C.2. Non-intervention in internal affairs*
  - *C.3. Sovereign immunity of the State*

## A. THE INTERNATIONAL STATUS OF THE STATE. STATE SOVEREIGNTY

- The international status of the State is marked by the recognition of its **sovereignty**, which is a constitutional principle of the legal system.
- **Definition:** is the characteristic and exclusive attribute of the State.
  - In the internal sphere: supreme (*summa potestas*) and complete (*plenitudo potestatis*) authority.
  - At the international level: absence of subjection to a power superior to that of the State itself and is equivalent to independence. It implies exclusive competence for the exercise of authority over a given territory to the exclusion of any other State.
- **Content:** entails a broad sphere of powers (competences of State) which it can exercise independently and autonomously, and duties:
  - Exclusive powers for the exercise of legislative, executive and jurisdictional powers in the domestic sphere.
  - Permanent sovereignty over natural resources and wealth and over the economic activities carried out in its territory. [GA Resolution 1803 \(XVII\) of 14 December 1962](#).
  - Sovereign powers to decide freely on its external action, with no limitations other than those established by international law.
  - Duty: the need to respect the sovereignty of the other States and the requirements introduced for this purpose by international law.

## **B. CONTENT OF SOVERIGNTY: THE COMPETENCES OF THE STATE**

### ***B.1. NATURES AND SCOPE OF THE STATE'S COMPETENCES***

- Powers of the State: domestically and internationally.
  - In its internal dimension: power to legislate for the whole of its territory, the exercise of jurisdictional competence by its courts of justice and the monopoly of coercive power within its territory.
  - In its external dimension: freedom to conduct its international relations independently and without being subject to requirements other than those deriving from international law itself.
- State's competences:
  - original or inherent character (sovereignty). , which constitutes an essential attribute recognized by international law.
  - Discretionary: they can be exercised freely without any interference by the other subjects of international law. Effect:
    - Existence of competences that have not been regulated by international law and therefore belong to the internal jurisdiction: *domaine réservé* of the State and "exclusive competences" (an autonomous power of decision).
      - ❖ Art. 2.7 UN Charter
  - Initially full: general scope and are not restricted by the principle of specialty.

## **B.2. LIMITS TO THE EXERCISE OF STATE'S COMPETENCES**

- The powers of the State are subject in their exercise to certain limits set by international law:
  - [PCIJ Lotus case of 1927](#), the powers of the State cannot be exercised in the territory of another State: *"In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention"*.
  - Limited by obligations that have been freely assumed with respect to specific matters: [PCIJ Wimbledon case of 1923](#) *"The right to enter into international agreements is an attribute of state sovereignty."*
  - Limitation of the so-called "regulated competences (competences which under international law are subject to a restrictive regulation to ensure their compatibility with the competences of other States or with the collective interests of the international community).
    - Process of progressive reduction of original competences.
    - International Organizations/Human rights developments.

## **C. COROLLARIES OF STATE SOVERIGNTY**

### **C.1. SOVEREIGN EQUALITY**

- Fundamental principle of IL
  - Article 2.1 of the Charter of the United Nations.
  - Developed in GA Resolution 2625 (XXV) of October 24, 1970: *All states enjoy sovereign equality. They have equal rights and equal duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.*
- It comprises the following elements:
  - States are legally equal;
  - Each State enjoys the rights inherent to full sovereignty;
  - Each State has the duty to respect the personality of other States;
  - The territorial integrity and political independence of a State are inviolable;
  - Each State has the right to freely choose and carry out its political, social, economic and cultural system;
  - Each State has the duty to comply fully and in good faith with its international obligations and to live in peace.
- Compatible with certain treaty derogations that admit disparities of treatment in favor of certain States:

- Privileges accorded to some States by granting them a pre-eminent position in certain areas (the right of "veto" of the permanent members of the Security Council).
- Practices of positive discrimination in favor of certain States suffering from a structural situation of inequality or vulnerability.
  - Advantages of developing countries in the World Trade Organization system.
  - the special status of landlocked or geographically disadvantaged States.
  - Principle of "common but differentiated responsibilities" in International Environmental Law.

## **C.2. NON-INTERVENTION IN INTERNAL AFFAIRS**

- The principle of the sovereign equality of States implies the obligation not to intervene in matters within the domestic jurisdiction of other States.
  - [ICJ Judgment of April 9, 1949 Case of the Straits of Corfu](#)
  - Proclaimed by [GA Resolution 2131 \(XX\) of 21 December 1965](#) "Declaration on the Inadmissibility of Intervention in the Internal Affairs of States and the Protection of their Independence and Sovereignty".
  - Content of this principle specified in [Resolution 2625 \(XXV\) of 24 October 1970](#): No State or group of States has the right to intervene directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State: armed intervention, other form of interference or threat against the personality of the State or the political, economic and cultural elements that constitute it, are violations of international law.
- Analysis by [ICJ Judgment of June 27, 1986](#) concerning the case of military and paramilitary activities in and against Nicaragua:
  - Principle of Customary international law.
  - This principle prohibits any State or group of States from intervening directly or indirectly in the internal affairs of another State.
    - matters in respect of which the principle of sovereignty of States recognizes their right to decide freely.

- Recent times: trend towards the introduction of certain exceptions to the prohibition of intervention in the internal affairs of other States
  - assistance, interference or "humanitarian intervention".
  - The "responsibility to protect" populations when the territorial State does not duly fulfill its duties in this respect: reaffirmation of the obligation of States to be responsible for the well-being of their populations and to assist the United Nations in protecting populations from genocide, war crimes, ethnic cleansing and crimes against humanity.



### C.3. SOVEREIGN IMMUNITY OF THE STATE

- A State may not be subjected against its will to the judicial (immunity from jurisdiction) or coercive (immunity from execution) powers of another State without its consent: *par inter pares no habet imperium*.
- Body of customary rules:
  - Absolute theory of immunity: the courts of a State could never exercise jurisdiction against a foreign State without its consent or take enforcement measures against it.
  - Relative theory of immunity: It distinguishes between acts of the State performed in the exercise of its sovereign powers (*acts iure imperii-State's immunity*) and those performed in the context of civil and commercial activities (*acts iure gestionis*).
    - This relaxation begins to be pointed out also with respect to the immunity of execution of the foreign State.
- ICJ: in favor of maintaining the immunity of the foreign State from jurisdiction and enforcement of civil claims brought in national courts alleging a violation of peremptory norms (*ius cogens*).
  - Judgment of 3 February 2012 concerning State jurisdictional immunities: "A State is not deprived of immunity merely because it is accused of serious violations of international human rights law or the international law of armed conflict that could constitute war crimes or crimes against humanity".

- ILC: United Nations Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004 (not in force, missing 8 parties).

# DINAMICS OF THE STATE: POLITICAL AND TERRITORIAL TRANSFORMATIONS

- A. Identity and continuity of the State.
- B. Birth and recognition of new States.
  - *B.1. Concept and modalities of recognition*
  - *B.2. Discretionary nature of recognition*
- C. Political transformations: recognition of Governments
- D. Territorial transformations: succession of States

## **GENERAL CONSIDERATIONS**

- States are social bodies subjects to historical dynamic: changes and modifications ("transformations of the State") that may affect its various component elements (population, territory and government), and are of interest to international law when they affect its relations with other States.

## **A. IDENTITY AND CONTINUITY OF THE STATE**

- General principle relating to the transformations of the State: principle of "identity and continuity" of the State: except in cases where the State is totally extinguished, the State entity remains identical for international law despite changes.
  - Application in cases of revolutions (changes in governing regimes).
- Rationale: do not alter the international status of the State or affect the persistence of the rights and obligations established under international law.

## **B. BIRTH AND RECOGNITION OF NEW STATES**

- Emergences of new States: colonial emancipation, dismemberment or splitting of another State, unification of States, etc.
- Other members of the international community reaction: recognition or non-recognition of the new State.

### ***B.1. CONCEPT AND MODALITIES OF RECOGNITION***

- Doctrinal (Institute of IL) definition: *free act by which one or more States declare the existence on a given territory of a politically organized human society, independent of any other existing State, capable of observing the prescriptions of international law, and by which they consequently express their willingness to consider it as a member of the international community.*
- Modalities:
  - Expressly, by means of a specific and formal declaration of recognition
  - Tacitly or implicitly, by means of other acts implying recognition of the State (complex question).
  - Cases of (mis)so-called "collective" or concerted recognition: a group of States have agreed on the conduct to be followed with respect to the recognition of new States in each case (is rather a concerted act adopting criteria for the recognition, which will then materialize through individual recognition by each of the States).

## ***B.2. DISCRETIONARY NATURE OF RECOGNITION***

- It is a free act because it is within the discretionary competence of the State, with total independence and based on criteria of opportunity.
  - Political nature.
  - Evolution of IL: limit discretion in matters of recognition
    - Implications of principle prohibiting recourse to the threat or use of force against the territorial integrity or political independence of any State, or in any manner incompatible with the purposes of the United Nations.  
*Ex: Declaration on November 15, 1983, by the Turkish community in the northern part of Cyprus as an independent state under the name "Turkish Republic of Northern Cyprus" (TRNCNK).*

### ***B.3. DECLARATORY NATURE OF RECOGNITION***

- The recognition does not have a constitutive value (it does not create the State being recognized) but is merely declaratory, since it merely states that the State exists.
  - Existence of the State is governed by the principle of effectiveness, precedes recognition and does not depend on it.
  - The State exists when a government exercises its authority over a given territory and population, regardless of its recognition or non-recognition by other States.
  - Recognition does not create the recognized State, but simply expresses the acceptance of its existence by the recognizing State.
- However, the effects of recognition are not inconsequential.



## C. POLITICAL TRANSFORMATIONS: RECOGNITIONS OF GOVERNMENTS

- General rule: changes in the regime of government do not affect the international status of the State.
- However, in cases where a revolutionary change in the power structure occurs within a State, the question of "recognition of governments" often arises in practice.
  - Third States are free to decide whether to recognize the *de facto* government.
  - Attempts have been made in international practice to subject this process to predetermined criteria or guidelines:
    - "legitimacy" criteria.
    - theory of "effectiveness".
    - "Estrada doctrine": the maintenance or withdrawal, as it seemed convenient, of diplomatic agents".

## **D. TERRITORIAL TRANSFORMATIONS: SUCCESSION OF STATES**

- Changes in the territory: specific problems of "State succession". Complexity of situations by diversity of cases (the emergence of new States as a result of the emancipation of colonial countries, the merger of two pre-existing States the division of a State into two States, the dismemberment of a State, the segregation of a part of the territory of a State).
- Definition: replacement of one State (predecessor State) by another (successor State) in the responsibility for the international relations of a territory. Questions regarding:
  - the treaties concluded by the predecessor State with respect to the territory being succeeded;
  - the property, archives and debts of the predecessor State;
  - the membership of the predecessor State in international organizations;
  - the nationality of the population of the predecessor State;
  - the private property affected by the succession, etc.
- Some of the matters: international codification:
  - the succession of States in respect of treaties of 1978: principles of tabula rasa (newly states) and continuity of treaties (other cases).
  - the succession of States in respect of property, archives and debts of 1983 (casuistic).

- ILC Draft Articles on the nationality of natural persons in relation to the succession of States.
- Generally: Problems solved by special agreements between the predecessor State and the successor State.

# STATE BODIES IN CHARGE OF INTERNATION AL RELATIONS

A. General aspects

B. Head of State, Head of Government and Minister of Foreign Affairs

- *B.1. International competition*
- *B.2. Inviolability, privileges and immunities.*
- *B.3. Spanish law*

C. Diplomatic relations

D. Consular relations

## A. GENERAL ASPECTS

- States do not live in isolation but related to other subjects of IL: 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 IL 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 (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. HEAD OF STATE, HEAD OF GOVERNMENT AND MINISTER OF FOREIGN AFFAIRS**

### ***B.1. 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”* .

## ***B.2. INVIOLABILITY, 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.

### ***B.3. 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 Corts 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.

## C. 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.

## **D. 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*): like 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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