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The Concept of Extraterritorial Jurisdiction in International Economic Law: An Appraisal

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Abstract

This paper appraises extra-territorial jurisdiction in the realm of international economic law. jurisdiction concerns the power of the state under international law" to impact or regulate people, property and circumstances and reflects the basic principles of state sovereignty, non interference in domestic affairs and equality of states. Jurisdiction is an exercise of authority which may change, terminate or create legal relationships and obligation; and is achievable through judicial executive or legislative action. Although there has never been a universally accepted conception of what constitutes extraterritorial exercise of jurisdiction, extraterritorial exercise of jurisdiction can be defined to mean an application of law by a state to a foreign national's conduct, the whole or part of which is engaged outside the territory of that state. The paper examined some Nigeria legislations with provisions, having the taste of extraterritorial jurisdiction. Various types of jurisdictions and instances of the exercise of such jurisdictions were extensively discussed.

Introduction

Jurisdiction is the term that describes the extent or limit of a state legal competence or other regulatory authorities to apply, enforce or make rules of conduct upon persons it concern the extent of each state's right to regulate conduct upon persons; it concerns the extent of each state's right to regulate conduct or the consequences of events, essentially.

According to "shaw" "jurisdiction concerns the power of the state under international law" to impact or regulate people. Property and circumstances and reflects the basic principles of state sovereignty, non interference in domestic affairs and equality of states. Jurisdiction is an exercise of authority which may change, terminate or create legal relationships and obligation; and is achievable through judicial executive or legislative action.

Jurisdiction is the most versatile term in international Law which has been frequent in Legal instrument but still never defined. Jurisdiction can have different meaning in different contexts. Depending on the circumstances, jurisdiction may refer to the totality of the power or authority that a state has or exercises in which case it is identifiable "with sovereignty"

Jurisdiction may also mean the power or authority of a state in a certain field such as adjudication of cases by courts or other judicial authorities or levy of taxes. Jurisdiction describes therefore with varying degrees of precision in diverse situation what a state can do and what it does. "Jurisdiction can rightly be regarded as the dynamic aspect of the idea of sovereignty" it is jurisdiction that makes the notion of sovereignty describable and visible in strict legal terms. According, to Gordon jurisdiction describes the legal authority of a state which scope is manifest in terms of prescriptive or enforcement jurisdiction of a state's laws imposes boundaries on the scope of state legal authority. The state exerts its legal sovereignty over conceptual and physical space. The application of law of state requires that a territorial connection can be made between the legal question and this conceptual or physical state place. "That connection is an imperative of international law, and is necessary to distinguish the applicability of one state's laws from another's" even when expressed in terms of "prescription" and "enforcement" the concept of jurisdiction invokes a certain geography one that articulates the scope of state's sovereignty in territorial terms.

A state's economic jurisdiction means its exercise of power over property, persons, transactions and economically relevant events in the framework of its legal system. This power is exercised by the state through administrative judicial and legislative measures. The aforementioned prescriptive exercise of power is what is referred to as legislative jurisdiction.

A state also exercises its enforcement jurisdiction i.e. sanctions, imposition of penalties, imprisonment and denial of entry into a country through the aforementioned enforcement measures which is meant to ensure the implementation of its legislative jurisdiction. Jurisdiction is considered to be an aspect of state's sovereignty. To that end "the demarcation of the extents' of a state's economic jurisdiction is the function of international law"

State is not the only entity vested with jurisdiction in the economic sphere in International Economic Law. Certain regional economic organizations were equally empowered to "prescribe and enforce economic laws.

TYPES OF JURISDICTIION

At the preceding topic we have discussed the concept of jurisdiction defining same in various perspectives as viewed by the learned authorities in the field. This topic will contain an analysis of types of jurisdiction.

According to Perritt Jr. "Three kinds of governmental powers give rise to three categories of jurisdiction" viz;

i. Prescriptive jurisdiction;
ii. Adjudication jurisdiction; and
iii. Enforcement jurisdiction

Prescription jurisdiction refers to the authority or power of a state to make it laws applicable to a particular circumstance or persons through adopting legislation or through courts developing the law in some cases. On the other hand, enforcement jurisdiction refers to the authority or power of a state to take action to enforce those laws through arrest, detention, prosecution, conviction, and sentencing and in some cases punishing person for breaking the laws. Adjudicatory jurisdiction deals with the power or authority of courts to apply the law in particular cases.

The aforementioned types of jurisdiction replicate practical limits on the exercise of coercive power by the state. When a state seeks to govern conduct occurring outside its borders or to exercise prescriptive jurisdiction it is dependent on the practicability of exercising its own coercive power outside its borders to enforce it laws or on the willingness of other states to give effect to its laws. Jurisdiction of a state like any other is in principle limited to its own territory.

SOURCES OF JURIDICTION

As this work is concerned with the concept of extraterritorial jurisdiction under international economic law, the concept is defined by the traditional sources of international law treaties, custom, and general principles of law.

TREATIES

Referred to a written agreements entered into by states that create legal rights and obligation between them. Treaties bind only states that are parties to them. They may in certain circumstances serves as evidence of customary international law. In Abacha vs. Fawehinmi the Supreme Court of Nigeria per S.O. Uwaifo JSC (as he then was) defined treaty as follows;

> *"----- treaty means an international agreement or by whatever name called e.g. Act, Charter, Concordant, convention, covenant, declaration, protocol or statutes, concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."*

Report has it that no generally binding treaty exist regulating extraterritorial jurisdiction, except in areas of bribery and corruption and bribery of foreign public officials in international business transactions. There was an unsuccessful attempt at developing a generally binding treaty at the outmost dealing with limited areas. Example, "The Draft Hague convention of jurisdiction and foreign judgments in civil and commercial matters attempted to establish basic principles concerning extraterritorial jurisdiction over civil and commercial matters including extraterritorial tort jurisdiction" owing to absence

of any agreement reached and a final text to be adopted, the negotiations ceased ultimately.

CUSTOMARY INTERNATIONAL LAW

In contrast to treaties the rule of customary international law "binds all states except persistent objectors". The rules can be mandatory, prohibitory and permissive. They are mandatory because they require states to act in a certain way; they are prohibitory as they prohibit states from acting in a certain way; and permissive because they permit sates to act in a certain way. Rules with respect to jurisdiction can be of all three types most often though "rules concerning jurisdiction are permissive rules that allow states to assent their jurisdiction, but do not require them to do so. "The status of the international court of justice refers to international customs as evidence of a general practice accepted as law" the development of the rule of customary international law requires two elements; state practice and jurist opinion but it is not yet clear which actions constitute the two elements and how uniform they must be and what is the proper relationship between them. therefore, "any reliance on custom requires some discussion of methodological issues"

In terms of states practice, it is suggested that both verbal and physical acts of the legislative, executive and judicial organs of a state can contribute in the process of formation of customary international law in terms of jurist opinion, the test relevant is whether states assert jurisdiction or refrain from asserting jurisdiction based on the believe of the acceptability of such actions, its proscription or necessity under international law.

GENERAL PRINCIPLES OF LAW

This is the third primary traditional source of international law. And what constitute a question of a significant debate. Some argue that general principles refer to the general principles of international law while others see it as fundamental propositions or features that form the basis of all municipal legal systems, whether based on natural law or are binding by virtue of their prevalence is a further issue of debate. As such there are various approaches to the methodology for deriving general principles of law both conceptual and comparative approaches have received notable support.

BASES OF JURISDICTION

The concern of jurisdiction is with the allocation of competence between states theoretical understanding of jurisdiction is necessary to have a clear sight of how all these aspects "and very many more fit together", and how they interrelate. In order to understand that, the competence to prescribe law has to be distinguished from the competence to apply law. The prescription of law according to the author is evidenced primarily by legislation, but also by other regulatory and common law processes within the state. According to Lowe and Staker "the most important basis for the assertion of extra territorial jurisdiction is now the huge and constantly growing network of treaties in which states cooperate to secure the effective and efficient subjection to the law of offences of common concern."

Basing extraterritorial jurisdiction on the nationality or domicile of a corporation significantly reduces sovereignty concern competition law is acquiring international dimension increasingly bringing it to the domain of public international law. Trade and investment on a global scale are much more widespread and the geographical reach of the effect of cartels, mergers and unilateral firm conduct is ever expanding due to the lack of one uniform set of supra national rules a region of competition law based on national regulation within a system of state cooperation has developed.

EXTRA TERRITORIAL JURISDICTION

Inspite of the general presumption against the extraterritorial application of legislation, claim have arisen in the context of economic issues whereby states like United States seek to apply their laws outside their territory. *"In a manner which may precipitate conflicts with other states".* Problems do not often arise, where the claims are founded upon the territorial and nationality theories of jurisdiction but claims made upon the basis of the so called "effects" doctrine have provoked considerable controversy. States assume jurisdiction on the grounds that the behavior of a party is producing "effects" within its territory beyond the objective territorial principle. This is notwithstanding the fact that all the conduct complained of takes place in another state. One of the most seriously conflicting issues over half a century in the field of economic law is the reach of a state's laws. Europe and United States have been applying their

economic laws to conduct occurring outside their borders but affecting their economy. Territorial principle has always been invoked so as to justify the jurisdictional assertion rational states acting in their own interest will indeed only exercise jurisdiction if they have an interest in doing so and this interest often stem from the territorial adverse effects of foreign conduct because of the indeterminacy of the territorial principle, it may however justify almost any jurisdictional assertion over foreign conduct that somehow affects a state's territory.

An unrestricted application of the territorial principle in the field of international economic law ineluctably leads to upsetting the foreign nations where the harmful conduct originated and to strain the forum states own regulatory and judicial resources. States have therefore circumscribed the territorial effects agreeable to effects based jurisdiction to direct substantial, reasonable and foreseeable effects. Criticism is always directed towards United States for extra territorial assertion of jurisdiction. However, United States is not the only one in asserting jurisdiction over conduct occurring outside its territory. A number of other countries do so. The United Kingdom has under the protection of trading interests Act of 1980 exercised extra territorial jurisdiction over non-nationals. It also asserts the right to control the activities of persons outside the United Kingdom when her interests are threatened by any foreign state's trade measures which would apply extraterritorially.

Another good example is the Arab nation's boycott of Israel imposes sanctions on foreign companies for economic activity outside the boycotting countries. The United kingdom has under the protection of trading interests Act of 1980 exercised extraterritorial jurisdiction over non-nationals it also asserts the right to control the activities of persons outside the United Kingdom when her interest are threatened by any foreign state's trade measures which would apply extraterritorially. The Act does not require as a precondition that the other state's exercise of jurisdiction be illegal.

However, even though United States is not alone in asserting extraterritorial jurisdiction, it is the most inexhaustible source of extraterritorial regulation, law and enforcement action. Surprisingly, it is the most significant target of international complaint about extraterritoriality

MEANING OF EXTRATERRITORIAL JURISDICTION

According to Qureshi & Ziegler A universally accepted conception of what constitutes extraterritorial exercise of jurisdiction has not being achieved.

KOJIMA Takaaki defined extraterritorial application of law to mean an application of law by a state to a foreign national's conduct, the whole or a part of which is engaged outside the territory of that state.

Extraterritorial jurisdiction has also been defined as a competence exercised over persons or goods located in another state. This approach is in conflict with the underlying logic of international public law which allows but limits extraterritoriality. Worthy of consideration here is the guidelines given by international court of justice in the Lotus' case. Thus;

> *"Far from laying down a general prohibition to the effect that states may not extend the application of their laws and the jurisdiction of their courts to persons, property and act outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every state remains free to adopt the principles which it regards as best and most suitable"*

What are the limits therefore of the extraterritorial jurisdiction of states? To some scholars, it is "based on a certain tie between the extraterritorial events considered or the extraterritorial situation and the states and the rationale of a state's jurisdiction is commonly related to its territory population or its very existence as a state.

Again extraterritorial jurisdiction or extraterritoriality is a "situation in which state powers legislative, executive and judicial governs relations of law situated outside the territorial of the state in question. Extraterritorial jurisdiction as defined by Wikipedia is the legal ability of a government to exercise authority beyond its normal. According to the site any authority can of course claim extraterritorial jurisdiction over external territory they wish. For it to be effective it must be agreed either with the legal authority in the external territory or with a legal authority which covers both territories. The phrase may also refer to a country's laws extending beyond it boundaries in the sense that they may authorize the courts of that country to enforce their jurisdiction against parties

before them in respect of a subject matter outside that country. This does not depend on the co-operation of other countries, for reason that the affected people are within the relevant country. Free dictionary site states that the concept of extraterritoriality stems from the writing of French legal theorist and jurist Pierre Ayraut 1536-1601 who postulated that certain persons and things remained outside the reach of local judicial process while within the territory of a foreign sovereignty. Georg Friederich Von Marten's multi lingual translation put the actual word extraterritoriality into the international vocabulary. Classical writers like Samuel Von Pufendort (1632 -94) Hugo Grotius 1583 – 1645 gave Ayraut's idea greater circulation.

Furthermore, extraterritoriality has been defined as a jurisdiction exercised by a nation in other countries by treaty, or by its own consul's in foreign lands or ministers. The doctrine of extraterritorial jurisdiction is a subset of the broader question of legislative jurisdiction, the geographical scope of a law making body's power to regulate. The idea is that all nations should be able to regulate a core zone or range of individual and conduct of concern to them without undue friction with other nations.

A law is extraterritorial when a court applies a domestic law to foreigners from conduct occurring beyond the territorial borders of the nation state in which the court is situated.

THE SIGNIFICANCE OF INTERNATIONAL ECONOMIC LAW CONCEPT OF JURISDICTION

In a world where individuals and businesses are operating increasingly in a global domain, the issue of extraterritorial application of national laws particularly in the field of economic law is progressively becoming of great importance. Ordinarily, the exercise of jurisdiction by a state was limited to persons, property and act within its territory moreover, the growth of multinational corporations doing business across border and on global level, globalization of banking sector, ease of modern travel between sates, technological development globalization of stock exchange and the transpiration of transnational criminal enterprise and activities have cumulatively encourage states to exercise jurisdiction beyond their territorial boundaries.

The steady increase in states exercise of extraterritorial jurisdiction has not therefore resulted in extinguishing the controversies surrounding such exercises. Extraterritorial jurisdiction involves a fundamental dilemma. Every state has the right to regulate its own public order at one hand, and therefore it is entitled to legislate for conduct occurring within its territory. This principle is considered by many to be an outcome of state sovereignty. On the other hand individuals and business are increasingly acting and producing effects across state borders. In doing so "they cheer up the desire of states to assert their laws extraterritorially" this often results in the application of two or more national laws to the same conduct.

Indeed the rules and legal principles governing jurisdiction have a fundamental importance in international economic law because they are concerned with the allocation between states and other entities such as European Union of competence to regulate daily life. So long as they determine the reach of a state's laws, they may be said to determine what the boundaries of that state's particular public order are. There are many examples of contested jurisdictional claims that affects wide range of interest but less spectacular. For example, the united states has at various times enacted laws that purportedly forbid foreign businesses outside the United States to trade with certain states such as Iran, Cuba and former soviet Union. Those enactments have afflicted significant economic costs and disadvantages on non US companies; and they raised the question of the correctness and the legality of one state purporting to forbid persons in another state to do things that are perfectly lawful in the state where those persons are located In view of their significance, it is surprising that the principles governing jurisdiction had attracted considerable attention from jurists over the years. Therefore international controversy over the limits of jurisdiction which was intense fifty years after 1945 seems to have abated somehow during the recent years.

EXERCISE OF EXTRATERRITORIAL JURISDICTION

States exercise extraterritorial jurisdiction in a number of economic domain. And the need for such exercise is potentially continuous many claims of extraterritorial jurisdiction over transnational economic transactions have been made under various grounds of prescriptive jurisdiction including the effect's

doctrine. Extraterritorial jurisdiction is becoming an issue of paramount importance internationally. However, inspite of the general consensus that extraterritorial jurisdiction is important increasingly, there is yet a lot of disagreement over just when it is appropriate for a state to exercise prescriptive jurisdiction extraterritorially over natural persons including the circumstance under which it is appropriate for a state to apply its law beyond its territorial boundaries to protect the interests of its citizens and non-citizens. The extraterritorial systems essentially intended to protect the operation of the economy had been least objectionable. Systems that had a substantial policy impact and those that have been wealth acquiring have aroused the most controversy some of the principal instances of the exercises of extraterritorial jurisdiction in the economic domain are;

1. **TAXATION:**

   According to Qureshi and Ziegler the primary aim of extraterritorial jurisdiction is to protect the operation of fiscal jurisdiction, the extraterritorial reach of fiscal authority has been both wealth acquiring and to ensure that the domestic tax base is not undermined through tax avoidance and evasion as well. Hence the extraterritorial tax jurisdiction can arise in a number of ways. Some of the main permutations are as follows;-

   a. Tax Liability on the basis of nationality, residence of domiciliation of an individual on worldwide income, despite the fact that the source of the income is in another state. A good illustration relevant to the above is the provision of section 3(i) of the personal income tax Act which provides thus;

      "Subject to the provision of this Act tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside. Or outside Nigeria."

      The above provision is aimed at ensuring that Nigerian domestic Tax base is maintained and no tax payer evades payment of tax on the

basis of the domiciliation of his income. The provision did have a taste of extraterritorial legislative jurisdiction.

Another ways by which the extraterritorial elements of jurisdiction arise are;

b. In the computation of domestic and foreign source incomes.
c. Taxation of the undistributed income of some foreign entities attributable to beneficiaries within state.
d. Taxation of services carried out outside but utilized within the sates, among others.

However, most conflicts of fiscal jurisdiction are resolved through bilateral double taxation agreement between sates. While at times states resort to application of extraterritorial taxation.

2. **REGULATION OF ANTI-COMPETITIVE CONDUCT ABROAD**

Regional economic organization and states regulated anti competitive conduct taking place abroad or originating domestically which has a bearing on the domestic consumers and producers within the national economy. The regulation is directed at private conduct abroad that is intended to undermine the market conditions within the territory and that does not have such an effect. Some of the extraterritorial conducts considered to be anti-competitive are;

i. Conduct and or agreement abroad by individuals or corporations nationals or not nationals that involves fixing of price of goods and services that are available within the jurisdiction.
ii. Conduct that restricts the imports, exports or domestic supply of goods and services.
iii. Conduct or conduct abroad by individuals or companies that interfere with the domestic production of goods and services. Among others.

3. **REGULATION OF TRANSACTION IN SECURITIES**

A state may want to exercise jurisdiction for the purpose of regulating conduct occurring abroad involving transactions in securities that relates to its internal securities market when the conduct is intended to have considerable effect on the securities market. In such a situation state

regulates the buyers and sellers in the market and the status of person holding the securities.

4. **REGULATION TO AFFIRM OWNERSHIP OF PROPERTY**

   At times of peace or war a regulation may be made by a state to claim ownership of property situated extraterritorially for the purpose of preventing an illegal transfer of assets of national interest; for example;

   i. Nationalization of corporations with assets abroad; or rights of share holders of corporations with foreign assets and also transfer of title to state of art treasures in case of illegal exportation.

5. **REGULATION IN THE MONETARY FIELD**

   States exercise jurisdiction in order to protect their vital monetary interest. However, various aspects of states' monetary law have an extraterritorial dimension. Here the principal conduct that is regulated is counterfeiting of one state's currency abroad. Currency reserves are also protected by states through exchange control restrictions by way of imposing obligations on residents for conducts that take place abroad. The jurisdictional basis for such regulation is grounded on the personal jurisdiction on the basis that the non national resident has sufficient close connection with the state so as to warrant the exercise of jurisdiction. More so, under general international law, as a general rule, a state can impose exchange control regulations. Though there is some suggestion that this position may have changed; also under customary international law certain types of restrictions on the transfer of money may not be permitted for example, repatriation of foreign capital and transfer of currency transactions made on the understanding of eventual repatriation. In addition members of international monetary fund are required not to enforce an exchange contract where ever formed that is inconsistence with the exchange restriction of any member state of the international monetary fund.

   However, some issues regarding state legislation and private litigation also raise the questions of extraterritorial jurisdiction which relates to banking sector. The general idea is that banks should be supervised by the home regulator in relation to its capital adequacy management and

business practices for example banks are required to comply with reporting requirements arising from money laundering legislation, those relating to securities held on account of customers and to grant supervisory access to necessary information which may have extra territorial implications.

6. **REGULATION OF THE ENVIRONMENT**

   Many at times, states do regulate conduct in environmental areas with an extraterritorial effect. Claims to extraterritorial jurisdiction of that nature are linked to international economic issues; to international trade in particular. Claims to export environmental standards extraterritorially through the regulation of international trade in the form of denial of entry of product which does not confirm to certain environmental standard; national practice of prohibiting the import of environmentally noxious substances are some of the extraterritorial effects worthy of consideration here.

7. **REGULATION OF INTERNATIONAL TRANSPORT AND MOVEMENT OF PEOPLE**

   Regulation of international transport is of universal interest and important to the functioning of international economy. Where the interest of the international economy as a whole is affected seriously on the basis of universal principle; therefore, a state may exercise jurisdiction where the conduct of hijacking or piracy occur, they are offences over which all states can have jurisdiction. States also need to control the movement of people entering their territories for political, economic, security and social reasons. According, to Navanethem Pillay millions of people risk their lives and safety in order to cross international boundaries in search of a better life. And such has present one of the most serious human rights problems in the world today. a most recent example of restriction on international transport and movement of people is the one experienced during the COVID 19 pandemic. To avoid the spread of the virus, countries of the world shut their air land and sea ports thereby restraining movement of persons coming from other countries. Such executive action has exterritorial effects.

IMMUNITIES FROM JURISDICTION

At the beginning of 20th century the international law of state was wider than it is today. Under an absolute theory of immunity in general, a state and its property were immune from judicial process of another state. However, by 1900 a new concept of sovereignty immunity emerged. Immunity is one of special factors the existence of which wouldn't allow jurisdiction to be exercised as it normally would. In order word, jurisdiction is one of the exceptions to the usual application of a state's legal powers". The concept of jurisdiction revolves around the principles of a state sovereignty, equality and non interference. Jurisdiction as a concept seeks to define an area in which the actions of the organs of government and its administration are free from international legal principles and interference, and supreme. The grounds for jurisdiction relate to the requirement for respect of territorial integrity and political independence of other states under international law. Therefore, immunity from jurisdiction is founded in this requirement whether such immunity relates to a state or its diplomatic officials.

SOVEREIGN IMMUNITY

Until recently sovereignty was regarded as appertaining to particular individual in a state and not as existence and power of the state. The idea of the personal sovereign would have been undermined had courts been able to exercise jurisdiction over foreign sovereigns. "The sovereign was a definable to whom allegiance was due.

Sovereign immunity is closely related to two other legal concepts of non justiciability and act of state.

ABSOLUTE IMMUNITY APPROACH

The concept of absolute immunity postulates that sovereign is completely immune from foreign jurisdiction in all cases irrespective of the circumstances. More so, growth in the commercial activities of the state has led to problems and to the amendment of the above rules in some countries. The number of nationalized industries public corporations and government agencies and other organs of the state have created a reactions against the concept of absolute immunity partly because it will enable state enterprises to have an advantage

over private companies therefore many states had to adhere to the doctrine of restrictive immunity, in which immunity is available as regard governmental affairs but not in respect of commercial activities engaged by government immunity can no longer be obtained in respect of commercial activity of government which include; contract for the supply of goals or services loan, transaction for the provision of finance and any other transaction entered by a state not for the purpose of exercising sovereign authority.

Importantly, which ever theory whether absolute or restrictive applied, what is crucial as a factor is determining the entity entitled to immunity, if the entity is not part of the state apparatus, then no immunity can arise. Owing to the co-existence between groups of independent states, there has been developed a special customs as to how the diplomatic officials and other special representative of other state are to be treated. Diplomacy is an ancient institution and legal provision governing the manifestation of communication between various parties, including negotiations between recognized agents.

Diplomatic immunity is a special right exemption freedom guarantee and protection accorded to diplomatic agents and missions for the efficient and effective discharge of their duties. The various convention of 1961 came into force in 1964 codifying most modern diplomatic and consular practices including diplomatic immunity. The rationale for the immunity held under the Vienna convention protects the diplomats by exempting them from local jurisdiction so that they can perform their duties with independence and security this immunity is not meant to benefit individuals personally but to ensure that diplomats do their jobs efficiently.

However, the legal basis for granting such immunity to the diplomats include extraterritoriality theory which considers a mission as an extension of the territory of the sending state which ought to be respected and accorded privileges. Representative character of the envoy is equally one of the theories for granting diplomatic immunity. This theory postulates that the representative of the sending state is a sending state and should not be subjected to the jurisdiction of the host state which mean that the diplomatic agent of a sovereign state owes no allegiance to the state which is accredited to and as such couldn't be subjected to the laws and jurisdictions of the receiving state. Closely followed is the theory of functional necessity which is aimed at removing the

hurdle, interference and influence likely to impede the discharge of the functions of diplomats. The theory believed that diplomats should be allowed to carry out their functions within their host communities without let of hindrance which if subjected will hamper the satisfactory performance of their functions thereby making it impossible for them to achieve the purpose for which they are sent to the host state in the first instance.

NIGERIAN DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT 1990

Diplomatic law in Nigeria was borrowed profoundly from the English law before independence. After independence in 1960, the diplomatic immunities and privileges (common wealth countries and republic of Ireland) Act represented Nigeria's diplomatic charter. Soon after independence Nigeria acceded to the Vienna's convention on diplomatic law. Diplomatic immunities and privileges Act (No. 42) of 1962 gave effect to relevant provision of the Vienna convention in Nigeria law it is the said Act that consolidated all the previous laws on diplomatic immunities and privileges Act and the diplomatic privileges (extension) Act 10. It is safe to conclude therefore that Nigeria has adheres to the provisions of the Vienna convention in her diplomatic law and practice. In other words, Nigeria appears to have respected the rules of international law with respect to her diplomatic problems. The Nigerian diplomatic immunities and privileges Act has consolidate and amend certain enactments relating to diplomatic immunities and privileges. It confers diplomatic immunities and privilege to foreign envoys, consider officers their families, chief representatives of common wealth countries etc. it is worthy of mention that this immunity has been abused by the beneficiaries of this uncommon magnanimity. Experience has shown that in spite of the believe held widely that diplomatic agents are representatives of their nation in the receiving state and should act in all situations a manner that reflect positively the image of the sending state, the conducts of some of the agents amount to impurity. Diplomats have been involved in organized crime using their status as a cover. Notwithstanding the foregoing, no diplomat has been arrested or charged before any court of law in nearly all cases of the abuse of immunity by diplomats except in some cases in United States. The inability of the receiving state to

prosecute was as a result of lack of jurisdiction. Therefore any step taking by the receiving state to prosecute the diplomat will amount to an exercise of extraterritorial jurisdiction; except where the sending state waives its immunity. Otherwise, the receiving state is left with an option of declaring the diplomat a persona non grata.

Finally, from the foregoing analysis it can be seen that diplomatic and consular cases cannot be an exceptional cases of extraterritorial jurisdiction because they involve specifically obvious exercise of power by the assigned state agents. Jurisdiction extends to diplomatic consular cases because it involves a signatory's state bearing administrative obligations to its citizens and the functional control states possess over the territory of their overseas embassies.

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