



Warships: Sovereign Immunity versus Sovereign Territory

by Darin Reeves

The sovereign territory of a state consists of that state's land and airspaces, plus its internal and archipelagic waters and territorial seas, and is a bedrock principle found in both customary and codified international law. A state enjoys the almost unfettered right to exercise all forms of jurisdiction within its own sovereign territory.

In contrast, sovereign immunity arose as a principle of customary international law and as a doctrine has the effect of ensuring states do not exercise jurisdiction over other (foreign) states. This doctrine has been enjoyed by warships under international law for hundreds of years, and is an exception to the overarching principle of territorial jurisdiction

The doctrine of sovereign immunity holds that a warship and its company are immune to search, seizure, interference or any other form of enforcement jurisdiction (the power of a state to impose its laws in a place or over a person). This immunity is granted to foreign governments (and thus is enjoyed by Canada, and on Canada's behalf, HMC Ships) as a matter of "comity" – a privilege granted by one sovereign to another among the family of nations – and applies regardless of that warship's location (on the high seas, within foreign territorial or even internal waters).

The effect of sovereign immunity is that the foreign state "waives" its right to exercise enforcement jurisdiction over the warship and its company (while onboard) and consents to the foreign state's exercise of jurisdiction over that warship within its territory (if applicable). The only recourse by a state to a foreign warship within its waters is for the coastal state to require the warship to depart those waters, or to pre-emptively refuse permission for that warship to enter. Thus in permitting sovereign immunity by a foreign warship, a state, within its own sovereign territory, is refraining from exercising its jurisdiction over the foreign state. This is normally done in order to protect that foreign state's sovereign rights while it is present or operating within the territory of the coastal state.

While the two concepts appear very much the same, legally they are in fact different in the significant fact that sovereign territory may only be waived by an act of the executive (or through foreign invasion), while breach of sovereign immunity is possible with a ship's commanding officer's permission such as where foreign law enforcement or port authorities may be permitted to board the warship to conduct their duties. From the perspective of professional naval officers, it behooves one to use correct terminology.

Van de Velde, James, Neither Confirm nor Deny at Sea Still Alive and Consistent with International Law, 45 *Naval L. Rev.* 268-269 (1998)

Rob Regan, Sovereign Immunity and the Lost Ships of Canada's Historic Merchant Fleet, 64 *U. Toronto Fac. L. Rev.* 1 (2006)

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