

Michigan Law Review

Volume 47 | Issue 7

1949

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Recommended Citation

William C. Gordon, *INTERNATIONAL LAW-IMMUNITY OF UNITED NATIONS REPRESENTATIVE FROM JURISDICTION OF MUNICIPAL COURTS*, 47 MICH. L. REV. 1025 (1949).

Available at: <https://repository.law.umich.edu/mlr/vol47/iss7/22>

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INTERNATIONAL LAW—IMMUNITY OF UNITED NATIONS REPRESENTATIVE FROM JURISDICTION OF MUNICIPAL COURTS—An action for separate maintenance was initiated in a New York court against China's permanent representative to the United Nations, who appeared specially and moved to set aside the service of summons on the ground of diplomatic immunity. Exemption from suit was claimed under the Headquarters Agreement between the United States and the United Nations,¹ which granted certain resident representatives of member states diplomatic privileges and immunities. *Held*, defendant was entitled to diplomatic immunity and service of summons should be set aside.² *Tsiang v. Tsiang*, 86 N.Y.S. (2d) 556 (1949).

Under customary rules of international law, diplomatic officers of a foreign state are substantially immune from the jurisdiction of courts of the state to which they are accredited.³ Acts within the scope of diplomatic authority are protected, since such conduct is imputed to the sending state itself. Furthermore, to assure necessary independence of action, unofficial conduct is protected by diplomatic immunity.⁴ No principle of international law demands similar exemption for representatives of international organizations,⁵ and United States municipal law accords immunity to such persons only for official acts.⁶ A suit for separation clearly does not fall within the scope of this immunity. However, the United States, as host to the United Nations, has agreed that diplomatic status be conferred on certain resident representatives to that body, and defendant was among the specified class.⁷ The need for exemption from local jurisdiction with respect to official acts seems apparent, but should such protection be extended to United Nations representatives where private affairs are concerned? The strongest argument against this complete shielding of United Nations officials from the jurisdiction of municipal courts lies in the distinction between the United Nations and an ordinary diplomatic mission, both in number of representatives enjoying the special status and in character of the functions performed.⁸ On the other hand,

¹ 61 Stat. L. 756 art. V, §15 (1947). The text of the agreement is also found in 43 AM. J. INT. L. SUPP. 8 (1949).

² The court said that even without the Headquarters Agreement the State Department's suggestion that immunity should be granted would have precluded examination of the question. Criticizing this role of the Department of State, see Jessup, "Has the Supreme Court Abdicated One of Its Functions?" 40 AM. J. INT. L. 168 (1946); 97 UNIV. PA. L. REV. 79 (1948).

³ See generally 2 HYDE, INTERNATIONAL LAW, 2d ed., 1222-1302 (1945); 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 393-633 (1942).

⁴ See Preuss, "Capacity for Legation and the Theoretical Basis of Diplomatic Immunities," 10 N.Y. UNIV. L.Q. REV. 170 (1933); and Harvard Research in International Law, "Diplomatic Privileges and Immunities," 26 AM. J. INT. L. 97 (1932).

⁵ See Kunz, "Privileges and Immunities of International Organizations," 41 AM. J. INT. L. 828 (1947).

⁶ International Organizations Immunities Act, 59 Stat. L. 669 (1945), 22 U.S.C. (1946) § 288d. See Preuss, "The International Organizations Immunities Act," 40 AM. J. INT. L. 332 (1946). The first important case under this act is criticized by Preuss, "Immunities of Officers and Employees of the United Nations for Official Acts: The Ranallo Case," 41 AM. J. INT. L. 555 (1947).

⁷ 61 Stat. L. 756, art. V, §15 (1947).

⁸ See, for example, Wood, "Legal Relations Between Individuals and a World Organization of States," 30 TRANS. OF GROT. SOC. 141, 162 (1945).

the independence of the international organization is jeopardized by allowing the courts of a particular member to determine whether a certain act is official or unofficial in nature.⁹ Further, the United Nations recognizes a duty to waive immunity where it impedes the course of justice, and where waiver will not prejudice the international organization.¹⁰ The United Nations has taken steps to establish machinery for settlement of disputes when immunity is not waived.¹¹ Therefore, the merit of granting immunity turns primarily on the question whether the national court or the international organization should have the power to mark out the areas of exemption. The experiences of the League of Nations may indicate that complete immunity is essential to such an international organization.¹² Although a wholesale grant of immunity would be a matter of real concern to the United States, only a limited group is cloaked with diplomatic immunity by the Headquarters Agreement. The Convention on Privileges and Immunities of the United Nations, on which action is now pending in Congress, specifies in detail the protected groups and the immunities they are to receive, in an effort to meet this problem.¹³

William C. Gordon

⁹ Kunz, "Privileges and Immunities of International Organizations," 41 *AM. J. INT. L.* 828 at 862 (1947).

¹⁰ Convention on Privileges and Immunities of the United Nations, 1 *U.N. TREATY SERIES* 15, art. IV, §14, and art. V, §20; 43 *AM. J. INT. L. SUPP.* 1 (1949). Although accepted by a number of members, the United States has not yet acceded to this convention. See also Preuss, "Capacity for Legation and the Theoretical Basis of Diplomatic Immunities," 10 *N.Y. UNIV. L. Q. REV.* 170 at 181 (1933).

¹¹ Convention on Privileges and Immunities of the United Nations, 1 *U.N. TREATY SERIES* 15, art. VIII, §29 (b). The proposed tribunal to handle such disputes is modelled on the one established by the League of Nations. *U.N. DOC. A. 91* (Oct. 16, 1946). Some such machinery is required by so wide an immunity. 55 *YALE L. J.* 778 at 787 (1946).

¹² In general, see HILL, *IMMUNITIES AND PRIVILEGES OF INTERNATIONAL OFFICIALS* (1947), published by Carnegie Endowment for International Peace. In fact, the inappropriateness of diplomatic status when applied to officials of international organizations such as the League of Nations led to omission of the term "diplomatic immunity" from the United Nations Charter, art. 105, ¶ 2. See Report of the Rapporteur of Committee IV 2/42(2) in *U.N.C.I.O. Doc. 703-5* (1945). One defect was the "national discrimination" which resulted because officials who were nationals of the state where the seat of the international organization was located were denied immunities, although they acted as agents for the community of states rather than for a particular government.

¹³ Convention on Privileges and Immunities of the United Nations, 1 *U.N. TREATY SERIES* 15.