

1951

INTERNATIONAL LAW-IMMUNITY OF EMPLOYEE OF UNITED NATIONS DELEGATION FROM IN REM PROCEEDINGS IN MUNICIPAL COURTS

Allan Neef
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Conflict of Laws Commons](#), [Courts Commons](#), and the [International Law Commons](#)

Recommended Citation

Allan Neef, *INTERNATIONAL LAW-IMMUNITY OF EMPLOYEE OF UNITED NATIONS DELEGATION FROM IN REM PROCEEDINGS IN MUNICIPAL COURTS*, 49 MICH. L. REV. 1244 (1951).

Available at: <https://repository.law.umich.edu/mlr/vol49/iss8/21>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

INTERNATIONAL LAW—IMMUNITY OF EMPLOYEE OF UNITED NATIONS DELEGATION FROM IN REM PROCEEDINGS IN MUNICIPAL COURTS—A landlord's summary proceeding for recovery of possession was brought in a New York municipal court against a secretary of the Argentine delegation to the United Nations.

The defendant appeared specially and moved to vacate the service of the precept, claiming immunity from suit by virtue of the grant of diplomatic privileges and immunities to official employees of member delegations under Article V of the Headquarters Agreement¹ between the United States and the United Nations. *Held*, motion denied. Realty not directly pertaining to a delegation's employee's official position is not removed from the jurisdiction of the local courts by the grant of diplomatic immunity. *Agostini v. De Antueno*, (N.Y. Mun. Ct. 1950) 99 N.Y.S. (2d) 245.

Under generally recognized principles of international law, accredited diplomatic representatives are not subject to the criminal or civil jurisdiction of the courts of the receiving state.² This exemption is actually two-fold; acts in the exercise of official diplomatic functions are protected by being imputed to the sending state, while unofficial conduct is protected by diplomatic immunity in order to insure a free and unhindered fulfillment of the official functions.³ There is, however, no compelling obligation under customary international law principles requiring an extension of such immunity to the personnel⁴ of public international organizations. Consequently, United States municipal law has failed to recognize any jurisdictional immunity in United Nations' representatives and employees, except as to official acts,⁵ in the absence of express statutory- or treaty-granted exemptions.⁶ To meet this deficiency in the local law of the host nation, the Headquarters Agreement⁷ grants diplomatic immunity to representatives to the United Nations and their staffs, the defendant in the principal case belonging to the latter category. The Agreement, in order to avert local interference with the independence of operation necessary for the fulfillment of international obligations, creates a privileged class of persons ostensibly beyond

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

² 2 HYDE, INTERNATIONAL LAW, 2d ed., §§435-438 (1945); 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW, §§400-405 (1942).

³ Preuss, "Capacity for Legation and the Theoretical Basis of Diplomatic Immunities," 10 N.Y. UNIV. L.Q. REV. 170 (1933); OGDON, BASES OF DIPLOMATIC IMMUNITY, 166-194 (1936); Harvard Institute of International Law, "Diplomatic Privileges and Immunities," 26 AM. J. INT. L. 23, 118, 700 (1932 Supp.).

⁴ The references made to "United Nations personnel" and "United Nations functionaries" in this article are meant to include both persons employed by the United Nations organization and persons serving member delegations to the United Nations. The defendant in the principal case belongs to this latter category.

⁵ Official acts are immune not because of diplomatic immunity, but rather because they are the authorized acts of an agent of an immune principal, the United Nations. Preuss, "Diplomatic Privileges and Immunities of Agents Invested With Functions of an International Interest," 25 AM. J. INT. L. 694 at 706 (1931); Kunz, "Privileges and Immunities of International Organizations," 41 AM. J. INT. L. 828 at 838 (1947). It is interesting to observe that the United Nations Charter does not spell out any greater immunity than that for official acts. See art. 105 of the Charter, the text of which can be found in 59 Stat. L. 1032 (1945).

⁶ Preuss, "The International Organizations Immunity Act," 40 AM. J. INT. L. 332 at 333 (1946), discussing the effect of the Immunities Act, 59 Stat. L. 669 (1945), 22 U.S.C. (1946) §288d; Kunz, "Privileges and Immunities of International Organizations," 41 AM. J. INT. L. 828 at 842-6 (1947); *United States v. Coplon*, (D.C. N.Y. 1949) 84 F. Supp. 472 at 476.

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

the reach of legal process. In meeting this problem of enforcement of legal rights against United Nations personnel, there are at least four approaches which could be adopted: (1) judicial machinery could be established within the international organization itself;⁸ (2) the immunity might be waived by the organization upon application;⁹ (3) each nation could retain exclusive jurisdiction over its own nationals for such purposes;¹⁰ or (4) the local courts might exercise jurisdiction subject to the defense that an official function is involved.¹¹ The New York court apparently adopts the fourth approach,¹² although the grant of diplomatic immunity would seem to deny such an assumption of jurisdiction. The reasoning of the court, however, raises the question of whether in rem proceedings¹³ may not be an exception to diplomatic immunity. While there seems to be no substantial authority for such an exception,¹⁴ it could be argued that personal immunities should not prevail when the proceeding is basically against the property rather than the person. The inclusion of freedom from service of process—which is a requisite of even the in rem proceeding—within the scope of diplomatic immunities¹⁵ causes this argument to lose its force. Despite this difficulty, it is submitted that the court's "in rem" doctrine, as limited to proceedings involving the private property of United Nations functionaries,¹⁶ has a firm basis in general policy grounded on the necessities of the situation. In rem proceedings are by definition within the exclusive jurisdiction of the local courts, since jurisdiction over the property in dispute is an essential element.¹⁷ As a result, foreign courts are under the disability of being unable to enforce

⁸ While such judicial machinery is certainly desirable [55 YALE L.J. 778 at 787 (1946)], there does not appear to be any immediate prospect for its establishment.

⁹ HILL, IMMUNITIES AND PRIVILEGES OF INTERNATIONAL OFFICIALS (1947), gives a summary of the League of Nations experience with this approach. The Convention on Privileges and Immunities of the United Nations, 1 U.N. TREATY SERIES 15, art. IV, §14 and art. V, §20, shows that the United Nations has also adopted this procedure.

¹⁰ Foreign diplomatic agents have always been subject to the jurisdiction of their own national courts. 1 OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW, 7th ed., 715, 734 (1948). The Swiss government made this distinction as to the immunity of the personnel of the League of Nations. HILL, IMMUNITIES AND PRIVILEGES OF INTERNATIONAL OFFICIALS (1947); Preuss, "Diplomatic Privileges and Immunities of Agents Invested With Functions of an International Interest," 25 AM. J. INT. L. 694 (1931).

¹¹ This view was taken by the International Organizations Immunities Act, 59 Stat. L. 669, 22 U.S.C. (1946) §288d. See Preuss, "The International Organizations Immunities Act," 40 AM. J. INT. L. 332 (1946). Kunz, "Privileges and Immunities of International Organizations," 41 AM. J. INT. L. 828 at 862 (1947), criticizes this approach.

¹² See the holding in the principal case.

¹³ "In rem" as used in this article includes both in rem and quasi in rem proceedings.

¹⁴ See 2 HYDE, INTERNATIONAL LAW, 2d ed., §437 (1945), to the effect that a diplomat's property is probably immune from local jurisdiction even though not connected with official functions. It might be noted, however, that the United States Foreign Service Regulations advise United States diplomatic personnel abroad to the contrary. 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW §404 (1942).

¹⁵ 2 HYDE, INTERNATIONAL LAW, 2d ed., §435 (1945), indicates such process is void, which is the effect of 1 Stat. 117, 22 U.S.C. 252 provisions. See also 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW §402 (1942).

¹⁶ As distinguished from official personal property and United Nations' property.

¹⁷ Austin v. Royal League, 316 Ill. 188, 147 N.E. 106 (1925); Pennoyer v. Neff, 95 U.S. 714 (1877).

their judgments directly by transferring title or by placing the wronged party in possession of the property, and must rely on the relatively inadequate procedure of compelling the defendant to carry out the decree.¹⁸ In addition, it would appear that such in rem proceedings would not interfere with official operations of the United Nations or its member delegations, particularly since any showing of such interference would presumably constitute a defense to the action.¹⁹ Whether the in rem exception is rested on a theory of implied waiver of immunity,²⁰ or on a public policy exception to the general grant of immunity, it is submitted that it is a more desirable result than to allow the delinquent tenant or the private debtor to find a safe haven in the legal skirts of the United Nations' general immunities.²¹

Allan Neef

¹⁸ While there is nothing to prevent an international court from being given in rem jurisdiction, it is very unlikely that such would ever be done.

¹⁹ Even under the court's doctrine, it is to be assumed that official acts and property are beyond the court's jurisdiction.

²⁰ It might be said that the acquisition of property or a leasehold in an unofficial capacity within the state constitutes an implied agreement not to assert a claim of diplomatic immunity which will estop the diplomat from denying the local court's jurisdiction in any matter connected with such property or lease. Implied waiver theories have generally been looked at by the courts with disfavor, however. 2 HYDE, INTERNATIONAL LAW, 2d ed., §437 (1945); 1 OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW, 7th ed., 242 (1948).

²¹ There appears to be no reason why waiver of immunity was not sought from the Argentine government. It might also be noted that the New York Appellate Division had earlier held that state courts have no jurisdiction over United Nations personnel. *Friedberg v. Santa Cruz*, 274 App. Div. 1072, 86 N.Y.S. (2d) 369 (1949).