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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 Agreement 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. 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. There is, however, no compelling obligation under customary international law principles requiring an extension of such immunity to the personnel 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, in the absence of express statutory- or treaty-granted exemptions. To meet this deficiency in the local law of the host nation, the Headquarters Agreement 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 jurisdiction.
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; (2) the immunity might be waived by the organization upon application; (3) each nation could retain exclusive jurisdiction over its own nationals for such purposes; or (4) the local courts might exercise jurisdiction subject to the defense that an official function is involved. The New York court apparently adopts the fourth approach, 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 proceedings may not be an exception to diplomatic immunity. While there seems to be no substantial authority for such an exception, 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 immunities 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, 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. 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.


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 pro­
cedure of compelling the defendant to carry out the decree. In addition, it
would appear that such in rem proceedings would not interfere with official oper­
ations of the United Nations or its member delegations, particularly since any
showing of such interference would presumably constitute a defense to the
action. Whether the in rem exception is rested on a theory of implied waiver
of immunity, 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.

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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 capac­
ity 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. Fried­