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International Law—International Organizations Immunities Act— Immunity of Employees of United Nations

Defendant, a chauffeur employed by the United Nations and assigned to drive the Secretary General of that organization, was charged with driving at excessive speed in violation of the provisions of the ordinances of the Westchester County Park Commission. The Secretary General was in the vehicle at the time of the alleged violation. Defendant contended that he was immune from prosecution because of the provisions of the International Organizations Immunities Act,¹ and an Executive Order² issued pursuant thereto. *Held*: Immunity as a matter of law is available only when it is necessary to assure the proper deliberations of the international organization and defendant must plead to the charge.³

The privileges and immunities of officers and employees of international organizations rest on express treaty provisions,⁴ or on statutes enacted in the states in which such organizations function.⁵ There appears to be no firm rule of international law which requires the granting of such privileges and immunities.

The United States has consistently taken the position that no customary rule of international law obligates this country to grant privileges and immunities to officers and employees of international organizations.⁶ The International Organizations Immunities Act was passed in order to implement obligations toward older international

the scope of his employment. It is submitted the better and majority rule is that even though the rebutting evidence is uncontradicted, the owner is not entitled to a directed verdict when different reasonable inferences can be drawn from the facts shown by the evidence and only in extreme cases, where the facts are of a conclusive character, should the court direct a verdict. *Miller v. Service and Sales*, 38 P. 2d 995 (1935). *Contra*: *Dooley v. Saunders U-Drive Co.*, 109 N. J. L. 295, 162 Atl. 556 (1932).

¹ 59 STAT. 669 (1945), 22 U. S. C. §288 (Supp. 1946).

² Exec. Order No. 9698, 11 FED. REG. 1089 (1946) designated The Food and Agriculture Organization, The International Labor Organization, The Pan American Union, The United Nations, and the United Nations Relief and Rehabilitation Administration as entitled to enjoy the privileges, exemptions and immunities conferred by the International Organizations Immunities Act. Exec. Order 9751, 11 FED. REG. 7713 (1946) added the Inter-American Coffee Board, Inter-American Institute of Agricultural Sciences, Inter-American Statistical Institute, International Bank for Reconstruction and Development, International Monetary Fund and the Pan-American Sanitary Bureau.

³ *Westchester County v. Ranollo*, 67 N. Y. S. 2d 31 (1946).

⁴ TREATY OF BERLIN, July 13, 1878, Art. 53, provided that the European Commission on the Danube should function "in complete independence of the territorial authority." COVENANT OF THE LEAGUE OF NATIONS, Art. 7, §6, provided: "Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities."

⁵ For discussion on this point see L. Preuss, *Diplomatic Privileges and Immunities of Agents Invested with Functions of an International Interest*, 25 AM. J. INT'L L. 694, 699 (1931).

⁶ 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 422-423 (1942).

organizations,⁷ and as declaratory of United States policy under Articles 104 and 105 of the United Nations Charter.

Analogous to the immunities of officers and employees of international organizations are those given to diplomatic officers, which have been held to extend to the diplomat's family, staff, and servants.⁸ It has been suggested that the immunities extended to the staff and service personnel are not necessary or desirable in the light of modern conditions and that the present tendency in state practice with reference to treatment of non-official personnel is toward a curtailment of their privileges and immunities.⁹

Recognizing this restricted concept of the exemptions necessary to be granted to administrative and service personnel, Congress, in passing the Immunities Act, granted the immunity from legal process only in relation to those acts performed by officers and employees of international organizations in their official capacity.¹⁰ In this respect it is similar to the British legislation on the same subject.¹¹

It has been said that the sole justification for, and the measure of exemptions and immunities from the local law are to be found in the necessity of ensuring the free working of international institutions and the complete independence of their agents from any form of national control.¹²

This standard, as it applies to officers and employees of international organizations, is similar to that evolved by the Draft Convention on

⁷ CONSTITUTION OF THE FOOD AND AGRICULTURAL ORGANIZATION, Art. VII, ¶4, Art. XV; RESOLUTIONS 32-34 of the First Session of the Council of the United Nations Relief and Rehabilitation Administration; ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND, Art. X; INTERIM AGREEMENT ON INTERNATIONAL CIVIL AVIATION, Art. 1 §4; ARTICLES OF AGREEMENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, Art. VII; CONSTITUTION OF THE EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATIONS OF THE UNITED NATIONS, Art. XII.

⁸ 1 STAT. 118 (1790), 22 U. S. C. §252-254 (1940). *United States v. Lafontaine* (C. C. Dist. of Col. 1831) 4 Cranch 173, 26 Fed. Cas. No. 15, 550 in which an indictment charging the cook of the chargé d'affaires of the king of Sweden and Norway with assault and battery was quashed on motion and an affidavit of the defense counsel. *Republica v. Delongchamps*, 1 Dall. 111 (Pa. 1784). *Herman v. Apetz*, 130 Misc. Rep. 618, 224 N. Y. S. 389 (1927). See *Trost v. Tompkins*, 44A. 2d 226, 232 (Mun. Ct. App. D. C. 1945). *Contra*: Case of Gallatin's Coachman, 1827, 4 MOORE, INTERNATIONAL LAW DIGEST 657. See excellent discussion in Déak, *Classification, Immunities, and Privileges of Diplomatic Agents*, 1 So. CALIF. L. REV. 209, 246 (1928).

⁹ RESEARCH IN INTERNATIONAL LAW (1932), see comment Art. 23 on Diplomatic Privileges and Immunities. Art. 23 of the draft convention reads: "Subject to the provisions of this Convention, a receiving state may exercise jurisdiction over any member of the administrative or service personnel of a mission, only to an extent and in such manner as to avoid undue interference with the conduct of the business of the mission."

¹⁰ 59 STAT. 669 (1945), 22 U. S. C. §288d (Supp. 1946).

¹¹ Diplomatic Privileges (Extension) Act, 1944, 7 & 8 Geo. VI, Ch. 44. See 39 AM. J. INT'L L., Supp. 163 (1945) for text of act.

¹² L. Preuss, *The International Organizations Immunities Act*, 40 AM. J. INT'L L. 332, 345 (1946).

diplomatic privileges for administrative and service personnel, in that it emphasizes the functional aspect of immunity, and allows it only when such immunity is related to the necessity of allowing personnel of international organizations to be free of interference in the performance of their duties.

The International Organizations Immunities Act appears to go no further in granting immunity from legal process than is required by the above standard.

The court in the instant case says:

"It is urged on behalf of the defendant that the application of these cited provisions requires the exemption from prosecution or suit, criminal or civil, and without regard to the degree of the offense committed, of all personnel accredited to the United Nations as an international organization, without regard to the question as to whether the one so involved is the Secretary General himself or an accredited delegate to the organization's deliberations, or the humblest servant attached to the personnel of the organization, and without regard to the importance or unimportance of the functions of the particular individual defendant in the deliberations and workings of the organization so long as the defendant, at the time of the commission of the offense or the incurring of the liability, be acting in an official capacity. This Court is not prepared to accede to that view."¹³

A chauffeur hired by the United Nations, assigned to drive the Secretary General of the United Nations, and driving him at the time of the alleged offense, would seem to be performing an official act within the meaning of the statute. The interpretation applied by the court does violence to the express wording of the statute¹⁴ and the intent of Congress.¹⁵

The legal adviser to the State Department found little difficulty in the question and answered an inquiry by Secretary General Lie saying that the chauffeur was entitled to the immunity.¹⁶

The court distinguished the immunity of diplomatic representatives and the immunity of officers and employees of international organiza-

¹³ *Westchester County v. Ranollo*, 67 N. Y. S. 2d 31, 33 (1946).

¹⁴ 59 STAT. 671, 7b, 22 U. S. C. §288d(b) ("Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.")

¹⁵ See H. R. REP. No. 1203, 79th Cong., 1st Sess. (1945).

¹⁶ Letter from Mr. Charles Fahy, legal adviser to the Department of State, to Secretary General Lie. *N. Y. Times*, Nov. 30, 1946, p. 1, col. 6. On the other hand the reactions of the citizens of the United States might be noted: Judge Rubin "displayed a thick sheaf of letters received from all parts of the country. Each letter without exception, protested against the granting of immunity in the Ranollo case and all similar legal action involving United Nations personnel." *N. Y. Times*, Nov. 16, 1946, p. 21, col. 3.

tions by saying that the diplomatic representatives, their families, staff or servants are subject to return to their own country for trial and punishment while officers and employees of international organizations, if granted immunity, would escape trial and punishment completely.¹⁷

It should not be assumed that because the United Nations has no tribunal for the trial and punishment of offenders that no effective action can be taken by the United Nations against an employee who has violated the local law. The Secretary General has broad administrative power and should be capable of dealing out adequate punishment.¹⁸

If this method be found unworkable, it is suggested that the United Nations set up a tribunal to try cases of violations by officers and employees of local law, and of violations of regulations of the organization itself. There is ample power in Article 14¹⁹ and Article 22²⁰ of the United Nations Charter for the General Assembly to create such a tribunal.

That there have been and will be abuses of these privileges and immunities by officers and employees of international organizations cannot be doubted, but so necessary a rule must not be abandoned because of the derelictions of a few. To hold otherwise is to set a precedent that conceivably might become an instrument of coercion toward the international organization, its officers, or employees, by the national state in which such organization functions.

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Municipal Corporations—Taxation—Meaning of Public Purpose

"Taxes shall be levied only for public purposes" under Art. V, §3, of the North Carolina Constitution.¹ Therefore, whether the project

¹⁷ *Westchester County v. Ranollo*, 67 N. Y. S. 2d 31, 34 (1946). (The Court here refers to a case of "one Avenol in the Courts of the Republic of France" as refusing to grant immunity to the Secretary General of the League of Nations on a charge of non-support of his family. No citation is given and research has failed to disclose the case.) *But cf. V.— v. D.—*, 54 Clunet 1175 (1927) (a civil case in which immunity was recognized in the case of a permanent delegate to the League of Nations).

¹⁸ U. N. CHARTER, Art. 97, Art. 101. The request for immunity was withdrawn by the Security Officer of the United Nations by direction of Secretary General Lie. N. Y. Times, Nov. 30, 1946, p. 1, col. 6.

¹⁹ "Subject to the provisions of Art. 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations." U. N. CHARTER, Art. 14.

²⁰ "The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions." U. N. CHARTER, Art. 22.

¹ This sentence was put into the constitution by a 1936 amendment. However, following the trend of judicial decisions in this country, North Carolina adopted the doctrine that taxes may be levied only for public purposes in *Wood v. Oxford*, 97 N. C. 227, 2 S. E. 653 (1887). See McAllister, *Public Purpose in Taxation*, 18 CALIF. L. REV. 137 (1930) for a discussion of the history of this doctrine.