1981

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Abelardo L. Valdez

Recommended Citation
https://scholar.smu.edu/til/vol15/iss3/4

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Privileges and Immunities under the Vienna Convention on Diplomatic Relations and the Diplomatic Relations Act of 1978*

The Office of the Chief of Protocol in the State Department, which I used to head, is involved in our relations with foreign governments and their personnel on a daily basis. The general public may be aware of our responsibilities with regard to planning and managing ceremonies at the White House and visits by foreign chiefs of state and heads of Government, but this is only part of the work of this office. The Protocol Office also has the equally important role of ensuring that the diplomatic community in this country is accorded its rights, privileges and immunities. It is this aspect of the work of the Protocol Office which I would like to discuss in this article.

The majority of our citizens are generally aware of the concept of diplomatic immunity only in connection with traffic accidents and parking tickets involving diplomats.

The average person cannot understand why a "foreigner" is apparently allowed to break our laws without penalty. The idea of immunity for some individuals seems unfair and outmoded in today's world. In reality, diplomatic immunity is a vital and important concept in international law necessary to carry on the business of diplomacy between nations. However, as with all legal principles, the application of the principle to changing circumstances sometimes requires a restatement of the law. Such a restatement regarding diplomatic immunity has recently taken place in this country with the passage of the Diplomatic Relations Act of 1978 (92 Stat. 808; 22 U.S.C. 254a-254e). The Office of Protocol was deeply involved in this successful effort to modernize United States legislation on diplomatic immunity, consistent with international law.

To understand how the Office of Protocol carries out its liaison functions between embassies and the American public it is necessary to understand the legal framework within which we operate.

*The views expressed in this article are solely those of the author, and do not necessarily reflect the policy of the Department of State. The author would like to acknowledge the assistance of Richard Massey, Protocol Officer, in the preparation of this article.
The Diplomatic Relations Act of 1978

The Vienna Convention on Diplomatic Relations (23 U.S.T. 3227; T.I.A.S. 7502; 500 U.N.T.S. 95) is a codification of customary international law on diplomatic immunities and privileges. This multilateral treaty, adopted in 1961, entered into force for the United States in 1972. However, federal statutes (22 U.S.C. § 252-54) passed by the first Congress in 1790 remained on the books. These statutes accorded much broader immunity to diplomatic missions than required under international law as embodied in the Vienna Convention. The enactment of the Diplomatic Relations Act of 1978 repealed these laws and established the Vienna Convention as the fundamental law regarding diplomatic privileges and immunities.

The Diplomatic Relations Act contains an additional important provision designed to protect the public in the requirement that all diplomatic missions, their members and families carry liability insurance against risks arising from the operation of motor vehicles, vessels, or aircraft. Furthermore, action may be taken directly against the insurer of the members of the mission and their families. The insurer can no longer raise the defense that the insured is immune from suit or is an indispensable party. Since many members of diplomatic missions are still generally immune from suit, this section of the law is particularly important to those individuals seeking compensation for personal injury or property damage.

In implementing the insurance provisions of the Act the State Department has asked all foreign missions to provide an annual listing of all vehicles owned or operated by the mission, members of the mission and family members, with appropriate insurance information. The Office of Protocol solicits and maintains these records. Furthermore, all applications to our office for diplomatic tags or for waiver of registration fees must be accompanied with satisfactory evidence that the required insurance is in effect.

Diplomatic Immunity under the Vienna Convention on Diplomatic Relations

The term “diplomatic immunity” must now be used with caution since immunities vary depending on the personnel category, as established by the Vienna Convention, in which the individual fits. There are basically four categories of individuals covered by the Convention. Under the old law all of these individuals had full diplomatic immunity in both civil and criminal matters.

In the first category are the members of the diplomatic staff who, together with their immediate families, have full diplomatic immunity in the traditional sense. However, even these individuals are not covered in certain specific kinds of cases such as actions related to personal real estate transactions, transfers of property after death, and professional and commercial acts transacted outside of official functions.

The second category is comprised of members of the administrative and technical staff. This group, together with their families, has full criminal
immunity but only enjoys civil and administrative immunity for acts performed in the course of their duties. This is in contrast to the absolute immunity they had under the domestic statutes, now repealed.

The third category is the members of the service staff, who also enjoyed full immunity under the prior law. Under the Convention they only have immunity for acts performed in the course of their official duties.

The last category, private servants, includes servants in the personal employ of a member of the embassy. These people no longer have any diplomatic immunity.

Within the framework of the Vienna Convention and the Diplomatic Relations Act the Office of Protocol works to resolve issues concerning the diplomatic community in this country. Some of the issues are complex and involve other offices within the Department of State; others are handled routinely by the Protocol Office. The issuance of tax identification credentials, certification for free automobile registration, and custom clearances are ongoing tasks. As the office of record for foreign mission personnel in the United States, the Protocol Office is constantly updating its records and publications on the status and location of embassy and consular personnel around the country.

It is the duty of all members of the diplomatic community to respect the laws and regulations of this country. Therefore, if an individual violates any law, be it civil or criminal, for which diplomatic immunity may be an issue, the Protocol Office may become involved with the courts, local law enforcement authorities, private citizens, or the Embassy to bring about a resolution. Sometimes the problem can be resolved by a telephone call. In other cases, letters must be written, conferences held, and foreign governments consulted before a case is finally closed.

The diplomatic community looks to the Office of Protocol for advice and assistance with many of its activities. The following are two examples of complex issues in which the Protocol Office, in conjunction with other areas of the State Department, believed its intervention was necessary to protect the interests of the diplomatic missions as expressed in the Vienna Convention on Diplomatic Relations.

**Location of Chanceries**

The U.S. government, as part of its international obligations, is required to assist foreign governments to obtain suitable premises for their chanceries, which house the offices of a diplomatic mission, in the District of Columbia, in accordance with the Vienna Convention on Diplomatic Relations. Article 21 of the Convention states that

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

This article of the Vienna Convention appears straightforward and easy to implement. However, the Office of Protocol expends considerable effort “assisting” the sending state in finding suitable accommodations. Foreign governments usually prefer to locate their chanceries near other diplomatic missions and the State Department. They often prefer their own buildings which are suitably representational in character. Locating in a commercial building frustrates this preference, and limits our ability to provide adequate security coverage.

Reciprocity has become a growing issue between governments. The United States may wish to apply restraints on foreign missions within the United States in an effort to assist our missions abroad to obtain adequate treatment. If suitable locations are not available in the District of Columbia, United States efforts to seek improved or new chancery and staff locations abroad on the basis of reciprocity could be curtailed.

In 1979, the Congress vetoed an action by the city council of the District of Columbia, which would have severely limited the location of chanceries in certain prime areas in the District. This was the first time that Congress had overturned legislation of the District of Columbia government since the latter had been granted home rule. The local legislation was called The Location of Chanceries Act of 1979. Since the law directly affected diplomatic missions in the District of Columbia, the State Department became involved. It was our opinion that the proposal would unduly hinder foreign governments’ efforts to either modify their existing chanceries or find new properties suitable to house the offices of a diplomatic mission.

The purpose of the proposed measure was to amend the Chanceries Act of 1964, more commonly known as the Fulbright Act. The Fulbright Act arguably prohibited new chanceries in low density residential zones not otherwise zoned to permit chancery uses. Such chanceries could be located in certain business and commercial zones as a matter of right. They could also locate in medium and high density residential zones with permission of the local Board of Zoning Adjustment. This pre-home rule law of Congress effectively regulated the location of chanceries in Washington. Prior to 1964, new chanceries were allowed in all residential zones with the approval of a Zoning Commission. After the Fulbright Act, the zoning of the area determined acceptable locations. However, the Fulbright Act did not prohibit the Board of Zoning Adjustment from rezoning the area.

In practice, the Zoning Commission of the District of Columbia established regulations permitting planned unit developments, known as PUDs (effectively permitting a form of contract zoning). PUDs permitted a variety of residential, business, and recreational uses in a given area. Chanceries could be located in such an area provided the underlying zone permitted it. Under this arrangement, the Board of Zoning Adjustment
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could rezone a low-density residential area to medium density thus allowing a chancery to be built.

One further piece of history is necessary to complete the picture. Under the Home Rule Act, the National Capital Planning Commission (NCPC), a federal agency, was given the responsibility to protect the federal interest in the District and to plan specifically for "international" activities. In 1977 the NCPC adopted a federal plan concerning the location of foreign missions. This plan in many respects limited locations to residential areas where chanceries had historically been located such as the well known "Embassy Row" along Massachusetts Avenue. Since under the Home Rule Act zoning regulations issued by the District could not be inconsistent with the NCPC plan, the Zoning Commission added a new section to its regulations. This additional section was titled "Mixed Use Diplomatic District and Related Provisions for the Location of Chanceries and International Agencies." The new section set up what came to be known as "D zones" or "Diplomatic" zones. The "D zone" was an overlay zone district which permitted the location of new chanceries in certain residential areas, subject to approval of the District of Columbia Board of Zoning Adjustment, which implements regulations of the District's Zoning Commission.

The effect of the NCPC and zoning board actions was to prohibit chanceries in outlying residential areas, which had been possible through PUDs and rezoning, limiting them to areas where they had historically been located or in other areas permitted by the new plan. In our view the NCPC plan and the "D zones" provided the appropriate balance between the federal interests and obligations and the general concern in maintaining the character of "mixed-use" areas.

Some residents in these "D zones," however, did not wish to have chanceries as neighbors. They felt that chanceries, with their official representational activities and parking needs, should not be allowed near their homes. This was their attitude despite the fact that most of these areas had long since become "mixed use," involving substantial institutional uses. They requested relief from the D.C. government. The result was the proposed Chanceries Act of 1979 which, in the words of D.C. Corporation Counsel, "prohibit the location of chanceries in any zone or district which is restricted to use for residential purposes and which restriction was in effect on July 1, 1978."

This measure would have effectively frozen all zones in place, as they affect this particular usage, as they existed at the time of passage of the 1964 Act. The establishment of "D zones" would thus be prevented. Furthermore, chanceries already located in the affected areas could not make any alterations or additions to existing buildings and sites. The result would have been to restrict chancery locations largely to central core commercial office buildings, which are not desirable from a security point of view.

The Office of Protocol received many diplomatic representations concerning the proposed law. After consultation with the Office of the Legal
Advisor and other offices of the Department of State, we decided to work against the passage of the Chanceries Act as an unreasonable interference with the conduct of foreign relations. The Department failed to prevent passage at the local level, which left no alternative but to ask Congress to veto the legislation. Under the Home Rule Act, adopted in 1973, and which became effective in January of 1975, the Congress can, within thirty days, disapprove a bill passed by the District by adopting concurrent resolutions of disapproval by both the House and Senate.

In this instance we felt our treaty obligations and the federal interests were clear. The law would adversely affect these obligations as well as the interests of the United States here and abroad without a sufficient balancing benefit for local interests. Such restrictions here could very likely have an impact on the more than 150 United States posts overseas.

Our position, therefore, was that the proposed District bill would have an adverse impact on the federal interest and was not legally permitted under the Home Rule Act. The Home Rule Act granted (subject to congressional authority) general legislative authority to the District of Columbia City Council, but at the same time empowered a District Zoning Commission, under the jurisdiction of the Mayor, to enact zoning regulations and, as noted earlier, vested authority to plan for international (as well as federal) activities in the federal NCPC. The Home Rule Act did not give authority to the City Council to preempt the regulatory authority of the Zoning Commission. The Home Rule Act gave the authority over zoning to this semi-autonomous body, which maintained (and we agreed) that the Home Rule Act in no way limited their authority to rezone areas of the city if they felt it was appropriate. Furthermore, the Commission was obligated by the Home Rule Act not to pass regulations which were inconsistent with the plans of the NCPC regarding federal interests in the city.

This position was concurred in by a majority of the House District Committee and approved thereafter by a strong majority in both the House of Representatives and Senate in adopting the congressional resolutions to disapprove the Chanceries Act of 1979.

**Taxation of Foreign Mission Personnel**

The issue of taxation of foreign mission personnel comes up in all States where diplomatic personnel live and work. Many people unfamiliar with the Vienna Convention on Diplomatic Relations believe diplomatic personnel are exempt from all forms of taxation. Article 34 of the Convention, given below, includes those forms of taxation from which they are not exempt.

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal except:

a. indirect taxes of a kind which are normally incorporated in the price of goods or services;
b. dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the missions;

c. estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;

d. dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

e. charges levied for specific services rendered;

f. registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

In 1979, a local suburban county in Maryland, where many diplomats live, attempted to charge tuition in the public schools to all students of parents “domiciled” elsewhere. Whether parents were domiciliaries of the county would be determined in part on whether they paid taxes to the county. Diplomatic personnel are exempt from local income and sales taxes. They do pay property taxes however, on their privately owned residences. Nevertheless, under the proposed regulation of the local board of education they were to be considered domiciled elsewhere and subject to tuition charges.

The Office of Protocol received numerous communications from countries protesting this measure. They felt they were being singled out for adverse treatment. Although the Vienna Convention does not specifically preclude the charging of tuition for education, tuition is normally covered by taxes, primarily the property tax and, thus, in our opinion diplomats should not be required to pay for that which other residents are not charged a special fee. Therefore, we involved ourselves in the issue.

The State Department expressed its opposition in writing and in appearances before the county board of education. The Department's argument was based on the belief that the county could not charge tuition as a substitute for the taxes from which diplomatic personnel are exempt. The county could not do indirectly that which it could not do directly. We took the position that if the tuition fee was a substitute for an income and sales tax it could constitute a circumvention of the Vienna Convention. We also argued that diplomatic personnel pay property taxes on their homes which contribute to revenue directed for education. Furthermore, such an action would be an unfortunate precedent which could have an adverse effect on our own personnel overseas.

This issue was resolved by the State Board of Education which overruled the county board on the grounds that the state constitution granted free public education to all actual “residents” of the state, whether or not they were “domiciled” there.

Consular Relations

The section of the Protocol Office which primarily deals with the issues we have been addressing is called the Diplomatic and Consular Liaison
Office. In its consular liaison role the office is also responsible for granting official recognition of the appointments of foreign consular officers and serves as the federal government's office of record for the notification of all consular officers and employees of foreign governments stationed in the United States. It also provides a link with state and local governments on all matters concerning the rights, privileges and immunities of consular officers and employees. In this capacity it attempts to assist business firms as well as private citizens in their efforts to reach satisfactory settlements of disputes that arise between them. One of the most common misconceptions regarding a government's representation abroad is the distinction between members of a diplomatic mission and a consular post. All such personnel are commonly referred to as "diplomats." As a term to describe a person who represents his or her government abroad this may be acceptable. However, the rights, privileges and immunities of consulates and their personnel, while in some areas similar to those of diplomatic missions and their personnel, are for the most part lesser in degree.

Thus far we have been discussing our operations under the Vienna Convention on Diplomatic Relations. Consular liaison work, on the other hand, is governed by the Vienna Convention on Consular Relations, which entered into force for the United States in 1969, as well as by bilateral consular treaties.

The term "diplomatic immunity" is often incorrectly applied to consular officers. Such immunity refers to the protections under the Vienna Convention on Diplomatic Relations which has been discussed above. Consular officers, for example, do not have the degree of protection against criminal prosecution in our courts which is extended to diplomatic agents. They may only claim immunity for acts arising in the exercise of consular functions. This kind of immunity is also known as "official acts immunity." Furthermore, such immunity is a positive defense which must be asserted in a court and is subject to judicial determination. For example, a consular officer involved in a traffic accident could not claim diplomatic immunity. Whether the accident occurred while he was performing his official duties would be up to a court to decide. As a general principle the State Department does not consider the operation of a motor vehicle to be a consular function.

A career consular officer does enjoy personal inviolability. Article 41 of the Vienna Convention on Consular Relations states that a consular officer shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority. The United States generally interprets "grave crimes" as those classed as felonies. However, we do not consider the detaining of a consular officer for the purpose of writing a traffic ticket as an arrest or detention within the meaning of Article 41. A further distinction must be made between a career consular officer and an honorary consul. An honorary consul is either an American citizen or a permanent resident of the U.S. appointed by the