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the Commission requested the Maryland Attorney General's Office to study the Maryland Annotated Code to determine which laws, if any, might be affected by the Equal Rights Amendment. This study continues today.

The Commission recognized that the law was the most effective means of attacking sex discrimination. Commissioners began testifying at legislative hearings, particularly in the area of employment discrimination. One group of employees seen as victimized by employment discrimination was household workers. The Commission decided that these workers should at least be entitled to the minimum wage, and by 1974 both Maryland and the federal government agreed. After Maryland enacted its wage law, the Commission published *The Picture Is Changing* (which is now available in Spanish, as well as in English) to educate both household workers and heads of households. With the Commission's work and support, household workers also became eligible for workmen's compensation benefits under a 1975 state law.

Another booklet, *Know Your Rights*, was published in 1973. This booklet discussed consumer laws, employment rights, labor laws, marriage and divorce, Medicare, property rights of women, social security, unemployment insurance, and workmen's compensation.

The list of accomplishments of the Commission is indeed long. Many conferences have been set up, educational courses have been offered, legal equality has been secured — all with the aid of the Commission.

#### THE PRESENT AND BEYOND.

Today the Commission is headed by Shoshana S. Cardin, who became chairwoman after Ms. Boucher's resignation in 1974. Under Ms. Cardin, the variety of projects continues to thrive. In late 1974, a new project began in conjunction with the University of Baltimore School of Law, in which student interns analyze and present reports on bills before the General Assembly that will directly or potentially affect women. Other

internships have also been set up with several local colleges.

Under the present structure, each of the twenty-four Commissioners either heads a task force or works on a committee which focuses on a particular issue of importance to women. Present issues being dealt with include credit, continuing education, employment, legislation, rape, Title IX (sex discrimination in education), and history. Public conferences as well as production and distribution of handbooks continue.

In the past year, the Commission's name was changed to the Maryland Commission for Women. This name change was decided upon because a new direction is perceived for the present Commission: "Now, we're becoming more actively concerned with and ready to work for women in Maryland." *Decade*, at 4. The future, then, is activism.

## Diplomatic Immunity from Local Jurisdiction

by Eugene M. Zoglio

Diplomatic immunity may be broadly defined as the freedom from local jurisdiction accorded under international law by the receiving state to duly accredited diplomatic officers, their families, and servants. Associated with such immunity is the inviolability which applies to the premises of embassies and legations and the residences of duly accredited diplomatic officers. Diplomatic immunity is a universally recognized principal of international law, which civilized nations have accepted as binding them in their intercourse with one another.

International law in relation to diplomatic immunity is the result of usages and customs which have developed during the ages. The law of diplomatic immunity, like all international law, has

been acquiesced in by states for the purpose of attaining certain desired ends. There are several theories devised during successive periods of political thought for the purpose of achieving a settlement of cases in accordance with the then existing and desired institutions. Many of the precepts which we have inherited from the past are descended from theories and doctrines which no longer conform to factual conditions today. These archaic precepts, still repeated in treatises and judicial opinions, are responsible for the conflicting views as to the law which should govern a current situation. (Montell Ogdon, *Basis of Diplomatic Immunity*, 8-9.)

#### II

While numerous juristic theories have been advanced to justify the extension of diplomatic privileges and immunities, writers have consistently turned to one of three traditional theories to explain this practice.

The first is the theory of personal representation. Under this theory the diplomatic agent is the personification of his ruler or of a sovereign state whose independence must be respected. This theory dates back to the Greek city-states and gained widespread acceptance during the Renaissance when diplomacy was dynastically oriented. Sovereigns of this period were extremely sensitive to the affronts or insults accorded their diplomatic representatives. The envoys were considered the representative character of their sovereign, entitled to the same honors to which the sovereign would be entitled if he were personally present. In England and the United States in the eighteenth and nineteenth centuries the Chief Justice in both countries in rulings relative to the inviolability of the diplomatic representative made statements, to wit, "The diplomat is to be left at liberty to devote himself body and soul to the business of his embassy. He does not owe even a temporary allegiance to the sovereign to whom he is accredited, and he has at least as great a privilege from suit as the sovereign he represents" and "The person of a public minister is sacred and in-

violable. Whoever offers any violence to him, not only affronts the sovereign he represents, but also hurts the common safety and well-being of nations; he is guilty of a crime against the whole world." (Clifton E. Wilson, *Diplomatic Privileges and Immunities*, 2-3.)

It was in this milieu that the Act of Ann was passed by the British Parliament in 1708, and Sections 252-254 of Title 22 of the United States Code were passed in 1790. Those statutes and relative Court decisions gave the diplomatic ministers, their families, and employees the broadest extension of privileges and immunities.

The second theory to justify the extension of diplomatic immunity is the theory of extritoriality. Under this theory which began in the fifteenth century when countries began maintaining permanent missions in foreign states, the diplomat was not considered to be subject to local law because he does not reside in the host country since the diplomatic premises are considered to be the same as foreign territory. The ambassador must be treated as if he were still living in the territory of the sending state. While the theory of extritoriality has been modified by many countries, the modern trend has been toward a repudiation of the "fiction" as being outmoded and, logically, no longer applicable. Some examples where extritoriality has been dismissed are when contracts, signed in an Embassy, as well as purchases consummated on diplomatic premises, were held to have occurred in the host country.

The third theory used to justify the extension of diplomatic immunity is the theory of functional necessity. Under this theory the diplomatic agent must have freedom of movement and freedom of communication, as well as immunity from local jurisdiction, in order that nations may carry on international intercourse. This theory is based on the idea of interdependence of states and their need for mutual freedom and noninterference in their relations, and is found in all modern efforts to codify the rules of diplomatic intercourse. The Vienna Convention on Diplomatic Relations is in this tradition. The theory has grown in

importance since the Second World War and one very important reason is the expansion in the size of missions. Another reason for its acceptance is the increase in the number of international organizations since World War II, which has required the granting of immunities to additional persons. Since such organizations are without territory or representational status, only the theory of functional necessity adequately explains this development. (Wilson, 21.)

### III

Legislation providing for jurisdictional immunities in the United States is copied after the British mode. The pertinent laws provide immunity from criminal and civil jurisdiction. 22 U.S.C. 252, 253, 254. The Vienna Convention of 1961 provides for absolute criminal immunity and modified civil immunity. The United States became a signatory to this Convention on December 13, 1972. Title 22, Section 252, tells us any writ or process which is sued out or prosecuted by any person or judge whereby any person entitled to diplomatic immunity is arrested or imprisoned, or his goods or chattels are seized or attached, such writ or process is void. While this domestic law on the subject of diplomatic immunity has been enacted by the United States, diplomatic immunity is a principle of international law, and no domestic legislation is necessary to give it effect. American Courts are bound to recognize and apply the Law of Nations as part of the law of the land. Article 1, Section 8, Clause 10, gives to the Congress the power to define and punish Piracies and Felonies committed on the high seas, and offenses against the Law of Nations. Section 252 grants complete immunity from both civil and criminal process under all circumstances to one entitled to diplomatic immunity. This interpretation is based on the view that the exercise of jurisdiction over a diplomatic officer, regardless of whether the action pertains to his private or official acts, would interfere with and hamper him in the performance of his official functions. This principle of international law has not gained general acceptance and goes well beyond the immunity granted under Article

31 of the Vienna Convention on Diplomatic Relations. Under Article 31, a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state and will also enjoy immunity from its civil jurisdiction except in the case of: (a) a real action relating to 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 mission; (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending state; (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions.

### IV

While a substantial body of diplomatic rules, based on reciprocity, is available to guide the conduct of nations in their legal and political treatment of foreign diplomatic representatives, two problems still remain: (1) the extent of such privileges and immunities as are enjoyed by diplomatic personnel under current international practice and (2) the categories of persons to whom these acts of international courtesy should apply.

Article 1 of the Vienna Convention on Diplomatic Relations says a diplomatic agent includes the head of a mission and members of the diplomatic staff, or those having diplomatic rank, all of whom are entitled to maximum immunities. Under Articles 37 and 38, the administrative and technical staff, the service staff (employed by the mission), and private servants (employed by a member of the mission) all of whom receive limited immunities of different degrees. Members of the family of the diplomatic agent are entitled to the same immunities granted the agents, and nationals of the receiving state have immunity only in the carrying out of their official actions. The immunities granted under the Vienna Convention are more restrictive than those currently in practice in the United States.

Being guided by Sections 252, 253, and 254 of Article 22 of the U.S. Code, the United States has extended absolute

diplomatic immunity in both criminal and civil cases to the following persons: duly accredited diplomatic officers, wives, dependent children who are members of the diplomatic officer's household, and their servants. This complete immunity is also extended to administrative, clerical and service personnel of diplomatic missions regardless of nationality. This immunity is not extended to the members of their families.

Also covered with complete immunity is the resident representative to the United Nations and such members of his staffs as may be agreed upon between the Secretary General of the United Nations, the Government of the United States, and the Government of the member concerned. This immunity is personal and covers members of their families but not their servants. Also covered with complete immunity is the permanent resident representative to the Organization of American States and certain members of his staff. Finally, a limited number of officers of the North Atlantic Treaty Organization, National Representatives and International Staff enjoy the immunities and privileges accorded to diplomatic representatives and their official staff of comparable rank. This number, excluding family members, has reached 7,090. (Office of Protocol, Dept. of State, March, 1976.)

How does a state determine that an employee of a diplomatic mission is performing tasks which should grant him immunity? The position of the United States is not very clear, and, as previously noted, the list of those eligible in the United States is quite extensive. Article 3 of the Vienna Convention on Diplomatic Relations lists a function classification. It states that the functions of a diplomatic mission should consist, *inter alia*, in:

- (a) representing the sending state in the receiving state;
- (b) protecting in the receiving state the interests of the sending state and of its nationals, within the limits permitted by international law;
- (c) negotiating with the Government of the receiving state;
- (d) ascertaining by all lawful means

conditions and developments in the receiving state, and reporting thereon to the Government of the sending state; and

- (e) promoting friendly relations between the sending state and the receiving state, and developing their economic, cultural, and scientific relations.

If a person attached to a diplomatic mission is engaged in performing the above listed functions, then his position is one in which diplomatic immunity should be given. An article in the *London Times* on March 18, 1958, stated that there is both an obligation on the part of the host nation "not to be too censorious in its scrutiny of the list of those privileged" and on the part of the sending nation to keep the size of their missions at "an absolute minimum".

#### V

There have been attempts over the years by Members of Congress to repeal the 1790 Statutes because of the complete immunity from criminal, civil and administrative jurisdiction which is accorded to all foreign nationals, not permanent residents, and assigned the proper nonimmigrant visa status, in the employ of an embassy in Washington. The Department of State is seeking their repeal. The House of Representatives Bill — H.R. 14828 — and its counterpart in the Senate — S. 3019 — did not pass this current Session of Congress. Three Bills introduced in the Senate by Senator Hathaway (D., Maine) were also short lived but have the possibility of being reintroduced in the new Congress. One of these Bills, S. 3824, would repeal the 1790 Statutes. This action would unequivocally make the Vienna Convention on Diplomatic Relations the uncontroverted law in this country relative to diplomatic immunity. Bills S. 3825 and S. 3826 would establish within the Department of State a bureau of claims against foreign ministers and diplomats. Since a repeal of the 1790 Statutes would not effect the inviolability of the diplomat and certain members of his family and staff, repeal of the 1790 Statutes does not aid a citizen of the United States in receiving compensation for injuries received by a person enjoying dip-

lomatic immunity. Under S. 3826 whenever any person is injured in his person or property by any ambassador or public minister or any domestic or domestic servant of such minister, full compensation would be paid to the injured person from the Bureau of Claims.

This Bill is laudatory in that it protects the citizen who is injured by a person enjoying diplomatic immunity by making the United States liable while keeping intact the inviolability of the diplomat.

#### VI

The United States is burdened with a diplomatic policy that has its roots and laws from an era when the theory of personal representation and extritoriality were in vogue. Those theories are no longer acceptable and the theory of functional necessity is the logical position in today's milieu. This change in philosophy by most governments which grant diplomatic immunity, so that the agent must have freedom of movement and freedom of communication as well as immunity from local jurisdiction, in order that nations may carry on international intercourse, is followed by the logical conclusion that diplomatic immunity should be limited to those acts performed by a diplomatic agent which is relative to his diplomatic mission. While a host country may be justified in granting an ambassador or the head of a mission complete inviolability and immunity from jurisdiction because of the need for freedom of actions and it may be difficult to divide the private personality of the diplomat from the public personality, or always to distinguish his private from his public acts, we should not go so far as to extend the complete immunity to all members of his staff, household, and family. Under the theory of functional necessity, immunity should be granted only to those additional members of a diplomatic mission when the act can be related to their official functions. With the expansion of the size of diplomatic missions and the significant increase in the numbers of additional people which have been granted full immunity, citizens of this country are left with no legal remedies by which to enforce ac-

tions against members of diplomatic missions. Citizens are getting seriously injured and killed by automobiles driven by people with diplomatic immunity and businessmen are losing untold numbers of dollars because they cannot enforce contracts. Law enforcement officials see members of diplomatic missions violate the laws with impunity. It does a citizen little good who has been seriously injured or maimed for life or who has suffered substantial monetary loss to know that all he can hope for is compassionate consideration by the sending state or the United States' declaration of the erring diplomat as a *persona non grata* coupled with a demand for his recall.

The next Congress should consider the Bills which Senator Hathaway submitted last Session. 22 U.S.C. 252-254 should be repealed. We should have the Vienna Convention on Diplomatic Relations as our guiding law relative to diplomatic immunity. Here diplomatic immunity will still remain absolute for criminal violations, but civil immunity will be modified. We should also reconsider just what duties fall under the diplomatic duties umbrella, particularly as to lower diplomatic personnel, to nationals, and to non-diplomatic persons. Are there non-diplomatic duties being performed by people with diplomatic immunity?

If a person who is covered by diplomatic immunity and is engaging in acts in the furtherance of the goals of his mission creates liabilities by his acts or omissions, then the injured person should be able to proceed against the United States Government for a just and satisfactory settlement of the issue. This would be accomplished by the passing of Senate Bill S. 3826 sponsored by Senator Hathaway which calls for the Department of State to establish a Bureau of Claims Against Foreign Ministers and Diplomats to consider cases in which a person has been injured in person or property. The United States can then be subrogated and attempt to recover its losses through diplomatic channels. This policy will make our citizens more tolerant of members of the diplomatic community.

While the principle of diplomatic immunity originated in ancient times and

has developed over the centuries into a universally recognized doctrine of international law, it must be relevant to the task for which it exists. The fundamental purpose is the protection of the channels of diplomatic intercourse by exempting diplomatic representatives from local jurisdiction; however, the exemptions should not be limitless. The United States has, since its independence, recognized and applied the principle of diplomatic immunity and the decisions of the United States Courts have helped to develop and clarify the concept. Congress has enacted domestic statutes to give specific effect to the international law of diplomatic immunity.

The broad and liberal interpretation of diplomatic immunity to which the United States adheres must be significantly altered. The changing styles of modern day society cannot be burdened with laws that are two hundred years old. The multiplication of both missions and personnel has given us thousands of people who come in daily contact with our citizens, yet who are free from having to abide by our civil or criminal laws. It is no longer satisfactory to believe that a person entitled to diplomatic immunity will respect American laws, nor is it satisfactory to the injured citizens to know that the proper remedy is not to subject the diplomat to our jurisdiction but rather to invoke the sanctions of his own government by asking for his recall.

The injured citizen should not be dependent upon the generosity of the ambassador of the sending state in settling a cause of action. Diplomatic immunity must function within the parameters of twentieth century realities. Equity and justice demand no less.

### THE LAW by Lim E. Ricks

There was a young lady from Dover  
Who complained in an action of trover  
To the Judge she worded,  
"T'was my virtue converted."  
Said the judge, "fair market value you can  
recover."

## The Motorists and the President

(With apologies to Lewis Carroll)

by J. Martin McDonough, Jr.

*(The following is a poem written in early 1974 during the "energy crisis" which we all still remember vividly. Considering the results of the recent Presidential Election, it seemed appropriate to print the poem as a reminder of the way things were then.)*

The sun was shining on the sea,  
Shining with all his might;  
He did his very best to make  
The billows smooth and bright —  
And this was odd, because it was  
The middle of the night.

\* \* \* \* \*

"Now what's the country coming to?"  
The gas-less legions cried:  
"We give and give, and never get,  
You'd think we have no pride."  
"The Seventh Crisis has been met,"  
Their President replied.

"In sixty-eight, I came again  
Within the public view,  
And Law and Order was the plank  
That first brought me to you.  
The plumbing thieves of Watergate  
Should show what I can do.

"We quickly apprehended them,  
And gave them speedy trial.  
We quashed their pleas of innocent  
(I made a flat denial)  
And now the subject should be shut:  
I find the topic vile."

"Now, wait a sec'," the drivers said,  
As they queued up for fuel,  
"We'd like to hear about the tapes  
That caused your present duel,  
And how you keep your taxes down,  
When ours are high and cruel."

"... Now, let me say about the tapes,  
That I can see no wrong  
In making tape recordings of  
Some White House birds in song,  
And keeping these recordings safe  
At home, where they belong.

"The Presidential Privilege  
Has been invoked before  
To make our Nation more secure  
(The year was Eighteen-four),  
And so I use it on the tapes —  
To keep us out of war.