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PREFACE

In the light of developments, the text has been partially revised. In particular, the chapter on the Use or Threat of Force has been completely rewritten. The chapter on Legality of the Use of Force has been completely rewritten. The chapter on the Responsibility of States for Internationally Wrongful Acts has been completely rewritten. The chapter on the Responsibility of States for Internationally Wrongful Acts has been completely rewritten.

Contemporary events have called for in response to the inevitable a hostage to fortune of the efficacy of the law to survive, as it has done in powerful states. Since the end of the corruption. In the light of the rules as such, which

I would thank the Hon. Mr. Justice Hoogstraten for his contribution delivered in 1995 at the International Affairs University Press, an excellent consideration they have

The text has been prepared by my wife, Christine.

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12. Treaty Provisions	339	8. Nationality
13. Specialized Privileges and Immunities	340	9. Diplomatic
17 DIPLOMATIC AND CONSULAR RELATIONS	341	10. Nationality
1. Diplomatic Relations: Introduction	341	11. Compulsor
2. General Legal Aspects of Diplomatic Relations	342	12. The Functi
3. Staff, Premises, and Facilities of Missions	344	13. The Princi
4. Inviolability of Missions	347	<i>Nottebohm</i>
5. Inviolability of Diplomatic Agents	349	20 SOME RULES (
6. Personal Immunities from Local Jurisdiction	350	AND SPECIFIC
7. Immunity from Jurisdiction for Official Acts (<i>Ratione Materiae</i>)	352	1. General As
8. Immunities from Application of Certain Local Laws	353	2. Corporati
9. Some other Aspects of Immunity	353	3. Ships
10. Consular Relations	355	4. Aircraft
11. Special Missions	357	5. Space Obj
12. The Prevention and Punishment of Crimes against Internationally Protected Persons	358	6. Property i
18 RESERVATIONS FROM TERRITORIAL SOVEREIGNTY	359	7. Assets of I
1. Territorial Privileges by Concession	359	PA
2. Other Restrictions on Territorial Supremacy	369	21 THE RESPON.
3. External Imposition of Governmental Functions without the Consent of the Sovereign	369	1. The Relat
<hr/>		
PART VII RULES OF ATTRIBUTION (APART FROM TERRITORIAL SOVEREIGNTY AND STATE JURISDICTION)		
19 THE RELATIONS OF NATIONALITY	373	2. The Basis
1. The Doctrine of the Freedom of States in Matters of Nationality	373	3. Boundari
2. Opinions of Governments on the Issue of Autonomy	375	4. Objective
3. The Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws	377	5. <i>Culpa</i>
4. Nationality Rules Commonly Adopted by States	378	6. Intention
5. Legal Status of the 'General Principles'	383	7. The Indiv
6. The Logical Application of Rules of International Law	385	8. Liability t
7. State Responsibility and the Doctrine of the Genuine Link	387	9. Responsi
		Revolutic
		10. Agency a
		11. The Type
		12. Compen
		13. Circumst

official duties and this might include a road accident involving a car on official business.⁷⁸

8. IMMUNITIES FROM APPLICATION OF CERTAIN LOCAL LAWS

Certain immunities from the application of the local law are obviously ancillary to the main body of privileges and immunities. Perhaps the most decisive of the ancillary immunities is that from measures of execution.⁷⁹ There is exemption from all dues and taxes with a number of exceptions, one of which is indirect taxes (normally incorporated in the price of goods or services).⁸⁰ Further immunities concern customs duties,⁸¹ personal services, public service (for example, jury service), military obligations,⁸² social security provisions,⁸³ and the giving of evidence as a witness.⁸⁴ The exemption from customs duties of articles for the personal use of the diplomatic agent or members of his family belonging to the household is a rendering of a long current practice into a rule of law. The exemption from dues and taxes probably existed in the previous customary law, though the practice was not very consistent.

9. SOME OTHER ASPECTS OF IMMUNITY

(a) Beneficiaries of immunities⁸⁵

Diplomatic agents, who are not nationals of or permanently resident in, the receiving state, are beneficiaries of the privileges and immunities set out in the Vienna Convention, Articles 29 to 36.⁸⁶ The extent to which administrative and technical staff (as non-diplomatic members of the staff) should have these privileges and immunities was a matter on which state practice had not been uniform⁸⁷ and on which there was

⁷⁸ See Kerley, 56 AJ (1962), 120-1. Cf. *Re Cummings*, ILR 26 (1958, II), 549; *Caisse Industrielle d'Assurance Mutuelle v. Consul Général de la République Argentine*, ILR 45, 381.

⁷⁹ See *supra*, Arts. 31(3) and 32(4).

⁸⁰ Vienna Conv., Arts. 23 and 34. Cf. Art. 37 concerning the family of the agent and administrative, technical, and service staff.

⁸¹ Art. 36. Cf. Art. 37. ⁸² Art. 35. Cf. Art. 37.

⁸³ Art. 33. This deals with a matter previously obscure. Cf. Art. 37.

⁸⁴ Art. 31(2). Cf. Giuliano, 100 Hague *Recueil* (1960, II), 118-19. Cf. also Art. 37.

⁸⁵ See Hardy, *Modern Diplomatic Law*, pp. 74-80; Giuliano, 100 Hague *Recueil* (1960, II), 141-65; Whiteman, vii, 260-70; Wilson, 14 ICLQ (1965), 1265-95; Denza, *Diplomatic Law* (2nd edn., 1998), 321-49.

⁸⁶ Art. 37(1). There had been some inconsistent practice in relation to diplomatic agents apart from heads of mission; see Gutteridge, 24 BY (1947), 148-59; cf. Giuliano, 100 Hague *Recueil* (1960, II), 142.

⁸⁷ See Gutteridge, 24 BY (1947), 148-59; Giuliano, 100 Hague *Recueil* (1960, II), 153-8.

considerable debate at the Vienna Conference. The position for this group and also for members of service staff⁸⁸ was regulated as follows in Article 37:⁸⁹

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1,⁹⁰ in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption⁹¹ contained in Article 33.

In the case of diplomatic agents and the administrative and technical staff of the mission the respective immunities extend to 'members of the family' 'forming part of' their households. In view of variations in family law and social custom a precise definition was inappropriate.⁹²

(b) Duration of privileges and immunities⁹³

The termination of the functions of individual members of the diplomatic staff has been considered already.⁹⁴ Termination of the mission may occur, for example, through its recall, the outbreak of war between the states concerned, or the extinction of one of the states concerned. The duration of privileges is governed by Article 39 of the Vienna Convention, the principal provisions being these:

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so,⁹⁵ but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission,⁹⁶ immunity shall continue to subsist.

⁸⁸ On the previous position: Giuliano, 100 *Hague Recueil* (1960, II), 159–62.

⁸⁹ This article has provoked reservations from some states.

⁹⁰ Concerning customs duties. ⁹¹ Concerning social security provisions.

⁹² See *In re C. (an infant)* [1959] Ch. 363; ILR 26 (1958, II), 539; *Dutch Diplomat Taxation Case*, ILR 87, 76; see generally O'Keefe, 25 *ICLQ* (1976), 329–50; 49 *BY* (1978), 368; 56 *BY* (1985), 441; Rousseau, iv. 196–7; Brown, 37 *ICLQ* (1988), 63–6; Oppenheim, i. 110–12.

⁹³ See generally Whiteman, vii. 436–45; Jones, 25 *BY* (1948), 262–79; Hardy, *Modern Diplomatic Law*, pp. 80–3; Lauterpacht, *International Law: Collected Papers*, iii. (1970), 433–57; Denza, *Diplomatic Law* (2nd edn., 1998), 350–63; Rousseau, iv. 202–3.

⁹⁴ *Supra*, p. 346.

⁹⁵ See *Magdalena Steam Navigation Co. v. Martin* (1859) 2 El. & El. 94; *Musurus Bey v. Gadban* [1894] 2 QB 352; *Re Suarez* [1918] 1 Ch. 176, CA; *Shaffer v. Singh*, 343 F. 2d 324 (1965); ILR 35, 219; *Propend Finance Pty. v. Sing*, ILR 111, 611.

⁹⁶ On immunity *ratione materiae*, see *supra*, s. 7.

The Supreme Restitut occupied by diplomatic their immunity from the

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Consuls are in principle Though agents of the sen type of immunity from t enjoyed by diplomatic ag the protection of the inter economic and cultural rel of the property of nation; marriages, and supervisio

Since the eighteenth cer rather than law, together evolved is as follows.⁹⁷ T commission) and the autl receiving state must give c standard of diligence than sular premises are not in consular archives and doc immune from the jurisdic ceiving state in respect of immunity in respect of nity.¹⁰⁴ Articles intended f and members of the consu

⁹⁷ See *Tietz v. People's Repub permanent*. See further Romberg, *Republic of Iran* [1986] 1 WLR 975.

⁹⁸ *British Digest*, viii; Harvar Whiteman, vii. 505–870; Guggenl (1962, II), 365–497; id., 90 *JDI* (Suisse, iii. 1552–93; *Digest of US Pr*.

⁹⁹ See *Yrbk. ILC* (1961), ii. 11; Zourek, 106 *Hague Recueil*, at p. *Practice* (2nd edn., 1991); *British L*

¹⁰⁰ *Infra*, p. 502.

¹⁰¹ See *British Digest*, viii. 125; *Yrbk. ILC* (1961), ii. 109. Cf. White

¹⁰² The authorities all agree on

¹⁰³ *Princess Zizianoff v. Kahn an* viii. 146; Beckett, 21 *BY* (1944), 34 Parry, *Cambridge Essays*, p. 122 at 1

¹⁰⁴ *Supra*, p. 315. See *Hallberg v*

The Supreme Restitution Court of Berlin has held that premises or sites formerly occupied by diplomatic missions but no longer used for diplomatic purposes had lost their immunity from the local jurisdiction.⁹⁷

10. CONSULAR RELATIONS⁹⁸

Consuls are in principle distinct in function and legal status from diplomatic agents. Though agents of the sending state for particular purposes, they are not accorded the type of immunity from the laws and enforcement jurisdiction of the receiving state enjoyed by diplomatic agents. Consular functions are very varied indeed and include the protection of the interests of the sending state and its nationals, the development of economic and cultural relations, the issuing of passports and visas, the administration of the property of nationals of the sending state, the registration of births, deaths, and marriages, and supervision of vessels and aircraft attributed to the sending state.

Since the eighteenth century the status of consuls has been based upon general usage rather than law, together with special treaty provisions. The customary law as it has evolved is as follows.⁹⁹ The consul must have the authority of the sending state (his commission) and the authorization of the receiving state (termed an *exequatur*). The receiving state must give consular officials and premises special protection, i.e. a higher standard of diligence than that appropriate to protection of aliens generally.¹⁰⁰ The consular premises are not inviolable from entry by agents of the receiving state.¹⁰¹ The consular archives and documents are inviolable¹⁰² and members of the consulate are immune from the jurisdiction of the judicial and administrative authorities of the receiving state in respect of acts performed in the exercise of consular functions.¹⁰³ This immunity in respect of official acts is generally regarded as an aspect of state immunity.¹⁰⁴ Articles intended for the use of the consulate are exempt from customs duties, and members of the consulate, other than the service staff, are exempt from all public

⁹⁷ See *Tietz v. People's Republic of Bulgaria*, ILR 28, 369. The Court emphasized that the non-user was permanent. See further Romberg, 35 BY (1959), 235; and *Westminster City Council v. Government of the Islamic Republic of Iran* [1986] 1 WLR 979. Peter Gibson, J.

⁹⁸ *British Digest*, viii; Harvard Research, 26 AJ (1932), Suppl., pp. 189-449; Hackworth, iv. 655-949; Whiteman, vii. 505-870; Guggenheim, i. 512-15; *Yrbk. ILC* (1961), ii. 55, 89, 129; Zourek, 106 Hague *Recueil* (1962, II), 365-497; id., 90 *JDI* (1963), 4-67; Lee, *Consular Law and Practice* (2nd edn., 1991); *Répertoire suisse*, iii. 1552-93; *Digest of US Practice* (1979), 654-75; Rousseau, iv. 211-63; Oppenheim, i. 1132-53.

⁹⁹ See *Yrbk. ILC* (1961), ii. 110 ff. There are differing views on the ambit of the customary law: compare Zourek, 106 Hague *Recueil*, at p. 451; Beckett, 21 BY (1944), 34-50; Guggenheim; Lee, *Consular Law and Practice* (2nd edn., 1991); *British Digest*, viii. 146, 151, 158, 164.

¹⁰⁰ *Infra*, p. 502.

¹⁰¹ See *British Digest*, viii. 125; O'Connell, ii. 920-1; Oppenheim, i. 841-2; Beckett, 21 BY (1944), 34-50; *Yrbk. ILC* (1961), ii. 109. Cf. Whiteman, vii. 744.

¹⁰² The authorities all agree on this.

¹⁰³ *Princess Zizianoff v. Kahn and Bigelow*, *Ann. Digest* (1927-8), no. 266; Oppenheim, i. 841; *British Digest*, viii. 146; Beckett, 21 BY (1944), 34-50; Whiteman, vii. 770; *Yrbk. ILC* (1961), ii. 117, Art. 43, Commentary; Parry, *Cambridge Essays*, p. 122 at pp. 127-32, 154.

¹⁰⁴ *Supra*, p. 315. See *Hallberg v. Pombo Arguez*, ILR 44, 190.