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# Diplomatic Immunity-Jurisdiction-Adequacy of Service by Mail on Foreign Government Agency: Petrol Shipping Corp. v. Kingdom of Greece, Ministry of Commerce, Purchase Directorate (2d Cir. 1966)

Martin Belsky, *University of Akron School of Law*

# Casenotes

DIPLOMATIC IMMUNITY—JURISDICTION—ADEQUACY OF SERVICE BY MAIL ON FOREIGN GOVERNMENT AGENCY: *Petrol Shipping Corp. v. Kingdom of Greece, Ministry of Commerce, Purchase Directorate* (2d Cir. 1966)

By a written charter party, made in New York on February 12, 1960, petitioner Petrol Shipping Corporation agreed to transport surplus American grain for respondent Purchase Directorate of the Ministry of Commerce of the Kingdom of Greece, from Houston, Texas and/or Baton Rouge, Louisiana to Piraeus, Greece.[1] Under the charter party, all disputes were to be referred to three commercial arbitrators in New York for a final decision. For the purpose of enforcing any award, the agreement might be made "a rule of the court." At the discharge port in Piraeus, the ship sustained bottom damage of $287,000 allegedly because of an unsafe berth. After twice requesting the Greek Ministry to name its arbitrator, Petrol Shipping brought a petition for arbitration on January 14, 1963, in the District Court for the Southern District of New York under section four of the United States Arbitration Act, 9 U.S.C. § 4 (1964). Service of process was allegedly effected by ordinary mail to (1) respondent's Ministry of Trade, Washington, D.C.; (2) respondent's Ministry of Commerce, New York City; and (3) Becker and Greenwald, proctors for the Greek Ministry's Directorates.[2] On June 4, 1965, the District Court directed the Kingdom to proceed to arbitration, refusing to recognize any immunity. The Kingdom appealed, raising issues of jurisdiction, adequacy of service and immunity. *Held*, affirmed; the Greek Commerce Ministry must proceed to arbitration. Jurisdiction was acquired by the respondent's consent in the arbitration agreement and by its actual presence in New York; service was properly effected by mailing the summons and petition to the branch of the government which was a party to the contract sued upon; and the Greek Minis-

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1. Respondent acquired the grain pursuant to an agreement with the United States under the Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. § 1691 (1964).
2. Instant case at 106. The Trade Purchase Directorate was located in the Greek Embassy in Washington. Brief for the United States as amicus curiae in Petition of Petrol Shipping Corp., 332 F.2d 370 (2d Cir. en banc hearing 1964), *reprinted in* 3 INT'L LEG. MAT'LS 733 (1966). The Commerce Purchase Directorate was located in the Greek Consulate in New York. Brief for the Appellant (Kingdom of Greece) at 15 [hereinafter cited as Appellant's Brief].

try was not immune. *Petrol Shipping Corp. v. Kingdom of Greece, Ministry of Commerce, Purchase Directorate*, 360 F.2d 103 (2d Cir. 1966), *cert. denied*, 385 U.S. 931 (1966).

United States courts have abandoned the classical or absolute theory of sovereign immunity [3] and have followed recent State Department suggestions based on the national interest in the proper conduct of foreign relations and on the "restrictive theory" [4] which distinguishes between a nation's "public acts" (immune) and its "private acts" (not immune). Under this theory if the State Department does not suggest immunity, a court should deny immunity when the circumstances do not fall into the traditional categories of "public acts." [5] However, even under the restrictive theory, a court will consider the merits of a claim against a foreign state only after a claimant has shown that jurisdiction over the sovereign has been acquired and proper service has been effected.[6] Sovereign immunity is only a basis for relinquishing ju-

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3. 2 D. O'CONNELL, INTERNATIONAL LAW 914-16 (1965). *See* The "Parlement Belge," 5 P.D. 197, 217 (C.A. 1880); Schooner "Exchange" v. M'Faddon, 11 U.S. (7 Cranch) 116, 137 (1812) (libel *in rem* dismissed as to a schooner seized under orders of Emperor Napoleon and later converted into a public armed ship); *Ex parte* Republic of Peru, 318 U.S. 578, 589 (1943) (libel for breach of a charter party by merchant vessel owned and operated by the government of Peru; *held*, on suggestion of the State Department, that vessel was immune). *See also* RESTATEMENT (SECOND), FOREIGN RELATIONS LAW OF THE UNITED STATES, Reporters' Notes to § 69, at 211, 213 (1965) [hereinafter cited as RESTATEMENT, FOREIGN RELATIONS].

4. Letter from Jack B. Tate, Acting Legal Advisor to the State Department, to Acting Attorney General Philip B. Perlman, May 19, 1952, in 26 DEP'T STATE BULL. 984 (1952). Even in the courts of the United Kingdom, it is not "finally accepted . . . [that there is] . . . any absolute rule that a foreign independent sovereign cannot be impleaded in our courts in any circumstances." Viscount Simon in Sultan of Johore v. Abubakr Tunku, [1952] A.C. 318 (P.C.). *See* Lord Denning's dissent in Rahimtoola v. Nizam of Hyderabad, [1958] A.C. 379, 422; Lord Maugham's dissent in Compania Naviera Vascongado v. S.S. "Cristina," [1938] A.C. 485, 522.

5. Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354, 360 (2d Cir. 1964) (suit to compel the Spanish government to go to arbitration under a charter party provision; *held*, charter party partakes of the character of private acts and thus, under the restrictive theory, the Spanish government is not immune from in personam suit). The public acts mentioned by the court as being immune are "(1) internal administrative acts, such as expulsion of an alien; (2) legislative acts, such as naturalization; (3) acts concerning the armed forces; (4) acts concerning diplomatic activity; and (5) public loans." *Id.* at 360.

6. Collins, *The Effectiveness of the Restrictive Theory of Sovereign Immunity*, 4 COLUM. J. TRANSNAT'L L. 119, 127 (1965); Pugh & McLaughlin, *Jurisdictional Immunities of Foreign States*, 41 N.Y.U.L. REV. 25, 28 (1966); Lowenfeld, *The Sabbatino Amendment-International Law Meets Civil Procedure*, 59 AM. J. INT'L L. 899, 905 (1965).

risdiction previously acquired by presence, consent, long-arm statute, or in rem attachment.[7]

Once in personam jurisdiction has been acquired, the sovereign must be properly served with process in order to satisfy the Constitutional requirement of actual notice.[8] Generally, an ambassador or other diplomatic agent is immune from any suit against his person or property, and service upon him is void, the accepted rationale being that of functional necessity.[9] In the United States, which follows the general rule, no writ or process may be issued against an ambassador.[10] In addition, both international law and

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7. Brief for the United States, *supra* note 2, as quoted by the court in the instant case at 106. *See Ex parte* Republic of Peru, 318 U.S. 578 (1943); Harvard Research in International Law, *Competence of Courts in Regard to Foreign States* § 11, 23 AM. J. INT'L L. SUPP. 453, 597 (1932) [hereinafter cited as Harvard *Competence*]; Lauterpacht, *The Problems of Jurisdictional Immunities of Foreign States*, 28 BRIT. Y.B. INT'L L. 220, 224 (1952).

8. International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). *See* 1 J. WEINSTEIN, H. KORN & A. MILLER, NEW YORK CIVIL PRACTICE § 301.04 at 3-7 (1963); RESTATEMENT OF JUDGMENTS § 6 (1942).

9. Vienna Convention on Diplomatic Relations, art. 29, U.N. Doc. A/CONF. 20/13 (1961), [1965] Gr. Brit. T.S. No. 19, (CMND 2565) (The convention grants all diplomats immunity from suit except from suits based on actions involving professional or commercial activity outside their official functions and denies to administrative and technical staff members immunity from civil and administrative proceedings based on acts performed outside the course of their duties); International Law Commission, *Draft Articles on Diplomatic Intercourse and Immunities*, art. 29, 13 U.N. GAOR Supp. 9, at 11, 20, U.N. Doc. A/3859 (1958), reprinted in 53 AM. J. INT'L L. 253, 274 (1959); Harvard Research in International Law, *Draft Convention on Diplomatic Privileges and Immunities*, § 17, 26 AM. J. INT'L L. SUPP. 15, 90 (1932). *See* RESTATEMENT, FOREIGN RELATIONS § 73(1), (5); Griffin, *Adjective Law and Practice in Suits Against Foreign Governments*, 36 TEMP. L. Q. 1, 13 (1962); G. SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 42 (1st ed. 1947); Kerley, *Some Aspects of the Vienna Convention on Diplomatic Intercourse and Immunities*, 56 AM. J. INT'L L. 88 (1962).

10. 22 U.S.C. § 252 (1964):

> Whenever any writ or process has been sued out or prosecuted by any person in any court of the United States, or of a State, or by any judge or justice, whereby the person of any ambassador or public minister of any foreign prince or State . . . [accredited to the United States] . . . is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, such writ or process shall be deemed void.

*See* Letter from Secretary of State Root to Secretary of Commerce and Labor, March 16, 1906, in 4 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 513-514 (1942); Barnes, *Diplomatic Immunity from Local Jurisdiction: Its Historical Development Under International Law and Application in United States Practice*, 43 DEP'T STATE BULL. 173, 176 (1960); *Compare* Carrera v. Carrera, 174 F.2d 496 (D.C. Cir. 1944).

In civil law countries, once jurisdiction is acquired, service may be

United States practice regard the embassy premises as inviolable and immune from the jurisdiction of the host state.[11] Recently the Circuit Court for the District of Columbia held that compulsory service on a foreign nation by delivery of a summons to the Ambassador in his Embassy by a United States Marshall was invalid, relying on the State Department's contention that such service would "prejudice the United States' foreign relations and would probably impair the performance of diplomatic functions."[12] The premises of a consular mission are similarly inviolable, and a consul may interpose a defense of immunity to claims arising out of his performance of official functions.[13] United States courts have

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made on any agency or official of that nation. *See* Leonard, *The United States as a Litigant in Foreign Courts*, [1958] AM. SOC. INT'L L. PROC. 95, 105; Doub, *Experiences of the United States in Foreign Courts*, 48 A.B.A.J. 63, 65 (1962).

11. Vienna Convention, art. 22, *supra* note 9; International Law Commission, art. 20, *supra* note 9; Harvard Research, art. 3, *supra* note 9. For United States practice, see RESTATEMENT, FOREIGN RELATIONS § 77; Letter from Acting Legal Advisor to the State Department Leonard C. Meeker to Assistant Attorney General John W. Douglas, August 10, 1964, 59 AM. J. INT'L L. 110, 111 (1965).

12. Hellenic Lines, Ltd. v. Moore, 345 F.2d 978, 980 (D.C.Cir. 1965). Circuit Judge Washington, in a concurring opinion, would have based denial of mandamus on grounds analogous to *forum non conveniens*. The State Department said that: "An ambassador and his government would in all likelihood consider that he had been hampered in the performance of his duties if, for example, (a) the ambassador felt obliged to restrict his movements . . . or (b) he were diverted . . . by the need to devote time and attention to ascertaining the legal consequences, if any, of service of process . . . or (c) the manner of service had been publicly embarrassing to him . . . ." Letter from Leonard C. Meeker, Acting Legal Advisor to the State Department, to Nathan J. Paulson, Clerk of the United States Court of Appeals for the District of Columbia Circuit, January 13, 1965, as quoted in Hellenic Lines, Ltd. v. Moore, *supra*, at 980-981 n.5. Under Article 22 of the Vienna Convention, *supra* note 9, no personal service can be effected in the premises of a mission. Letter from Acting Legal Advisor to the State Department Leonard C. Meeker to Assistant Attorney General John W. Douglas, *supra* note 11; United States *ex rel.* Cardashian v. Snyder, 57 WASH. L. REP. 738 (D.C. Sup. Ct. 1929), *aff'd*, 44 F.2d 895 (D.C. Cir. 1930), *cert. denied*, 283 U.S. 827 (1931). *But cf.* Nankivel v. Omsk All Russian Government, 203 App. Div. 740, 197 N.Y.S. 467 (1922), *rev'd on other grounds*, 237 N.Y. 150, 142 N.E. 569 (1923) (where the court allowed service). For a criticism of the State Department's position as unrealistic and in conflict with the purpose of the restrictive theory of sovereign immunity, see Note, *Diplomatic Immunity—Service on Ambassador*, 6 VA. J. INT'L L. 167 (1965).

13. However, he is not immune from service in any proceeding arising out of activity other than his official activities. Vienna Convention on Consular Relations, April 24, 1963, arts. 31, 43, U.N. Doc. A/CONF. 25/12 (1963), *reprinted in* 13 INT'L & COMP. L.Q. 1230 (1964) (not in force

held that a consul cannot receive service addressed to his government, not because a consul is immune, but because by the nature of his functions he is not a proper "agent" to receive such service.[14] However, in *Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes*, the Second Circuit recently embraced the restrictive theory of immunity in maintaining that the sole function of process was to give notice to the government and its agency, and that once jurisdiction had been acquired, for example, by consent, service could properly be made under the Federal Rules since "no rule of international law requires special treatment for serving branches of foreign sovereigns." [15] Under Rule 4(d) (3) a foreign government agency is to be treated as a private corporation and may be served by delivering a copy of the summons and complaint to "an officer, a managing or general agent;" under Rule 4(d) (7), it may be served by mail if "prescribed by the law of the state in which the district court is held;" and under Rule 4 (e), it may be served by court order if authorized by federal statute or state law and practice.[16]

The court in the instant case, following the advice of the State Department, systematically dealt with the issues of jurisdiction in

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for the United States as of Dec. 31, 1967); HARVARD RESEARCH IN INTERNATIONAL LAW, DRAFT CONVENTION ON THE LEGAL POSITION AND FUNCTIONS OF CONSULS, comment on arts. 17, 21, at 327-330, 338-341 (1932), *reprinted in* 26 AM. J. INT'L L. SUPP. 189, 326-330, 338-341 (1932); RESTATEMENT, FOREIGN RELATIONS §§ 81(1)-(2) (1965); International Law Commission, *Draft Articles on Consular Relations*, arts. 30, 43, [1961] 2 Y.B. INT'L L. COMM'N 88, U.N. Doc. A/CONF. 25/6 (1963). On the inviolability of the consular premises *see also* Silva, *The Vienna Conference on Consular Relations*, 13 INT'L & COMP. L.Q. 1214, 1224-27 (1964). *But cf.* Griffin, *supra* note 9, at 10; Consular Convention between the United States and the Soviet Union, June 1, 1964, arts. 17, 19, 3 INT'L LEG. MAT'LS 778 (1964) (ratified by the United States Senate, March 16, 1967; not in force as of Dec. 31, 1967).

14. Oster v. Dominion of Canada, 144 F. Supp. 746 (N.D.N.Y.), *aff'd sub nom.* Clay v. Dominion of Canada, 238 F.2d 400 (2d Cir. 1956), *cert. denied*, 353 U.S. 936 (1957); Purdy Co. v. Argentina, 333 F.2d 95 (7th Cir. 1964) (consul not appropriate agent to receive service in order to effectuate jurisdiction of sovereign). *See* Lowenfeld, *supra* note 6, at 905. *But see* Griffin, *supra* note 9, at 10; Pugh & McLaughlin, *supra* note 6, at 32.

15. Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354, 364 (1964).

16. FED. R. CIV. P. 4(d) (3), (7), 4(e) (1963). *See* 2 J. MOORE, FEDERAL PRACTICE § 4.22(3), at 1132 (2d ed. 1966). One state that provides for service by mail is New York. *See* N.Y. CIV. PRAC. L. R. § 313 and comment thereto (McKinney 1966). FED. R. CIV. P. 4(i) (1963), which details how to effectuate service in a foreign country, was not in effect at the time of service in *Victory Transport* nor at the time of the instant case.

personam, adequacy of service, and sovereign immunity.[17] Relying on two cases involving the arbitration agreements of private foreign corporations and on *Victory Transport*, the court reasoned that the "question of immunity [did] not bear on the question of amenability, or personal jurisdiction," and thus the respondent had consented to the court's jurisdiction in its arbitration agreement with Petrol Shipping.[18] In addition, jurisdiction over the Directorate did not need to rest on constructive presence by consent, since, by virtue of its office and negotiations for the charter party in New York, "the branch of the respondent being sued is actually present." [19] In considering the *adequacy of service*, the court declined to continue the analogy of a sovereign agency to a foreign corporation. Relying on appellant's argument that the "sovereign nature of a foreign government for purposes of service of process under the Federal Rules (of Civil Procedure) is in no way diluted or changed by the so-called commercial nature of its activities," the court interpreted Federal Rule 4(d) as not providing for service on a sovereign government agency.[20] The appellant was not an "individual" and thus could not be served under Rule 4(d)(1). Rule 4(d)(3) (and thus 4(d)(7), which only applies to those categories of defendants in 4(d)(1) or 4(d)(3)) was not to be considered a

17. Instant case at 406. The court was free to determine the questions of jurisdiction and service, without the interference of the State Department. In response to a letter from the Greek Ambassador requesting a suggestion of immunity, the State Department felt that questions other than the sovereign nature of the activities were "matters for the court" and that, in this situation, the activities were "commercial" and thereby not immune. Appendix to Petitioner's Brief in the instant case at 7(a) (hereinafter cited as Petitioner's Appendix). *See* United States Brief as amicus curiae, *supra* note 2, 3 INT'L LEG. MAT'LS 733, 736 n.3.

18. Farr & Co. v. Cia Intercontinental de Navegacion, 243 F.2d 342 (2d Cir. 1957) (arbitration provision that submission to arbitration in New York "may be made a rule of the court . . ." *held*, to render provision meaningful, by consenting to arbitration in New York, a party makes "himself as amenable to suit as if he were actually present."); Orion S. & T. Co. v. Eastern States Petroleum Corp. of Panama, 284 F.2d 419 (2d Cir. 1960); Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354 (2d Cir. 1964) (implicit in the agreement to arbitrate is consent to the enforcement of that agreement; to hold otherwise would render "the arbitration a nullity"). *But cf.* Kahan v. Pakistan Federation, [1951] 2 K.B. 1003, 1012, [1951] 2 T.L.R. 697, 700.

19. Instant case at 107. *See* N.Y. CIV. PRAC. L. R. § 302(a)(1) and comment thereto (McKinney 1966). The court rejected Appellant's argument that the "presence" of a sovereign was only an immune "diplomatic presence." Appellant's Brief at 24.

20. Instant case at 19. *See* Appellant's Brief at 19. The rationale coincided with the court's attempts to separate the question of immunity from the questions of jurisdiction and service.

"catch-all for categories of parties not otherwise considered in Rule 4." [21] Respondent was only an agency of the Greek government and thus could not be considered a partnership, corporation, or an unincorporated association, the only classes of defendants to which Rules 4(d)(3) and 4(d)(7) explicitly refer. There was no question of due process as there was actual notice. Relying on a dictum in *In Re United Corp.*,[22] and on Federal Rule 83, which provides that "in all cases not provided by rule, the district courts. . .[may]. . .regulate their practice in any manner not inconsistent with these rules," the court felt it had the power and the duty to fashion an ad hoc rule to allow "service on a branch (of a sovereign) which is a party to the contract sued on. . . ." [23] On the question of *immunity*, the court felt bound by its own holding in *Victory Transport* which denied immunity on facts identical to those in the instant case. Moreover, the State Department had specifically rejected the Greek government's claim of sovereign immunity.[24]

The restrictive theory of sovereign immunity can be of little use if service on a sovereign cannot be effectuated. The rationale of the limited immunity doctrine is that a government engaging in purely commercial activities submits itself to the same liabilities and rules of procedure as do private entities.[25] Thus the questions should be whether the forum's requirements for service of process can be fulfilled and whether such service would be in conformity with international and domestic law. The court in the instant case seems to have fashioned a procedure to effectuate service external to the Federal Rules in conflict with the Rules' policy of a uniform, codified, and explicit system. "What might be considered proper service on a foreign sovereign in. . .(one) circuit might be im-

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21. Instant case at 107-108.
22. *In re* United Corp., 283 F.2d 593 (3d Cir. 1960) (S.E.C. order for defendant company to pay fees and defendant filed an untimely objection; *held*, District Court's denial of leave to file was not an abuse of discretion).
23. Instant case at 109-110: "[T]he fashioning of provisions with respect to service on foreign governments is a task peculiarly appropriate for federal courts."
24. Instant case at 110. Appellant argued that the effort of the Greek government to assure food for its people independent of the Soviet Union is "obviously a government function of the highest importance." Appellant's Brief at 10. The Court had already rejected this argument in the *Victory Transport* case. *See* Letter by John W. Douglas, Assistant Attorney General, to the Court of Appeals for the Second Circuit, November 18, 1964, in Petitioner's Appendix at 16(a); Letter of the State Department to Kingdom of Greece, in Petitioner's Appendix at 6(a)-10(a).
25. Griffin, *supra* note 9, at 9; Harvard *Competence*, art. 19, at 676.

proper in. . .(another). . . ." [26] Because of the possible delays and high costs involved in service by the methods set out in Rules 4(e) and 4(i), and the familiarity of American counsel with 4(d), Rules 4(d)(3) and 4(d)(7) offer the most convenient method for service on foreign governments in Federal courts.[27] Once a court has in personam jurisdiction over a sovereign by consent, presence, or long-arm statute, the *sole* function of service becomes the satisfaction of the Constitutional requirement that it be reasonably probable that the defendant receive actual notice.[28] For service under the Federal Rules, the only question, then, is who is to be considered an "officer, or managing or general agent" for purposes of 4(d)(3) and 4(d)(7). For Constitutional service, such "officer" or "agent" must be a "representative so integrated with the corporation sued as to make it likely he will realize his responsibilities and know what he should do with any legal paper served upon him." [29] If one is to treat a sovereign agency participating in com-

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26. Petition of Kingdom of Greece, Ministry of Commerce, for Writ of Certiorari, Petrol Shipping Corp. v. Kingdom of Greece, Ministry of Commerce, Docket No. 489, at 19 (U.S. Oct. Term 1966). *Compare* Miner v. Atlass, 363 U.S. 641 (1960) (local Federal Rule *held* to conflict with the failure of coverage within the District Court's general Admiralty Rules). Though the Department of Justice advised the Court of Appeals for the District of Columbia Circuit in Hellenic Lines, Ltd. v. Moore, 345 F.2d 978 (D.C. Cir. 1965), that any attempt to bring service within the Federal Rules should be by specific legislation (Appellant's Brief at 21-23), the silence of the State Department in the instant case and in the *Victory Transport* case suggests that the United States government, realizing the necessity of providing a means to effectuate the restrictive theory, feels that American courts should provide adequate methods for complaining plaintiffs to secure proper service of process within the Federal Rules.

27. Interview with Eli Ellis, Esq., counsel for Petrol Shipping Corp., February 27, 1967. Both Federal Rules 4(d)(1) (service on individuals) and 4(d)(2) (service on infants or incompetents) are clearly inapplicable. Rules 4(i)(1)(a), 4(i)(1)(b), and 4(i)(1)(c) require use of a foreign law expert; rule 4(i)(1)(d) (service by registered mail) requires knowledge of receipt by the opposing party in a foreign country and thus delay; rule 4(e) and 4(i)(1)(e) require litigation for an *ex parte* order.

Some publicists feel that foreign government agencies should be served in the same way that the sovereign of the forum subjects himself to suit. *See* Leonard, *supra* note 10, at 98; Doub, *supra* note 10, at 65; 2 D. O'CONNELL, INTERNATIONAL LAW 919 (1965). *Compare* FED. R. CIV. P. 4(d)(4), 4(d)(5), and 4(d)(6) (1963).

28. Petition of Petrol Shipping Corp., 37 F.R.D. 437, 439 (S.D.N.Y. 1965). *See* Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950); International Shoe Co. v. Washington, 326 U.S. 310, 320 (1943). *See also* D. KARLEN, PRIMER OF PROCEDURE 13 (1950); 1 J. WEINSTEIN, H. KORN & A. MILLER, NEW YORK CIVIL PRACTICE § 301.04, at 3-7 (1963).

29. C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS 231 (1963). *See* 2 MOORE, *supra* note 16, at § 4.22(2); Remington Rand, Inc. v. Knapp-Monarch Co., 139 F. Supp. 613, 621-22 (E.D. Pa. 1956).

mercial activities as a private entity—*i.e.*, as an unincorporated association or a corporation — for purposes of immunity, there seems to be no reason for maintaining that it cannot be considered the same for purposes of service.[30] If a foreign government agency does not have a convenient representative in the jurisdiction, service might be effected by mail to a diplomat or consul situated in the jurisdiction.[31] It is the duty of the diplomat to represent a government's interests in a foreign country. Service by mail would probably not be considered to be an interference with the functions and dignity of a diplomat, nor a violation of the diplomatic premises, and it is reasonable to assume that the diplomat would be able to communicate notice.[32] Indeed, the Second Circuit may have offered a precedent for service by mail on the diplomat himself as the "agent" of his government, since the inviolability of the embassy would seem to be no more violated by service by mail to a diplomat in his embassy than to a branch of a government located in the same premises as in the instant case.[33] Similarly, consuls

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30. Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354, 364 (2d Cir. 1964); Pugh & McLaughlin, *supra* note 6, at 53; Harvard *Competence*, comment to art. 11, at 599.

The court's technical exclusion of a foreign government agency from the categories of defendants covered by Federal Rules 4(d)(3) and 4(d)(7), as described *supra* at notes 19 and 21, rejects the premise that the Federal Rules should be construed to allow new situations to be handled by established and orderly procedures.

31. Harvard *Competence*, art. 19, at 675. *See* State Department Letter to American Diplomatic Posts, 56 AM. J. INT'L L. 532 (1962) (instruction for notice of suit on United States government agencies to be served on officials in the United States Embassy). *But see* Hellenic Lines, Ltd. v. Moore, 345 F.2d 978, 983 (D.C. Cir. 1965) *Compare* American Football League v. National Football League, 27 F.R.D. 264 (D. Md. 1961) (service on team's coach adequate to give notice to team).

32. *See* H. REIFF, DIPLOMATIC AND CONSULAR PRIVILEGES AND IMMUNITIES AND PRACTICE 2 (1954); Note, *Diplomatic Immunity—Service on Ambassador*, 6 VA. J. INT'L L. 167, 172 (1965); International Law Commission, *Diplomatic Intercourse and Immunities*, comment to art. 20, *supra* note 9, at 268.

The Japanese delegation proposed a service-by-mail amendment to the Vienna Convention on Diplomatic Immunities and Intercourse, art. 20, U.N. Doc. A/CONF. 26/C.1/L.146 (1961), which was withdrawn because the delegation felt that the unanimous consensus was that service could be effected by mail under the existing provision. U.N. Doc. A/CONF. 20/C.1/S.R. 22 at 13 (1961). *See* Kerley, *supra* note 9, at 102.

33. In the instant case the court allowed service by mail to a government agency located in a diplomatic mission.

22 U.S.C. § 252 (1964), text quoted at note 10 *supra*, does not expressly prohibit service of process on a diplomat as a representative of his government. Any obligation that a diplomat might feel to advise his government of the pendency of a proceeding should not be construed to mean "arrest or imprisonment." Griffin, *supra* note 9, at 12; Pugh & McLaughlin, *supra* note 6, at 32. *Cf.* Collins, *supra* note 6, at 133, 148.

represent their government by promoting trade, settling trade disputes, serving judicial documents on persons in their receiving state and receiving such documents for their governments, and therefore seem to be appropriate "agents" for purposes of service of process.[34] In a suit on a foreign government agency, the most appropriate "agent" is, as the instant case correctly notes, the local subdivision which made the commercial agreement at issue.[35]

MARTIN H. BELSKY*

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34. REIFF, *supra* note 32, at 2, 120-22; Vienna Convention on Consular Relations, *supra* note 13, arts. 5, 5(j); Harvard Research, *Draft Convention on the Legal Position and Functions of Consuls, supra* note 13, art. 1 and comment thereto at 207, 217; International Law Commission, *Draft Articles on Consular Relations, supra* note 13, art. 5(j) and comment 18 at 9; 1 L. OPPENHEIM, INTERNATIONAL LAW 839 (8th ed. Lauterpacht 1955).

The *Oster* and *Purdy* cases, *supra* note 14, were situations where service was needed to acknowledge the "presence" of the sovereign for in personam jurisdiction. Here the question is whether a consul is a proper "official" to give fair notice to his government under Federal Rules 4(d)(3) and 4(d)(7). *See* Griffin, *supra* note 9, at 10; Pugh & McLaughlin, *supra* note 6, at 32. Like diplomatic offices, the inviolability of consular premises will not be threatened. In the instant case, the court allowed service by mail to a government agency located in a consular mission.

35. Instant case at 110.

*LL.B. Candidate, Columbia, 1968.