

manently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions" This qualification mirrors the contours of protection set forth in article 64 and clearly preserves the protection privileges of Honorary Consuls as regards their consular functions.

⁴ Obviously, this determination is the province of the trier of fact. See, Note 2, *supra*. In any event, the indictment in this case also characterizes the Honorary Consul of Chile in the Commonwealth of Puerto Rico as a "foreign official." 18 U.S.C. 1116(b) (3) (B). As we stated hereinbefore, nothing indicates that Honorary Consuls cannot be deemed to fall under any one of the two categories of 18 U.S.C. 1116(b). See [1972] *U.S. Code Cong. & Admin. News, supra*.

458 F. Supp. 1353, 1359-1361.

Art. 31 of the Vienna Convention on Consular Relations, done Apr. 24, 1963 (TIAS 6820; 21 UST 77; entered into force for the United States Dec. 24, 1969), provides, as to "inviolability of the consular premises" (headed by a career consular officer), in part:

Inviolability of the consular premises

1. Consular premises shall be inviolable to the extent provided in this article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purposes of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
3. Subject to the provisions of paragraph 2 of this article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

* * * * *

21 UST 77, 87.

Art. 50, the parallel provision for consular posts headed by an honorary consular officer, provides:

Protection of the consular premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Ibid., p. 115.

§ 3 Special Missions and Trade Delegations

Visiting Sovereigns or Members of Sovereign's Household

The case of *Kilroy v. Windsor (Prince Charles, the Prince of Wales), et al.*, No. C 78-291, United States District Court, Northern District of Ohio, Eastern Division was a suit for damages brought against the Prince of Wales, the President and members of the Board of Cleveland State University, the Dean of the Cleveland-Marshall Law School, various security officers of the University and of the Department of State, named and unnamed, and police officers of the City

of Cleveland, for alleged deprivation of plaintiff's rights under the Constitution and laws of the United States.

The suit arose out of an incident during a ceremony of dedication held within the Law School's moot court room, when an Honorary Doctorate of Laws was also being conferred upon the Prince of Wales. Following a question put by plaintiff to the Prince, that alleged British Government torture of prisoners in (Northern) Ireland, plaintiff was escorted from the room by two Department of State security officers. He was ultimately removed from the premises. After lengthy interrogation by Cleveland police officers, plaintiff was released.

Upon being informed of the case, the Department of State requested the Department of Justice to file a suggestion of immunity with the Court and to obtain dismissal of the action against the Prince of Wales. Acting upon the suggestion of immunity, District Judge Thomas D. Lambros dismissed the complaint against the Prince of Wales on December 7, 1978. His memorandum opinion and order stated in part:

... Although there is an allegation that the Prince of Wales "conspired . . . to deprive plaintiff of his constitutional rights," . . . other pleadings and the record to date disclose no real involvement by the Prince of Wales beyond the mere allegation that "his visit to the City of Cleveland . . . precipitated the constitutional deprivations set forth . . ." . . . Plaintiff admits that the Prince of Wales was "at all times relevant to this complaint a representative of the British Government."

The Attorney General of the United States, on recommendation by the State Department and through the United States Attorney for this district, has determined that the Prince of Wales is immune from suit in this matter, and has filed a "suggestion of immunity" with the Court

... [T]he doctrine, being based on foreign policy considerations and the Executive's desire to maintain amiable relations with foreign states, applies with even more force to live persons representing a foreign nation on an official visit.

Excerpts follow from the affidavit of John J. Horrigan, Assistant U.S. Attorney, which constituted the suggestion of immunity submitted by the United States:

1. The United States has an interest and concern in the subject matter and outcome of this action insofar as there is involved the question of immunity from the jurisdiction of this Honorable Court of a representative of a friendly foreign state who was on an official visit to the United States. That issue arises in connection with a determination reached by the executive branch of the Government of the United States in the implementation of its foreign policy and in the conduct of its international relations, which determination should be given effect by this Court.

* * *

3. Under customary rules of international law, recognized and applied in the United States, the head of a foreign government, its foreign minister and other diplomatic representatives, including senior officials on special diplomatic missions, are immune from the jurisdiction of United States, Federal and State courts. Courts in the United States have consistently accepted as conclusive the

determinations of the Department of State concerning the status and immunity of foreign representatives. *Chong Boon Kim v. Yim Yong Shik*, Civ. No. 12565. (Cir. Ct., 1st Cir. Ha. 1963), cited at 58 Am. J. Int'l. L. 186 (1964).

In *Carrera v. Carrera*, 174 F.2d 496, 497 (D.C. Cir. 1949) the court stated:

"It is enough that an ambassador has requested immunity, that the State Department has recognized that the person for whom it was requested is entitled to it, and that the Department's recognition has been communicated to the court. The courts are disposed to accept as conclusive of the fact of the diplomatic status of an individual claiming an exemption, the views thereon of the political department of their government."

See also *Curran v. City of New York*, 77 N.Y.S. 2d 206 (N.Y. Sup. Ct. 1947), Aff'd, 88 N.Y.S. 2d 924 (1949).

The U.S. Supreme Court has reached the same conclusion in similar cases involving the immunity of foreign sovereigns. *Ex Parte Republic of Peru*, 318 U.S. 578, 589 (1943); *Republic of Mexico v. Hoffman*, 324 U.S. 30, 36 (1945); see also *Restatement (Second), Foreign Relations Law of the United States*, Sections 60 and 82.

The suggestion of immunity referred to, quoted from, and attached, a letter from the Legal Adviser of the Dept. of State, Herbert J. Hansell, to the Attorney General of the United States, Griffin B. Bell, the substantive portion of which read:

* * *

The Prince of Wales is the eldest son of the Queen of the United Kingdom of Great Britain and Northern Ireland. He is heir apparent to the throne. Thus, he is a member of the sovereign's immediate family and household. The pendency of this action has become a matter of concern in United States relations with the Government of the United Kingdom.

On the occasion that gave rise to this litigation, the Prince was fulfilling his official functions on an official visit to the United States which was on behalf of his country and designed to promote good relations between the United States and the United Kingdom.

The Department of State regards the visit of Prince Charles as a special diplomatic mission and considers the Prince to have been an official diplomatic envoy while present in the United States on that special mission. (See *Chong Boon Kim v. Yim Yong Shik and David Kim*, Civil No. 12565, Cir. Ct., 1st Cir., Hawaii, 1963, cited in 58 Am. J. Int'l. L. 186 (1964).)

In light of these considerations, the Department recognizes and allows the immunity of the Prince of Wales from the jurisdiction of the United States District Court in this action.

We would be grateful if you would cause an appropriate suggestion of immunity to be filed with the district court.

Dept. of State File No. P78 0181-0500.

Officials of State-Owned Commercial Entities

The Embassy of Chile wrote to the Department of State on December 1, 1977, about the type of nonimmigrant visa appropriate to Chilean officials employed at the New York offices of the State Development Corporation (CORFO), the Copper Corporation (CODELCO), the National Petroleum Company (ENAP), and the National Electricity Company (ENDESA). The Department's reply, April 14, 1978, read in part:

* * *

The Department of State appreciates that these organizations are in representation of the Government of Chile. Nevertheless, as indi-