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# X. International Law

provisions of Federal Rule 19 by affirming an automatic rule of involuntary joinder of partially subrogated insurers.[123] The outcome in *Travelers* also creates an exception to the *Erie* doctrine when a federal forum provides a means to prejudice the jury that is forbidden in state court.[124] In a diversity action in the Fourth Circuit, therefore, a Virginia citizen that has received compensation from a insurer prior to commencement of an action is at a disadvantage when suing an out-of-state tortfeasor and should consider suing in state court.[125]

PATRICIA A. REED

## X. INTERNATIONAL LAW

### *Foreign Government's Diplomatic Property Exempt from Real Estate Tax*

Under the traditional theory of foreign sovereign immunity,[1] a sovereign state enjoyed absolute immunity from suit in the courts of

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action without joinder of person that will benefit from action); FED. R. CIV. P. 19(a) (compulsory joinder is proper whenever a risk of prejudice to absent person, incomplete relief between parties, or subsequent litigation exists). *But see* Gargis v. B.F. Goodrich Co., 386 F.2d 534, 534 (3d Cir. 1967) (per curiam) (joinder of partial subrogee is not necessary because Federal Rule 17 does not require joinder of partial subrogee as a real party in interest).

[123] *Compare* Travelers Ins. Co. v. Riggs, 671 F.2d 810, 813 (4th Cir. 1982) (Fourth Circuit rule is that defendant can compel joinder of partial subrogee automatically) *with* White Hall Bldg. Corp. v. Profexray Div. of Litton Indus., 387 F. Supp. 1202, 1204-1207 (E.D. Pa. 1974) (joinder of a partial subrogee under Federal Rule 19 requires examination of particular case because prejudice to partial subrogor may outweigh prejudice to defendant), *aff'd mem.*, 578 F.2d 1377 (3d Cir. 1978).

[124] *See* 671 F.2d at 813-14 (Fourth Circuit rule of involuntary joinder of partial subrogees gives defendant a strategical advantage that is unavailable in state forum). *But see* Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530, 532 (1949) (purpose of *Erie* doctrine is to prevent noncitizen of state from gaining advantage over state citizen); Guaranty Trust Co. v. York, 326 U.S. 99, 112 (1945) (federal forum should not provide occasion for discrimination against state citizen in diversity action).

The purpose of diversity jurisdiction in the federal courts is to protect a nonresident of a state from local prejudices that may exist in the state court. *See* Erie R.R. v. Tompkins, 304 U.S. 64, 74 (1938). The reason for the application of state law in diversity cases, however, is to protect a state resident against a nonresident's litigational advantages in the federal forum. *Id.*

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[1] The traditional principles of sovereign immunity emerged during the era of the personal sovereign. Note, *The American Law of Sovereign Immunity Since the Tate Letter*, 4 VA. J. INT'L L. 75, 75 (1964) [hereinafter cited as *The American Law*]. Under traditional principles of sovereign immunity, a domestic sovereign received total immunity to suit in domestic courts based on the theories that the sovereign could do no wrong and that the sovereign should not be subject to suit in a self-created tribunal. *See* von Mehren, *The*

another nation.[2] Similarly, the courts of one nation would not execute a judgment against any property belonging to a foreign sovereign.[3] Gradually the restrictive theory of foreign sovereign immunity replaced traditional principles.[4] The restrictive principle limits a foreign state's immunity to the sovereign's governmental acts.[5] A foreign state, however, is subject to suit for its commercial activty.[6] The Foreign

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*Foreign Sovereign Immunities Act of 1976*, 17 COLUM. J. TRANSNT'L L. 33, 34 (1978) [hereinafter cited as von Mehren]; Note, *Recent Developments in the Anglo-American Doctrine of Foreign Sovereign Immunity*, 5 INT'L TRADE L.J. 298, 298 (1980) [hereinafter cited as *Recent Developments*]; Note, *The Relationship Between Executive and Judiciary: The State Department as the Supreme Court of International Law*, 53 MINN. L. REV. 389, 390 (1968) [hereinafter cited as *The Relationship Between Executive and Judiciary*]; *The American Law*, *supra*, at 75. Foreign sovereign immunity arose as domestic sovereigns granted absolute immunity from suit to foreign sovereigns and foreign sovereigns' agents as a matter of comity. *The American Law*, *supra*, at 75; *see* The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 137 (1812) (host nation consented to waive jurisdiction over foreign sovereign). The principles of equality, interdependence, and dignity of individual states supported granting immunity to foreign sovereigns. 11 U.S. at 137; von Mehren, *supra* at 35 n.9.

[2] von Mehren, *supra* note 1, at 35; *Recent Developments*, *supra* note 1, at 298; *The American Law*, *supra* note 1, at 75; Letter from Jack B. Tate to Attorney General of the United States (May 19, 1952), 26 DEP'T ST. BULL. 984, 984 (1952), *reprinted in* Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 711 app. (1976) [hereinafter cited as Tate Letter]. The traditional theory of foreign sovereign immunity recognized that the host sovereign had the power to revoke a foreign sovereign's immunity to suit in the host sovereign's tribunals. The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 146 (1812). Unless the host sovereign revoked a foreign sovereign's immunity, however, a foreign sovereign enjoyed absolute immunity from suit. *Id.*

[3] The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 137, 145 (1812); HOUSE COMM. ON JUDICIARY, LEGISLATIVE HISTORY OF THE FOREIGN SOVEREIGN IMMUNITIES ACT, H.R. REP. NO. 1487, 94th Cong., 2d Sess. 7, 27 (1976), *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 6604, 6626 [hereinafter cited as H.R. REP. NO. 1487]. Under traditional theories of foreign sovereign immunity, a friendly state regarded any judicial seizure of the state's property as an affront to the state's dignity. Republic of Mex. v. Hoffman, 324 U.S. 30, 36 (1945).

[4] von Mehren, *supra* note 1, at 36. *See generally* Tate Letter, *supra* note 2, 26 DEP'T ST. BULL. at 984-85 (emergence of restrictive theory of foreign sovereign immunity); *Recent Developments*, *supra* note 1, at 302 (restrictive theory of foreign sovereign immunity replaced traditional principles). The United States adopted the restrictive theory in 1952 to allow persons doing business with foreign governments to adjudicate commercial disputes in court. Tate Letter, *supra* note 2, 26 DEP'T ST. BULL. at 984-85. In the United States, however, foreign sovereigns enjoyed complete immunity from execution of judgments until Congress passed the Foreign Sovereign Immunities Act of 1976 (Immunities Act). H.R. REP. NO. 1487, *supra* note 3, at 27, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6626; von Mehren, *supra* note 1, at 42 & n.43; *see* Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, §§ 1609-1610, 90 Stat. 2891, 2895 (codified at 28 U.S.C. §§ 1609-10 (1976)) (when foreign sovereign's property subject to execution); *infra* note 8 (provisions of Immunities Act).

[5] von Mehren, *supra* note 1, at 33; Tate Letter, *supra* note 2, 26 DEP'T ST. BULL. at 984.

[6] von Mehren, *supra* note 1, at 33-34, 36-37; Tate Letter, *supra* note 2, 26 DEP'T ST. BULL. at 984.

Sovereign Immunities Act of 1976[7] (Immunities Act) codified the restrictive theory of foreign sovereign immunity.[8] Before Congress passed the Immunities Act, the State Department decided whether a foreign state received immunity on a case by case basis.[9] Under the Immunities Act, courts apply the statute to determine whether a foreign sovereign receives immunity from suit and execution.[10] In *United States v. County*

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[7] Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified at 28 U.S.C. §§ 1330, 1332, 1391, 1441, 1602-1611 (1976)).

[8] H.R. REP. No. 1487, *supra* note 3, at 7, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6605. The Immunities Act sets forth the procedures that parties must follow to sue a foreign state or a foreign state's instrumentalities. *Id.* at 6, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6604. In addition, the Immunities Act declares when a foreign state is entitled to immunity. *Id.* A district court has personal jurisdiction over a foreign state when the court has subject matter jurisdiction over the action and when the plaintiff has served process upon the foreign state. 28 U.S.C. § 1330(b) (1976); *see* Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 308 (2d Cir. 1981), *cert. denied*, _____ U.S. _____ (1982); 28 U.S.C. § 1608 (1976) (service of process upon foreign state). The Immunities Act provides that a district court has jurisdiction over the subject matter of a claim against a foreign state when the state is not entitled to immunity because of the nature of the claim. 28 U.S.C. § 1330(a) (1976); *see Texas Trading & Milling Corp.*, 647 F.2d at 307; 28 U.S.C. § 1605 (1976) (general exceptions to foreign state's jurisdictional immunity); H.R. REP. No. 1487, *supra* note 3, at 13, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6612 (district court has jurisdiction over claims against foreign sovereign without regard to amount in controversy).

A foreign state is subject to suit for the state's commercial activity when the activity has substantial contact with the United States. 28 U.S.C. § 1605(a) (1976); *see id.* § 1603(d) (1976) (definition of commercial activity); *id.* § 1603(e) (definition of commercial activity carried on within United States); *see, e.g., Texas Trading & Milling Corp.*, 647 F.2d at 310 (foreign state's contracts to purchase cement and state's issuance of appurtenant letters of credit constituted commercial activity); United Euram Corp. v. Union of Soviet Socialist Republics, 461 F. Supp. 609, 611-12 (S.D.N.Y. 1978) (foreign state's contract to send artists to United States in exchange for fee was commercial contract); Outboard Marine Corp. v. Pezetel, 461 F. Supp. 384, 395-96 (D. Del. 1978) (foreign state agency that manufactured golf carts and sold carts in United States engaged in commercial activity). A foreign state's property is immune from execution unless the Immunities Act specifically provides for execution against the property. 28 U.S.C. § 1609 (1976). A foreign state's property is not immune from execution when the property supports the commercial activity upon which the claim is based. *Id.* § 1610(a)(2). Property that the state uses for purposes of its diplomatic mission or for the residence of the chief of the mission is immune from execution. *Id.* § 1610(a)(4)(B). Congress did not consider embassies and related buildings to be properties that support commercial activity. H.R. REP. No. 1487, *supra* note 3, at 29, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6628.

[9] H.R. REP. No. 1487, *supra* note 3, at 7, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6605-06; *see* Mexico v. Hoffman, 324 U.S. 30, 35 (1945) (to avoid embarrassing executive branch in conduct of foreign affairs, courts should follow executive branch's determination of whether to grant jurisdictional immunity to foreign state); Tate Letter, *supra* note 2, 26 DEP'T ST. BULL. at 985 (State Department determined whether to grant jurisdictional immunity to foreign state). *See generally The Relationship Between Executive and Judiciary, supra* note 1 (State Department decided questions of sovereign immunity).

[10] 28 U.S.C. § 1602 (1976); *see* H.R. REP. No. 1487, *supra* note 3, at 7, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6605-06 (application of Immunities Act determines whether foreign sovereign immune from suit). The Immunities Act provides that the courts, rather

*of Arlington*,[11] the Fourth Circuit considered whether a local government may assess taxes and enforce a tax lien[12] against a foreign state's premises when the state uses the premises to house its diplomatic staff.[13]

In 1974, the United States and the German Democratic Republic (GDR) established diplomatic relations.[14] Two years later, the GDR purchased an apartment building in Arlington County, Virginia, to house its diplomatic staff.[15] Arlington County assessed real estate taxes on the GDR's apartment building, which the GDR did not pay.[16] In 1978, Ar-

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than the executive branch, determine questions of sovereign immunity for three reasons. *See* H.R. REP. No. 1487, *supra* note 3, at 7, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS at 6606. First, judicial determinations of immunity will minimize foreign policy implications of immunity decisions. *Id.* Second, courts will decide immunity questions on legal rather than political grounds. *Id.* Third, the immunity practice of the United States will conform to other nations' practices because virtually every other country requires courts to decide immunities issues. *Id.*

[11] 669 F.2d 925 (4th Cir. 1982), *appeal dismissed, cert. denied*, 51 U.S.L.W. 3251 (U.S. Oct. 4, 1982). The Supreme Court dismissed the appeal from the Fourth Circuit's decision in *Arlington* for lack of jurisdiction. 51 U.S.L.W. at 3251. The Court treated the appeal as a petition for writ of certiorari, and denied certiorari. *Id.* Three Justices would have affirmed the Fourth Circuit's decision. *Id.*

[12] A lien is a claim that a creditor imposes upon a debtor's property as security for a debt or charge, or a charge upon specific property that makes the property security for the performance of an act. Assembly of God v. Sangster, 178 Kan. 678, _____, 290 P.2d 1057, 1059-60 (1955). The State of Virginia permits a municipal government to impose a lien on property to enforce payment of real estate taxes assessed against the property. *See* VA. CODE § 58-762 (1950) (lien on real estate for taxes and levies assessed thereon).

[13] 669 F.2d at 927.

[14] *Id.* The United States and the German Democratic Republic (GDR) established diplomatic relations in accordance with the Vienna Convention on Diplomatic Relations (Vienna Convention) and agreed to accord full diplomatic privileges and immunities to one another's diplomatic staffs. Agreed Minute on Negotiations Concerning the Establishment of Diplomatic Relations, Sept. 4, 1974, United States-German Democratic Republic, 25 U.S.T. 2597, 2598, T.I.A.S. No. 7937 [hereinafter cited as Agreed Minute on Negotiations]; *see* 669 F.2d at 930; Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95 [hereinafter cited as Vienna Convention]. The Vienna Convention exempts the sending state and the head of the mission from paying taxes on the buildings and ancillary land that the state uses for purposes of the mission. Vienna Convention, *supra*, art. 23(1), 23 U.S.T. at 3238 & art. 1(i), 23 U.S.T. at 3231. The exemption covers the residence of the head of the mission. *Id.*, art. 23(1), 23 U.S.T. at 3238 & art. 1(i), 23 U.S.T. at 3231. The sending state and the head of the mission must, however, pay the host government for specific services rendered. *See id.*, art. 23(1) 23 U.S.T. at 3238; E. DENZA, DIPLOMATIC LAW 194, 195 (1976) (diplomat not required to contribute toward general expenses of host government) [hereinafter cited as E. DENZA]. The Vienna Convention also exempts a diplomatic agent from paying taxes on property that the diplomat holds on behalf of the sending state for purposes of the mission. Vienna Convention, *supra*, art. 34(b), 23 U.S.T. at 3242. The diplomatic agent must nevertheless pay the host government for specific services that the host government has rendered. *See id.*, art. 34(e), 23 U.S.T. at 3243; E. DENZA, *supra*, at 195 (diplomat must pay for specific services that host government has rendered).

[15] 669 F.2d at 927. The chief of the GDR's diplomatic mission did not reside in the GDR's apartment house. *Id.* at 934.

[16] *Id.* at 927. In 1977, Arlington County assessed real property taxes in the amount of $24,389 against the GDR's apartment building. Brief for United States as Appellant at 4,

lington County sued the GDR, seeking judgment in the amount of unpaid real estate taxes and the declaration of a tax lien.[17] The GDR made a special appearance[18] to contest the district court's jurisdiction.[19] The district court held that the Immunities Act granted the court jurisdiction over Arlington County's suit.[20] Consequently, the court entered judgment in the amount of taxes due plus interest and declared the GDR's property subject to a tax lien.[21]

The GDR informed the State Department that the GDR did not accept the district court's judgment.[22] The State Department independently

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United States v. County of Arlington, 669 F.2d 925 (4th Cir. 1982) [hereinafter cited as Brief for United States as Appellant].

[17] 669 F.2d at 927. Arlington County sued the GDR in the Circuit Court for Arlington County. Brief for United States as Appellant, *supra* note 16, at 4. The GDR removed the suit to the United States District Court for the Eastern District of Virginia. *Id.*; *see* 28 U.S.C. § 1441(d) (1976) (foreign sovereign may remove to federal district court action brought against sovereign in state court).

[18] In a special appearance, a party contests the court's jurisdiction over the person of the party making the appearance. F. JAMES & G. HAZARD, CIVIL PROCEDURE 647 (2d ed. 1977). By making a special appearance, a party does not submit to the court's jurisdiction. *Id.*

[19] 669 F.2d at 927. The GDR moved to dismiss Arlington County's complaint on the grounds that the district court lacked jurisdiction over the subject matter of the suit. Brief for United States as Appellant, *supra* note 16, at 4. The GDR argued that its apartment building was immune from property tax because the building housed the GDR's diplomatic staff. *Id.* The GDR did not raise further defenses to Arlington County's claim but elected to stand on the jurisdictional defense. *Id.* at 5.

The United States did not intervene in the lawsuit that Arlington County brought against the GDR. 669 F.2d at 927; *see* FED. R. CIV. P. 24 (b)(2) (federal officer or agency may intervene in action when party relies on executive agreement as defense to action). Initially, the State Department doubted that the GDR's apartment building was exempt from real estate tax. 669 F.2d at 927. The State Department later changed its position and concluded that the GDR's property was not taxable. *Id.* at 928; *see infra* note 23 and accompanying text (State Department decided that GDR apartment building was exempt from property tax).

[20] 669 F.2d at 928. The district court in *Arlington* found that the Immunities Act provided two separate bases for jurisdiction over Arlington County's lawsuit against the GDR. *See id.* First, the district court held that the Immunities Act granted jurisdiction because the GDR's ownership of the apartment house was commercial in character. *Id.*; *see* 28 U.S.C. § 1605(a)(2) (1976) (foreign state not immune from jurisdiction of United States' courts when action concerns state's commercial activity). Second, the district court held that the Immunities Act provided jurisdiction because rights in immovable property were in issue. 669 F.2d at 928; *see* 28 U.S.C. § 1605(a)(4) (1976) (foreign state not immune from jurisdiction of United States' courts when rights in immovable property situated in United States are in issue).

[21] 669 F.2d at 928. The district court ruled that Virginia law provided for imposition of a tax lien on the GDR's property. *Id.*; *see* VA. CODE § 58-762 (1950) (lien on real estate for taxes and levies assessed thereon); *supra* note 12 (definition of lien).

[22] 669 F.2d at 928. The GDR informed the State Department that the GDR was entitled to sovereign immunity from the jurisdiction of the United States courts. *See id.* The GDR further asserted that the Vienna Convention exempted the GDR's diplomatic property from taxation. Brief for United States as Appellee and Reply Brief for United States as Appellant at 14, United States v. County of Arlington, 669 F.2d 925 (4th Cir. 1982) [hereinafter cited as

decided that the property was not taxable.[23] In May 1979, the United States and the GDR entered into an agreement (May Agreement) exempting the GDR's property from local real estate taxes provided that the GDR used the property for diplomatic mission purposes.[24] Arlington County nevertheless continued to tax the property.[25] The Attorney General, on behalf of the United States, filed an action in district court seeking to prevent the County from taxing the GDR's property.[26] The

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Brief for United States as Appellee]; *see supra* note 14 (Vienna Convention's provisions for tax exemption).

[23] 669 F.2d at 928. In the past, the State Department had construed the Vienna Convention's tax exemption provisions strictly and did not exempt diplomats' residences from property tax, even when the sending state owned the residence. M. NASH, 1978 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 610; *see* Vienna Convention, *supra* note 14, art. 34(b) (diplomatic agent exempt from payment of taxes for property that agent holds on behalf of sending state for purpose of the mission). The State Department considered diplomatic agents to hold residences for their personal use rather than for purposes of the mission. E. MCDOWELL, 1976 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 201. Despite the strict interpretation, the United States granted tax exemptions for diplomats' and consuls' residences on a reciprocal basis. M. NASH, *supra*, at 610; *see, e.g.*, Consular Convention, June 1, 1964, United States-U.S.S.R., art. 21, 19 U.S.T. 5018, 5033, T.I.A.S. No. 6503; Consular Convention, March 22, 1963, United States-Japan, arts. 7(1), 12(1)(a), 15 U.S.T. 768, 776, 785, T.I.A.S. No. 5602; Consular Convention, Jan. 8, 1963, United States-Korea, arts. 2(1), 12(1), 14 U.S.T. 1637, 1639-40, 1646, T.I.A.S. No. 5469; Consular Convention, June 6, 1951, United States-United Kingdom, arts. 7(1), 12(1), 3 U.S.T. 3426, 3431, 3435-36, T.I.A.S. No. 2494; Consular Convention, May 1, 1950, United States-Ireland, arts. 7(1), 12(1), 5 U.S.T. 949, 960, 971-72, T.I.A.S. No. 2984. In 1978, the State Department adopted a more liberal construction of the Vienna Convention's tax exemption provisions and decided that diplomats' residences should be exempt from property taxes. *See* M. NASH, *supra*, at 610-13. The State Department decided to exempt diplomats' residences from property taxes for two reasons. *Id.* at 612. First, the United States wanted to conform to the prevailing practice of many other countries that provide tax exemptions for diplomats' residences. *Id.* at 611-12. Second, the United States desired to act consistently with international law, which the State Department interpreted as requiring tax exemption for diplomats' residences. *Id.*; *see* E. DENZA, *supra* note 14, at 198 (majority of states that have adopted Vienna Convention allow tax exemption for residences of diplomatic agents).

[24] 669 F.2d at 928. The United States and the GDR entered into the May 1979 agreement (May Agreement) for tax exemption because the governments wished to clarify the 1974 agreement establishing diplomatic relations. Brief for United States as Appellee, *supra* note 22, at 15; *see supra* note 14 (agreement to establish diplomatic relations between United States and GDR). In particular, the governments wished to resolve the dispute over the tax status of the GDR's apartment building and specify that the GDR's property was exempt from taxation. Brief for United States as Appellee, *supra* note 22, at 14-15; *see supra* note 23 (State Department's revised interpretation of Vienna Convention provisions for tax immunity).

[25] 669 F.2d at 928. In 1978, Arlington County assessed taxes in the amount of $23,664 against the GDR's apartment building. Brief for United States as Appellant, *supra* note 16, at 5. From January through April 1979, Arlington County assessed taxes against the property in the amount of $17,144. *Id.*

[26] 669 F.2d at 928. The United States brought suit against Arlington County because the United States sought to protect the United States' sovereign interests, to control foreign policy, and to meet international obligations. *Id.* at 928; *see* Sanitary Dist. v. United States, 266 U.S. 405, 425 (1925) (United States has standing to bring lawsuit to carry out

United States District Court for the Eastern District of Virginia held that the May Agreement exempted the property from subsequent taxes.[27] The court held, however, that the apartment house was subject to an enforceable lien for taxes assessed prior to the May Agreement.[28]

The parties appealed to the Fourth Circuit.[29] On appeal, Arlington County challenged the validity of the May Agreement for two reasons.[30]

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treaty obligations to foreign government); United States v. Arlington County, 326 F.2d 929, 932 (4th Cir. 1964) (federal government has right to bring suit to enforce national policies); United States v. City of Glen Cove, 322 F. Supp. 149, 152 (E.D.N.Y.) (United States has authority to bring suit to prevent state action that would violate United States' treaty obligations), *aff'd*, 450 F.2d 884 (2d Cir. 1971). The United States requested three forms of relief. 669 F.2d at 928. First, the United States prayed for a declaratory judgment that the GDR's property had been exempt from county taxes from the date that the GDR purchased the property. *Id.* Second, the United States requested that the court void all assessments and liens affecting the property. *Id.* Third, the United States asked the court to enjoin Arlington County from attempting to collect property taxes from the German government. *Id.*

[27] *See* 669 F.2d at 928.

[28] *Id.* In addition to finding that the GDR's apartment house was subject to a tax lien, the district court held that the 1978 judgment in favor of Arlington County collaterally estopped the United States from litigating the issue of the building's tax status prior to May 1979. *Id.*; *see supra* text accompanying notes 17-21 (Arlington County's 1978 lawsuit against GDR). The doctrine of collateral estoppel provides that once a court of competent jurisdiction actually and necessarily determines an issue, the court's determination is binding upon a party to the litigation or his privy in a subsequent suit based on a different cause of action. Montana v. United States, 440 U.S. 147, 153 (1979).

The district court in *Arlington* found that the United States and the GDR were in privity because they had a concurrent relationship to, or a mutual interest in, the same right of property. *See* 669 F.2d at 935; *see* 1B J. MOORE, MOORE'S FEDERAL PRACTICE ¶ 0.411[1] (2d ed. 1982) (privity exists when parties have concurrent relationship to same right of property). The district court consequently held that the 1978 judgment bound the United States. *See* 669 F.2d at 935. The Fourth Circuit reversed the district court and held that the United States was not estopped from litigating the issue of the apartment building's tax liability prior to May 1979. *Id.* at 935. The Fourth Circuit noted that a concurrent relationship to the same right of property applies, for example, to the relationship between a trustee and a trust beneficiary and between a guardian and a ward. *Id.*; *see* 1B J. MOORE, *supra*, at ¶ 0.411[1] (concurrent relationship to same right of property exists between trustee and trust beneficiary and between guardian and ward). The *Arlington* court found that a similar relationship did not exist between the United States and the GDR and therefore, the United States and the GDR were not in privity. 669 F.2d at 935. The Fourth Circuit also ruled that the United States and the GDR sought to vindicate different interests by litigating the issue of the building's tax status. *Id.*; *see supra* note 26 (United States' reasons for bringing suit against Arlington County). In addition, the Fourth Circuit held that application of collateral estoppel was inappropriate because the United States sought to raise issues that the 1978 judgment did not settle. 669 F.2d at 935-36.

[29] *See* 669 F.2d at 928-33.

[30] *See id.* at 929, 931. In addition to challenging the May Agreement's validity, Arlington County argued on appeal that the GDR did not use the apartment house for mission purposes or for the residence of the chief of the mission and that the property consequently did not meet statutory standards for immunity from execution. 669 F.2d at 933; *see* 28 U.S.C. § 1610(a)(4)(B) (1976) (property that foreign sovereign uses for purposes of maintaining diplomatic mission or residence of chief of mission immune from execution). Arlington County asserted that owning an apartment building is a commercial act. Brief for United

First, the County argued that the United States' executive branch had no authority to enter into the May Agreement.[31] Second, the County contended that the May Agreement unconstitutionally infringed on the County's power to tax.[32] The United States asserted that the district court correctly held that the May Agreement precluded Arlington County from assessing subsequent taxes on the GDR's property.[33] The United States further argued that sovereign immunity prevented Arlington County from enforcing a tax lien against property that the GDR used to support the diplomatic mission.[34]

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States as Appellee, *supra* note 22, at 32; *see* 28 U.S.C. § 1603(d) (1976) (commercial character of activity determined by nature rather than purpose of activity). The county argued that since owning an apartment building is a commercial act, the the Immunities Act allowed execution against the GDR's property. 669 F.2d at 933; *see* 28 U.S.C. § 1610(a)(2) (1976) (foreign state's property not immune from execution if property supports commercial activity upon which claim is based).

[31] 669 F.d at 929. Arlington County attacked the May Agreement's validity on the ground that a deputy assistant secretary of state rather than an assistant secretary of state signed the note evidencing the agreement. *Id.* at 930. The County asserted that internal State Department rules required an assistant secretary to sign the agreement. *Id.* at 930-31. The Fourth Circuit found that the State Department had ratified the agreement. *See id.* at 931. The Fourth Circuit, therefore, held that the presumption of official regularity sustained the validity of the agreement. *Id.*; *see* R.H. Stearns Co. v. United States, 291 U.S. 54, 63 (1934) (under presumption of official regularity, Court presumed that public official took appropriate steps to validate actions); United States v. Chemical Found., Inc., 272 U.S. 1, 14-15 (1926) (absent clear evidence to contrary, courts presume that public officials properly have discharged official duties); Petro-Chem Mktg. Co. v. United States, 602 F.2d 959, 968 (Ct. Cl. 1979) (presumption of official regularity supports official acts of public officers).

[32] 669 F.2d at 931. On appeal to the Fourth Circuit, Arlington County asserted that the United States Constitution does not delegate to any branch of the federal government the authority to exempt a foreign sovereign's property from state taxation. *Id.*; *see* U.S. CONST. amend. X (reserving to states powers that Constitution does not delegate to federal government). Arlington County contended that an individual state therefore has the power to grant or deny immunity from property taxation. 669 F.2d at 931. The County argued that since the Virginia Constitution does not provide tax immunity for a foreign government's property, the GDR must pay real estate taxes. *Id.*

Arlington County also argued on appeal that Federal Rule of Civil Procedure 19 required the United States to join the GDR in the lawsuit against the County. *Id.* at 928. Rule 19 requires that a person be joined as a party in an action if in his absence the court cannot accord complete relief among those already parties to the action. FED. R. CIV. P. 19(a)(1). Rule 19 also provides for joinder when the absence of a person interested in the litigation would subject one of the parties to multiple liability. *Id.* 19(a)(2)(ii). The County contended that without joinder, the district court could not afford Arlington County complete relief against the GDR because if the Fourth Circuit affirmed the district court's judgment, the County would have to initiate another action against the GDR to collect taxes for 1978 and part of 1979. 669 F.2d at 928. The Fourth Circuit held that the GDR was not a necessary party to the action because resolution of the dispute between the United States and Arlington County did not require the GDR's presence in the litigation. *Id.* at 929. The *Arlington* court further held that the United States sued to vindicate its own interests in the tax controversy rather than the GDR's interests. *Id.* at 928.

[33] Brief for United States as Appellee, *supra* note 22, at 7, 20-21.

[34] 669 F.2d at 932.

The Fourth Circuit upheld the validity of the May Agreement.[35] The *Arlington* court held that the executive branch has the authority to recognize a foreign state and to remove obstacles to full recognition.[36] The court found that the initial agreement establishing diplomatic relations between the United States and the GDR in 1974 required each state to accord full diplomatic privileges and immunities to the other state's diplomatic staff.[37] The Fourth Circuit ruled that the 1974 recognition provided the executive branch with the authority to enter into the May Agreement for tax exemption.[38]

The Fourth Circuit also held that the May Agreement did not infringe unconstitutionally on the County's power to tax.[39] The *Arlington* court recognized that the United States federal government has complete power over the nation's foreign affairs.[40] The court found that the power over foreign affairs does not derive from affirmative grants from the Constitution but rather from the United States' status as a sovereign nation.[41] The court held that an individual state, as a subdivis-

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[35] *Id.* at 929. In upholding the validity of the May Agreement, the Fourth Circuit relied on the Supreme Court's decisions in *United States v. Pink* and *United States v. Belmont. Id.* at 929-32; *see* United States v. Pink, 315 U.S. 203 (1942); United States v. Belmont, 301 U.S. 324 (1937); *infra* note 53 and accompanying text (discussion of *Pink* and *Belmont*).

[36] 669 F.2d at 930. By an act of recognition, a state commits itself to treat an entity as a state or to treat a regime as the government of a state. RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 94(1) (1965). Recognition may, but need not, include the initiation of diplomatic relations. *Id.* § 98(1).

[37] 669 F.2d at 930; *see supra* note 14 (agreement establishing diplomatic relations between United States and GDR).

[38] 669 F.2d at 930. The *Arlington* court found that the Diplomatic Relations Act of 1978 supported the executive branch's authority to enter into the May Agreement. *Id.*; *see* Diplomatic Relations Act of 1978, Pub. L. No. 95-393, 92 Stat. 808 (codified at 22 U.S.C. §§ 254a-254e (1976 & Supp. II 1978), 18 U.S.C. §§ 1351, 1364 (1976)). Congress enacted the Diplomatic Relations Act to reflect Article 47 of the Vienna Convention. S. REP. No. 958, 95th Cong., 2d Sess. 5, *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS 1935, 1939; *see* Diplomatic Relations Act, 22 U.S.C. § 254c (1976 & Supp. II 1978); Vienna Convention, *supra* note 14, art. 47, 23 U.S.T. at 3249 (states may extend each other more favorable treatment than Vienna Convention provides). Under the Diplomatic Relations Act, the President may specify privileges and immunities for individual diplomats that result in more favorable treatment than the Vienna Convention requires. 22 U.S.C. § 254c (1976 & Supp. II 1978); *see supra* note 14 (Vienna Convention's provisions for tax exemption). The President delegated the power to specify privileges and immunities for diplomats to the Secretary of State. Exec. Order No. 12,101, 3 C.F.R. 258 (1979). The Fourth Circuit found that the Diplomatic Relations Act extends privileges to individual diplomats and not to foreign states. 669 F.2d at 930. Therefore, the court ruled that the Diplomatic Relations Act was not dispositive of the executive branch's authority to enter into the May Agreement. *See id.* The *Arlington* court ruled, however, that courts should not construe the Diplomatic Relations Act to limit the executive's power to deal with foreign sovereigns. *Id.*

[39] 669 F.2d at 932.

[40] *Id.* at 931-32.

[41] *See id.* In holding that the May Agreement did not infringe unconstitutionally on Arlington County's power to tax, the Fourth Circuit relied on principles enunciated in *United States v. Curtiss-Wright Corp. Id.* at 931; *see* United States v. Curtiss-Wright Corp., 299 U.S. 304 (1936) (discussed *infra* notes 51-52 and accompanying text).

ion of the United States, may not interfere with the federal government's conduct of foreign affairs and that an international agreement that the federal government negotiated binds the states.[42] The *Arlington* court held, therefore, that subsequent to the May Agreement, the United States' grant of tax immunity took precedence over Arlington County's denial of immunity.[43]

Although the Fourth Circuit expressed no opinion on the validity of the pre-May Agreement property taxes,[44] the court held that Arlington County could not enforce a tax lien against the GDR's apartment house.[45] The court noted that the Immunities Act exempts from execution property that a foreign sovereign uses to maintain a diplomatic mission, but that the Immunities Act allows execution against a foreign state's property if the property supports commercial activity.[46] The *Arlington* court found that neither the Immunities Act nor the Act's legislative history specifically distinguished between property that a foreign sovereign uses for a diplomatic mission and property that supports a state's commercial activity.[47] The Fourth Circuit, therefore, focused upon the State Department's determination, as evidenced by the May Agreement, that the GDR used the apartment house for diplomatic mission purposes.[48] Consequently, the *Arlington* court held that the GDR's apartment house was diplomatic property and exempt from judgment.[49]

In upholding the validity of the May Agreement, the Fourth Circuit relied on several Supreme Court cases which hold that state laws and

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[42] 669 F.2d at 931-32. The *Arlington* court ruled that an international agreement, like a treaty, is superior to state law. *Id.*; *see* United States v. Pink, 315 U.S. 203, 230-31 (1942) (state law must yield to international agreement); United States v. Belmont, 301 U.S. 324, 331 (1937) (international agreement superior to state law because national government has power to control foreign affairs); U.S. CONST. art. VI, cl. 2 (treaty is supreme law of land).

[43] 669 F.2d at 932.

[44] *See id.* at 936. The *Arlington* court held that on remand, the United States could litigate the issue of the GDR property's tax status prior to the May Agreement. *Id.* at 936; *see supra* note 28 (United States not estopped from litigating issue of GDR property's tax status prior to May Agreement).

[45] 669 F.2d at 935.

[46] *Id.* at 932. *Compare* 28 U.S.C. § 1610(a)(4)(B) (1976) (property used for purposes of maintaining diplomatic mission or residence of chief of mission immune from execution) *with id.* § 1610(a)(2) (foreign state's property not immune from execution if property supports commercial activity upon which claim is based).

[47] *See* 669 F.2d at 934.

[48] *Id.* at 934. The *Arlington* court found that the State Department has expertise in determining whether a foreign government's property supports the government's diplomatic mission because the Department has responsibility for dealing with foreign missions. *Id.* The Fourth Circuit held that a court should reject the State Department's views only when the Department's views are manifestly unreasonable. *Id.* The *Arlington* court found that the State Department's views concerning the GDR's use of the apartment house were reasonable because the GDR used the building to house its diplomatic staff and did not seek to earn a profit through ownership of the building. *Id.*

[49] *Id.* at 935; *see* 28 U.S.C. § 1609 (1976) (foreign state's property immune from execution unless Immunities Act specifically provides for execution); *id.* § 1610(a)(4)(B) (property used for purposes of maintaining diplomatic mission immune from execution).

policies may not interfere with the federal government's conduct of foreign affairs.[50] The Supreme Court has recognized that the United States' power over foreign affairs derives from the United States' status as a sovereign nation and not from the United States Constitution.[51] The Court has therefore ruled that although the Constitution limits the federal government's power over domestic affairs, the Constitution does not restrict the national government's authority over international matters.[52] The court also has held that the executive branch has the authority to enter into international agreements that govern the United States' diplomatic relations.[53]

In light of Supreme Court precedent, Arlington County interfered with the federal government's conduct of foreign affairs by continuing to tax the GDR's apartment building after the United States and the GDR had agreed to exempt the building from taxes.[54] Arlington County may suffer hardship from the loss of tax revenues from the GDR's property.[55] In matters that affect foreign relations, however, the interests of a local

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[50] *See* 669 F.2d at 929-32; United States v. Pink, 315 U.S. 203, 230-31 (1942) (state law must yield to international agreement); United States v. Belmont, 301 U.S. 324, 331 (1937) (international agreement is superior to state law because national government has power to control foreign affairs); United States v. Curtiss-Wright Corp., 299 U.S. 304, 318 (1936) (federal government has sole power to conduct foreign relations).

[51] United States v. Curtiss-Wright Corp., 299 U.S. 304, 318 (1936). In *Curtiss-Wright*, the Supreme Court found that when the American colonies adopted the Constitution, the colonies delegated to the federal government certain powers that each colony then possessed. *Id.* at 316; see U.S. CONST. amend. X (powers that Constitution does not specifically delegate to federal government are reserved to states). The *Curtiss-Wright* Court found that since individual colonies never possessed power of external sovereignty, the colonies could not have transferred those powers to the national government. 299 U.S. at 316-17.

[52] United States v. Curtiss-Wright Corp., 299 U.S. 304, 315-16 (1936).

[53] United States v. Pink, 315 U.S. 203, 229 (1942); United States v. Belmont, 301 U.S. 324, 330 (1937). The Supreme Court has held that the executive branch has the authority to recognize a foreign state, to establish diplomatic relations, and to make agreements concerning international relations. 301 U.S. at 330. In *United States v. Pink* and *United States v. Belmont*, as in *Arlington*, the United States brought suit to enforce the United States' obligations under an international agreement. 315 U.S. at 210-13; 301 U.S. at 325-26; 669 F.2d at 928. The *Pink* and *Belmont* Courts concluded that the national government has exclusive power over international affairs. 315 U.S. at 233; 301 U.S. at 330; *accord* United States v. Curtiss-Wright Corp., 299 U.S. 304, 318 (1936); Neal-Cooper Grain Co. v. Kissinger, 385 F. Supp. 769, 773 (D.D.C. 1974). The Supreme Court has ruled that the federal government may carry out foreign relations without regard to state laws and policies. 315 U.S. at 233-34; 301 U.S. at 331. The Court has further determined that when the United States sues to enforce foreign policy, state laws must yield to the nation's international agreements. 315 U.S. at 234; 301 U.S. at 332. The *Pink* Court recognized that the entire nation could suffer if a state refused to comply with the federal government's foreign affairs decisions because the state's noncooperation could give rise to friction between the United States and another sovereign. 315 U.S. at 232.

[54] *See supra* notes 50 & 53 and accompanying text (state laws may not interfere with federal government's conduct of foreign affairs).

[55] *See* City of New Rochelle v. Republic of Ghana, 44 Misc. 2d 773, 775, 255 N.Y.S.2d 178, 180 (Westchester County Ct. 1964) (granting tax exemptions for diplomatic residences could impose hardship on municipality and municipality's residents). Arlington County

government must yield to the welfare of the nation.[56] By granting reciprocal tax exemptions for foreign states' diplomatic property, the United States benefits by receiving tax immunity for United States' diplomatic property located abroad.[57] Based on Supreme Court rulings and foreign policy considerations, the Fourth Circuit correctly held that the May Agreement exempting the GDR's apartment building from local real estate taxes prevailed over Arlington County's need to assess taxes upon the property.[58]

The *Arlington* court is the first circuit court to hold that the Immunities Act bars a local government from enforcing a tax lien against a foreign sovereign's diplomatic property. Few courts have addressed the issue of whether a foreign state's diplomatic and consular property is exempt from local real estate taxes.[59] The New York state courts have held, however, that treaty obligations or customary practices of international law[60] may provide tax immunity for diplomatic and consular offices and residences.[61] In addition, in *United States v. City of Glen Cove*,[62] the

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stands to lose over $20,000 per year in tax revenues because of the county's inability to tax the GDR's apartment house. *See supra* notes 16 & 25 (amount of property taxes assessed against GDR's property). The County can, however, make up for the loss by assessing higher taxes on non-tax-exempt properties. *See* 44 Misc. 2d at 775, 255 N.Y.S.2d at 180 (dictum) (municipality may raise taxes on residents' property to make up for revenues lost on nontaxable diplomatic property). In addition, under the Vienna Convention, Arlington County may bill the GDR for specific services that the county provides for the GDR's property. *See* Vienna Convention, *supra* note 14, art. 23(1), 23 U.S.T. at 3238 (sending state must pay host government for specific services that host government has rendered); *id.* art. 34(e), 23 U.S.T. at 3243 (diplomat must pay host government for specific services that host government has rendered); *supra* note 14 (Vienna Convention provisions for tax exemption).

[56] *See supra* notes 50 & 53 and accompanying text (international agreement that federal government negotiated is superior to state law).

[57] *See* Republic of Argentina v. City of New York, 25 N.Y.2d 252, 260-61, 250 N.E.2d 698, 701, 303 N.Y.S.2d 644, 649 (1969) (nations grant tax exemptions to foreign diplomatic property as matter of comity); C. WILSON, DIPLOMATIC PRIVILEGES AND IMMUNITIES 102 (1967) (tax exemption necessary for effective functioning of diplomatic relations).

[58] *See supra* notes 50-53 and accompanying text (Supreme Court decisions holding that local laws and policies must yield to international agreement); *supra* notes 55-57 and accompanying text (foreign relations considerations support reciprocal agreement to exempt diplomatic property from local tax).

[59] *But see infra* notes 60-62 and accompanying text (courts that have considered whether foreign state's diplomatic and consular property is exempt from local real estate taxes).

[60] Customary practices of international law are established rules of law based on the general practices of nations. *See* The Paquete Habana, 175 U.S. 677, 686, 700, 708 (1900). Customary international law need not be codified by treaty. *See id.*

[61] *See* Republic of Argentina v. City of New York, 25 N.Y.2d 252, 259, 250 N.E.2d 698, 700, 303 N.Y.S.2d 644, 647-48 (1969) (principles of international law exempt consular office from real estate taxation); Republic of Finland v. Town of Pelham, 26 A.D.2d 35, 38, 270 N.Y.S.2d 661, 664 (1966) (treaty exempts residence of consul general from local taxation); City of New Rochelle v. Republic of Ghana, 44 Misc. 2d 773, 774, 255 N.Y.S.2d 178, 180 (Westchester County Ct. 1964) (tax liens against residences of United Nations ambassadors dismissed because court lacked jurisdiction to enforce liens).

[62] 322 F. Supp. 149 (E.D.N.Y.), *aff'd*, 450 F.2d 884 (2d Cir. 1971).

United States District Court for the Eastern District of New York considered whether a municipal government could enforce a tax lien against property that a foreign sovereign owned and used to house the sovereign's diplomats.[63] The *Glen Cove* court found that a treaty governing the United States' obligations to the foreign state exempted the foreign state's diplomatic residences from local taxes.[64] The court ruled that a municipal government may not deprive a foreign sovereign of a treaty benefit.[65] The *Glen Cove* court therefore enjoined the municipality from enforcing the tax lien against the foreign sovereign's property.[66] The *Arlington* court's decision is consistent with the *Glen Cove* court's decision and with the New York state cases which recognize that a local government may not tax a foreign state's diplomatic property when the United States' foreign relations obligations require tax immunity for the property.[67]

Congress enacted the Immunities Act to transfer immunities-related decisions from the executive branch to the judiciary.[68] The *Arlington* court's reliance on the State Department's determination that the GDR used the apartment building for diplomatic mission purposes seems to contravene the purpose of the Immunities Act.[69] The Fourth Circuit, however, had valid reasons for considering the State Department's determination.[70] Moreover, the *Arlington* court emphasized that the State Department's opinion did not require the court to hold that the

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[63] 322 F. Supp. at 150. In *United States v. City of Glen Cove*, the United States sued Glen Cove to enjoin the city from enforcing a tax lien against property that the Soviet Union owned. *Id.* The Soviet Union used the property as a residence for representatives to the United Nations. *Id.* at 151.

[64] *Id.* at 152; *see* Consular Convention, June 1, 1964, United States-U.S.S.R., art. 21, 19 U.S.T. 5018, 5033, T.I.A.S. No. 6503 (diplomats' residences exempt from tax). The *Glen Cove* court recognized that the treaty between the United States and the Soviet Union exempted diplomats' residences from taxes other than taxes that represented bills for specific services rendered. *See* 322 F. Supp. at 152; Consular Convention, *supra*, art. 21, 19 U.S.T. at 5033. The *Glen Cove* court found that the taxes Glen Cove sought to collect were for the general support of the city government and not for specific services rendered. 322 F. Supp. at 155.

[65] 322 F. Supp. at 154-55.

[66] *Id.* at 155.

[67] *See supra* note 35 and text accompanying notes 35, 39 & 43 (*Arlington* court's decision exempting GDR's apartment house from local taxation); *supra* note 61 and accompanying text (New York State courts finding foreign state's diplomatic property exempt from municipal taxation); *supra* note 64 and text accompanying notes 64-65 (*Glen Cove* decision that treaty exempted foreign government's diplomatic residence from taxation).

[68] *See supra* note 10 and accompanying text (Immunities Act requires that courts determine questions of foreign sovereign immunity).

[69] *See supra* notes 48-49 and accompanying text (*Arlington* court relied on State Department's determination that GDR used apartment building for diplomatic mission purposes).

[70] *See supra* note 48 and text accompanying notes 47-48 (reasons for *Arlington* court's reliance on State Department's views).

GDR's property supported the diplomatic mission.[71] Therefore, the Fourth Circuit's dependence on the executive branch's view is not improper under the Immunities Act.

Congress required the judiciary to decide questions of foreign sovereign immunity because judicial determinations of immunity would minimize the foreign policy implications of immunities decisions.[72] The *Arlington* case, however, shows how judicial decisions under the Immunities Act may affect foreign relations.[73] The United States' relations with the GDR could have been affected adversely had the Fourth Circuit affirmed the district court's decision that Arlington County could enforce a tax lien against the GDR's apartment house.[74]

The Fourth Circuit's decision in *Arlington* prevents a local government from collecting real estate taxes on property that a foreign sovereign owns and uses for housing the sovereign's diplomats.[75] The Fourth Circuit properly determined that the federal government has the power to exempt a foreign sovereign's diplomatic property from taxes.[76] The court also correctly construed the Immunities Act to bar Arlington County from enforcing a tax lien against the GDR's apartment house.[77] The *Arlington* court's decision may impose financial hardships on the local government.[78] To allow a local government to collect taxes from a foreign sovereign, however, could hamper the United States' conduct of foreign relations.[79]

DONA A. SZAK

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[71] *See* 669 F.2d at 934 (State Department's opinions on scope of Immunities Act not conclusive).

[72] *See supra* note 10 and accompanying text (reasons for Immunities Act's requirement that courts determine questions of foreign sovereign immunity).

[73] A court's erroneous decision under the Immunities Act could hamper relations between the United States and a nation that was a defendant in a lawsuit based on the Immunities Act. In *Arlington*, for example, the GDR resorted to the State Department for assistance after the district court had held that the GDR's apartment house was subject to a tax lien. 669 F.2d at 928. Relations between the United States and the GDR might have deteriorated had the State Department not acted to prevent Arlington County from enforcing the tax lien.

[74] *See supra* note 73 and accompanying text (enforcement of tax lien against GDR's apartment house could affect adversely relations between United States and GDR).

[75] *See* 669 F.2d at 932, 935.

[76] *See supra* notes 51-53 and accompanying text (federal government's power to enter into international agreements).

[77] *See supra* note 8 and accompanying text (Immunities Act).

[78] *See supra* note 55 and accompanying text (exempting diplomatic residences from real estate taxation may impose burden on local government).

[79] United States v. City of Glen Cove, 322 F. Supp. 149, 152 (E.D.N.Y.), *aff'd*, 450 F.2d 884 (2d Cir. 1971); Republic of Argentina v. City of New York, 25 N.Y.2d 252, 259, 250 N.E.2d 698, 700, 303 N.Y.S.2d 644, 647 (1969); C. WILSON, DIPLOMATIC PRIVILEGES AND IMMUNITIES 102 (1967).