

SOVEREIGN IMMUNITY

McKeel v. Islamic Republic of Iran 722 F.2d 582
(U.S. Ct. of Appeals 9th Circuit 30 December 1983)

Under the Foreign Sovereign Immunities Act, 1976 28 U.S.C. section 1605(a)(5) sovereign immunity is waived in suits for money damages against a foreign state for personal injury etc. occurring in the United States, which is defined in section 1603(c) to include "all territory and waters continental or insular, subject to the jurisdiction of the United States." (Australian lawyers might note the analogous provision in the ALRC's draft legislation, clause 14 which provides:

14. A foreign State is not immune in a proceeding concerning:-
- (a) the death of, or personal injury to, a person; or
 - (b) loss of or damage to tangible property,
- where the cause of action arose in Australia.

The draft does not define Australia, but clause 4 extends the act to each External Territory : Australian Law Reform Commission, Research Paper 7, Draft Australian Legislation on Foreign State Immunities, Sydney, 1983.)

This was an action by certain former U.S. diplomatic hostages in Iran against that government, who argued that the U.S. embassy in Tehran was part of the territory of the U.S. The court rejected this argument because it held that congressional intent was to make U.S. law on sovereign immunity consistent with international law. The section was directed primarily to the problem of traffic accidents in the U.S. caused by embassy vehicles; the legislative history made that clear.

A U.S. embassy was under the jurisdiction of the U.S., but remained part of the territory of the receiving state : Restatement (second) para 77, comment (a).

The court was separately urged to assimilate the embassy to "territory" by applying the protective principle. The nationality and protective principles do allow the U.S. to assert jurisdiction over individuals for events occurring in U.S. embassies and consulates. This may be based on express statutory provisions: U.S. v. Erdos 474 F.2d 157, cert. denied 414 U.S. 876. However, the court stated that to interpret the section in issue as urged by the appellants would represent a fundamental change in prevailing international practice as regards sovereign immunity. Reciprocity would for example then require that the U.S. concede jurisdiction in matters of Tort involving the U.S. government occurring in foreign embassies in the U.S.