

ACT OF STATE - EXPROPRIATION - TREATY OF AMITY

Kalamazoo Spice Extraction Co. v The Provisional Military Government of Socialist Ethiopia, Court of Appeals, Sixth Circuit, 9 March 1984, Unreported.

The court reversed a lower court's decision that the Act of State doctrine precluded an examination of the expropriation of the shares in an Ethiopian incorporated subsidiary owned by the plaintiff. The Treaty of Amity, 1955, between Ethiopia and the U.S.A., contained a provision requiring the payment of "prompt, adequate and effective compensation" in the event of expropriation. The widespread use of this principle indicated it was an "agreed upon principle of international law". The Court of Appeals therefore required the lower court to determine what rights, if any, the treaty conferred on the plaintiff, and in doing so, seems to recognize a treaty exception to the Act of State doctrine.

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TERRORISM - JURISDICTION

Hanoch Tel-Oren v Libyan Arab Republic, Court of Appeals, D.C. 3 February 1984. Unreported.

In this case involving a terrorist attack on a civilian bus in Israel, the court held that it lacked jurisdiction. In Filartiga v Pena-Irala 630 F. 2d 876 (2d Circuit, 1980) the court had added torture to those crimes such as piracy or trading in slaves as crimes which conferred jurisdiction on any state to prosecute, that is universal jurisdiction. In this case, the court was not concerned with "official" torture - this was a terrorist act attributed to an entity not recognized as a state, namely the P.L.O. There was no consensus that politically motivated terrorism was outlawed by the law of nations, although customary international law may well forbid states from aiding terrorist attacks on neighbouring states. One of the opinions, that of Circuit Judge Edwards, suggested that universal jurisdiction may be seen as an exception to the nineteenth century principle that only states had liability under international law.

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SOVEREIGN IMMUNITY - EXPROPRIATION

Jackson v People's Republic of China, U.S. District Court, Northern District of Alabama, Eastern Decision. March 1984, unreported.

On 1 September 1982 the court held that the plaintiff could bring a class action on dishonoured Hukuang bonds issued by The Imperial Chinese Government in 1911. The present Chinese government asserts that there was considerable opposition to this issue at the time, and to the large foreign debt incurred by the Imperial Government. It helped, they said, to trigger the Wuchang uprising and the Revolution of 1922 led by Dr. Sun Yat Sen. Some payments under the bonds were made by the National Government, but they were suspended in 1939, and never acknowledged by the People's Government. The court held that the action brought by Jackson on behalf of many bondholders, who sometimes were

successors in title to the bonds more as paper collectors items than as investments, could not be barred by the doctrine of sovereign immunity. The issuing of the bonds was a "commercial activity" for which sovereign immunity was no longer available under 28 U.S.C. 1605(a) 2. The People's government did not appear, and the court therefore declined to consider the question of the statute of limitations. Judgement in an amount of \$41,313,038.00 with interest was entered: 550 F. Supp. 869 (1982); (1983) 22 ILM 75. The subsequent diplomatic protest in the form of the Chinese Aide Memoire is published at (1983) 22 ILM 81. A Statement of Interest was then filed by the U.S. Administration, setting out its views on the substance and the importance of the issue, noting that it had persuaded the People's Government to intervene, and supporting the motion to set the judgement aside: (1983) 22 ILM 1077. The Australian Financial Review, 6 April 1984 at 41, through their Peking correspondent reported "Last week a U.S. court set aside the case....saying [it] ..... affected "important and delicate" international relations and that a U.S. Federal judge gave the Chinese Government and U.S. bondholders until ... 12 March ..... to ask for a hearing on China's motion to discuss.....

According to the U.S. Embassy in Peking there are another three similar cases pending in U.S. courts and although China still asserts that U.S. courts have no jurisdiction over the Government of China, it has hired U.S. lawyers to put its case "

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