INTERNATIONAL LAW

The Trust Territory is not a foreign state such as to give the FSM Supreme Court diversity jurisdiction over a suit against the Trust Territory. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1982).

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM R. 53, 73-74 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

Under international law punitive damages are but rarely and then only reluctantly allowed against foreign national governments. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 431-32 (Pon. 1994).

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

International law does not impose vicarious liability on the chief of state or elected or appointed officials to whom governmental authority has been delegated to make military decisions having collateral consequences to noncombatants in theaters of operations. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive

revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.5 (Kos. 2000).

Internal waters are those waters on the landward side, or inside, of the baselines of the territorial sea. The exclusive economic zone starts twelve nautical miles seaward of the baseline and extending outward for another 188 nautical miles. A desire to maximize the area that might be included within the baselines, subject to the FSM's international treaty obligations, cannot be interpreted as a recognition of state ownership of the ocean resources 12 to 200 nautical outside of those baselines when drawn. Chuuk v. Secretary of Finance, 9 FSM R. 424, 430-31 (App. 2000).

Under the United Nations Convention on the Law of the Sea, an international treaty to which the FSM has acceded and which is now in effect, coastal nations do not have sovereign ownership of the resources in their exclusive economic zones. Coastal nations only have sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living. These rights are subject to numerous duties, including the duty to allow other nations access to the living resources of its exclusive economic zone if the coastal nation does not have the domestic capacity to harvest the entire allowable catch in its exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432 (App. 2000).

Under the Law of the Sea Convention, a coastal nation does not "own" the fish in its exclusive economic zone. But a coastal nation does "own," if "own" is the right word, the sovereign right to exploit those fish and control who is given the access to its exclusive economic zone and the opportunity to reduce those fish to proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432 (App. 2000).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

Conduct attributable to a state that is intended to, and does, effectively deprive an alien of substantially all of the benefit of his interest in property, constitutes a taking of the property, even though the state does not deprive him of his entire legal interest in the property. If a government harasses a foreign entrepreneur in such a way as to make the enterprise

unprofitable, one of two outcomes may follow: the entrepreneur may abandon the property or the entrepreneur may sell it to the government at a price which reflects only the diminished potential of the firm. The first is usually classified as a "creeping expropriation" and the second becomes a case of coercion. However, conduct attributable to a state may deprive an alien's property of value without constituting a taking. AHPW, Inc. v. FSM, 12 FSM R. 114, 120-21 (Pon. 2003).

What is now the Federated States of Micronesia was a part of the Trust Territory of the Pacific Islands during the United Nations Trusteeship, and the government of the Trust Territory was not an agency of the United States. When the present Federated States of Micronesia was part of the Trust Territory of the Pacific Islands, the Federated States of Micronesia was a foreign country relative to the United States, and not a U.S. territory. In re Neron, 16 FSM R. 472, 473-74 (Pon. 2009).

The Federated States of Micronesia is not, and historically was not, a U.S. territory. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Although the court will not judge the actions of the U.S. government, when the case's disposition does not require the court to judge those actions, the court can and will judge the actions of the parties to the case if there are satisfactory criteria to do so. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

The international nature of admiralty and maritime law would necessitate that FSM statutory maritime law be applied uniformly throughout the FSM and not vary from island to island because the concept of admiralty law is related uniquely to the law of nations and it consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Pacta sunt servanda ("agreements must be kept"), is the rule of law that applies to all agreements made within the framework of the international legal system, and is the basis of the law of treaties, and once in force treaties are binding on the parties to them and must be performed in good faith. FSM v. Ezra, 19 FSM R. 486, 492 & n.5 (Pon. 2014).

Although the FSM has not acceded to, ratified, or otherwise adopted Vienna Convention on the Law of Treaties of May 1969, pacta sunt servanda is international customary law that binds the FSM independently. FSM v. Ezra, 19 FSM R. 486, 492 n.5 (Pon. 2014).

Customary international law can be derived from a variety of sources, but most often from a general and consistent practice of states, and the "practice of the states" includes: 1) all manner of actual behaviors as well as public statements and instructions from diplomatic and official governmental bodies; 2) international agreements codifying or contributing to the emergence of international law; 3) and can also be derived from general principles common to all legal systems. There is no precise formula to indicate how widespread a practice must be before it is accepted as a general practice. FSM v. Ezra, 19 FSM R. 486, 492 & n.8 (Pon. 2014).

All nations have a duty and obligation over its territory and general authority over its nationals. This duty requires: 1) prescription, 2) adjudication, and 3) enforcement of international law. Prescription is the nation's responsibility to make sure that its laws, whether

created by legislation, executive order, rule or regulation, or court order enable it to carry out its international obligations. Adjudication is the requirement that persons or things are subject to the process of its courts or administrative tribunals, whether civil or criminal proceedings. Finally, enforcement of the law requires the nation to induce or compel compliance and punish noncompliance with its laws through the courts, police, or by other action. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

Since the FSM became a member state of the United Nations, it has reciprocal obligations to the international community to redress wrongs in good faith under the provisions of the U.N. Charter. FSM v. Ezra, 19 FSM R. 486, 496 n.15 (Pon. 2014).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

– Diplomatic Relations

It would seem, as a matter of comity among sovereign nations, the Korean Embassy would expect that after the receipt of its diplomatic note, the FSM Department of Foreign Affairs would promptly and voluntarily, long before the trial court ordered it, file its determination that the Korean defendants had diplomatic immunity from suit. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

The FSM President is authorized to enter into diplomatic relations with foreign governments and to consent to the establishment of diplomatic missions in the FSM. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

Members of diplomatic missions, and their families and private servants, and diplomatic couriers assigned to the mission must be afforded the privileges, immunities, protections, and exemptions specified in the April 18, 1961 Vienna Convention on Diplomatic Relations, and the diplomatic mission's premises is inviolable. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

An embassy's inviolability and protection is law, made by treaty, and the magnitude of the infraction is irrelevant since inviolability is a foundation of international law that precludes even the slightest violation because there is no more fundamental prerequisite for the maintenance of good relations between the countries in today's interdependent world than the inviolability of diplomatic envoys and embassies. The inviolability rule applies to the embassy building, or parts of buildings and land ancillary thereto, irrespective of ownership and to a diplomatic agent's private residence. FSM v. Ezra, 19 FSM R. 486, 491 & n.4 (Pon. 2014).

Under the Vienna Convention, the receiving country is under a special duty to protect diplomatic persons, places, and things against any intrusion or damage, and to prevent any disturbance of peace of the mission or impairment of its dignity. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

Since the Constitution explicitly grants the FSM Supreme Court trial division concurrent and original jurisdiction over any cases arising under treaties and since a breach of the inviolability of the embassy premises is a direct violation of an international treaty and international law, the FSM Supreme Court trial division has original jurisdiction over a prosecution for a misdemeanor trespass and theft committed in a foreign embassy. FSM v. Ezra, 19 FSM R. 486, 491-92 (Pon. 2014).

Internationally protected persons are entitled to special protection. Those persons are entitled to a higher degree of protection than afforded to ordinary citizens. FSM v. Ezra, 19 FSM R. 486, 493 n.9 (Pon. 2014).

Under international law, the state is expected to provide an effective civil remedy, and/or criminal sanction when damage or injury to a diplomatic mission occurs. If it does not do so, the claim might proceed before an international tribunal. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

In order to fulfill its treaty obligations to protect diplomats, as governed through the application of international law, the FSM must apply its national criminal code of law to private citizens acting within its territorial control. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

Exclusive national jurisdiction over a trespass and theft at the Chinese Embassy is proper under 11 F.S.M.C. 104(7)(a)(ii) as an otherwise undefined national crime, but jurisdiction is not proper under 11 F.S.M.C. 104(7)(a)(i) where an exclusive list of national crimes is defined. FSM v. Ezra, 19 FSM R. 486, 494 (Pon. 2014).

The Chinese Embassy does not enjoy full extraterritoriality under the Vienna Convention on Diplomatic Relations, but is afforded special privileges therein because the status of diplomatic premises arises from the rules of law relating to immunity from the prescriptive and enforcement jurisdiction of the receiving state; the premises are not a part of the territory of the sending state. That embassy premises are inviolable does not mean that they are extraterritorial. FSM v. Ezra, 19 FSM R. 486, 495 n.13 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because ambassadors, and all foreign officials, are explicitly intended to be protected by the national government and breaching of an embassy's sanctity affects the personal residence of the ambassador, and directly affects the ambassador's staff, many of whom are legally protected foreign officials; because, although the embassy's physical premises are not explicitly listed in the Constitution as protected property they are necessarily, and implicitly, included within relationship with the ambassador and other foreign diplomats; because the duty of protecting the physical diplomatic mission is an express requirement of the agreement between the FSM and China and the Vienna Convention, statutorily incorporated by reference, requires the protection of the embassy itself; and because this is of an indisputably international character, a fortiori of a national character, and therefore beyond the reach of the state power to control. FSM v. Ezra, 19 FSM R. 486, 496 (Pon. 2014).

The FSM has enacted legislation that gives positive effect to the Vienna Convention on Diplomatic Relations of April 18, 1961. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Diplomatic missions, members of the mission, and their families and private servants, and diplomatic couriers assigned to the mission shall be afforded the privileges, immunities, protections, and exemptions specified in the Vienna Convention on Diplomatic Relations of April 18, 1961. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

The FSM statute explicitly incorporates the Vienna Convention's diplomatic immunity provisions into FSM law. Thus, the Vienna Convention's diplomatic immunity provisions apply in the FSM, regardless of whether the Vienna Convention is self-executing. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Since no reciprocal determination has been made concerning the Chinese Embassy, the Vienna Convention's diplomatic immunity provisions apply unaltered to the Chinese Embassy in the FSM. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Any action or proceeding brought against an individual who is entitled to diplomatic immunity with respect to such action or proceeding under any FSM law extending diplomatic privileges and immunities, must be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual, or as otherwise permitted by law or applicable rules of procedure. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

The Vienna Convention on Diplomatic Relations embodies customary international law, including the "practice of states," and under international law and FSM statute, the Chinese Embassy premises is inviolable, and its premises shall be immune from search, requisition, attachment, or execution. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

Embassy premises, since they are held on behalf of the sending state for the purposes of the mission, are thus immune from suit. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

The Chinese Embassy is immune from litigation. This immunity is established by treaty (the Vienna Convention), by customary international law, and by FSM statutory law. Estate of Gallen v. Governor, 21 FSM R. 457, 461 (Pon. 2018).

An embassy's immunity from litigation is not dependent on the FSM's issuance of a diplomatic note or effective only once the FSM has issued a diplomatic note, and not before; it is effective upon the establishment of the diplomatic mission. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

When an embassy has, as permitted by statute, established its immunity by motion, it must be dismissed as a party. No pleading defect, real or imagined, can alter that and produce a different result. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

When, because an embassy is immune from suit, it will be dismissed. Since the court cannot exercise jurisdiction over it, and, as a prevailing party, it is also entitled to its costs. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

An embassy is immune from attachment or execution, and cannot be ejected from its premises. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).

Under the Vienna Convention, embassy land remains inviolable, and the host country or its agents cannot enter the embassy grounds without the consent of the head of the mission or the sending state. Estate of Gallen v. Governor, 21 FSM R. 457, 462 n.2 (Pon. 2018).

When the plaintiffs' basic claim is that the state defendants deprived them of their property (the land on which an embassy sits) without just compensation, they would have a viable remedy of monetary damages assessed against the Pohnpei state defendants if they prove that claim, but no remedy against the embassy since it is immune. Estate of Gallen v. Governor, 21 FSM R. 457, 462 (Pon. 2018).