

**Computer Sciences Raytheon<sup>1</sup> and Local Union No. 2088, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner.** Case 12-RC-7612

August 31, 1995

DECISION ON REVIEW AND ORDER

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

On May 20, 1993, the Regional Director for Region 12 issued a Decision and Order in which he dismissed the instant petition because he found that the National Labor Relations Board is without statutory jurisdiction over the Employer's employees working on the islands of Antigua and Ascension. The Employer is a United States company, and the Petitioner seeks to represent only the Employer's employees who are United States citizens working on the islands. The Petitioner sought review of the Regional Director's decision. By Order dated February 4, 1994 (not included in bound volumes), the Board requested that the parties file supplemental briefs addressing the question of whether the provisions in either of the Status of Forces Agreements (SOFAs) in effect between the United States and the respective governments of the islands of Antigua and Ascension would permit a finding that application of United States labor law to United States citizens working for a United States company on military bases on those islands would not be "extraterritorial" as that term is used in *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991).

The Board, by Order dated August 25, 1994 (not included in bound volumes), granted the Petitioner's request for review of the Regional Director's determination and dismissal of the petition. On the same date, the Board requested that the Civil Division of the Department of Justice solicit the views or experiences of other government agencies, including the Departments of State, Defense, and Commerce, on the application of United States law on military bases located in foreign countries pursuant to SOFAs or similar agreements. The Board also expressed interest in whether those government agencies were aware of any impediments or factors that the Board should consider in determining whether to assert jurisdiction.<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>1</sup>The Employer's name appears as amended at the hearing.

<sup>2</sup>By Order dated January 11, 1995 (not included in bound volumes), the Board denied the Petitioner's request that the Board direct a different procedure or response format for either the Justice Department's submission or for the parties' reply to the submission. The Petitioner subsequently filed a reply to the Justice Department's submission.

Having carefully considered the entire record, including the request for review, the Employer's opposition brief, the supplemental briefs of the parties, the Justice Department's statement of position, and the Petitioner's reply to the Justice Department's submission, we have decided to affirm the Regional Director's decision. For the reasons discussed below, we find that the Board lacks statutory jurisdiction over the instant matter.

I. THE EMPLOYER'S OPERATIONS

The Employer provides technical services to the Space Command of the United States Air Force in the Eastern Range pursuant to a contract with the United States Government. These services are provided by the Employer at Cape Canaveral Air Force Station, Patrick Air Force Base, and Jonathan Dickinson Missile Tracking Annex, all located in Florida; on two U.S. flagships, the USNS *Redstone* and the USNS *Observation Island*; and at United States military bases on the islands of Ascension and Antigua. The Petitioner currently represents employees at each of the Employer's locations, except Ascension and Antigua, under three separate collective-bargaining agreements. Through the instant petition, the Petitioner seeks to represent a unit of approximately 140 employees employed on the military bases on Ascension and Antigua.

Ascension is a possession of the United Kingdom of Great Britain and Northern Ireland. It is a remote island in the South Atlantic situated approximately midway between Africa and South America. Ascension does not have an indigenous population and the island is closed to visitors other than those who have permission from the British Government. There are no commercial flights to Ascension, and visitors must fly on either a United States or a British military aircraft.

Antigua is a sovereign nation that gained its independence from Great Britain in 1981. Antigua is located in the Caribbean Sea approximately 1200 miles from Patrick Air Force Base in Florida. The island is accessible by both commercial and military airlines.

The employees working at the facilities on Antigua and Ascension are generally hired for, and assigned to, those stations permanently; they are not routinely rotated back to the Employer's stations in the United States. The employees located in Ascension and Antigua perform the same general duties as the employees located at the Employer's other facilities. They may apply for transfers to the mainland, but only permanent transfers are available. The employees are interviewed and hired at Patrick Air Force Base in Florida. In addition, the payroll, permanent records, and personnel files for Ascension and Antigua are handled and maintained at Patrick Air Force Base. The island employees have the same health insurance, pension plan, and 401(k) plan as the mainland employees and are eligible

for workers' compensation benefits pursuant to the Defense Base Act and the Longshoremen's and Harbor Workers' Compensation Act, as are the mainland employees. The Employer's operations on both islands are headed by station managers who, in turn, report to the Employer's manager of ships and stations located at Patrick Air Force Base. Temporary assignments of employees from Antigua and Ascension to the mainland do not occur frequently. Mainland employees are temporarily transferred somewhat more frequently to the islands to fill in for island employees or to perform special modifications. While on the islands, the mainland employees continue to be covered by their respective collective-bargaining agreements.

The Employer employs both United States citizens and foreign nationals at the facilities in Antigua and Ascension. The foreign nationals generally perform support (nonelectronic) work because United States security clearance requirements prevent them from performing technical work. The Employer has a contract with the Antigua Workers Union covering Antiguan workers working at the base in Antigua, but this contract specifically excludes United States citizens. The United States citizens occupy job classifications different from those of the Antiguan workers. The Petitioner seeks to represent only the United States citizens employed by the Employer on Antigua and Ascension.

## II. THE STATUS OF FORCES AGREEMENTS

Both the Status of Forces Agreement (SOFA) between the United States and Antigua,<sup>3</sup> and the SOFA between the United States and Great Britain,<sup>4</sup> provide the United States with the right to operate facilities on the islands of Antigua and Ascension for certain defense purposes. The Petitioner contends that the SOFAs "reflect a limited cession of authority to the United States" and that the facilities operated by the United States are "effectively federal enclaves, in which the operation of local law is suspended in deference to the authority of the United States." The Employer, on the other hand, maintains that the SOFAs are "simply rules of conduct that apply to civilian employees of defense contractors . . . as well as military personnel." As described in more detail below, the SOFAs specify the rights granted by the other countries to the United States.

<sup>3</sup>The SOFA between Antigua and the United States was signed on December 14, 1977 (TIAS 9054), and is currently in effect.

<sup>4</sup>The SOFA between Great Britain and the United States regarding Ascension Island was signed on June 25, 1956 (TIAS 3603; 7 U.S.T. 1999), and is currently in effect.

## III. THE CONTENTIONS OF THE PARTIES

### A. *The Petitioner*

The Petitioner maintains that the Board has statutory jurisdiction over the petitioned-for unit of employees on the islands of Antigua and Ascension and further maintains that the Board should exercise its discretion to assert jurisdiction. The Petitioner asserts that the Board has statutory jurisdiction because the Act's definition of the term "commerce" includes trade "between any foreign country and any State" and because the SOFAs cede jurisdiction of labor relations matters to the United States. Moreover, the Petitioner cites cases in which the Board has previously asserted jurisdiction outside the territorial lands and waters of the United States.<sup>5</sup> Finally, the Petitioner argues that the Board should exercise its discretion to assert jurisdiction because the employees in the petitioned-for unit are engaged in the same work as those employees that it already represents at all the Employer's other facilities and because the Employer's facilities (in Florida, on the flagships, and on the bases on Ascension and Antigua) are integrated, as demonstrated by the fact that the Employer's facilities operate under a single contract with the Department of Defense to provide services in connection with a missile and satellite tracking system in the Eastern Test Range.

### B. *The Employer*

The Employer argues that the Board does not have statutory jurisdiction in this case. It contends that the Supreme Court has interpreted the Act to extend only to employees whose work is within the United States or its legally recognized territories; that neither Antigua nor Ascension is a "territory" as that term is used in the Act; and that the SOFAs do not allow the United States to apply its Federal labor laws on either island. The Employer argues, in the alternative, that even assuming it possessed jurisdiction, the Board should exercise its discretion and decline to assert jurisdiction because the islands of Ascension and Antigua are remote, difficult to access, and it would not effectuate the purposes of the Act to assert jurisdiction.

### C. *The Department of Justice*

At the Board's request, the Justice Department solicited views from the Departments of Commerce, Defense, and State regarding the Board's jurisdiction in this case. The Justice Department submitted to the Board a summary of the Federal agencies' responses. In the summary, the Department of Justice argued that the Board should not assert jurisdiction, citing serious questions regarding the Board's authority to do so

<sup>5</sup>The Petitioner cites, *inter alia*, *Alcoa Marine Corp.*, 240 NLRB 1265 (1979); and *Van Camp Sea Food Co.*, 212 NLRB 537 (1974).

under both domestic law and foreign municipal and international law. It further argued that: United States military bases are not extraterritorial enclaves; the SOFAs involved in this case are executive agreements which did not require Congressional approval; and, in the Justice Department's experience, labor law is intensely territorial. In addition, the Department of Justice warned of possible problems if the Board should assert jurisdiction, including the creation of distinctions between United States employers, non-United States employers, United States employees, and non-United States employees, and the creation of potential for litigation in foreign courts (or in U.S. courts by foreign plaintiffs) regarding application of the Act in foreign countries.

#### IV. ANALYSIS

##### A. Applicable Principles

It is a basic precept of statutory construction that, in the absence of a manifestation of a contrary intent, it is presumed that Congressional legislation does not apply outside the territorial jurisdiction of the United States. *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949). This rule "is based on the assumption that Congress is primarily concerned with domestic conditions." *Id.* "It serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) (*Aramco*). The test for determining whether Federal legislation applies abroad is "whether 'language in the [relevant Act] gives any indication of a Congressional purpose to extend its coverage beyond places over which the United States has some sovereignty or has some measure of legislative control.'" *Aramco*, 499 U.S. at 248, quoting *Foley Bros.*, 336 U.S. at 285.<sup>6</sup>

<sup>6</sup>The Petitioner contends that under the Board's decision in *Longshoremen ILA (Coastal Stevedoring Co.)*, 313 NLRB 412 (1993), *enf. denied* on other grounds 56 F.3d 205 (D.C. Cir. 1995), and under the 11th Circuit's decision in *Dowd v. Longshoremen ILA*, 975 F.2d 779 (1992), *affg.* 781 F.Supp. 1565 (M.D. Fla. 1991), the focus in determining jurisdiction is whether regulation of the employment practice at issue is an appropriate application of U.S. law and whether it interferes with, or impacts on, labor relations of a foreign government. While we agree with the Petitioner that those are relevant concerns in deciding whether to exercise our discretion to assert jurisdiction, the test for initially deciding whether we have statutory jurisdiction is correctly set forth above. The decisions in *Coastal Stevedoring* are inapposite to the instant case. In *Coastal Stevedoring*, the Board examined whether it had jurisdiction over an alleged unfair labor practice against a U.S. labor organization, carried out in Japan by agents of the U.S. union, and in which the conduct resulted in an allegedly unlawful secondary boycott within the United States. The instant case involves a request that the Board exercise jurisdiction over a representation petition covering United States citizens who are employed by a United States employer, but who do not work within a territory of the United States. Because the issue involved in this case is the extraterritorial applicability of the Act, the test from *Aramco* and *Foley* governs.

The *Foley/Aramco* test is therefore essentially a two-part test. The first part focuses on the statute that a party seeks to extend beyond the geographical boundaries of the United States. The second part focuses on the characteristics of the particular area in which the conduct to be regulated by the statute occurs—whether it is an area in which, notwithstanding its foreign location, "the United States has some sovereignty . . . or some measure of legislative control," i.e., whether the contended-for application of the statute would be truly "extraterritorial." *Id.*

The Supreme Court has already decided the first part of the test so far as the Act we administer is concerned. It has held that even though the Act contains broad language referring to foreign commerce in its definition of "commerce," such language does not support a finding that the Act applies abroad. *Aramco*, 499 U.S. at 251–252, citing *McCulloch v. Sociedad Nacional*, 372 U.S. 10 (1963).<sup>7</sup> The Court specifically referred to the Act's lack of any specific language reflecting congressional purpose to apply the Act in other countries. *Id.* Congress has not amended the Act in any relevant respect since the Court construed it as not having extraterritorial application, so we are therefore bound to presume that Congress did not intend that the Act would apply on the islands of Ascension or Antigua *unless* the United States, by treaty or otherwise, has achieved sovereignty or some measure of legislative control over places located there.<sup>8</sup>

Thus, the issue in this case is whether the Employer's operations in Antigua and Ascension are located in places in which the "United States has some sovereignty or has some measure of legislative control." It is clear that the United States has no sovereignty over either Antigua, which is itself a sovereign nation, or over Ascension, which is a possession of Great Britain. We, therefore, turn to the question of whether the

<sup>7</sup>Sec. 2(6) of the Act provides that

The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

<sup>8</sup>In an earlier decision, the Supreme Court, in dicta, noted that the Act's definition of "commerce" is more narrow than that in the Fair Labor Standards Act because the NLRA does not include the term "possession," as does the FLSA. *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 388 fn. 15 (1948). In *Vermilya-Brown*, the Court held that the FLSA covers employees of American contractors engaged in construction of a U.S. military base in Bermuda on land leased to the United States by Great Britain for a period of 99 years. The Court's decision was based on: its finding that the lease terms allow Congress to regulate labor matters on the base; the definition of "commerce" in the FLSA includes the term "possession;" and the FLSA contains broad language describing the purpose of that Act "to regulate labor relations in an area vital to our national life." *Id.* at 390.

United States has some measure of legislative control over the places in which the petitioned-for employees work in Ascension or Antigua.

*B. The SOFAs Do Not Confer a Sufficient  
“Measure of Legislative Control”*

The Petitioner contends that the SOFAs, which establish the United States military bases on Ascension and Antigua, provide the United States with a measure of legislative control sufficient to permit application of the Act to the petitioned-for unit of employees. We cannot agree. We find that neither SOFA grants sufficient rights to the United States to support application of the Act to employees working on the military bases involved in this case.

1. The Ascension Island SOFA

The Ascension SOFA explicitly sets out the rights and privileges accorded to the United States and specifically confines those rights to the purposes connected with the operation of the Long Range Proving Ground. Article II, paragraph 1, of that SOFA provides that the United States:

shall have the right in the Range Area: (a) to launch, fly, and land guided missiles; (b) to establish, maintain and use an instrumentation and a communications system including radar, radio, land lines and submarine cables for operational purposes in connection with the Long Range Proving Ground; (c) to operate such vessels and aircraft as may be necessary for purposes connected directly with the operation of the Long Range Proving Ground.

Article XIX further limits the authority granted to the United States by providing that “[n]either the United States of America nor the United States authorities shall exercise any rights granted by this Agreement, or permit the exercise thereof, *except for the purposes specified in this Agreement.*” (Emphasis added.)<sup>9</sup> The language of the SOFA thus clearly limits the rights of the United States to certain specified military purposes and, with the exception of those provisions governing criminal jurisdiction, the SOFA does not grant the United States the right to apply its own laws to individuals on the island of Ascension.

We are not persuaded by the Petitioner’s reliance on article XXV, paragraph 2 of the SOFA which provides that “no laws of Ascension Island which would deroga-

te from or prejudice any of the rights conferred on the Government of the United States of America by this Agreement shall be applicable within the Range Area, save with the concurrence of the Government of the United States of America.” That provision specifically refers to “the rights conferred on [the United States] *by this Agreement*” (emphasis added) and we find that the Agreement itself does not confer the right on the United States to apply, in significant measure, its laws to individuals on the military base. Our interpretation is further supported by the fact that the SOFA explicitly describes those powers and rights that the United States has on the island. (See those rights listed in fn. 8.) Under the doctrine of *expressio unius est exclusio alterius*, the absence from the list of a provision regarding application of United States Federal labor laws on the military base is evidence that this power was not granted to the United States.

In sum, we agree with the Regional Director and conclude that the Ascension SOFA does not provide the United States with sufficient legislative control on the military base to support a finding that the Act applies to the petitioned-for unit of employees on the island of Ascension.

2. The Antigua SOFA

Although it presents a somewhat closer question, we also agree with the Regional Director and conclude that the SOFA between Antigua and the United States does not establish a sufficient measure of legislative control to allow application of the Act to the petitioned-for unit of employees working on the island of Antigua. The General Description of Rights set forth in article II in the Antigua SOFA is somewhat broader than that of the Ascension SOFA. It provides that:

The United States Government shall have and enjoy, in accordance with the terms and conditions of this Agreement, the rights, power and authority which are necessary for the development, use, operation and protection for military purposes of the defense areas which are described in the Annex hereto. The United States Government shall have and enjoy such rights of access, rights of way and easements as may be necessary for these purposes.

Article I of the Antigua SOFA defines the phrase “military purposes” as:

(a) the installation, construction, maintenance and use of military equipment and facilities, including facilities for the training, accommodation, hospitalization, recreation, education and welfare of members of the United States Forces; and (b) all other activities of the United States Government, United States contractors and authorised service

<sup>9</sup>Other provisions of the SOFA govern: the United States’ use of Ascension’s public services and utilities, payment of taxes, and jurisdiction over criminal matters; shipping and aviation; establishment of a United States military post office; claims for compensation; and the actual provision of sites for the United States operations in Ascension. In addition, the SOFA exempts U.S. nationals from the application of the immigration and taxation laws of Ascension.

organizations carried out for the purposes of this Agreement[.]

Although these provisions are broader than those in the Ascension SOFA, it is evident that Antigua's grant of rights to the United States was made for limited military purposes, and these purposes do not contemplate general application of United States' domestic law to individuals on the island except as specifically permitted by the SOFA.<sup>10</sup> The Petitioner contends that its position is supported by the language of article VI(1) of the SOFA, which governs the United States' purchase of local goods and services, because that provision is "prefaced" by the phrase "subject to United States' policies or regulations." This language, however, merely provides that the preference for procuring goods and labor from Antigua is subject to United States' policies or regulations; it does not refer in any way to a general application of United States laws on the military base.<sup>11</sup>

We accordingly conclude that the Antigua SOFA does not provide the United States with sufficient legislative control on the military base to support a finding that the Act applies to the petitioned-for unit of employees on Antigua.

#### C. A No-jurisdiction Finding Is Consistent with Board Precedent

The instant case is distinguishable from cases in which the Board has found that it has statutory jurisdiction abroad. In *Contract Services*, 202 NLRB 862 (1973), the Board found that it had statutory jurisdiction over a United States employer operating a bus transportation service in the Panama Canal Zone and employing Panamanian nationals. The Board's decision that it had jurisdiction was based on the fact that the Canal Zone was governed by the Canal Zone Code which was enacted by Congress and which included a system of magistrate courts with power of appeal to a

<sup>10</sup>The provisions of the Antigua SOFA regulate: the use of public services; taxes; criminal jurisdiction; civil claims; establishment of a United States post office; establishment of a commissary; use of motor vehicles; use of currency; and establishment of a Joint Consultative Board made up of representatives of the United States and Antigua. As in the Ascension SOFA, we find it significant that the detailed enumeration of rights and powers granted to the United States does not include a provision allowing the United States to apply its labor laws on the military base on Antigua.

<sup>11</sup>We note that art. VI of the Antigua SOFA specifically states that, with respect to local workers employed by U.S. contractors, "full regard shall be given to employment practices generally obtained for similar employment in Antigua," but contains no comparable reference to employment practices for nonlocal labor. The fact that there is not a comparable provision for application of Antiguan practices to nonlocal labor is an insufficient basis on which to find that Antigua granted the United States the right to apply United States labor laws to nonlocal labor.

Federal district court.<sup>12</sup> In *Van Camp Sea Food Co.*, 212 NLRB 537 (1974), the Board overruled an earlier case<sup>13</sup> and held that American Samoa is a "Territory" as that term is used in Section 2(6) of the Act. The Board relied on a subsequent Supreme Court decision<sup>14</sup> that held American Samoa to be a "territory" as defined by the Sherman Act (15 U.S.C. §§ 1 et seq.) and the Board noted that other Federal labor legislation, such as the Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.) and the Labor-Management Reporting and Disclosure Act (29 U.S.C. §§ 401 et seq.), already applied in American Samoa. Finally, in *Micronesian Telecommunications Corp.*, 273 NLRB 354 (1984),<sup>15</sup> the Board found that it had statutory jurisdiction over an employer doing business in the Northern Mariana Islands because a covenant, approved by the inhabitants of the Islands and enacted into law by the U.S. Congress, provided that the Islands would become a commonwealth in political union with, and under the sovereignty of, the United States.<sup>16</sup>

The decisions in *Contract Services*, *Van Camp Sea Food*, and *Micronesian Telecommunications* are distinguishable from the present case because in those cases the Board was presented with operations in locations where the United States clearly had a measure of legislative control (as evidenced by the fact that the Panama Canal Zone, American Samoa, and the Northern Mariana Islands were each already governed in some way by laws enacted by the U.S. Congress). In contrast to those cases, Congress has not enacted any laws governing Antigua or Ascension. Especially when compared to the agreements allowing United States legislation in the other three cases, it is clear that the SOFAs involved in this case are merely limited grants of authority to the United States allowing for existence of a military base for specified reasons and establishing the ground rules by which individuals on the bases are to conduct themselves. Finally, we find this case distinguishable because the SOFAs are agreements negotiated and entered into by the executive branch—they are not approved by Congress.

This case is more similar to *RCA OMS, Inc. (Greenland)*, 202 NLRB 228 (1973), in which the Board found that it had no jurisdiction over an employer operating a system of radar and communications stations for the United States Government on five sites in

<sup>12</sup>Although the Board found that it had statutory jurisdiction, the Board exercised its discretion to decline to assert jurisdiction because of foreign relations considerations.

<sup>13</sup>*Star-Kist Samoa, Inc.*, 172 NLRB 1467 (1968).

<sup>14</sup>*U.S. v. Standard Oil of California*, 404 U.S. 558, rehearing denied 405 U.S. 969 (1972).

<sup>15</sup>The Board's decision was enforced in *Micronesian Telecommunications Corp. v. NLRB*, 820 F.2d 1097 (9th Cir. 1987).

<sup>16</sup>The Northern Mariana Islands were entrusted to the United States by the United Nations after World War II. The covenant was negotiated to take effect upon the termination of the trusteeship.

Greenland.<sup>17</sup> The Board considered that: the employer had employees in the United States and in Canada who were organized pursuant to the respective laws of those countries; the employees were required to have U.S. Government security clearance; the employees were hired in the United States; the employees were paid from the United States; and the employees returned to their original hiring location in the United States upon completion of their jobs in Greenland. The Board found, however, that these factors were outweighed by the fact that Greenland is a Danish possession clearly not within the Board's jurisdiction under the Act. We find similarly in this case that those factors establishing connections with the United States are insufficient to overcome the presumption against extraterritorial application of the Act.

The Petitioner argues that the U.S. military bases on Ascension and Antigua can be analogized to U.S. flagships and suggests that because the Board has found statutory jurisdiction over U.S. flagships, the Board should also find that it has statutory jurisdiction over the military bases. See *Dredge Operators*, 309 NLRB 984 (1992), *enfd.* 19 F.3d 206 (5th Cir. 1994); and *Alcoa Marine Corp.*, 240 NLRB 1265 (1979). We find

<sup>17</sup> Although not discussed in the Board's decision, it is likely that the five Distant Early Warning sites were located in Greenland pursuant to an agreement between the United States and Denmark similar to the SOFAs at issue in this case. See *Vermilya-Brown Co. v. Connell*, *supra*, 335 U.S. at 385 fn. 9.

this argument unpersuasive. It is a "well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship." *McCulloch v. Sociedad Nacional*, 372 U.S. 10, 21 (1963). There is no such rule regarding military bases set up in foreign countries pursuant to agreements negotiated and signed by the executive branch of the United States. Indeed, the Justice Department maintains that U.S. military bases overseas are not extraterritorial enclaves, but rather are part of the territory of the foreign states in which they are located.<sup>18</sup> Therefore, we do not find that the military bases at issue in this case are analogous to U.S. flagships.

#### Conclusion

Accordingly, for all the reasons discussed above, we find that the Board does not have statutory jurisdiction over the instant petition.

#### ORDER

The Regional Director's Decision and Order is affirmed and the petition is dismissed.

<sup>18</sup> The Justice Department also notes that United States embassies remain the territory of the receiving state, do not constitute territory of the United States, and are not within the territorial jurisdiction of the United States. Restatement (Second) of the Foreign Relations Law of the United States § 77 comment a (1965). See, e.g., *McKeel v. Islamic Republic of Iran*, 722 F.2d 582, 588 (9th Cir. 1983), *cert. denied mem.* 469 U.S. 880 (1984).