

# REPUBLIC OF PHILIPPINES V. MARCOS: THE ACT OF STATE DOCTRINE AS A DEFENSE TO CIVIL LIABILITY FOR FORMER OFFICIALS OF FOREIGN GOVERNMENTS

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The act of state doctrine in its classic form provides that “the courts of one country will not sit in judgment on the acts of another done within its own territory.”<sup>1</sup> Act of state concerns are relevant whenever courts must evaluate the legality of sovereign acts of foreign governments.<sup>2</sup> Although the doctrine originally developed as an extension of the principle of sovereign authority,<sup>3</sup> its modern formulation is based on constitutional grounds.<sup>4</sup> The doctrine recognizes that the political branches of our government—rather than the judiciary—are best suited to carry out our country’s foreign pol-

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1. *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897).

2. *International Ass’n of Machinists & Aerospace Workers v. OPEC*, 649 F.2d 1354, 1359 (9th Cir. 1981), *cert. denied*, 454 U.S. 1163 (1982). See also Note, *Judicial Balancing of Foreign Policy Considerations: Comity and Errors Under the Act of State Doctrine*, 35 STAN. L. REV. 327 (1983) (proposing a broad act of state presumption that would prohibit adjudication of all cases with foreign policy implications).

3. See, e.g., *Shapleigh v. Mier*, 299 U.S. 468, 471 (1937); *Oetjen v. Central Leather Co.*, 246 U.S. 297, 303 (1918); *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356-58 (1909); *Underhill*, 168 U.S. at 252-53.

4. In *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), the Supreme Court sketched out the constitutional premise inherent in the doctrine:

The text of the Constitution does not require the act of state doctrine; it does not irrevocably remove from the judiciary the capacity to review the validity of foreign acts of state.

The act of state doctrine does, however, have “constitutional” underpinnings. It arises out of the basic relationships between branches of government in a system of separation of powers. It concerns the competency of dissimilar institutions to make and implement particular kinds of decisions in the area of international relations. The doctrine as formulated in past decisions expresses the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder rather than further this country’s pursuit of goals both for itself and for the community of nations as a whole in the international sphere.

*Id.* at 423.

icy.<sup>5</sup> Consequently, in deference to Congress and the Executive branch, courts have applied the doctrine in a variety of contexts to insulate the actions of foreign governments from judicial review in United States courts.<sup>6</sup>

Recently, Ferdinand Marcos invoked the doctrine as a defense to civil liability in two parallel lawsuits brought by the Philippine Government seeking the return of allegedly illegally obtained assets.<sup>7</sup> On appeal, the Second and Ninth Circuits reached conflicting conclusions regarding the appropriateness of the doctrine. The Second Circuit refused to recognize Marcos' act of state defense<sup>8</sup> while the Ninth Circuit found the doctrine implicated "in its most fundamental sense."<sup>9</sup>

These two cases reflect the inherent difficulties facing a sovereign defendant who attempts to invoke the doctrine as a defense to civil liability. First, the defendant must show that adjudicating the disputed government acts would interfere with our government's foreign policy to such an extent that judicial resolution would be inappropriate.<sup>10</sup> Second, the defendant bears the burden of showing that the disputed acts constitute "official" rather than "private" acts of state.<sup>11</sup> This article suggests that these requirements create obstacles preventing use of the act of state doctrine as a defense to liability by essentially all former sovereign officials, including Ferdinand Marcos. Accordingly, the Ninth Circuit case was wrongly decided.<sup>12</sup>

5. See *International Ass'n of Machinists*, 649 F.2d at 1358 ("The political branches of our government are able to consider the competing economic and political considerations and respond to the public will in order to carry on foreign relations in accordance with the best interests of the country as a whole.")

6. See, e.g., *Sabbatino*, 376 U.S. at 436-37 (doctrine prevents judicial inquiry into the validity of the Cuban government's expropriation of a Cuban sugar corporation owned principally by United States residents); *International Ass'n of Machinists*, 649 F.2d at 1361 (dismissal of OPEC price-fixing claim is appropriate due to act of state considerations); *Mol, Inc. v. People's Republic of Bangladesh*, 572 F. Supp. 79, 84 (D. Or. 1983) (decision of Bangladesh government to terminate plaintiff's license for export of Rhesus monkeys held unreviewable on act of state grounds); *Frolova v. Union of Soviet Socialist Republics*, 558 F. Supp. 358, 364 (N.D. Ill. 1983) (plaintiff's suit against the Soviet Union for refusing to allow plaintiff's husband to immigrate to the United States is barred by the act of state doctrine). See generally Annotation, *Modern Status of the Act of State Doctrine*, 12 A.L.R. FED. 707 (1972).

7. See *Republic of Philippines v. Marcos*, 818 F.2d 1473, *withdrawn and reh'g en banc granted*, 832 F.2d 1110 (9th Cir. 1987); *Republic of Philippines v. Marcos*, 806 F.2d 344 (2d Cir. 1986), *cert. dismissed*, 480 U.S. 942, *cert. denied*, 107 S. Ct. 2178 (1987).

8. *Marcos*, 806 F.2d at 359-60.

9. *Marcos*, 818 F.2d at 1482 (2-1 decision; Nelson, J., dissenting).

10. See *infra* text accompanying notes 24-33.

11. See *infra* text accompanying notes 34-59.

12. The Ninth Circuit may agree. Rehearing en banc has been granted and the original opinion withdrawn. 832 F.2d 1110 (9th Cir. 1987). [Editor's Note: Upon rehearing, in an opinion filed Dec. 1, 1988, the 9th Circuit sitting en banc affirmed the

## I. BACKGROUND: *REPUBLIC OF PHILIPPINES v. MARCOS*

In the Ninth Circuit action, the Philippines' complaint of June 16, 1986, charges the Marcoses with federal RICO violations and brings state law claims for conversion, fraud, and deceit based on a "net worth" theory.<sup>13</sup> The Philippines allege that almost all of the Marcoses' wealth was acquired illegally by noting the large discrepancy between the Marcoses' legitimate income and their enormous net worth. Ferdinand Marcos' net worth was only \$60,000 in 1966, a year after taking office. By 1986, however, the Marcoses allegedly held assets worth \$1.55 billion but reported earned income of only \$337,000 during the twenty-year period during which Marcos was in office.<sup>14</sup> The Philippine Government argues that this financial gain must have been stolen and properly belongs to the Philippine people.

The Philippines sought an injunction, based solely on this "net worth" theory, preventing the Marcoses from disposing of their assets until after the trial.<sup>15</sup> On June 25, 1986, the district court granted the injunction.<sup>16</sup> On appeal, the Ninth Circuit reversed. The court held that adjudication of much of Marcos' assets is barred by the act of state doctrine,<sup>17</sup> thus depriving the Philippines of a likelihood of success on the merits.<sup>18</sup>

## II. APPLICATION OF THE ACT OF STATE DOCTRINE

The Ninth Circuit opinion extends the act of state doctrine beyond established law in a manner inconsistent with the policies and rationales behind the doctrine. In *Banco Nacional de Cuba v. Sabatino*,<sup>19</sup> the Supreme Court reaffirmed the doctrine while prohibiting inquiry into a decree of the Cuban government expropriating a

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district court's order issuing preliminary injunction, holding that on the present record the act of state defense does not apply. *Republic of the Philippines v. Marcos*, 862 F.2d 1355 (9th Cir. 1988).]

13. *Marcos*, 818 F.2d at 1480.

14. *Id.*

15. A preliminary injunction may be granted where the plaintiff demonstrates probable success on the merits and the possibility of irreparable harm. *Id.* at 1477. Although the Philippines also brought three federal RICO claims, Ninth Circuit law does not authorize injunctive relief under RICO. *Religious Technology Center v. Wollersheim*, 796 F.2d 1076, 1088-89 (9th Cir. 1986), *cert. denied*, 479 U.S. 1103 (1987). Therefore, the Philippines properly sought an injunction based only on the pendant state claims. *Marcos*, 818 F.2d at 1480.

16. *Republic of the Philippines v. Marcos*, No. Civ. 86-3859-MRP (C.D. Cal. June 25, 1986) (order issuing preliminary injunction).

17. *Marcos*, 818 F.2d at 1490.

18. *Id.* at 1481 ("If we determine that a substantial portion of Marcos' conduct is likely to be shielded by [the act of state doctrine], plaintiff's net worth theory would collapse, and with it its probability of success on the merits . . .").

19. 376 U.S. 398 (1964).

Cuban sugar company owned primarily by United States citizens. The *Sabbatino* court, however, explicitly questioned the wisdom of extending the doctrine to cover acts of former as well as current governments.<sup>20</sup> The court suggested that “[t]he balance of relevant [foreign policy] considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence.”<sup>21</sup> In that situation, the policy behind the doctrine—to prevent judicial interference with the political branches’ exercise of foreign policy—may no longer be applicable. In recognition of the complexities of foreign policy, however, the *Sabbatino* court refused to set down a broad, inflexible rule.<sup>22</sup> Instead, the doctrine has developed in subsequent decisions into “a balancing test with the critical element being the potential for interference with our foreign relations.”<sup>23</sup>

### A. Foreign Policy Interference

In the Ninth Circuit opinion, Judge Kozinski contends that resolution of *Marcos* would interfere with our country’s foreign relations in a number of ways. First, a ruling against Marcos would embarrass the United States by finding that the Philippine government under him, which the United States considered a close ally for many years, “was actually a criminal enterprise under our law.”<sup>24</sup> Next, interference with our foreign policy would result if the unsta-

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20. *Id.* at 428. Before *Sabbatino*, courts often applied the act of state doctrine to prohibit inquiry into the conduct of foreign governments (or government officials) that were no longer in power at the time of the trial. See, e.g., *Underhill v. Hernandez*, 168 U.S. 250, 254 (1897) (acts of former Venezuelan military commander held acts of state and thus not subject to adjudication in United States courts); *Bernstein v. Van Heyghen Freres S.A.*, 163 F.2d 246, 249-50 (2d Cir.) (act of state doctrine barred claim alleging that Nazi official illegally forced plaintiff to transfer property), *cert. denied*, 332 U.S. 772 (1947); *Banco de Espana v. Federal Reserve Bank of N.Y.*, 114 F.2d 438, 443-44 (2d Cir. 1940) (action to recover silver purchased from deposed Spanish Government barred by act of state doctrine).

21. 376 U.S. at 428.

22. *Id.* (deciding only the narrow question that “the Judicial Branch will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement”).

This narrow ruling recognizes that there are legitimate circumstances where foreign policy concerns favor dismissal of civil action against a former foreign official. This may occur, for example, where action against a popular, retiring official is inconsistent with the wishes of the current government.

23. *DeRoburt v. Gannett Co.*, 733 F.2d 701, 703 (9th Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985); see also *International Ass’n of Machinists & Aerospace Workers v. OPEC*, 649 F.2d 1354, 1358-59 (9th Cir. 1981), *cert. denied*, 454 U.S. 1163 (1982); *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597, 607 (9th Cir. 1976) (“The touchstone of *Sabbatino*—the potential for interference with our foreign relations—is the crucial element in determining whether deference should be accorded in any given case.”), *cert. denied*, 472 U.S. 1032 (1985).

24. *Marcos*, 818 F.2d at 1482.

ble Philippine political environment creates another new government or our government's attitude toward the current Philippine government changes.<sup>25</sup> Finally, he suggests that a decision in favor of the defendants may hinder our relationship with the current Philippine government.<sup>26</sup>

Each of these contentions is unpersuasive. In this case, the danger of interference with the Executive's foreign policy is certainly much less than if this court were evaluating the conduct of the current Philippine government.<sup>27</sup> In fact, as the Second Circuit declared, "[t]he United States has made it clear that it does not fear embarrassment if the courts of this country were to take jurisdiction of this *and other disputes* between The Republic and ex-President Marcos."<sup>28</sup> While the position of the Executive is not binding on the judiciary,<sup>29</sup> it strongly suggests that refusing to accept Marcos' act of state defense would not threaten our country's foreign policy.<sup>30</sup> Therefore, contrary to Judge Kozinski's position, it seems less troublesome for the United States to admit its mistake in supporting a corrupt dictator than to allow a former government official to evade both international and United States laws.

Furthermore, Judge Kozinski's argument that the potential for another change in the Philippine leadership favors non-adjudication seems premature without substantial evidence of political unrest.<sup>31</sup> After weighing the substantial countervailing foreign and domestic policy interests favoring resolution of this dispute, it is unreasonable to base this judicial decision on pure speculation that the Philippine Government, or our country's attitude toward it, may change in the future.<sup>32</sup>

Likewise, Judge Kozinski's contention that a judicial decision *against the Philippines* would unduly interfere with the foreign pol-

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25. *Id.*

26. *Id.*

27. The Second Circuit in *Marcos* agrees. See *Marcos*, 806 F.2d at 359 ("[T]he danger of interference with the Executive's conduct of foreign policy is surely much less than the typical case where the act of state is that of the current foreign government.").

28. *Marcos*, 806 F.2d at 356 (emphasis added).

29. See *First Nat'l Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 773 & n.4 (1972) (Douglas, J., concurring in result); *id.* at 775-76 (Powell, J., concurring in judgment); *id.* at 777-78 (Brennan, J., joined by Stewart, Marshall, and Blackmun, JJ., dissenting).

30. This concern over foreign policy interference is less problematic in the criminal context where approval of an indictment by the Executive branch is a prerequisite to prosecution.

31. The opinion's only basis for this assumption is a footnote suggesting that in January 1987 the Philippine army attempted to overthrow the Aquino Government with the apparent support of the Marcoses. *Marcos*, 818 F.2d at 1486 n.16. Given the added advantage of hindsight, however, this attempt appears quite trivial.

32. Of course, if the political situation in the Philippines should change, the district court could then reassess the applicability of the act of state doctrine. *Id.* at 1496 (Nelson, J., dissenting).

icy of the United States is also speculative. It is reasonable to assume that, by initiating this suit, the Philippines is aware of the risk that the court may find Marcos' conduct completely legal. The United States continues to maintain strong economic, military, and political ties to the Philippines.<sup>33</sup> These ties would be severely weakened if our courts refused to test the legality of Marcos' conduct.<sup>34</sup> Rather than protecting the Executive and Congressional branches' ability to conduct diplomatic relations with the current Philippine government, judicial abstention here may obstruct the maintenance of friendly relations. Accordingly, the act of state doctrine should not bar adjudication of this case.

### B. Official Acts of State Requirement

Another hurdle facing Marcos in his attempt to use the act of state doctrine as a defense to liability is proving that his acts constitute the type of conduct properly covered by the doctrine. Not all acts of a foreign government are free from court scrutiny under the act of state doctrine. The doctrine prevents inquiry into public, governmental acts but not into private or commercial conduct.<sup>35</sup> Similarly, some courts limit the doctrine to sovereign activity affecting the "public interest."<sup>36</sup>

Judge Kozinski reasons that the acts of Ferdinand Marcos, the former head of state, were the official sovereign acts of the Philippines.<sup>37</sup> While the opinion concedes that not all actions of a top

33. A declaration by Michael H. Armacost, Undersecretary of State for Political Affairs, made on March 15, 1986, and submitted before the United States Court of International Trade, stressed the "extremely important" relations between the United States and the Philippines. *Marcos*, 806 F.2d at 357 n.3. He notes that the United States has supplied over \$250 million in military assistance to the Philippines over the last five years. Additionally, in 1985 alone, United States-Philippine trade reached \$3.7 billion, while direct American investment in the Philippines was over \$1.2 billion.

34. *See id.* ("Undersecretary Armacost asserted that the Aquino government will view the United States' actions on this matter as an important indicator of the future course of our bilateral relations . . .").

35. *See Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 695 (1976) (declining to extend act of state doctrine to cover government's "purely commercial obligation"); *Filartiga v. Pena-Irala*, 577 F. Supp. 860, 862 (E.D.N.Y. 1984) (alleged acts of torture and murder by a former Inspector General of Police were "not ratified" by the Paraguayan government, and thus not acts of state). *But see International Ass'n of Machinists & Aerospace Workers v. OPEC*, 649 F.2d 1354, 1360 (9th Cir. 1981) (arguing that "certain seemingly commercial activity will trigger act of state considerations"), *cert. denied*, 454 U.S. 1163 (1982).

36. *Clayco Petroleum Corp. v. Occidental Petroleum Corp.*, 712 F.2d 404, 406 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984); *see Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597, 607 (9th Cir. 1976) ("[A] court in the United States . . . will refrain from examining the validity of an act of a foreign state by which that state has exercised its jurisdiction to give effect to its public interests. [Emphasis added]." (quoting Restatement (Second) of Foreign Relations Law of the United States Section 41 (1965))), *cert. denied*, 472 U.S. 1032 (1985).

37. *Marcos*, 818 F.2d at 1482.

foreign government official are exempt from adjudication, it maintains that if Marcos "gained access to the public monies by statute, decree, resolution, order, or some other 'governmental act' as president, the act of state doctrine would be triggered."<sup>38</sup> Alternately, the opinion criticizes the doctrine's "public interest" qualification as greatly weakening the doctrine by allowing courts to attack the motives behind government acts which "necessarily reflect complex political and policy choices."<sup>39</sup>

This analysis misinterprets much of the Philippines' argument. The Philippine Government challenges a wide variety of Marcos' activities,

including but not limited to accepting payment, bribes, kickbacks, . . . expropriating outright private property for the benefit of persons beholden to or fronting for Mr. Marcos, the said expropriation at times effected by violence or the threat of violence or incarceration; arranging loans by the Philippine Government to private parties beholden to and fronting for Mr. Marcos; direct raiding of the public treasury . . . .<sup>40</sup>

The defendants bear the burden of showing that the act of state doctrine precludes scrutiny of Marcos' acts as a dictator.<sup>41</sup> They have made no attempt to meet their burden by showing how individual acts of Marcos fall within the scope of the doctrine. In fact, many of these activities bear little resemblance to governmental acts requiring "complex political and policy choices." Instead, they closely resemble the common theft that Judge Kozinski declared unprotected.<sup>42</sup>

In an earlier lawsuit, also titled *Republic of Philippines v. Marcos*,<sup>43</sup> the Philippines brought suit against Marcos seeking an injunction to prevent the transfer or encumbrance of five properties allegedly acquired with funds stolen from the Philippine people. There, the Second Circuit refused to hold that the act of state doctrine prevented scrutiny of Marcos' actions. It affirmed the district court's grant of a preliminary injunction, reasoning that Marcos failed "to make the crucial distinction between [his] acts as head of

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38. *Id.* at 1485.

39. *Id.*

40. *Id.* at 1493 (Nelson, J., dissenting).

41. *See Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 694 (1976).

42. *See Marcos*, 818 F.2d at 1485 ("[I]f [Marcos] entered the public treasury at gunpoint and walked out with the money or property belonging to the Philippines, he would not be protected by the act of state doctrine."). Inexplicably, this contention is inconsistent with further language in the opinion regarding the scope of a dictator's power. *See id.* at 1489 ("Offensive as such absolute government may be to our sense of justice, no legal restraints can prevail against dictatorial power. A dictator can do whatever he can get away with.").

43. 806 F.2d 344 (2d Cir. 1986), *cert. dismissed*, 480 U.S. 942, *cert. denied*, 107 S. Ct. 2178 (1987).

state, which may be protected from judicial scrutiny even if illegal under Philippine law, and his purely private acts."<sup>44</sup> Consequently, his burden of proving that the challenged acts were public was not met.<sup>45</sup>

Judge Kozinski, however, finds the Second Circuit case to be materially different in ways that control the disposition of the act of state issue. Primarily, he argues that in the Second Circuit case "the district court will not be asked to try the basic issues accusing President Marcos of unlawful takings."<sup>46</sup> Instead, he stresses that in the Second Circuit litigation the Philippines only sought to freeze assets in the United States, subject to a final determination of the lawfulness of Marcos' conduct by the *Philippine* courts.<sup>47</sup> On the other hand, Judge Kozinski finds the act of state doctrine appropriate in the Ninth Circuit lawsuit because Marcos' conduct is to be litigated in the United States rather than the Philippines.<sup>48</sup>

Judge Kozinski's analysis ignores the "official acts" requirement of the doctrine. In the Ninth Circuit lawsuit, the preliminary injunction was issued only nine days after the complaint was filed.<sup>49</sup> By issuing the injunction the district court attempted to maintain the status quo, not to decide the case on its merits.<sup>50</sup> Regardless of where the litigation will eventually take place,<sup>51</sup> at this early stage of the proceedings, Marcos failed to meet his burden of showing that his were specific acts of state falling within the scope of the doctrine. Therefore, though Judge Kozinski's argument has merit with respect to the doctrine's foreign policy requirement, his critique simply fails to address the "official acts" aspect of the doctrine, the crux of the Second Circuit opinion.<sup>52</sup>

Moreover, the Ninth Circuit decision directly rejects the holding of a Fifth Circuit opinion, *Jimenez v. Aristeguieta*,<sup>53</sup> involving

44. *Id.* at 359.

45. *Id.*

46. *Marcos*, 818 F.2d at 1488 (quoting *Marcos*, 806 F.2d at 361).

47. *Id.* at 1490 n.25.

48. *Id.* at 1488 & 1490 n.25.

49. The complaint was filed on June 16, 1986. *Id.* at 1475. The preliminary injunction was issued nine days later, June 25, 1986. *Id.* at 1477.

50. See *Republic of the Philippines v. Marcos*, No. Civ. 86-3859-MRP at 4 (C.D. Cal. June 25, 1986) (order issuing preliminary injunction).

51. In fact, contrary to Judge Kozinski's contention, the Second Circuit did not rule out further litigation in the district court. It held that "[t]here thus appears to be no bar to the grant of a preliminary injunction and the district court may either itself determine ownership or defer to Philippine proceedings . . ." *Republic of Philippines v. Marcos*, 806 F.2d 344, 356 (2d Cir. 1986) (emphasis added), *cert. dismissed*, 480 U.S. 942, *cert. denied*, 107 S. Ct. 2178 (1987).

52. *Id.* at 359 (holding that Marcos "simply fail[ed] to make the crucial distinction between acts of Marcos as head of state, which may be protected from judicial scrutiny even if illegal under Philippine law, and his purely private acts").

53. 311 F.2d 547 (5th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963).

substantially the same facts. The defendant in *Jimenez*, an alleged dictator of Venezuela, was accused of committing financial crimes, including embezzlement, fraud, or breach of trust for his own personal gain.<sup>54</sup> The Fifth Circuit affirmed the district court's extradition order, rejecting the defendant's argument that all acts of a dictator are protected from judicial intrusion.<sup>55</sup> The court reasoned that such acts "constituted common crimes" and as such are "as far from being an act of state as rape."<sup>56</sup>

Judge Kozinski attempts to distinguish *Jimenez* by noting the different contexts in which judicial review is sought. He reads the *Jimenez* holding as limited to cases where "the political branches had, pursuant to a treaty, expressly contemplated judicial review of the official's actions."<sup>57</sup> The *Jimenez* opinion, however, is devoid of language or logic supporting that contention. Although the decision is based in part on the existence of an extradition treaty,<sup>58</sup> the court explicitly states that the crimes allegedly committed by *Jimenez* were "not acts of Venezuela sovereignty."<sup>59</sup> This analysis implies that the acts complained of would not constitute acts of state even in the absence of an extradition treaty between the two countries.

### III. CONCLUSION

The act of state doctrine was not designed as a tool to protect heads-of-state from liability for crimes committed in their personal lives. Officials are shielded only when they act in their sovereign capacity for the "public interest." Moreover, the doctrine is particularly inappropriate in cases in which the government invoking the doctrine is no longer in power. In those cases, the major policy supporting judicial abstention, avoiding interference with foreign policy, is often absent. Consequently, both the "official acts" and "foreign policy interference" requirements are likely to be formidable restraints preventing use of the act of state defense by governments (and government officials) that are no longer recognized as sovereign.

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54. *Id.* at 557.

55. *Id.* (The court found that "[e]ven though characterized as a dictator, appellant was not himself the sovereign—government—of Venezuela within the Act of State Doctrine.").

56. *Id.* at 558.

57. *Republic of Philippines v. Marcos*, 818 F.2d 1473, 1485 n.12, *withdrawn and reh'g en banc granted*, 832 F.2d 1110 (9th Cir. 1987).

58. *See Jimenez*, 311 F.2d at 558.

59. *Id.* at 557-58.