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CASE COMMENTS

INTERNATIONAL COMMERCIAL BRIBERY AND
THE ACT OF STATE DOCTRINE


In *Environmental Tectonics v. W.S. Kirkpatrick, Inc.* the United States Court of Appeals for the Third Circuit held that the act of state doctrine does not bar lawsuits against individuals who bribe foreign officials.

After soliciting bids to construct an aeromedical center for the Nigerian Air Force, the Nigerian Defense Ministry awarded the defendant, W.S. Kirkpatrick, the contract. The plaintiff, Environmental Tectonics Corporation International initiated an investigation upon learning that it had submitted a substantially lower bid than Kirkpatrick on the same project. Environmental Tectonics investigation revealed a detailed scheme of illegal payments made by Kirkpatrick to Nigerian military and political officials in order to secure the contract.

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1. 847 F.2d 1052 (3d Cir. 1988).
2. Under the act of state doctrine, both federal and state courts will refrain from adjudicating cases which raise sensitive foreign policy concerns even though they have proper jurisdiction. See infra notes 15-20.
4. 847 F.2d at 1067.
5. W.S. Kirkpatrick & Co. Inc. is a New Jersey corporation which sells and brokers aircraft equipment, parts and facilities to airlines and foreign air forces. Other named defendants included Kirkpatrick International, its wholly owned subsidiary, which was formed specifically to carry out W.S. Kirkpatrick's duties under this particular Nigerian contract; Carpenter, Kirkpatrick's chief executive officer; and Akindele, a Nigerian citizen and Kirkpatrick's agent. 847 F.2d at 1055.
6. Environmental Tectonics Corporation International is a Delaware corporation with its principal place of business in Pennsylvania and, like Kirkpatrick, it manufactures and sells aircraft equipment and facilities. *Id.*
7. Kirkpatrick's chief executive officer, Carpenter, hired a Nigerian national, Akindele, to act as Kirkpatrick's local agent in all matters pertaining to the contract at issue. Akindele informed Carpenter that to secure the contract, Kirkpatrick would have to pay a sales commission totalling 20% of the contract price. Most of the 20% was to be paid to Nigerian political and military officials. Through a written agreement with Akindele, Kirkpatrick agreed to pay the commission to two Panamanian corporations controlled by Akindele. In turn, those corporations were to pay the commission to the Nigerian officials. Shortly thereafter, the Defense Ministry awarded Kirkpatrick...
ics reported its findings to the Nigerian and United States governments. An investigation by the United States Justice Department culminated in criminal sanctions against defendant under the Foreign Corrupt Practices Act (FCPA). After Kirkpatrick's sentencing, Environmental Tectonics filed suit to recover damages resulting from the lost contract. Kirkpatrick filed a motion to dismiss on the ground that the act of state doctrine barred adjudication of the claim.

After receiving a "Bernstein letter" from the State Department, the contract and paid it in four installments. After Kirkpatrick received each installment, it funneled payments via the United States mails and wire transfers to the two Panamanian corporations controlled by Akindele. Akindele then distributed the funds, totalling $1.7 million.

During plea bargaining, Kirkpatrick and Carpenter agreed to submit offers of proof setting forth the entire bribery scheme. The district court imposed a $75,000 fine on Kirkpatrick, payable over a five year period, and sentenced Carpenter to two hundred hours of community service and a fine of $10,000. After receiving a "Bernstein letter" from the State Department, Kirkpatrick also filed a motion to dismiss the racketeering claim under Federal Rule of Civil Procedure 12(B)(6), contending that Environmental Tectonics had failed to allege a "pattern of racketeering activity" as required by federal and state racketeering statutes.


(a) It shall be unlawful for any domestic concern . . . or any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to -

(1) any foreign official for purposes of -

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign officials to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person . . .


Kirkpatrick also filed a motion to dismiss the racketeering claim under Federal Rule of Civil Procedure 12(B)(6), contending that Environmental Tectonics had failed to allege a "pattern of racketeering activity" as required by federal and state racketeering statutes. After the Second Circuit declined to adjudge the validity of the acts of the German government, Bernstein obtained a letter from the State Department stating that in cases involving Nazi expropriations the Executive branch had a policy to allow aggrieved parties to pursue their claims in federal
United States District Court for the District of New Jersey concluded that the act of state doctrine barred adjudication of the case because the cause of action required the plaintiff to prove that Nigerian officials violated Nigerian law. The district court reasoned that such a finding would implicitly criticize Nigeria's handling of its internal affairs and threatened to hinder the relations between Nigeria and the United States. On appeal, the Third Circuit reversed and held: the act of state doctrine does not foreclose judicial inquiry into the motivations of foreign governments if the potential negative impact on foreign relations is merely speculative and if application of the doctrine would thwart the United States legitimate interest in implementing its regulatory policies.

The act of state doctrine precludes U.S. courts from inquiring into the validity of public acts that a recognized foreign sovereign power commits within its own territory. The Supreme Court first adopted the doctrine in 1897. The Supreme Court has struggled to define the act of state...
The doctrine's parameters ever since the doctrine's inception. The Court's early decisions attributed the origins of the doctrine to principles of sovereign immunity, conflict of laws, and international comity. Modern act of state analysis, however, rests on the separation of powers doctrine.

The Court first used the separation of powers analysis in Banco Nacional de Cuba v. Sabbatino. In that case, the Castro regime, in retaliation for U.S. actions against Cuba, adopted a law that gave Cuba discretionary power to nationalize, by forced expropriation, property or enterprises in which U.S. nationals had an interest. Despite the fact
that such a taking violated international law, the Court refused to examine the validity of a taking of property by a foreign sovereign government within its territory. The Court found that the judicial branch should defer to the executive branch in matters of sensitive foreign policy because judicial intervention may actually "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."

The Court recognized that although the "text" of the Constitution does not require the act of state doctrine, the doctrine does have "constitutional underpinnings" arising out of the relationships between branches of government in a system of separation of powers.

Although subsequent legislation overruled Sabbatino's holding regarding international takings the Court's flexible analysis based on a "balancing of relevant considerations" has survived. However, the Court's failure to identify the precise factors to be weighed, its refusal to for-

23. Id. at 428-29.
24. Id. at 423.
25. Id.
26. In reaction to the Sabbatino decision, Congress enacted the "Hickenlooper Amendment" in 1964. The amendment states in pertinent part:

no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other rights to property is asserted by any party including a foreign state... based upon (or traced through) a confiscation of other taking... by an act of that state in violation of the principles of international law... .


27. 376 U.S. at 428.
28. The Court suggested that the following factors were relevant considerations: the sensitive nature of the issue, the ability of the executive branch to redress the grievances and the consensus of international law on the subject. Id. at 428. The Court also emphasized the ideological discord between capitalistic and communistic countries concerning the state's power to expropriate the property of aliens. The Court, however, suggested that the existence of a "treaty or other unambiguous agreement" might alter its analysis. Id. at 428-31.

Alternatively, one court incorporated the balancing test normally employed in the context of extraterritorial jurisdiction. The Ninth Circuit considered the following factors relevant in determining extraterritorial jurisdiction:

the degree of conflict with foreign law or policy, the nationality or allegiance of the parties, the locations or principal places of business of corporations, the extent to which enforcement by either state can be expected to achieve compliance, the relative significance of effects on the United States as compared with those elsewhere, the extent to which there is an explicit purpose to harm or affect U.S. commerce, the foreseeability of such an effect, and the relative importance to the violation charged of conduct within the United States as compared with conduct abroad.

Timberlane Lumber Co. v. Bank of America, N.T. & S.A., 549 F.2d 597, 614 (9th Cir. 1976). See also Mannington Mills, Inc. v. Congoleum Corp., 595 F.2d 1287, 1297-98 (3rd Cir. 1979) (applying the Timberlane factors in the extraterritorial jurisdiction context). Only one court, however, has
mulate an inflexible rule of noninterference in international affairs\textsuperscript{29} and its limited application of its own test\textsuperscript{30} have generated confusion among the lower courts concerning possible exceptions to the act of state doctrine.\textsuperscript{31}

The Court's post-\textit{Sabbatino} decisions have added to the uncertainty in the area because no one exception to the act of state doctrine has attracted a majority of the Court. For example, in \textit{First National City Bank v. Banco Nacional de Cuba}\textsuperscript{32} the Bernstein exception garnered the support of only three Justices.\textsuperscript{33} Similarly, in \textit{Alfred Dunhill of London, Inc. v. Republic of Cuba}\textsuperscript{34} only a plurality could agree that the act of state doctrine should not encompass commercial acts by foreign sover-

\begin{itemize}
\item The Court noted that, the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice. \textit{Id.} The Court suggested that the judiciary might interfere if the issue involved touched less sharply on national nerves. \textit{Id.} See also supra note 28.
\item The Court noted that international law is divided on the limits of a state's power to expropriate alien property. \textit{Id.} at 428-31.
\item The Court has never applied the \textit{Sabbatino} analysis in any context other than expropriation of property cases. Subsequent to \textit{Sabbatino}, the Court has only expounded on the scope and application of the doctrine on two occasions, and both instances involved the nationalization of U.S. property interests by the Castro regime. \textit{See infra} notes 34-37.
\item The federal courts of appeals have disagreed whether a treaty or valid agreement exception to the act of state doctrine exists. \textit{Compare} \textit{Libyan American Oil Co. v. Socialist People's Libyan Arab Jamahiriya}, 684 F.2d 1032 (D.C. Cir. 1981) (refusing to enforce an otherwise binding arbitration agreement between the plaintiff and Libya) \textit{with} \textit{Kalamazoo Spice Extraction Co. v. Provisional Military Gov't of Socialist Ethiopia}, 729 F.2d 422 (6th Cir. 1984) (enforcing a treaty between the United States and Ethiopia forbidding takings without adequate compensation).
\item In \textit{Citibank}, the Castro government seized all Cuban branches of the petitioner's bank without just compensation. Respondent defaulted on a loan by petitioner, and petitioner sold the loan collateral and applied the proceeds toward the loan. The proceeds, however, exceeded the unpaid balance of the loan and respondent sought to recover the excess. The petitioner counterclaimed for damages resulting from the expropriation of its property by the Cuban government. The Court distinguished \textit{Sabbatino} because of the differing foreign policy positions of the executive branch in each case. In \textit{Sabbatino} the executive branch took a neutral position, while in \textit{Citibank} it expressly represented to the Court in a \textit{Bernstein} letter that it did not support application of the act of state doctrine. Thus, the \textit{Citibank} opinion focused on the \textit{Bernstein} exception as a valid exception to the doctrine. \textit{See infra} note 37.
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\textsuperscript{32} 406 U.S. 759 (1972). In \textit{Citibank}, the Castro government seized all Cuban branches of the petitioner's bank without just compensation. Respondent defaulted on a loan by petitioner, and petitioner sold the loan collateral and applied the proceeds toward the loan. The proceeds, however, exceeded the unpaid balance of the loan and respondent sought to recover the excess. The petitioner counterclaimed for damages resulting from the expropriation of its property by the Cuban government. The Court distinguished \textit{Sabbatino} because of the differing foreign policy positions of the executive branch in each case. In \textit{Sabbatino} the executive branch took a neutral position, while in \textit{Citibank} it expressly represented to the Court in a \textit{Bernstein} letter that it did not support application of the act of state doctrine. Thus, the \textit{Citibank} opinion focused on the \textit{Bernstein} exception as a valid exception to the doctrine. \textit{See infra} note 37.
\textsuperscript{33} \textit{See infra} note 37.
\textsuperscript{34} 425 U.S. 682 (1976).
eigns. Writing for the plurality, Justice White reasoned that “more discernable rules of international law have emerged with regard to commercial deals of private parties in the international market.”

Despite the Court’s inability to agree on exceptions to the act of state doctrine, some lower federal courts and commentators have argued that both bribery and antitrust should be exceptions to the doctrine. The lower federal courts, however, are divided on whether to inquire into

35. In *Dunhill*, the Cuban government confiscated the business and assets of the five leading manufacturers of Havana cigars. The foreign government appointed intervenors to occupy the seized businesses. Dunhill, an U.S. importer, mistakenly paid sums due for accounts receivable which accrued prior to the intervention. The former owners demanded payment from Dunhill who in turn sought to recover its mistaken payments from the Cuban intervenors. The intervenors claimed that the repayment obligation was a debt whose situs was in Cuba and that their refusal to pay was an act of state.

Four members of the Court (the Chief Justice, Justice White, Powell and Rehnquist) concluded that the refusal to pay did not constitute an act of state because of the commercial, as opposed to governmental, nature of the transaction. The plurality justified its position on two grounds. First, the plurality analogized to the commercial activity exception to the doctrine of sovereign immunity. *Id.* at 698. Second, the plurality noted that there is a greater consensus as to the rules governing the commercial dealings of private parties in the marketplace compared to the rules concerning governmental powers. *Id.* at 704.

36. *Id.*

37. A majority of the Supreme Court has never endorsed the Bernstein exception, see *supra* note 11, as a valid bar to act of state immunity. In *Sabbatino*, the Court expressly avoided ruling on the validity of the exception. 376 U.S. at 420. In *Citibank*, however, three justices (Rehnquist joined by the Chief Justice and White) adopted the Bernstein exception, while two justices (Douglas and Powell) decided the case on other grounds and four justices (Brennan joined by Stewart, Marshall and Blackmun) unequivocally rejected the Bernstein exception. The issue does not arise very frequently, however, because the State Department has issued only seven Bernstein letters since 1954.


Others have relied on the policy argument that the United States has a great interest in the effective enforcement of the Foreign Corrupt Practices Act, see *supra* note 9. See *Sage Int'l, Ltd. v. Cadillac Gage Co.*, 534 F. Supp. 896, 909 (E.D. Mich. 1981); Comment, *Should There Be a Bribery Exception to the Act of State Doctrine?* 17 CORNELL INT. L. REV. 401, 419 (1984). But see Note, *Prohibiting Foreign Bribes: Criminal Sanctions for Corporate Payments Abroad*, 10 CORNELL INT. L. REV. 231, 235-36 (1977) (quoting *Foreign and Corporate Bribes: Hearings on S. 3133 Before the Senate Committee on Banking Housing and Urban Affairs*, 94th Cong. 2d Sess. 84-85 (1976) (testimony of John McClay)). A special review committee investigating questionable payments made by multinational corporations testified before the Senate Committee that it “could not identify a single country where a bribe of a government official to induce a government to enter into a contract with any company for the supply of its product to that government was not illegal in that country.”
the motivation behind a foreign government's actions. For example, in *Hunt v. Mobil Oil Corp.* the Second Circuit espoused an expansive interpretation of the doctrine by foreclosing judicial inquiry into the motive of a foreign government because to do so would inevitably involve a determination of the validity or legality of the government's actions. In *Hunt*, a small oil producer claimed that Mobil and six other competitors conspired among themselves, in violation of U.S. antitrust laws, and with the Libyan government, to eliminate Hunt from competition by Libyan nationalization of Hunt's oil properties. Hunt challenged only its competitor's actions in catalyzing the government's response and not the validity of Libya's taking itself. The court dismissed Hunt's claim under the act of state doctrine because it reasoned that in order to properly adjudicate the matter its inquiry would necessarily involve an examination of the Libyan government's motive. Because an examination into motive might raise doubts about the validity of the taking, the *Hunt* court abstained from reviewing the merits of the case.

In *Industrial Investment Development v. Mitsui & Co., Ltd.* the Fifth Circuit expressly rejected *Hunt*'s dual protection of motivation and validity and held that precluding all inquiry into the motivation behind the sovereign act would uselessly thwart legitimate U.S. goals if adjudication would not result in an embarrassment to the executive branch. In *Mitsui* the court concluded that the Indonesian government's revocation of the plaintiff's timber license, allegedly due to the defendant's monopolistic tactics, did not raise sufficient foreign policy concerns to trigger the application of the act of state doctrine. In finding an antitrust exception to the doctrine contrary to the per se approach advanced in *Hunt*, the *Mitsui* court stated that motivation and validity are not equally protected

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39. 550 F.2d 68 (2d Cir. 1976).
41. *Id.* at 70-72.
42. *Id.* at 70. The complaint did not allege corruption on the part of Libya, nor did it name any Libyan officials as defendants. *Id.*
43. *Id.* at 77-78. The court relied heavily on a State Department pronouncement characterizing the event as a political reprisal and economic coercion. Libya proclaimed that its purpose was to give the United States a "big hard blow in the Arab area on its cold, insolent face." *Id.* at 73 (quoting *Hearings before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Policy Relations*, 93rd Cong., 2d Sess., pt. 6, at 316-17 (1974) (statement of the State Department)).
44. 594 F.2d 48, 55 (5th Cir. 1979).
45. *Id.*
by the act of state doctrine. In *Mitsui* the court allowed the question concerning the foreign government’s motivation only to the extent of measuring damages. Because the public interest in preserving and maintaining effective competition in this country outweighed the minimal political repercussions which might result from inquiry into the motive behind the granting of a timber license, the court concluded that the act of state doctrine was inapplicable.

Similarly, in *Williams v. Curtiss-Wright Corp.*, the Third Circuit refused to invoke the act of state doctrine to immunize the anti-competitive conduct of a defendant who dealt in a market composed of foreign governments. In *Curtiss-Wright*, the court distinguished *Hunt* as an expropriation case but nevertheless criticized its broad holding. The court focused on the degree of intervention required to meet the plaintiff, Curtiss-Wright’s, burden of proof. The court recognized that the burden would require obtaining direct evidence from the foreign government. However, because the complaint treated the foreign sovereigns as victims, not co-conspirators, the court concluded that Curtiss-Wright’s challenges did not question the validity of the foreign governments’ acts but rather the motivation behind them.

To the contrary, in *Clayco Petroleum Corp. v. Occidental Petroleum Corp.*, the Ninth Circuit embraced the *Hunt* rationale in the bribery context. There, Clayco claimed that Occidental bribed government officials of Umm Al Qaywayn to secure a valuable off-shore oil concession. Clayco’s complaint implicated the government of Umm Al Qaywayn as an active participant in the scheme. In holding that the act of state doctrine barred Clayco’s suit, the court noted that the doctrine would

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46. *Id.*
47. *Id.*
48. *Id.* at 55-56. See also *U.S. Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 704 (1962) (a conspiracy to monopolize U.S. commerce is not outside the reach of the Sherman Act just because part of the conduct occurred in a foreign country).
49. 694 F.2d 300 (3d Cir. 1982).
50. *Id.* at 301. Defendant’s actions purportedly led to the boycott of plaintiff’s products by numerous foreign governments.
51. *Id.* at 304 n.5.
52. *Id.*
53. *Id.* at 303-04.
54. *Id.* at 304.
55. 712 F.2d 404 (9th Cir. 1983).
56. *Id.* at 405.
57. *Id.* at 406.
not apply unless the sovereign activity affected the public interest. 58 The court decided that the case did implicate public interests because the underlying dispute involved a sovereign decision affecting important natural resources. 59 Thus, in declining to follow Mitsui, the Clayco court concluded that it was unwilling to resolve issues requiring it to judge the motivations behind a foreign sovereign’s acts. 60

In Environmental Tectonics v. Kirkpatrick, Inc. 61 the Third Circuit rejected the strict view of Clayco and Hunt and held that the act of state doctrine does not bar a suit which at most requires it to examine the motives behind, rather than the legality of, a foreign government’s acts. 62 Although the nature of Nigeria’s act constituted a sufficiently formal expression of the government’s public interest, 63 the court concluded that its inquiry did not focus on the validity or legality of the Nigerian government’s acts. Accordingly, the court employed the flexible approach enunciated in Sabbatino. 64

First, the court accorded the position of the State Department in its Bernstein letter 65 significant weight, finding that the district court had misconstrued the intent of the letter. 66 Next, the court reaffirmed Curtiss-Wright 67 to illustrate its continuing unwillingness to allow litigants to shield themselves from the consequences of United States regulatory

58. Id. (citing Int’l Ass’n of Machinists and Aerospace Workers v. OPEC, 649 F.2d 1354, 1360 (9th Cir. 1981), cert. denied, 454 U.S. 1163 (1982).
59. Id. at 407. The Clayco court reconciled this factor with another decision in the Ninth Circuit using the act of state doctrine to bar a similar cause of action. See Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331 F. Supp. 92 (C. D. Cal.), aff’d, 461 F.2d 1261. (9th Cir. 1971), cert. denied, 409 U.S. 950 (1972) (involving an act of state bar to review antitrust claims spurred by a foreign sovereign’s issue of a fraudulent territorial decree).
60. 712 F.2d at 406. The court refused to pass on the validity of the commercial exception to the doctrine, id. at 407, and found that the bribery exception did not extend to private lawsuits. Id. at 409.
61. 847 F.2d 1052 (3d Cir. 1988).
62. Id. at 1052.
63. Id. at 1058. The court acknowledged that contracts are usually considered commercial acts; however, it found the commercial exception inapplicable because the bidding system of defense contracts is by its nature governmental. Id. at 1059.
64. See supra notes 27-28 and accompanying text.
65. See supra note 11.
66. 847 F.2d at 1059. The district court relied on one line in the letter stating that the court should proceed with due care and caution to justify complete abstention. The Third Circuit, however, concluded that the lower court read this line out of context with the rest of the letter which expressly stated that the State Department would allow adjudication under these facts.
67. See supra notes 49-54 and accompanying text.
policies by merely doing business abroad. Finally, the court concluded that judicial inquiry into motive did not raise the type of institutional conflict between the executive and judicial branches that would justify applying the act of state doctrine.

Although correctly recognizing a bribery exception to the act of state doctrine, the *Environmental Tectonics* court employed both incomplete and flawed reasoning. First and foremost, though the court purported to follow *Sabbatino*, it failed to consider several relevant factors. For instance, the court ignored the lack of consensus in international law on the impropriety of bribery. One could argue, therefore, that absent global consensus regarding the impropriety of bribery to procure government defense contracts, the involvement of Nigerian government officials alone should implicate the doctrine. Hence, under *Sabbatino* and its progeny, such foreign government involvement could outweigh the United States interest in stemming the growing tide of international bribery regardless of whether the inquiry examined motive or validity.

Second, the court improperly focused on the nature of the act rather than the role of the sovereign. The court erroneously followed *Curtiss-Wright* on the oversimplified ground that both cases involved government contracts. This reliance is misplaced because the court failed to note a critical distinction between the two cases. In *Curtiss-Wright*, the foreign governments were victims, rather than active participants in the scheme. Moreover, because the foreign governments in *Curtiss-Wright* were guilty of no wrongdoing, an investigation in that case would neither unduly embarrass those sovereigns or interfere with the United States’ foreign policy. Again, however, in *Environmental Tectonics*, the Nigerian government played an integral role in the illicit scheme. Although this factor militates against adjudicating the case, the court failed to address the unique issues raised by the bribery allegation. In particular, the

68. 847 F.2d at 1062.
69. Id.
71. Although it may be illegal in the United States and other western nations to procure contracts through bribery, see supra note 9 and accompanying text, it is not necessarily recognized as such in Nigeria, a third world nation. But see supra note 38 and accompanying text (discussing the possibility of an international recognition of bribery as a crime).
72. The *Clayco* court considered this argument. See supra notes 55-60 and accompanying text.
73. See supra notes 49-54 and accompanying text.
74. See supra note 48 and accompanying text.
court never addressed the issue of whether the acceptance of a bribe constitutes an act of state.

*Environmental Tectonics* provides an essential countervailing precedent to the *Clayco* decision. *Clayco* effectively foreclosed all judicial inquiry into bribery and justly has been criticized as providing a shield for corruption and bribery. Although *Environmental Tectonics* is the first case to recognize bribery as a legitimate exception to the act of state doctrine, its specious conclusion may not hold much merit for future reviewing courts. If in fact bribery is a crime universally condemned, supran bribery may be a valid exception to the act of state doctrine. However, the *Environmental Tectonics* decision does not focus on this factor in carving such an exception, but instead focuses on the limited embarrassment an inquiry into motive will have on the Nigerian government. If later courts considering bribery as an exception to the act of state doctrine avoid the *Environmental Tectonics* pitfall and look to the *Sabbatino* orthodoxy, they may create a more solid, lasting bribery exception to the act of state doctrine.

*D.E.B.*

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75. *See supra* note 9.