

## In re Philippine National Bank: Transcending Traditional Act of State Doctrine Limitations

*Pedro Roman M. Ariston*

*50 ATENEO L.J. 1 (2005)*

SUBJECT(S): PUBLIC INTERNATIONAL LAW

KEYWORD(S): ACT OF STATE DOCTRINE

The Article stems from the case of *Philippine National Bank v. U.S. Dist. Ct. for the Dist. Of Haw.* In this case, the Philippine Supreme Court's decision to forfeit the Marcos Swiss assets in favor of the Republic of the Philippines was challenged. This embroiled the Philippine National Bank (PNB) in a long and protracted contempt proceeding before the United States District Court for the District of Hawaii. The United States Court of Appeals for the Ninth Circuit eventually granted PNB's petition for mandamus relief. This grant raised legal issues concerning the act of state doctrine. The Article therefore seeks to tackle these issues by first presenting the factual background of the case then discussing the arguments of the contending parties that relate to the act of state doctrine. Lastly, the Article highlights the Court's holding especially as it resolved the novel issues concerning the application of the act of state doctrine.

The main legal issue raised which involves the act of state doctrine was whether the act of state doctrine applies to invalidate the orders issued by the Hawaii District Court. The Ninth Court eventually resolved this by declaring that such orders did indeed violated the act of state doctrine. While the act of state doctrine was originally deemed to arise from international law, it has been viewed as a function of the constitutional separation of powers. This view thus reflects the Court's belief that the engagement of the judicial branch in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs. The Forfeiture decision of the Philippine Supreme Court is deemed to qualify as an act of state as the doctrine is not limited to governmental acts taken by the executive or legislative branch of the government. By providing a thorough explanation of the legal basis for such a decision, the Article provides a better understanding of the application of the act of state doctrine.