

Note on the Aftermath of Sabbatino

The passage below explains the “Sabbatino Amendment,” which was effective in relation to the Sabbatino case itself, but has subsequently been construed very narrowly by the courts. The Helms-Burton Act of 1996 includes a provision ousting the act of state doctrine in litigation under this Act, but this provision has not (yet) been tested in the courts.

The Reaction to Sabbatino. It should be no surprise that the *Sabbatino* judgment evoked an uproar in the U.S. Congress, which promptly passed what became known as the *Sabbatino* or Second Hickenlooper Amendment to the Foreign Assistance Act of 1964. The amendment includes the following language:

Notwithstanding any other provision of law, 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 right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principles of compensation and the other standards set out in this subsection: Provided, that this subparagraph shall not be applicable (1) in any case in which an act of a foreign state is not contrary to international law or with respect to a claim of title or other right acquired pursuant to an irrevocable letter of credit of not more than 180 days duration issued in good faith prior to the time of confiscation or other taking, or (2) in any case with respect to which the President determines the application of the act of state doctrine is required in that particular case by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf in that case with the court.

22 U.S.C. § 2370(e)(2)

On remand, the Southern District Court in New York followed the dictate of the *Sabbatino* Amendment and dismissed plaintiff’s complaint. The Second Circuit affirmed, while the Supreme Court denied *certiorari*, effectively permitting itself to be reversed by Congress. *Banco Nacional de Cuba v. Farr*, 243 F.Supp. 957 (S.D.N.Y.1965), *aff’d*, 383 F.2d 166 (2d Cir.1967), *cert. Denied*, 390 U.S.956 86 S.Ct. 1038, 19 L.Ed.2d 1151 (1968).