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CASE COMMENT: *The Phillipine Admiral*

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The Philippine Admiral—The Privy Council of the British Commonwealth adopted the restrictive theory of sovereign immunity in holding that a State-owned merchant ship engaged in ordinary commercial activity is not entitled to immunity in an action in rem.

INTRODUCTION

The growth during the last century of State commercial ventures established a trend toward limiting sovereign immunity[1] and allowing actions by private parties against foreign States when claims arose out of those commercial activities.[2] In 1919, the British Court of Appeal ruled in *The Porto Alexandre*[3] that a State-owned trading vessel which was in the possession of a foreign government when it was arrested was entitled to immunity. Since that decision, the theory of absolute immunity of State-owned commercial trading vessels had been adhered to by the British judiciary—despite widespread criticism by British legal scholars,[4] the jettisoning of the doctrine by nearly all other Western nations,[5] and the adoption of the Brussels Convention of 1926[6]

1. "Sovereignty is that broad, umbrella-like concept that attaches to nationhood and is the basis of all the immunities that inure to a foreign state and prevent jurisdiction over that state in another nation's courts." Note, *Jurisdictional Immunities of Foreign States*, 23 DE PAUL L. REV. 1225 n.4 (1974). Three forms of "immunity" arise from the concept of sovereignty: (1) diplomatic immunity; (2) the act of state doctrine; and (3) sovereign immunity which relates to the acts and effects of acts of a foreign State in and on another State. From this third principle, two conflicting theories of immunity have arisen: absolute immunity and restrictive immunity. *Id.*

2. *See generally* Schmitthoff & Woolridge, *The Nineteenth Century Doctrine of Sovereign Immunity and the Importance of the Growth of State Trading*, 2 J. INT'L L. & POL. 199 (1972).

3. [1920] P. 30 (C.A. 1919).

4. For an ongoing criticism of the British law of sovereign immunity, see Mann: 12 MOD. L. REV. 494 (1949), 15 MOD. L. REV. 220 (1952), 18 MOD. L. REV. 184 (1955), 20 MOD. L. REV. 273 (1957), 21 MOD. L. REV. 165 (1958), 27 MOD. L. REV. 81 (1964), 36 MOD. L. REV. 18 (1973).

5. Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 702 n.15 (1976). *See* Lauterpacht, *The Problem of Jurisdictional Immunities of Foreign States*, 28 BRIT. Y.B. INT'L L. 220, 250-72 (1951). *See generally* SUCHARITKUL, STATE IMMUNITIES AND TRADING ACTIVITIES IN INTERNATIONAL LAW (1959) [hereinafter cited as SUCHARITKUL]. Although the countries of Eastern Europe continue to adhere to the theory of absolute immunity, they have agreed to submit themselves to foreign jurisdiction via a series of bilateral treaties with Western States. *See* Lissitzyn, *Sovereign Immunity as a Norm of International Law*, in TRANSNATIONAL LAW IN A CHANGING SOCIETY: ESSAYS IN HONOUR OF PHILIP C. JESSUP 188, 192-93 (W. Friedmann ed. 1972); SUCHARITKUL at 99, 152-61.

6. Convention for the Unification of Certain Rules Relating to the Immunity of State-owned Vessels, *done* Apr. 10, 1926, 176 L.N.T.S. 199 [hereinafter cited as 1926 Convention]. *See* note 36 and accompanying text *infra*.

and the European Convention on State Immunity of 1972,[7] which severely limited State immunity.

In *The Philippine Admiral*,[8] the Judicial Committee of the Privy Council[9] dealt for the first time with the question of whether the theory of absolute immunity should properly encompass commercial activities of a foreign State against actions in rem.

I. FACTS

The *Philippine Admiral* was owned by the Government of the Republic of the Philippines. The cargo ship was constructed for the Republic by a Japanese shipbuilding company as part of the Japanese reparations for damages inflicted on Filipino property during World War II.[10] The eventual owner of the ship was intended to be the Liberation Steamship Company [hereinafter referred to as Liberation], a Filipino corporation.[11] In November 1960, the Reparations Commission, an agency of the Philippine Government, contracted for the conditional sale of the ship to Liberation with payments to be made in installments. The Commission was to hold title to the vessel until final payment. If default occurred, the Commission was entitled to immediate possession of the vessel; all prior sums paid by Liberation were to be considered as rent. By 1973, Liberation was seriously in arrears.[12]

In December 1972, while the *Philippine Admiral* was being repaired in Hong Kong, Liberation chartered the ship to the Telfair Shipping Corporation [hereinafter referred to as Telfair]. A dispute between Liberation and Telfair over which party was to

7. European Convention on State Immunity, *done* May 16, 1972, 3 COUNCIL OF EUROPE, EUROPEAN CONVENTIONS AND AGREEMENTS 28 (Europ. T.S. No. 74), 11 INT'L LEG. MAT'S 470 (1972) [hereinafter cited as 1972 Convention]. *See* 12 COLUM. J. TRANSNAT'L L. 130 (1973); notes 38, 40, & 41 and accompanying text, *infra*.

8. [1976] 2 W.L.R. 214 (P.C.), *aff'g* [1975] 3 C.L. 32 (Hong Kong Sup. Ct.).

9. The Judicial Committee of the Privy Council is the court of last resort for appeals from the British colonies, protectorates, and trust territories. *See, e.g.*, O.H. PHILLIPS, CONSTITUTIONAL AND ADMINISTRATIVE LAW 635-40 (5th ed. 1973).

10. By a 1956 treaty, Japan agreed to provide $500 million in goods and services upon request by the Philippine Government and acceptance by Japan. The Philippine Reparations Law of 1957 established: (1) a mission in Japan as the agent of the Philippine Government to carry out the agreement by procuring goods and services, and (2) a Reparations Commission to administer the acquisition, utilization, and distribution of the goods and services. [1976] 2 W.L.R. at 217-18.

11. The Philippine Government ordered that no goods obtained from Japan as reparations were to be leased, sold, or supplied to anyone other than a Philippine citizen or to an entity wholly owned by Philippine citizens. *Id.*

12. [1976] 2 W.L.R. at 218-19.

pay for the repairs led to the purported cancellation of the charter party by Liberation. Telfair commenced an action in rem for damages for breach of contract. In May and September 1973, Wallem Shipping Limited, Hong Kong brokers and shipping agents, instituted writs in rem for goods supplied and disbursements made.[13]

Pursuant to the Telfair action, the ship was arrested. Due to the costs of maintaining the vessel under arrest and because Liberation had made no attempt to procure its release, the Registrar of the Hong Kong Supreme Court obtained an order for the appraisal and sale of the ship with the proceeds to be paid to the Court. Upon receiving notice of the Court order, the Reparations Commission declared the vessel repossessed and moved that the writs be set aside on the ground of sovereign immunity.[14]

The motion was granted by Chief Justice Briggs of the Hong Kong Supreme Court. The Chief Justice held that although the *Philippine Admiral* was engaged in commercial transactions and was not in the public service of the Philippines, the Republic was entitled to immunity since it was the owner of the ship and had an immediate right to possession.[15] The full Court unanimously reversed the Chief Justice, finding no grounds for the claim of immunity.[16] The Philippine Government then paid a bail bond to procure the vessel's release.[17]

The Judicial Committee of the Privy Council took jurisdiction of the case and sought to answer three questions: 1) Should *The Porto Alexandre* be followed? 2) If not, was the *Philippine Admiral* "more" than a mere trading ship and thus still entitled to immunity? 3) If *The Porto Alexandre* is followed, should absolute immunity be denied nevertheless since the Republic itself did not breach any contracts, was not liable for the breach, and did not have possession or control of the vessel when the breach occurred?[18]

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13. *Id.* at 219.

14. *Id.* at 219-20.

15. Chief Justice Briggs held that he was bound by the precedent set by *The Porto Alexandre. Id.* at 220-21.

16. The grounds for reversal were: (1) the *Philippine Admiral* was regarded as an ordinary trading vessel rather than a vessel in the public service of the Philippines; (2) *The Porto Alexandre* did not apply since in that case the Portuguese Government was "in possession of and operating the ship," while in this case, Liberation, a private company, was in possession of the ship and was operating it for its own purposes; and (3) the case was similar to *Republic of Mexico v. Hoffman*, 324 U.S. 30 (1945), where sovereign immunity was not granted. *Id.* at 221.

17. *Id.*

18. *Id.* at 221-22.

II. ANALYSIS

A. The Porto Alexandre *and the Doctrine of Absolute Immunity*

In order to determine if the theory of absolute immunity as expressed in *The Porto Alexandre* should be followed, Lord Cross, writing for the Privy Council, surveyed all prior cases and international conventions involving State immunity which influenced British law. The earliest British case reviewed by Lord Cross was *The Charkieh*,[19] decided in 1873. There, in an action in rem, the defense of sovereign immunity was denied to the Khedive of Egypt on the ground that he was not a sovereign prince. The admiralty court stated further that even if he were a sovereign, he lost his immunity by assuming the character of a trader—the Khedive's ship was chartered out to a private individual and was involved in ordinary commercial activities. Sir Robert Phillimore included the following far-sighted dictum in his opinion:

> No principle of international law . . . has gone so far as to authorize a sovereign prince to assume the character of a trader, when it is for his benefit; and when he incurs an obligation to a private subject to throw off, if I may speak, his disguise, and appear as a sovereign, claiming for his own benefit, and to the injury of a private person, for the first time all the attributes of his character.[20]

The opinion distinguished proceedings in rem from proceedings in personam and did not question the doctrine of absolute immunity for actions in personam.

Sir Robert followed his own dictum to deny in rem immunity in an 1879 case, *The Parlement Belge*.[21] There, a packet owned by the Belgian King, manned by his employees, and flying the Belgian flag, carried mail and passengers between Belgium and England. Sir Robert held that no immunity could be granted because the *Parlement Belge* was partially engaged in commerce.

The Court of Appeal reversed Sir Robert and established the following general principle of absolute immunity:

> [A]s a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign State to respect the independence and dignity of every other State, each and every one declined to exercise by

19. [1873] L.R. 4 Adm. & Eccl. 59.
20. *Id.* at 99-100.
21. [1879] 4 P.D. 129, *rev'd*, [1880] 5 P.D. 197 (C.A. 1878).

> means of its courts any of its territorial jurisdiction over the person of any sovereign or ambassador of any other State, or over the public property of any State which is destined to public use . . . .[22]

Lord Justice Brett ventured that "[t]he mere fact of the ship being used *subordinately* and *partially* for trading purposes does not take away the general immunity."[23] Indirectly, this holding of *The Parlement Belge* would prove to be central to the sovereign immunity controversy for the next century.

In *The Porto Alexandre*,[24] decided in 1920, the ship in question was the property of the Portuguese Government, but was used for commercial trading voyages earning freight. The Court of Appeal there decided that the situation was indistinguishable from *The Parlement Belge*; no action could be maintained against the ship. Thus, the Court interpreted *The Parlement Belge* as requiring a grant of immunity for a State-owned ship even if it was operated *substantially* for ordinary trading purposes.

The Porto Alexandre was the bedrock of the Philippine Government's defense in the instant case. However, Lord Cross held that *The Porto Alexandre* was "incorrectly decided," having misinterpreted *The Parlement Belge*.[25] According to Lord Cross, *The Parlement Belge* stood merely for the proposition that a foreign sovereign may not be sued in personam, and that an action in rem may not be brought against a ship used *substantially* for public purposes.[26] In Lord Cross's view, *The Parlement Belge* was not authority to hold that State commercial trading activities are to be regarded as public activities.[27] Therefore, the question remained open as to whether a State-owned vessel used substantially for mere trading purposes would be immune.

Lord Cross relied heavily upon the dissent in a famous case before the House of Lords in 1938: *The Cristina*.[28] There, an ac-

22. [1880] 5 P.D. at 214-15.

23. *Id.* at 220 (emphasis added).

24. [1920] P. 30 (C.A. 1919). In 1926, a conclusion similar to the one reached in *The Porto Alexandre* was reached by the Supreme Court of the United States in Berizzi Brothers Co. v. S.S. Pesaro, 271 U.S. 562 (1926) (absolute immunity attaches to State-owned commercial ships). *Contra*, RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 69 (1965).

25. [1976] 2 W.L.R. at 224-25.

26. *Id.* at 223.

27. *Id.* at 222-23.

28. Compania Naviera Vascongada v. S.S. Cristina (The Cristina), [1938] A.C. 485.

tion was brought to obtain the return of a privately-owned vessel which the Spanish Republican Government had requisitioned on the high seas before it docked in England. The Law Lords unanimously agreed that the Spanish Government could not be impleaded and should be granted immunity. The lasting importance of the case is the clearly defined disagreement of the Law Lords over *The Porto Alexandre* and the extent of sovereign immunity. Lord Atkin made the often repeated statement[29] that according to well-settled English law, sovereign immunity attaches to both actions in rem and actions in personam. Lord Maugham, on the other hand, cited the Brussels Convention of 1926[30] and pointed out that *The Parlement Belge* did not imply that State-owned ships used for purely commercial purposes were entitled to immunity.[31]

Later dicta of the House of Lords cast further doubt on Lord Atkin's view of *The Parlement Belge* and *The Porto Alexandre.* Viscount Simon, for the Law Lords, noted the inconsistency of these past decisions in his dissenting opinion in *Sultan of Johore v. Abubakar Tunku Aris Bendahar*:[32]

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29. Lord Atkins set forth the following two principles:

> The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages.
>
> The second is that they will not by their process, whether the sovereign is a party of the proceedings or not, seize or detain property which is his or of which he is in possession or control.

[1938] A.C. at 490.

30. *See* note 36 *infra.*

31. In the years after *The Christina*, the theory of absolute immunity was extended, especially where foreign State agencies were involved. However, there were often forceful separate opinions which were increasingly critical of the British view of immunity. *See, e.g.*, Baccus S.R.L. v. Servicio Nacional del Trigo, [1957] 1 Q.B. 438 (immunity granted to corporation connected with Canadian province); Krajina v. The Tass Agency, [1949] 2 All E.R. 274 (C.A.) (agency of the Soviet Union granted immunity despite incorporation); Rahimtoola v. Nizam of Hyderabad, [1958] A.C. 379; United States of America v. Dollfus Mieget Cie. S.A., [1952] A.C. 582.

Soon after the decision of the Court of Appeal in *Krajina v. The Tass Agency*, the then Lord Chancellor, Lord Jowitt, organized an inter-departmental committee (the Somervell Committee) to issue a report determining if organs of foreign States received a wider immunity than was necessary in international law. After more than two years, the committee disbanded, making no recommendations because of sharp differences of opinion among committee members. The inability of the committee to make any positive proposals for changes brought renewed criticism. *See* Mann, *Sovereign Immunity*, 18 MOD. L. REV. 184, 186 (1955); Sinclair, *The European Convention on State Immunity*, 22 INT'L & COMP. L.W. 254, 261 (1973).

32. [1952] A.C. 318 (P.C.). This case involved an unsuccessful attempt by the Sultan to obtain immunity from actions arising under decrees of the wartime Japanese

> Their Lordships do not consider that there has been finally established in England . . . any absolute rule that a foreign independent sovereign cannot be impleaded in our courts in any circumstances. Indeed, a great deal of reasoning in the judgment in *The Parlement Belge* would be inexplicable if there could be applied a universal rule without possible exception to the effect that, once the circumstance of a foreign sovereign being impleaded against his will can be established, a proceeding necessarily becomes defective by virtue of that circumstance alone.[33]

Although not pursued by Lord Cross, the above reasoning leads to the conclusion that the English rule of absolute immunity was never actually "absolute."

B. *The New British Rule*

Having determined that the question was open regarding the immunity of State-owned vessels engaged principally in ordinary commercial trading, Lord Cross was required to formulate the new English rule. He placed considerable weight upon the Brussels Convention of 1926[34] [hereinafter referred to as 1926 Convention] and the 1972 European Convention on State Immunity[35] [hereinafter referred to as 1972 Convention], both of which the United Kingdom signed but did not ratify.

Article I of the 1926 Convention[36] provides:

> Sea-going ships owned or operated by states . . . as well as the states which own or operate such ships . . . shall be subject . . .

Provisional Government giving certain property to the Sultan. The Law Lords ruled that the Sultan had submitted himself to the jurisdiction of the Japanese courts and that the later proceeding was merely a continuation of the wartime proceeding of the provisional courts. *Id.*

33. *Id.* at 343-44.

34. *See* note 6 *supra.*

35. *See* note 7 *supra.*

36. The celebrated British Admiralty Judge, Sir Maurice Hill, was among the leading figures calling for the elimination of absolute immunity for State commercial vessels. His proposals led to the 1926 Convention. After the Convention was written, difficulties arose over the interpretation of one of the articles in which immunity was granted in actions in rem to private vessels which were operated, but not owned, by a State. Even the British courts did not recognize this immunity; Great Britain therefore refused to ratify the Convention.

The Convention was also criticized because it contained neither provisions for non-maritime trading activities of States nor detailed standards of definitions. By 1938, only thirteen countries had ratified the Convention. The United States, the Soviet Union, France and Great Britain were not among these. However, the Convention can be viewed as a progressive force because its principles were applied by many States in exercising restrictive immunity. SUCHARITKUL at 92-100.

> to the same rules of liability and the same obligations as those applicable in the case of privately-owned ships, cargoes and equipment.[37]

The 1972 Convention[38] limited the scope of sovereign immunity but did not include maritime matters covered by the 1926 Convention. Lord Cross interpreted the involvement by the United Kingdom in the 1972 Convention to mean that the government had not repudiated the earlier Convention's provisions.[39] The 1972 Convention detailed thirteen distinct sets of facts in which the plea of sovereign immunity would not be available.[40] In other than those thirteen cases, the signatory countries' "courts shall be entitled to enter proceedings against states not party to the present convention."[41]

Lord Cross also noted, somewhat critically, the procedure in the United States of seeking a State Department recommendation for the granting or denying of sovereign immunity.[42] Com-

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37. 1926 Convention, art. 1.

38. Austria, Belgium, West Germany, Luxembourg, the Netherlands, Switzerland, and the United Kingdom were signatories to the Convention. 3 COUNCIL OF EUROPE, EUROPEAN CONVENTIONS AND AGREEMENTS, app. at 54 (Europ. T.S. No. 74).

39. [1976] 2 W.L.R. at 232.

40. As summarized by Professor Mann, these thirteen cases arise in proceedings:

(i) which the state itself initiates, albeit by way of certain counterclaims;

(ii) to which the state had agreed to submit;

(iii) in which the state has taken steps relating to the merits;

(iv) which "relate to an obligation of the state which, by virtue of a contract, fails to be discharged in the territory of the state of the forum";

(v) which relate to a contract of employment to be performed in the state of the forum;

(vi) which concern matters arising from the state's participation in a company, association or other legal entity;

(vii) which relate to the industrial, commercial or financial activity of an office, agency or other establishment in the state of the forum;

(viii) which relate to a patent or other industrial property of the defendant state;

(ix) which relate to immovable property in the forum state;

(x) which relate to property arising by way of succession, gift, or *bona vacantia*;

(xi) which relate to redress for injury caused to the person or tangible property in the state of the forum by a wrongdoer present in such territory at the time of the occurrence;

(xii) which relate to arbitration pursuant to a submission in writing;

(xiii) which concern the administration of property in which a contracting state has a right or interest.

Mann, *New Developments in the Law of Sovereign Immunity*, 36 MOD. L. REV. 18, 21-22 (1973).

41. 1972 Convention, art. 24.

42. American courts have felt bound by the determination of the State Department

menting on the so-called "Tate Letter,"[43] he thought it dangerous to defer to the executive on the question of sovereign immunity, for "what may begin by guidance as to the principles to be applied may end in cases being decided irrespective of any principle in accordance with the view of the executive as to what is politically expedient."[44] Though no suggestion was made that the Privy Council seek the advice of the Foreign Office in this case, it may be inferred that any such suggestion would have been received with little sympathy.[45]

Lord Cross concluded that *The Porto Alexandre* should not be followed and that henceforth the doctrine of restrictive immunity would be applied to actions in rem.[46] Lord Cross, in addition to basing his decision on the reasoning of the dissenting opinions in *The Cristina*[47] and the *Sultan of Johore*,[48] also noted that "the trend of opinion in the world outside the Commonwealth since the last war has been increasingly against the appli-

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as to whether sovereign immunity should be granted in a given case. *See, e.g.*, Republic of Mexico v. Hoffman, 324 U.S. 30 (1945); *Ex parte* Republic of Peru, 318 U.S. 578 (1943). For a detailed discussion of this procedure see Lowenfeld, *Litigating a Sovereign Immunity Claim—The Haiti Case*, 49 N.Y.U.L. REV. 377 (1974).

43. The Tate Letter established the restrictive doctrine as the official policy of the State Department. Letter from Jack B. Tate, Acting Legal Advisor of the Department of State, to Philip B. Perlman, Acting Attorney General, May 19, 1952, 26 DEP'T STATE BULL. 984 (1952). The Tate Letter states that the granting of immunity depends on whether the activity is considered *jure imperii* (public act) or *jure gestionis* (commerical act), but did not define the terms. They are usually defined according to the "purpose test"; *i.e.*, whether the purpose of the activity is commercial or public. *See* Victory Transport, Inc. v. Comisaria General, 336 F.2d 354 (2d Cir. 1964), *cert. denied*, 381 U.S. 934 (1965).

The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1330, 1391(f), 1441(d), 1602-11 (U.S. CODE CONG. & AD. NEWS, Dec. 3, 1976), takes the decision out of the jurisdiction of the State Department. Sovereign immunity is presumed unless the case falls under certain defined exceptions, the most important being commercial activity. *Id.* §§ 1604, 1605(a)(2). This activity is distinguished from public activity according to the "nature" of the act. *Id.* § 1603(d). This eliminates the unsatisfactory "purpose" test and the confusion between *jure imperii* and *jure gestionis*. For an analysis of the Act see Atkeson, Perkins & Wyatt, *H.R. 11315, The Revised State-Justice Bill on Foreign Sovereign Immunity: Time for Action*, 70 AM. J. INT'L L. 298 (1976).

44. [1976] 2 W.L.R. at 229, *quoting* Rich v. Naviera Vacuba, S.A., 197 F. Supp. 710 (E.D. Va.), *aff'd*, 295 F.2d 24 (4th Cir. 1961).

45. *See* [1976] 2 W.L.R. at 22.

46. [1976] 2 W.L.R. at 233. Lord Cross felt obligated to answer the "fully argued" third question raised on appeal, *i.e.*, if *The Porto Alexandre* is followed, should immunity be granted? He concluded that although the Republic was not in possession of the ship, nor liable for any of the contracts, immunity would have been granted because the Republic was the ship's owner, and had an immediate right to possession. *Id.* at 234. However, this point should not be interpreted as an affirmance of that case.

47. *See* text accompanying notes 28-31 *supra*.

48. *See* text accompanying notes 32 & 33 *supra*.

cation of the doctrine of sovereign immunity to ordinary trading transactions."[49] However, the boldest reason asserted by Lord Cross was that "[t]heir Lordships themselves think that it is wrong that [absolute immunity] should be so applied."[50]

Lord Cross was not deterred by the lack of a clear-cut dividing line between acts *jure imperii* and acts *jure gestionis*.[51] According to Lord Cross, similar difficulties arise under the absolute theory of sovereign immunity as to whether a defendant is or is not so closely connected with a foreign State as to make the action in substance one against the foreign State. In limiting the effect of *The Philippine Admiral* to actions in rem, Lord Cross invited the British Government to extend restrictive immunity to actions in personam by ratifying the 1926 and 1972 Conventions.[52] Although Lord Cross recognized that applying the absolute theory to actions in personam while applying the restrictive theory to actions in rem produces a "somewhat anomalous" result, he insisted that the Privy Council should not be deterred from applying a theory which is "more consonant with justice."[53]

Having decided to follow the restrictive theory, Lord Cross was required to determine whether the *Philippine Admiral* was a ship *publicus usibus destina* or a mere commercial vessel. Lord Cross, examining its past history and looking to its probable future use as an ordinary merchant ship earning freight by carrying cargoes, concluded that the ship's use was exclusively commercial. Thus, the Philippine Government, as its owner, was not entitled to immunity.[54]

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49. [1976] 2 W.L.R. at 232. However, it appears that the Republic of the Philippines adheres to the absolute theory to the extent that international agreements and international law do not restrict that immunity. *See* Regala, *The Contributions of Philippine Courts in the Development of Public International Law*, 40 PHILIPPINE L.J. 501, 503-04, 508 (1965); Balasbas, *The National Territory of the Philippines: A Brief Study*, 49 *id.* at 505, 516-17 (1974).

50. [1976] 2 W.L.R. at 232.

51. *See* note 43 *supra*.

52. [1976] 2 W.L.R. at 233.

53. *Id.*

54. Lord Cross stated that the decision would have been more difficult had the Republic asserted that the ship would be used only for public purposes in the future. *See* Flota Maritima Browning de Cuba, S.A. v. Canadian Conqueror, [1962] 34 D.L.R.2d 628 (immunity granted where State changed merchant ship from commercial to public use). By this remark, Lord Cross seemed to apply the discredited "purpose" test. *See* note 43 *supra*. Hopefully, clearer guidelines will be formulated in future cases. Without such guidelines the value of the restrictive doctrine might be severely limited. One need only examine past United States decisions to discover inconsistent case law caused by a failure to define standards. See, *e.g.*, Victory Transport, Inc. v. Comisaria General, 366 F.2d 354

CONCLUSION

The formal judicial acceptance of the restrictive theory of sovereign immunity by the United Kingdom in *The Philippine Admiral* finally brings that country into the mainstream of Western legal thought. The decision was largely made possible by a series of dissenting opinions, the first of which was Lord Maugham's in *The Cristina*. Although Lord Cross claimed to be immune from the exigencies of British foreign policy, it must be recognized that all the Common Market countries had earlier abandoned the doctrine of absolute immunity.[55]

The Judicial Committee of the Privy Council clearly indicated that their decision affected only actions in rem. Although *The Philippine Admiral* represents a major development in the British law of sovereign immunity, nevertheless steps remain to be taken by the United Kingdom to fully embrace the restrictive doctrine. This decision should provide the impetus for the British Government to ratify the 1926 Convention and the 1972 Convention; such acts would extend the doctrine to actions in personam and establish clear standards for its application.

Paul Wurm

(2d Cir. 1964), *cert. denied*, 381 U.S. 934 (1965), which tried to enumerate acts *jure imperii*.

55. *See* note 5, *supra*.