

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

volved. But commencing with the Marshall Plan in 1948, Congress has enacted programs of guaranties to American investors in specified foreign countries.⁷⁶³ More relevant to discussion here is that Congress has attached to United States foreign assistance programs various amendments requiring the termination of assistance and imposing other economic inducements where uncompensated expropriations have been instituted.⁷⁶⁴ And when the Supreme Court in 1964 applied the “act of state” doctrine so as not to examine the validity of a taking of property by a foreign government recognized by the United States but to defer to the decision of the foreign government,⁷⁶⁵ Congress reacted by attaching another amendment to the foreign assistance act reversing the Court’s application of the doctrine, except in certain circumstances, a reversal which was applied on remand of the case.⁷⁶⁶

PRESIDENTIAL ACTION IN THE DOMAIN OF
CONGRESS: THE STEEL SEIZURE CASE

To avert a nationwide strike of steel workers that he believed would jeopardize the national defense, President Truman, on April 8, 1952, issued an executive order directing the Secretary of Commerce to seize and operate most of the steel industry of the country.⁷⁶⁷ The order cited no specific statutory authorization but invoked generally the powers vested in the President by the Constitution and laws of the United States. The Secretary issued the appropriate orders to steel executives. The President promptly reported his action to Congress, conceding Congress’s power to supersede his order, but Congress did not do so, either then or a few days later when the President sent up a special message.⁷⁶⁸ The steel companies sued, a federal district court enjoined the seizure,⁷⁶⁹ and the Supreme Court brought the case up prior to decision by the court of appeals.⁷⁷⁰ Six-to-three, the Court affirmed the district court order, each member of the majority, however, contributing an individual opinion as well

⁷⁶³ 62 Stat. 143 (1948), as amended, 22 U.S.C. § 2191 et seq. *See also* 22 U.S.C. § 1621 et seq.

⁷⁶⁴ 76 Stat. 260 (1962), 22 U.S.C. § 2370(e)(1).

⁷⁶⁵ *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

⁷⁶⁶ 78 Stat. 1013 (1964), as amended, 22 U.S.C. § 2370(e)(2), applied on remand in *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 (1968).

⁷⁶⁷ E.O. 10340, 17 Fed. Reg. 3139 (1952).

⁷⁶⁸ H. Doc. No. 422, 82d Congress, 2d sess. (1952), 98 CONG. REC. 3912 (1952); H. Doc. No. 496, 82d Congress, 2d sess. (1952), 98 CONG. REC. 6929 (1952).

⁷⁶⁹ 103 F. Supp. 569 (D.D.C. 1952).

⁷⁷⁰ The court of appeals had stayed the district court’s injunction pending appeal. 197 F.2d 582 (D.C. Cir. 1952). The Supreme Court decision bringing the action up is at 343 U.S. 937 (1952). Justices Frankfurter and Burton dissented.