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*33 AFFIRMING THE LAW OF NATIONS IN U.S. COURTS

An Overview of Transnational Law Litigation

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When the First Congress of the United States met in 1789, it drafted legislation that was to have a profound impact on international law and human rights 200 years later. The Alien Tort Claims Act (ATCA), codified as part of the First Judiciary Act, provides that "[t]he district courts shall have original jurisdiction of any civil action brought by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." [FN1] Despite its contemporary prominence, the legislative history of ATCA remains unclear. Indeed, it has been referred to as "a kind of legal Lohengrin ... no one seems to know whence it came." [FN2]

For almost 200 years, the ATCA lay dormant. Occasional references in the case law failed to generate interest in the act. In 1980, however, a decision by the Second Circuit Court of Appeals in *Filartiga v. Pena-Irala* breathed new life into the statute and signaled the birth of transnational law litigation in the United States.

Since 1980, victims of human rights abuses have filed an increasing number of lawsuits seeking civil remedies for injuries that occur outside the United States. [FN3] The plaintiffs hail from countries such as Argentina, Bosnia, Burma, Chile, China, El Salvador, Ethiopia, Guatemala, Haiti, Indonesia, Nigeria, Paraguay, and the Philippines. The cases allege numerous violations of international law, including arbitrary detention, forced disappearance, torture, extrajudicial killing, genocide, war crimes, and crimes against humanity. Defendants have included foreign government officials, private individuals, foreign governments, and multinational corporations. Several of these lawsuits have resulted in significant damage awards.

While Congress established the statutory mechanisms for transnational law litigation, non-state actors have been the principal catalysts for this litigation. A dynamic network of actors - victims and their families, civil rights organizations, environmental groups, and human rights activists - has used transnational law litigation to seek justice and affirm the law of nations in U.S. courts. [FN4]

*34 The Birth of Transnational Law Litigation

For many years, Dr. Joel Filartiga ran a modest medical clinic that served a largely rural

population in central Paraguay. Throughout his medical career, Dr. Filartiga had criticized the regime of Gen. Alfredo Stroessner for its brutal treatment of indigenous groups in Paraguay. Because of his political activism, Filartiga was often the target of harassment and intimidation by Paraguayan officials. On March 29, 1976, Filartiga's son, Joelito, was kidnapped, brutally tortured, and murdered by Americo Peña-Irala, a police official in Asunción, Paraguay. Peña-Irala presented Joelito's body to his sister Dolly with the admonition, “Here you have what you have been looking for and deserved.” [FN5] Despite the efforts of the Filartiga family, Paraguayan officials did little to investigate the case. Indeed, government officials met the family's calls for action with further threats and intimidation. As a result, Dolly Filartiga moved to the United States to seek political asylum. Dr. Filartiga, however, remained in Paraguay to continue his social work and political activism.

In March 1979, Paraguayan activists notified Dolly Filartiga that Peña-Irala had left Paraguay and was living in New York. She immediately filed a lawsuit against Peña-Irala in federal district court for the Eastern District of New York, alleging wrongful death for the acts of torture committed in Paraguay. The lawsuit was brought under the Alien Tort Claims Act. The district court dismissed the action on jurisdictional grounds, holding that the term “law of nations,” as employed in ATCA, excludes the law that governs a state's treatment of its own citizens. The plaintiffs appealed the district court's ruling to the Court of Appeals for the Second Circuit.

In a groundbreaking ruling, the Second Circuit reversed the district court's ruling and held that the lawsuit could proceed. [FN6] After reviewing numerous multilateral, regional, and national sources of law, the Second Circuit determined that torture was firmly prohibited by international law:

> In light of the universal condemnation of torture in numerous international agreements, and the renunciation of torture as an instrument of official policy by virtually all of the nations of the world (in principle if not in practice), we find that an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations.” [FN7]

This violation can occur regardless of the nationality of the parties.

The Court of Appeals also upheld ATCA's constitutionality, recognizing that U.S. courts “regularly adjudicate transitory tort claims between individuals over whom they exercise personal jurisdiction.” [FN8] In addition, Congress specifically authorized federal court jurisdiction over lawsuits alleging violations of international law by adopting the Alien Tort Claims Act. Because the law of nations formed a part of U.S. common law, this grant of jurisdiction was authorized by Article III of the U.S. Constitution.

Accordingly, the Court of Appeals held that “whenever an alleged torturer is found and served with process by an alien within our borders, [the Alien Tort Claims Act] provides federal jurisdiction.” [FN9] The court concluded that establishing civil liability for such acts “is a small but important step in the fulfillment of the ageless dream to free all people from brutal violence.” [FN10] When the case was remanded, Peña-Irala defaulted and the district court entered a judgment in favor of the Filartiga family and awarded them $10 million in damages. [FN11] Efforts to collect the judgment have been unsuccessful. For the Filartiga family, however, the lawsuit was not about money; it was about justice. [FN12]

The Development of Transnational Law Litigation

The *Filartiga* case established the viability of transnational law litigation in the United States. Federal courts now recognize jurisdiction under the ATCA when three conditions are met: (1) an alien sues; (2) the suit is for a tort; and (3) the plaintiff alleges a violation of international law. As noted by the U.S. State Department, "[h]uman rights lawyers now regularly invoke the [Alien Tort Claims] Act in litigating international human rights principles in United States courts." [FN13] The following four cases provide a sampling of transnational law litigation.

Argentina: *Forti v. Suarez-Mason*

In the late 1970s, a military regime governed Argentina. Political opponents and other "undesirables" were often targeted for threats and abuse by a regime intolerant of political dissent. Thousands of people were detained without charge. Many were killed; others simply disappeared. This period of Argentine history is known as the Dirty War.

On Feb. 18, 1977, the Forti family, including 16-year-old Alfredo, was seized by Argentine military officials as the family prepared to leave the country. Accused of subversive activities, the Forti family was detained without charge for several days. While the five Forti children were ultimately released, their mother was not. She was never seen again.

On July 25, 1977, 16-year-old Debora Benchoam, along with her 17-year-old brother, were abducted from their home in Buenos Aires by military personnel. Debora was detained without charge for more than four years. Her brother was tortured and summarily executed.

In 1986, Alfredo Forti and Debora Benchoam brought a federal lawsuit against former Gen. Carlos Guillermo Suarez-Mason, who was in charge of the military installations where the plaintiffs and their families were kept. Suarez-Mason was served with the complaint while he was in U.S. custody, awaiting extradition to Argentina. The lawsuit alleged several violations of international law, including torture, murder, and prolonged arbitrary detention. [FN14] In 1990, the plaintiffs were awarded $8 million in damages.

35 The Philippines: *In re Marcos Human Rights Litigation

Ferdinand Marcos was elected president of the Philippines in 1965 and re-elected in 1969. As the end of his second term neared, Marcos imposed martial law in an effort to suspend constitutional **protections** and, thereby, perpetuate his rule over the country. Inevitably, human rights abuses followed. Political opponents were routinely **tortured** and summarily executed by military and paramilitary groups. By most accounts, thousands of people fell **victim** to the brutality of the Marcos regime.

After his overthrow in 1986, Marcos established residence in Hawaii. His arrival spawned a number of class action and individual lawsuits alleging massive human rights violations. One lawsuit was filed by a political activist who had been arrested and sent to prison, where he was subjected to regular beatings and mock executions. Another lawsuit was filed by the mother of a student who had been kidnapped and tortured by the military.

During the litigation, the federal courts rejected the claim that Marcos was immune from civil prosecution based on sovereign immunity or former head of state immunity. Ultimately, the Marcos estate was found liable for thousands of acts of torture, summary execution, and disappearance. [FN15] In 1995, the plaintiffs were awarded $2 billion in compensatory and punitive damages.

Ethiopia: *Abebe-Jira v. Negewo*

From 1974 to 1991, Ethiopia was ruled by a military government that threatened, tortured, and summarily executed political opponents. Thousands were killed by military and paramilitary groups. Students were specifically targeted by the government. Violence in urban areas was mirrored by a different kind of violence in rural areas: famine. Through indifference and incompetence, it is estimated that well over 2 million people died of starvation. This period of Ethiopian history is known as the Red Terror.

Elizabeth Demissie was 17 years old when she and her sister were arrested by Kelbessa Negewo, a police official in Addis Ababa, Ethiopia. During her six-month detention, Elizabeth was abused and tortured by Negewo and other prison officials. Although Elizabeth was ultimately released, her sister was never seen again. Edgegayehu Taye suffered similar experiences at the hands of Negewo during her 10-month detention. Following their release, Demissie and Taye fled Ethiopia.

In 1989, Taye encountered Negewo at an Atlanta hotel, where they both worked. In September 1990, Demissie, Taye, and another Ethiopian woman filed a federal lawsuit against Kelbessa Negewo for his participation in acts of torture and other cruel, inhuman, and degrading treatment. After a brief trial, Negewo was found liable for numerous human rights violations. In its findings of fact, the district court concluded that “Negewo was directly involved in the interrogation and torture of each of the plaintiffs in this case. He was personally present during part of the time they were tortured and supervised at least part of the torture.” [FN16] Based upon these findings, the court awarded the plaintiffs compensatory and punitive damages in the amount of $1.5 million.

Yugoslavia: *Doe v. Karadzic*

The fall of the Soviet empire created a power vacuum throughout Eastern Europe, and Yugoslavia was one of the first states to implode. In the former Yugoslav territory of Bosnia-Herzegovina, Radovan Karadzic used ethnicity as a weapon in his efforts to establish a Bosnian Serb state. Torture and mass execution became rampant. Rape and sexual violence were used as weapons of war against women and children. Concentration camps were built to house prisoners segregated by ethnicity and religion. By the summer of 1992, it became evident that the Bosnian Serb leaders were conducting a campaign of ethnic cleansing, seeking to eliminate all traces of the non-Serb population from Bosnia-Herzegovina.

In 1993, several Bosnian women filed two lawsuits against Karadzic in federal district court for the Southern District of New York. The complaints alleged numerous violations of international law, including genocide, war crimes, and crimes against humanity. The plaintiffs' stories mirror the countless human tragedies that had scarred the Yugoslav landscape. One

plaintiff stated that Bosnian Serb soldiers raped and murdered her mother. Another plaintiff described how her infant was taken and brutally killed in front of her family. Several plaintiffs had been victims of rape and other acts of torture. The district court dismissed the lawsuit, holding that international law confines its reach to state actors and does not apply to nonstate actors. As a nonstate actor, Karadzic could not be held liable for violations of international law.

On appeal, the Second Circuit acknowledged the unique quality of the litigation: "[m]ost Americans would probably be surprised to learn that victims of atrocities committed in Bosnia are suing the leader of the insurgent Bosnian-Serb forces in a United States District Court in Manhattan." [FN17] The Court of Appeals disagreed with the district court's analysis of individual responsibility under international law. "Instead, we hold that certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals." [FN18] The court identified several acts that could give rise to international liability when committed by private individuals, including piracy, slave trade, genocide, and certain war crimes. The court added that non-state actors could also be held liable for acts of torture or summary execution if they acted under color of law. In this respect, the court found that the color of law jurisprudence of 42 U.S.C. § 1983 is a relevant guide for determining whether a defendant has engaged in official action for purposes of ATCA litigation. "A private individual acts under color of law within the meaning of § 1983 when he acts together with state officials or with significant state aid. ... The appellants are entitled to prove their allegations that Karadzic acted under color of law of Yugoslavia by acting in concert with Yugoslav officials or with significant Yugoslavian aid." [FN19]

Following the Second Circuit's ruling, Karadzic announced***36** he would no longer participate in the litigation, and default was entered. In fall 2000, two separate juries awarded the plaintiffs verdicts of $745 million and $4.5 billion in damages.

Refining Transnational Law Litigation

The Alien Tort Claims Act has been the principal mechanism for litigating violations of human rights in U.S. courts. The act limits litigation, however, to lawsuits filed by foreign nationals and does not provide jurisdiction for lawsuits against foreign governments. In response to these jurisdictional limitations, Congress adopted legislation to extend civil liability beyond the relatively narrow parameters of ATCA in cases of human rights violations. The adoption of the **Torture Victim Protection Act** (TVPA) and an amendment to the Foreign Sovereign Immunities **Act** (FSIA) have provided **victims** with additional avenues for redress.

Torture Victim Protection Act

In 1991, Congress adopted the **Torture Victim Protection Act** to supplement the remedies available under ATCA and to comply with the Convention against **Torture** and Other Cruel, Inhuman or Degrading Treatment or Punishment. [FN20] The TVPA establishes civil liability for **acts** of **torture** and extrajudicial killing committed abroad. The TVPA provides, in pertinent part, that

> [a]n individual who, under actual or apparent authority, or color of law, of any for-

> eign nation (1) subjects an individual to **torture** shall, in a civil action, be liable for damages to that individual; or (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

According to the Senate report accompanying the TVPA, torture violates standards of conduct accepted by virtually every nation, and prohibition of such actions has attained the status of customary international law. “These universal principles provide little comfort, however, to the thousands of victims of torture and summary executions around the world. ... Despite universal condemnation of these abuses, many of the world's governments still engage in or tolerate torture of their citizens. ...” [FN21] The TVPA was established to address these problems. It was not adopted to replace ATCA; rather, it was designed to work in conjunction with that statute.

The TVPA differs from ATCA in several respects. Unlike ATCA, the TVPA is not limited to plaintiffs who are foreign nationals but allows U.S. citizens to pursue civil actions as well. However, the TVPA allows only civil actions for torture or extrajudicial killing; ATCA contains no such restriction. Whereas ATCA is a jurisdictional statute and provides a cause of action, the TVPA only provides a cause of action. [FN22] The TVPA also contains two additional restrictions. First, a plaintiff must exhaust adequate and available remedies in the place in which the conduct giving rise to the claim occurred. Second, no action shall be maintained unless it is commenced within 10 years after the cause of action arose. This provision may be tolled, however, for good cause.

Foreign Sovereign Immunities Act

Although the Alien Tort Claims **Act** and the **Torture Victim Protection Act** authorize civil actions against public officials and private individuals, they do not provide jurisdiction for actions against foreign governments. The Foreign Sovereign Immunities **Act** is the sole basis for obtaining jurisdiction over a foreign state in U.S. courts. [FN23] Under the FSIA, a foreign state is presumed to be immune from suit unless one or more of the codified exceptions to immunity apply. [FN24] These exceptions include cases of waiver, commercial activity, and certain claims in tort and property. [FN25] Courts have construed these provisions narrowly, leading to relatively few successful lawsuits against foreign governments or their instrumentalities.

In April 1996, Congress amended the FSIA to remove the immunity of foreign states in lawsuits for personal injury or death caused by acts of state-sponsored terrorism, including torture, extrajudicial killing, hostage taking, aircraft sabotage, or the provision of material support or resources for such acts. [FN26] Several conditions must be met in order to bring these lawsuits: (1) the plaintiff or victim must be a U.S. national; (2) the foreign state must have been designated as a state sponsor of terrorism by the U.S. State Department; and (3) the act or provision of material support is engaged in by an official, employee, or agent of the foreign state while acting within the scope of his or her office. If the act occurred within the territory of the foreign state, that state must be offered a reasonable opportunity to arbitrate the claim. A statute of limitations was also imposed: no action can be maintained unless it is commenced within 10 years from the date on which the cause of action arose. All principles of equitable tolling, however, apply in calculating this limitation period. In September 1996,

Congress clarified the FSIA by establishing an explicit cause of action for acts of state-sponsored terrorism. [FN27] In October 1998, the FSIA was further amended to allow awards of punitive damages against foreign governments, although this provision was subsequently repealed in 2000. [FN28]

Recent Developments in Transnational Law Litigation

Since 1980, more than 100 cases of transnational law litigation have been filed in U.S. courts. Recent developments include lawsuits filed against foreign governments for acts of state-sponsored terrorism, efforts to impose civil liability on multinational corporations for their foreign operations, and World War II era litigation for war crimes and crimes against humanity.

Lawsuits against foreign governments

Prior to the 1996 FSIA amendments, lawsuits against foreign governments had generally proven unsuccessful. Few plaintiffs were able to meet the rigorous jurisdictional requirements for suing foreign governments. When Congress***37** removed foreign sovereign immunity in cases of state-sponsored terrorism, the step led to a flurry of lawsuits by victims and their families. Several of these cases resulted in significant damage awards.

In *Flatow v. Islamic Republic of Iran*, for example, a U.S. national was killed by a suicide bombing in Israel. Palestine Islamic Jihad, an organization funded by the Iranian government, claimed responsibility for the attack. In 1997, the father of the victim brought a lawsuit against the Iranian government and several Iranian officials in the federal district court for the District of Columbia. The lawsuit alleged that the Iranian government had provided financial assistance to Palestine Islamic Jihad and that Iran had been named a state sponsor of terrorism by the U.S. State Department, thereby fulfilling the core requirements of the Foreign Sovereign Immunities Act. Although the Iranian government was served with process, it refused to participate in the proceedings, and default was entered. On March 11, 1998, the district court held that the plaintiff had met the requirements of the FSIA and awarded approximately $247 million in compensatory and punitive damages. [FN29] Initial efforts to satisfy the judgment by attaching Iranian government property in the United States proved unsuccessful.

The outcome of the *Flatow* judgment was not unique. Similar judgments were issued in other state-sponsored terrorism cases against Iran and Cuba. [FN30] In each of these cases, however, the plaintiffs were unable to collect their judgments because the foreign government assets were either frozen or otherwise unavailable. In response, Congress adopted the Victims of Trafficking and Violence Protection Act of 2000, which authorized the payment of certain FSIA judgments against Cuba and Iran from the U.S. Treasury. [FN31] As a result, several litigants, including the *Flatow* plaintiffs, received partial payment from the United States in satisfaction of their judgments. To date, over $300 million has been paid to victims of state-sponsored terrorism, although these payments have been limited to a small group of plaintiffs with pre-existing judgments against Cuba or Iran.

Lawsuits against multinational corporations

One of the unique aspects of transnational law litigation has been the recent effort to extend civil liability to multinational corporations. Although these lawsuits have not yet reached the trial stage, several district court and appellate decisions have affirmed the viability of this litigation.

In *Doe v. Unocal*, farmers from the Tenasserim region of Myanmar (formerly Burma) brought a class action lawsuit in federal district court for the Central District of California against Unocal Corp., Total S.A., and two Myanmar government agencies. [FN32] The lawsuit alleged numerous human rights violations, including forced labor, torture, and crimes against humanity arising out of the development of a natural gas pipeline in Myanmar. Following a motion to dismiss, the district court held that the Myanmar government agencies were entitled to sovereign immunity under the Foreign Sovereign Immunities Act. In contrast, the other defendants, including Unocal, were subject to jurisdiction under the Alien Tort Claims Act. With respect to these defendants, the district court held that nonstate actors can be found liable for certain violations of international law even in the absence of state action. In addition, the court added that nonstate actors can also be found liable for violations of international law if they acted under color of law. To determine whether the defendants had acted under color of law, the court looked to the standards developed under 42 U.S.C. § 1983 litigation. The court recognized that state action could be present when there is a substantial degree of cooperation between state officials and private parties.

On Aug. 31, 2000, the district court dismissed the *Unocal* case, holding that Unocal could not be held liable for alleged human rights violations in the absence of its active participation in the atrocities allegedly committed by the Myanmar government. [FN33] Even though the evidence indicated Unocal knew that forced labor was being utilized and that it benefited from this practice, "such a showing is insufficient to establish liability under international law." [FN34] An appeal is pending before the Ninth Circuit Court of Appeals.

While the *Unocal* case remains under review, its recognition of the potential liability of multinational corporations for violations of international law is significant. Specifically, the decision recognizes that corporations may be found liable for their own actions as well as for the actions of partners and joint venturers, including foreign governments. Given the activities of multinational corporations worldwide and their interaction with foreign governments, recognition of potential liability for human rights violations is significant. Similar lawsuits have been filed against several other multinational corporations for their overseas operations, including Chevron, Coca-Cola, Exxon Mobil, Royal Dutch, Shell Transport, and Texaco.

World War II era litigation

Two developments - lawsuits against foreign governments and multinational corporations - are both manifested in the recent litany of World War II era litigation. In the last five years, numerous lawsuits have been filed in the United States in an attempt to obtain compensation for human rights violations committed during World War II. [FN35] Issues ranging from forced prostitution to the use of slave labor have been litigated. Property claims involving bank accounts, insurance policies, real estate, and artwork have also been raised. Most of these lawsuits have been settled or dismissed.

In *Iwanowa v. Ford Motor Co.*, for example, a victim of forced labor filed a lawsuit against Ford Motor Co. and its German subsidiary, Ford Werke A.G. The plaintiff alleged that Ford Motor Co., through its German subsidiary, had profited from the use of slave labor in Nazi Germany during the Second World War. The plaintiff sought the disgorgement of all economic benefits that accrued to the defendants as a result of forced labor, compensation for the reasonable value of services, and damages. While the district court recognized that Ford's "use of unpaid, forced ***38** labor during World War II violated clearly established norms of customary international law," the court found the plaintiff's claims were barred by the statute of limitations, the London Debt Agreement, and were otherwise nonjusticiable. [FN36]

Most World War II era lawsuits have met the same fate. In many cases, litigants have been unable to receive compensation or even an apology for their injuries. In other cases, however, diplomatic negotiations have led to significant settlements by several foreign governments and multinational corporations.

A Critique of Transnational Law Litigation

As transnational law litigation has developed in the United States, so too has the criticism. In a 1995 letter to the federal district court for the Southern District of New York, Radovan Karadzic expressed disdain for the ongoing litigation against him and announced he would no longer participate in the proceedings. His comments to the district court are representative of the criticisms made about transnational law litigation in the United States: "[c]an you really hope to find truth or do justice or protect rights for people in distant nations? Do you really believe that attaching a U.S. dollar sign to human tragedy around the world by empty judgments in uncontested lawsuits is a step toward peace or justice?" [FN37] Karadzic is not alone in his criticism of transnational law litigation. Some commentators have also expressed concern about the foreign policy implications of this litigation. [FN38]

These criticisms are misplaced.

With respect to practical concerns, the federal courts have developed several responses for cases that may implicate U.S. foreign policy interests. For example, courts can use doctrines of judicial abstention, including the political question doctrine or the act of state doctrine, to dismiss lawsuits that are seen as an infringement on the constitutional powers of the President or Congress. [FN39] Even so, the courts are not likely to dismiss a lawsuit in the absence of serious concerns that rise to the level of constitutional implication. [FN40] Courts can also use the doctrine of forum non conveniens to dismiss lawsuits if a foreign government has a properly functioning civil system capable of addressing the claims in a fair and efficient manner. [FN41] Of course, U.S. courts should not take such drastic action in the absence of compelling evidence that foreign courts have the ability and inclination to punish serious violations of international law. In addition, the federal government may submit an amicus curiae brief to the court expressing its position on the potential implications of the litigation on U.S. foreign policy. Indeed, it has done so in several cases.

With respect to normative concerns, this litigation serves several purposes. [FN42] Torture and other forms of persecution are antithetical to human dignity and the rule of law; impunity further undermines them. Punishing human rights violations, even if only through civil

penalties, serves to affirm these values and voice condemnation for such **acts** of violence.

Transnational law litigation can help promote the search for truth. By pursuing these cases, a public record that describes the human rights abuses committed by the perpetrators and the injustices suffered by the **victims** is created. These developments can further advance social and political reconciliation in countries traumatized by periods of repression and persecution.

Although financial redress can never compensate a **victim** of **torture** or extrajudicial killing, a judgment of liability can have a powerful effect nonetheless. Proceedings can empower **victims** and facilitate their recovery. The suits provide **victims** with an opportunity to tell their stories in public, and a full and fair hearing can help restore the **victims**' sense of justice. In the absence of such ameliorative efforts, **victims** will continue to suffer long after their physical and emotional scars fade from the public conscience. These concerns are particularly relevant for the United States, where it is estimated that more than 400,000 **torture** survivors live.

Despite these considerations, not all cases of transnational law litigation end in judgments for the plaintiffs. In fact, many cases are dismissed, even though courts acknowledge the egregious injuries suffered by the plaintiffs. As stated in one recent district court opinion:

> This analysis ends on a mixed note. The Court is not unmindful of the enormity of the atrocities Plaintiffs so movingly and vividly portray. ... But Plaintiffs' eloquence alone does not equate to law. Nor, regrettably, is the law always as eloquent as we may wish it to be, especially when its outcomes may not comport with our own conception of the ideal. Certainly, torture, extrajudicial killings, and other forms of deliberate brutality, anytime, anywhere, pierce the inner core of human baseness and cross the outer crusts of infamy.
>
> It is well to consider also that justice and injustice, paired like strands of life, normally travel hand in hand, their union joined in direct proportion. Every injustice gives rise to a call for justice that expands to the limits of the injuries suffered or perceived. The greater the wrong, the louder the cry for right to be requited.
>
> In the light of these observations, the vanguard of the law should stand ready to adapt as appropriate, to shape redress and remedy so as to answer measure for measure the particular evil it pursues. [FN43]

Transnational law litigation provides a voice for victims of human rights atrocities and a forum to hear their claims. If there are limits to this litigation, the United States should develop other mechanisms to affirm the law of nations and to ensure that calls for justice are not silenced.

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[FN1]. 28 U.S.C. § 1350.

[FN2]. *IIT v. Vencap Ltd.*, 519 F.2d 1001, 1015 (2nd Cir. 1975).

[FN3]. *See generally* William J. Aceves, *Liberalism and International Legal Scholarship: The Pinochet Case and the Move Toward a Universal System of Transnational Law Litigation*, 41 HARV. INT'L L.J.. 129 (2000); *The Alien Tort Claims Act: An Analytical Anthology* (Ralph G. Steinhardt & Anthony D'Amato eds., 1999); Beth Stephens & Michael Ratner, *International Human Rights Litigation in U.S. Courts* (1996).

[FN4]. Organizations involved in transnational law litigation include the Center for Constitutional Rights, the Center for Justice and Accountability, Earthrights International, and the International Labor Rights Fund.

[FN5]. Hearing Transcript at 15-16, *Filartiga v. Pena-Irala*, (Feb. 12, 1982) (No. 79-917).

[FN6]. *See Filartiga v. Pena-Irala*, 630 F.2d 876 (2nd Cir. 1980).

[FN7]. *Id.* at 880.

[FN8]. *Id.* at 885.

[FN9]. *Id.* at 878.

[FN10]. *Id.* at 890.

[FN11]. *See Filartiga v. Pena-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984).

[FN12]. *Taking Tyrants to Courts*, AMERICAN LAWYER (October 1991), at 56.

[FN13]. U.S. Dep't of State, Initial Report of the United States of America to the U.N. Committee against Torture, U.N. Doc. CAT/C/28/Add.5 (1999), at para. 278.

[FN14]. *See Forti v. Suarez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988); *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987).

[FN15]. *See Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996); *Hilao v. Marcos*, 25 F.3d 1467 (9th Cir. 1994); and *Trajano v. Marcos*, 978 F.2d 493 (9th Cir. 1992).

[FN16]. *See Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996).

[FN17]. *See Kadic v. Karadzic*, 70 F.3d 232, 236 (2nd Cir. 1995).

[FN18]. *Id.* at 239.

[FN19]. *Id.* at 245.

[FN20]. Pub. L. No. 102-256, 106 Stat. 73, *reprinted* in 28 U.S.C. § 1350 note.

[FN21]. S. Rep. No. 249, 102d Cong., 1st Sess. (1991). *See also* H.R. Rep. No. 367, 102d Cong., 1st Sess. (1991). On signing the TVPA into law, President George H.W. Bush acknowledged the importance of providing a civil remedy to victims of torture. “In this new era, in which countries throughout the world are turning to democratic institutions and the rule of law, we must maintain and strengthen our commitment to ensuring that human rights are respected everywhere.” George H.W. Bush, Statement on Signing the **Torture Victim Protec-**

tion Act of 1991, March 12, 1992, 28 WEEKLY COMP. PRES. DOC.. 465, 466 (March 16, 1992).

[FN22]. Accordingly, plaintiffs must plead a jurisdictional statute such as 28 U.S.C. § 1331 or § 1350 in order to establish subject matter jurisdiction.

[FN23]. *Amerada Hess Shipping Corp. v. Argentine Republic*, 488 U.S. 428 (1989).

[FN24]. 28 U.S.C. § 1604.

[FN25]. 28 U.S.C. § 1605.

[FN26]. 28 U.S.C. § 1605(a)(7).

[FN27]. Civil Liability for Victims of State Sponsored Terrorism, Pub. L. No. 104-208, 100 Stat. 3009-172 (Sept. 30, 1996), *reprinted in* 28 U.S.C. § 1605 note.

[FN28]. 28 U.S.C. § 1606. However, the statute does allow punitive damages against an agency or instrumentality of the foreign state. *Id.*

[FN29]. *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1 (D.D.C. 1998).

[FN30]. *See, e.g.*, *Cicippio v. Islamic Republic of Iran*, 18 F. Supp. 2d 62 (D.D.C. 1998); *Alejandre v. Republic of Cuba*, 996 F. Supp. 1239 (S.D. Fla. 1997). Other lawsuits were filed against Iraq and Libya. *See, e.g.*, *Daliberti v. Republic of Iraq*, 97 F. Supp. 2d 38 (D.D.C. 2000); *Rein v. Socialist People's Libyan Arab Jamahiriya*, 162 F.3d 748 (2nd Cir. 1998).

[FN31]. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2002, 114 Stat. 1464. The act did not address judgments against other countries such as Iraq or Libya.

[FN32]. *Doe v. Unocal*, 963 F. Supp. 880 (C.D. Cal. 1997).

[FN33]. *Doe v. Unocal*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000).

[FN34]. *Id.* at 1310.

[FN35]. *See generally* Michael Bazyler, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV.. 1 (2000).

[FN36]. *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 440 (D.N.J. 1999).

[FN37]. David Rohde, *Jury in New York Orders Bosnian Serb to Pay Billions*, N.Y. TIMES, Sept. 26, 2000, at A10.

[FN38]. *See, e.g.*, Curtis A. Bradley, *The Costs of International Human Rights Litigation*, 2 CHI. J. INT'L L.. 457 (2001); Anne-Marie Slaughter and David Bosco, *Plaintiff's Diplomacy*, FOREIGN AFF., Sept.-Oct. 2000, at 102.

[FN39]. *See Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 823 (D.C. Cir. 1984) (Robb, J. concurring).

[FN40]. As the Supreme Court set forth in *Baker v. Carr*, not all questions touching foreign relations are political questions, and "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Baker v. Carr*, 369 U.S. 186, 211-22 (1962).

[FN41]. *See Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2nd Cir. 2000); *See also* Aric K. Short, *Is the Alien Tort Statute Sacrosanct? Retaining Forum Non Conveniens in Human Rights Litigation*, 33 N.Y.U. J. INT'L L. & POL. 1001 (2001). *But see* Kathryn Lee Boyd, *The Inconvenience of Victims: Abolishing Forum Non Conveniens in Human Rights Litigation*, 39 VA. J. INT'L L. 41 (2000).

[FN42]. *See generally Amnesty International USA: United States of America: A Safe Haven for Torturers*, 6-8 (2002).

[FN43]. *Tachiona v. Mugabe*, 169 F. Supp. 2d 259 (S.D.N.Y. 2001).

49-JUN Fed. Law. 33

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