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Corporate Liability Under the Alien Tort Statute: Federal Common Law as the Standard for Third Party Liability

*by Alexandra Bradley**



Courtesy of Brooke Anderson

Protest outside of Chevron.

*"We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law."*¹

—Justice Jackson

THE ALIEN TORT STATUTE (ATS)² PRESENTS A UNIQUE OPPORTUNITY TO PROVIDE JUSTICE FOR VICTIMS OF EGREGIOUS HUMAN RIGHTS ABUSES AROUND THE WORLD. The statute is radical: allow aliens to sue for violations of international law in the United States, violations that did not take place on our territory. Or is it radical? The First United States Congress passed the statute in 1789 and the Supreme Court validated its viability for egregious violations of human rights such as genocide, slavery, and torture in 2004.³ Although its use for modern violations of international law is relatively new, it provides a profound opportunity to hold all answerable to the law—even corporations. This article explores the possibility of holding corporations liable for violations of international law under the ATS for the acts of third parties. After a brief introduction and background of

the ATS, the article explains why third party liability for transnational corporations is a viable claim under the ATS. Finally, the article argues that courts should apply a third-party liability standard derived from federal common law.

INTRODUCTION

Transnational corporations conduct business all over the world with ever-increasing frequency. The size, power and influence these corporations wield are unparalleled. In addressing the Senate in 1973 during investigations of the Nixon scandal, Senator Frank Church admitted that "when we speak of corporate and Government relationships, the language will be that which is appropriate to dealings between sovereigns."⁴ Although these corporations are subject to U.S. laws regarding their operations in the U.S., they are able to profit from governments that do not enforce a rule of law or protect their own people. This powerful relationship between corporations and foreign governments is often at issue under the ATS.

Federal courts have already seen a number of high profile ATS cases against transnational corporations. Companies such as Caterpillar, Exxon, Pfizer, Shell, and Unocal have been sued for their complicity in human rights violations committed in foreign countries. The Supreme Court has yet to address whether corporations can be held liable for the actions of third parties overseas. However, the concept of third party liability regarding corporations and egregious human rights abuses is not new.

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Although its use for modern violations of international law is relatively new, [the ATS] provides a profound opportunity to hold all answerable to the law—even corporations.

Third party liability is an umbrella term for the concept of holding a corporation complicit for its action, inaction or negligence, which results in injury or damage. For example, after World War II, corporate owners were convicted for supplying poison gas to the Nazis based on proof that they knew the purpose for which the gas was to be used.⁵ The difference today is not that the foreign sovereign has been defeated, but that it is unwilling or unable to prosecute. In such circumstances, does the ATS provide a remedy?

Despite the Supreme Court's silence, the majority of the circuit courts believe that the ATS does provide a remedy when foreign sovereigns are unwilling or unable to prosecute. The State Department under the George W. Bush administration,⁶ some scholars, and corporate lobbyists, however, speak out strongly against third party liability under the ATS. A common theme of the dissent is a fear of unreasonable and unlimited liability for corporations conducting business abroad under often unstable political regimes. This fear does not justify the strict elimination of third party liability under the ATS, but admittedly there is great need to clarify the standard under which corporations can be held liable. As it stands, lower courts have proposed numerous standards under similar-sounding labels that give rise to confusion as to the rights and responsibilities of claimants and defendants alike. The Supreme Court should confirm the viability of third party liability under the ATS and look to well-defined federal common law standards, which already govern corporate actions under U.S. law. Doing so would effectuate the Congress's intent upon creating the statute, fulfill due process notions of fairness and notice, and continue the United States down the path of leading the world toward more socially responsible investment abroad.

BACKGROUND

The ATS, states "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."⁷ Although the statute lay practically unused for nearly two hundred years, in the 1980s the Second Circuit in *Filártiga v. Peña-Irala*⁸ interpreted the ATS to be a living statute that could provide a remedy for modern day human rights violations. The United States Supreme Court did not weigh in on the issue until 2004 in *Sosa v. Alvarez-Machain*.⁹ The *Sosa* Court held that the ATS is *only* a jurisdictional statute. The determination was based in part on the fact that it was originally included in Section 9 of the Judiciary Act of 1789, which dealt solely with

jurisdictional issues. However, the Court recognized that the statute could not have been created to simply be ineffective and that the first Congress was too concerned with the consequences of violations of international law to leave the ATS "lying fallow indefinitely." Alvarez-Machain lost his ATS claim, but human rights advocates rejoiced nevertheless: the Supreme Court had affirmed the viability of ATS claims.

THIRD PARTY LIABILITY IS A VALID CAUSE OF ACTION UNDER THE ATS

While the Supreme Court in *Sosa* resolved several issues regarding the ATS, the question of whether corporations can be held liable for the actions of third parties overseas, and under what standard, was not at issue. For those Circuit Courts that have found third party liability to be a viable claim under the ATS, they often arrived at disparate standards of liability. In the meantime, lower courts struggle to find a balance between effectuating the First Congress's intent and preventing unwarranted fishing expeditions against corporations. The result is an absolute disarray of decisions, which leave both plaintiffs and defendants in limbo as to their rights and legal responsibilities. Multiple circuits and scholars have expressed the need for the Supreme Court to clarify the issue of third party corporate liability under the ATS. From this challenge two major issues emerge: (A) whether third party liability is a viable claim under the ATS and (B) if so, what standard of third party liability should apply?

THIRD PARTY LIABILITY SURVIVES THE *SOSA* STANDARD

A two-step analytical inquiry emerged from *Sosa* to determine whether there is a viable claim under the ATS: (1) whether jurisdiction lies under the ATS and (2) whether to recognize a common-law cause of action to provide a remedy for the alleged violation of international law.¹⁰ The first inquiry under the *Sosa* test is whether federal subject-matter jurisdiction is satisfied by the three explicit statutory conditions: (i) an alien sues (ii) for a tort (iii) committed in violation of the law of nations. If jurisdiction is determined, the second step by a court is to determine "whether a common-law cause of action *should* be created."¹¹

The *Sosa* Court explicitly warned that there were only three types of offenses meant to fall under the term "law of nations" when the statute was enacted: the violation of safe conduct, infringement of the rights of ambassadors, and piracy. Therefore, "any claim based on the present-day law of nations

to rest on a norm of international character [must be] accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms . . . recognized.”¹² Thus, only violations of “specific, universal and obligatory” norms of international law are actionable under the ATS.¹³ To date, case law has generally determined that the following torts meet the rigorous standard of “specific, universal and obligatory” and are thereby actionable under the ATS: torture, summary execution, disappearance, prolonged arbitrary detention, genocide, war crimes, crimes against humanity, extrajudicial killing, and slavery. Human rights violations that *may* trigger ATS jurisdiction are cruel, inhuman and degrading treatment, child labor, racial discrimination, environmental harm, kidnapping, right to freedom of association, and financing terrorist organizations.

The most common defense by corporate defendants is that third party liability is not a “specific, universal and obligatory” norm under the law of nations. This defense conflates the plain language of the ATS. The underlying tort is the violation of the law of nations and therefore must meet the *Sosa* “specific, universal, and obligatory” standard for determining what torts warrant prosecution under the ATS. The subsidiary rule of third party liability is an ancillary issue and not the underlying tort and therefore should not be required to meet the *Sosa* standard. Instead, it is a federal court’s function to determine which subsidiary rules of decision are most appropriate to effectuate the intent of the statute.

Even if a court were to require third party liability to meet the *Sosa* standard, however, history demonstrates that third party liability is a “specific, universal, and obligatory” norm under the law of nations. In 1789, when the ATS was enacted, the federal courts recognized third party liability for violations of international law. Attorney General William Bradford, in a 1795 opinion, discussed aiding and abetting criminal and civil liability under the ATS, of U.S. citizens who joined a French attack on a British colony in Sierra Leone.¹⁴ Additionally, several eighteenth-century cases applying international law found liability for aiding and abetting, such as the 1795 Court in *Talbot v. Janson*.¹⁵ Similarly, *Henfield’s Case*¹⁶ stated that U.S. citizens may be held liable under the laws of the United States for “committing, aiding or abetting hostilities” in violation of the law of nations.¹⁷ Furthermore, numerous World War II cases found accomplice liability for war crimes and crimes against humanity.¹⁸

More recently, decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) established third party liability standards.¹⁹ Modern treaties such as the Convention on the Prevention and Punishment of the Crime of Genocide prohibit not only genocide but also complicity and conspiracy to commit genocide.²⁰ Additionally, Article 25 of the Rome Statute, which established the International Criminal Court (ICC) in 1998, states that a person may be liable if “[f]or the purpose of facilitating the commission of [a] crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.”²¹ Thus, third party liability was recognized as a viable form of liability for “specific, universal and obligatory” norms of international law not only at the time the ATS was enacted, but it is recognized as customary international law today as well.

Another common defense to corporate third party liability under the ATS is the claim that international law regulates nations and does not address individuals or private relationships. Early international law, however, established that certain violations permit individual liability (i.e. the prohibition against piracy). Modern day courts have extended that reasoning to human rights violations such as prohibitions against the slave trade and certain war crimes. The Second Circuit in *Kadić v. Karadžić*,²² recognized the liability of individuals under the ATS and stated, “we do not agree that the law of nations, as understood in the modern era, confines its reach to state actions.” Defendant corporations further contend that while there may be liability for individuals, international law does not impose obligations or liability on juridical actors or artificial persons such as corporations. The Restatement (Third) of the Foreign Relations Law of the United States, however, states that, “individuals and corporations have some independent status as persons in international law. . . .” Where a particular international norm applies to private actors, corporate liability can and should be found.

Defendants also commonly argue that the Supreme Court’s decision in *Central Bank v. First Interstate Bank of Denver*²³ bars corporate third party liability under the ATS. In *Central Bank*, the Supreme Court decided that because section 10(b) of the Securities Act of 1933 and 1934 does not explicitly include aiding and abetting liability, the Court would not imply it. The Court reasoned that the exclusion of aiding and abetting from section 10(b) was deliberate because Congress explicitly included such liability in other New Deal legislation drafted during the same time period.

The argument that *Central Bank* precludes third party liability under the ATS takes the Supreme Court’s reasoning for its decision out of context. The Court’s reasoning clearly does not stand for the proposition that third party liability is *never* to be applied unless explicitly stated by a statute. In fact, the Supreme Court in *Meyers v. Holley*²⁴ assumed that Congress intended the Fair Housing Act to incorporate third party liability for tort actions. Consequently, it can be concluded that *Central Bank* merely highlights the necessity of analyzing the ATS in the context of the time in which it was created to determine whether to imply third party liability under the statute. Similarly, one can conclude that the drafters of the ATS would have assumed third party liability was to be a form of liability under any violation of international law. Many courts assessing third party liability under the ATS dismiss this argument because *Central Bank* should not be erroneously applied where international law is applicable.²⁵ However, even if federal common law were applicable, as is argued below, *Central Bank* would not bar corporate aiding and abetting under the ATS for the contextual reasons stated above.

Finally, a common policy argument by defendants is that more harm than good will be done under the ATS because corporations will stop investing in developing countries. Such a chilling effect would allegedly stifle trade and some go so far as to say it would entirely offset any liberalization gained by the current trade-negotiation round of the World Trade Organization (WTO), the Doha Development Round. According to such dissent, “the ultimate losers will be millions of impoverished people denied an opportunity to participate in global markets.”²⁶

This line of reasoning is simply unfounded. Similar arguments were made during the development of domestic product

liability tort law, but history clearly demonstrates that requirements that corporations act in a socially responsible manner will not discourage investment. The same will be true under the ATS. The Supreme Court limited the scope of the ATS to violations of human rights that rise to the level of being accepted as customary international law. Such violations include genocide, slavery, disappearance, torture, war crimes, and summary execution—crimes for which any society would gladly forfeit a few foreign direct investment dollars to eradicate. Furthermore, the positive correlation between political stability and foreign investment is widely known.

In conclusion, third party liability is a subsidiary rule of decision that effectuates the first Congress' intent upon creating the statute. Even if the courts were to require third party liability to meet the *Sosa* "specific, universal and obligatory" standard, history demonstrates its viability as an actionable claim under the ATS. This determination is not barred by *Central Bank* and when taken as a whole, including the important policy goals of deterring corporate involvement in egregious human rights abuses, it is clear that the ATS encompasses third-party liability.

COURTS SHOULD APPLY EXISTING FEDERAL COMMON LAW STANDARDS

Once it has been determined that third party liability is a viable claim under the ATS, the immediate problem arises as to which standard of third party liability should apply. Therein lies the most confusing and controversial aspect of corporate third party liability under the ATS. Despite great dispute over the existence of federal common law, the Supreme Court in *Sosa* made it clear that federal common law provided a cause of action for violations of international law under the ATS.²⁷ Determining that federal common law governs the ATS, however, merely gives courts discretion to borrow or incorporate state law, international law and/or foreign law (law of the country where the tort occurred). Alternatively, courts could, and should, simply apply existing and well-settled theories of third party liability under federal common law for two reasons.

First, looking to federal common law to define principles of third party liability is consistent with the Supreme Court's interpretation of other federal statutes. For example, in *Beck v. Prupis*,²⁸ the Court analyzed the Racketeer Influenced and Corrupt Organization Act (RICO)²⁹ and made a clear distinction between the "underlying tortious act" and "the means for establishing third party liability for the underlying tort." The Court ultimately looked to federal common law to establish the elements of third party liability. Similarly, the Supreme Court relied on federal common law of agency in the context of the Copyright Act,³⁰ rather than on the law of any particular state.³¹ Under the ATS, courts should pursue a similar analysis and look to federal common law to determine the definition of third party liability.

Second, considerations of uniformity and predictability support the use of federal common law over that of state law, foreign law and international law. Corporations of the size typically implicated in ATS claims often have sufficient jurisdictional contacts to be haled into court in several, if not all, fifty states. All parties would benefit from the use of clearly defined federal common law standards and reliance on such standards would eliminate the risk of forum shopping. Furthermore, applying federal common law does not implicate serious constitutional

concerns about displacing state law, since the ATS deals with violations of international law, an "area in which the Tenth Amendment has reserved little or no power to the states."³² Similarly, foreign law should not apply because of related concerns about uniformity and predictability. ATS cases often arise in failed or repressive states where there is no redress within the domestic legal system. Applying foreign law would often invalidate the claim and not provide a remedy. Furthermore, it would be extremely burdensome to force judges to analyze legal systems that could not be adequately understood without extensive cultural research of varying legal orders that often transform overnight.

Correspondingly, international law does not provide the notice and uniformity appropriate for third party liability under the ATS. International law clearly encompasses third party liability, but a single definition of the standard is nearly impossible. Customary international law, by its very definition and creation, does not require strict consensus as to its elements; rather, the core principle of the norm forms its foundation. Given the diversity of cultures and legal systems involved in establishing customary international law it is not surprising that variance exists as to exact peripheral elements.³³

The uncertainty this variance can cause in determining liability is demonstrated by the different third party liability standards defined in *Khulumani* and *Unocal*—both under the label of international law. In *Khulumani*, Judge Robert Katzmann determined that international law, as governed by the Rome Statute, establishes third party liability when the defendant "provide[s] practical assistance to the principal which has a substantial effect on the perpetration of the crime and does so *with the purpose* of facilitation the commission of that crime."³⁴ The Ninth Circuit in *Unocal*, on the other hand, determined that international law, as governed by decisions of the ICTY and ICTR, establishes third party liability when the defendant had actual or constructive "knowledge that [his/her] actions will assist the perpetrator in the commission of the crime."³⁵

The Rome Statute's requirement of providing practical assistance with "the purpose of" facilitating the commission of that crime is a much higher standard than any of the other third party liability standards set forth by international law tribunals since World War II. It is questionable whether the Rome Statute even amounts to customary international law. J. Katzmann uses the Rome Statute as evidence of customary international law because it "has been signed by 139 countries and ratified by 105, including most of the mature democracies of the world." Customary international law is not determined by how many countries sign a treaty or statute but by *opinio juris*, a demonstrated legal obligation. There has not been enough time since the statute was passed for the ICC (created by the Rome Statute) to decide a case using the standard, much less for nations to demonstrate that they feel themselves legally bound by it. *Khulumani* and *Unocal* exemplify the difficulty of defining international law and the sweeping differences among the definitions of third party liability that can fit under the label of international law.

In light of the current disarray of third party liability standards emanating from federal courts under ATS decisions, the need for uniformity is great. Corporate defenders dubbed the ATS "the awakening monster" due in part to the uncertainty of potential liability under the ATS. Using federal common law to

determine the principles of third party liability would provide the necessary due process notions of notice, uniformity and predictability guaranteed by the U.S. Constitution. Existing federal common law principles such as joint liability, agency, and reckless disregard already govern corporations in the United States. Therefore, the use of federal common law standards would clarify corporate understanding of their liabilities abroad, rather than disrupt any reliance they may have on the current plethora of standards avowed by the courts. Rather, it will clarify the exact standards by which corporations will be expected to shape their actions regarding egregious human rights abuses abroad.

THE EFFECT OF APPLYING FEDERAL COMMON LAW AS OPPOSED TO INTERNATIONAL LAW

When courts face the choice between federal common law and international law standards of third party liability, the decision has several important consequences. Generally, the federal common law standard of third party liability is a more difficult standard to prove than that set forth by international law tribunals since World War II. For example, the ICTR and ICTY standards of third party liability include assistance or encouragement that has a “substantial effect on the perpetration of the crime.” In contrast, under the Restatement (Second) of Torts § 876, one is subject to liability if “substantial assistance or encouragement” is given. Therefore, under international law a person could give very limited assistance that happens to have a substantial effect on the perpetration of the crime and be held liable. The same is not necessarily true under federal common law.

One specific difference between third party liability under federal common law and international law is the issue of intent. Under the ICTR and ICTY standard of third party liability, the necessary intent to find liability is satisfied with “actual or constructive knowledge.” By contrast, under federal common law the aider and abettor must “know” that their conduct gives substantial assistance.³⁶ The use of the word “knows” in Restatement (Second) of Torts § 876 is defined in § 12 of the same Restatement and explicitly precludes the constructive knowledge application allowable under the international law. The difference between having to prove actual knowledge versus the ability under international law to hold a corporation liable if it *should have* inferred that its conduct would give substantial assistance is significant to both a corporation’s understanding of its responsibilities as a possible aider and abettor and the issues of burden of proof for a plaintiff.

Another specific difference between federal common law and international law relates to the issue of “moral support.” Moral support includes any action that aids the perpetrator in ways that are not strictly physical (i.e. providing arms) or financial. To date, the scope of “moral support” under both international law and federal common law is unclear. Under international law, as established by decisions of the ICTY and the ICTR, aiding and abetting requires “practical assistance, encouragement, or *moral support* which has a substantial effect on the perpetration of the crime.”³⁷ However, neither the ICTY nor the ICTR have specifically defined “moral support” through a decision. With regard to federal common law, the Ninth Circuit in *Unocal* noted that “there may be no difference between encouragement [of the Restatement (Second)] and ‘moral support’” of the international standard of third party liability.³⁸ Indeed, Comment (d) of the

Restatement (Second) of Torts § 876 (1986) states, “[a]dvice or encouragement to act operates as a moral support to a tortfeasor and if the act encouraged is known to be tortious it has the same effect upon the liability of the adviser as participation or physical assistance.” Therefore, it is unclear exactly how claims alleging third party liability for “moral support” would play out differently under international law and federal common law standards.

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CONCLUSION

The above discussion demonstrates the complex and confusing nature of third party liability standards used by federal courts under similar labels but with wholly differing meanings. What is overwhelmingly clear, however, is the need to affirm the viability of third party liability under the ATS. Once that is established, courts should draw from existing federal common law third party liability standards to clarify the rights and responsibilities of both plaintiffs and defendants. Advocates view the ATS as an opportunity for the United States to continue to lead the world in bringing justice to those who suffer egregious human rights abuses. Human rights abuses must stop and financial pressure by investing corporations could provide a more effective remedy than any existing convention or treaty. The existing body of domestic law on third-party liability, if adopted as a method of implementing the ATS, would temper corporations’ fears of an infinite liability that could come with investing in a foreign country. Until federal courts establish the uniformity and predictability that could arise from relying on existing federal common law standards of third party liability, the statute will continue to loom as the “awakening monster” rather than its true potential as a “small, but important step in the fulfillment of the ageless dream to free all people from brutal violence.”³⁹

HRB

ENDNOTES: Corporate Liability Under the Alien Tort Statute

- ¹ Opening Statement for the United States of America by Robert H. Jackson, Chief of Counsel for the United States at the Palace of Justice, Nuremberg, Germany, November 21, 1945, reprinted in Robert H. Jackson, *The Nuremberg Case* 30 (1947).
- ² 28 U.S.C. § 1350.
- ³ *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).
- ⁴ United States Senate, Committee on Foreign Relations, Subcommittee on Multinational Corporations, “Opening Statements by Senator Frank Church,” *Multinational Corporations and United States Foreign Policy*, 93rd Congress (20 March 1973).
- ⁵ The Zyklon B Case, 1 Law Reports of Trials of War Criminals 93 (Brit. Mil. Ct. 1946).
- ⁶ When this article went to press the Obama Administration had yet to clarify its position on the Alien Tort Statute.
- ⁷ The original text of the ATS states that the district courts shall “have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.” Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 73, 77 (1789).
- ⁸ 630 F.2d 876 (2d Cir. 1980).
- ⁹ 542 U.S. 692 (2004).
- ¹⁰ *Khulumani v. Barclay Nat’l Bank Ltd.*, 504 F. 3d 254, 266 (2d Cir. 2007).
- ¹¹ *Id.* at 267.
- ¹² *Sosa*, 542 U.S. at 725.
- ¹³ *Id.* at 732.
- ¹⁴ See Breach of Neutrality, 1 U.S. Op. Att’y. Gen. 57, 59 (1795).
- ¹⁵ 3 U.S. (3 Dall.) 133, 156-157 (1795).
- ¹⁶ 11 F. Cas. 1099 (C.C.D. Pa. 1793).
- ¹⁷ *Id.*
- ¹⁸ See e.g., The Zyklon B Case, 1 Law Reports of Trials of War Criminals 93 (Brit. Mil. Ct. 1946) (corporation owner and second in command convicted of supplying poison gas to Nazis based on proof that they knew and even suggested the purpose for which the gas was to be used); United States v. Krauch, 8 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 101081, 1169-72 (1952) (convicting pharmaceutical industrialists because the supplied experimental vaccine to the Nazis knowing that they would be used in illegal medical experiments on concentration camp inmates).
- ¹⁹ See e.g. *Furundzija*, Case No. IT-95-17/1-T, ¶ 245 (Dec. 10, 1998); *Musema*, Case No. ICTR-96-13-T, ¶ 180 (Jan. 27, 2000).
- ²⁰ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 278. See also Convention

- Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. 4(1), 1465 U.N.T.S. 113, 113 (entered into force June 26, 1987) (criminalizing any act “that constitutes complicity or participation in torture”).
- ²¹ Statute of the International Criminal Court art. 25 § 3(c), July 17, 1998, U.N. Doc. A/CONF. 183/9.
 - ²² 70 F.3d 232, 239 (2d Cir. 1995).
 - ²³ 511 U.S. 164 (1994).
 - ²⁴ 537 U.S. 280 (2003).
 - ²⁵ See e.g., *Almog v. Arab Bank*, 471 F. Supp. 2d 257 (E.D.N.Y. 2007).
 - ²⁶ Gary Clyde Hufbauer and Nicholas K. Mitrokostas, *Awakening Monster: The Alien Tort Statute of 1789* (Institute for International Economics, July 2003).
 - ²⁷ *Sosa v. Alvarez-Machain*, 543 U.S. 692, 732 (2004).
 - ²⁸ 529 U.S. 494 (2000).
 - ²⁹ 18 U.S.C. §§ 1961-1968.
 - ³⁰ 17 U.S.C. §§ 101-810.
 - ³¹ *Doe v. Unocal*, 395 F.3d 932, 972 (9th Cir. 2002) (citing *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 740 (1989)).
 - ³² Harold Koh, *Is International Law Really State Law?*, 111 Harv. L. Rev. 1824, 1831-1832 (1998).
 - ³³ *Presbyterian Church of Sudan v. Talisman Energy Inc.*, 374 F. Supp. 2d 331, 340-41 (S.D.N.Y. 2005).
 - ³⁴ *Khulumani v. Barclay Nat’l Bank Ltd.*, 504 F. 3d 254, 277 (2d Cir. 2007).
 - ³⁵ *Furundzija*, Case No. IT-95-17/1-T, ¶ 245 (Dec. 10, 1998) and *Musema*, Case No. ICTR-96-13-T, ¶ 180 (Jan. 27, 2000). The accomplice does not have to have had the intent to commit the principal offense. It is sufficient that the accomplice knew or had reason to know that the principal had the intent to commit the offense. *Musema*, Case No. ICTR-96-13-T, ¶ 182 (Jan. 27, 2000).
 - ³⁶ The Restatement (Second) of Torts Section 876(b) provides, “For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.”
 - ³⁷ See e.g., *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T (Dec. 10, 1998) (emphasis added); *Prosecutor v. Musema*, Case No. ICTR-96-13-T, ¶ 126 (Jan. 27, 2000).
 - ³⁸ *Unocal*, 395 F.3d at 951 n.28.
 - ³⁹ *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980).