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William S. Dodge

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# Which Torts in Violation of the Law of Nations?

BY WILLIAM S. DODGE\*

The Alien Tort Statute's language is simple. As presently codified, it says: "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."<sup>1</sup> Since *Filartiga v. Pena-Irala*<sup>2</sup> in 1980, foreign victims of human rights abuse have successfully relied on this provision to sue their foreign persecutors in U.S. court for torts such as torture,<sup>3</sup> cruel, inhuman or degrading treatment,<sup>4</sup> summary execution,<sup>5</sup> arbitrary detention,<sup>6</sup> causing disappearance,<sup>7</sup> genocide,<sup>8</sup> and war crimes.<sup>9</sup> In the mid-1990s, a "second wave"<sup>10</sup> of alien tort suits began. The defendants in these suits are corporations—often U.S. corporations—and the complaints

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\* Associate Professor, University of California, Hastings College of the Law. My thanks to Rick Herz for comments on an earlier draft.

1. 28 U.S.C. § 1350 (1993). As originally enacted in the first Judiciary Act, the provision read: "the district courts shall have .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, ch. 20, § 9, 1 Stat. 73, 76-77 (1789). For a discussion of the Alien Tort Statute's origins, see William S. Dodge, *The Historical Origins of the Alien Tort Statute: A Response to the "Originalists,"* 19 HASTINGS INT'L & COMP. L. REV. 221 (1996).

2. 630 F.2d 876 (2d Cir. 1980).

3. *Id.*; *Trajano v. Marcos*, 978 F.2d 493, 500 (9th Cir. 1992).

4. *Xuncax v. Gramajo*, 886 F. Supp. 162, 187 (D. Mass. 1995); *Paul v. Avril*, 901 F. Supp. 330, 335 (S.D. Fla. 1994).

5. *Xuncax*, 886 F. Supp. at 184.

6. *Id.*

7. *Forti v. Suarez-Mason*, 694 F. Supp. 707, 709-11 (N.D. Cal. 1988).

8. *Kadic v. Karadzic*, 70 F.3d 232, 241-43 (2d Cir. 1995).

9. *Id.*; *Doe I v. Islamic Salvation Front*, 993 F. Supp. 3, 8 (D.D.C. 1998).

10. Curtis A. Bradley, *Customary International Law and Private Rights of Action*, 1 CHI. J. INT'L L. 421, 425 (2000).

have tended to allege different kinds of torts, including forced labor,<sup>11</sup> environmental torts,<sup>12</sup> and “cultural genocide.”<sup>13</sup> In this paper, I deal not with whether any of the specific torts alleged in the second wave of alien tort litigation fall within the scope of the Statute,<sup>14</sup> but with the standard a court should apply to determine which torts in violation of the law of nations are actionable. This is an important question, and logically precedes the question of whether any particular tort is actionable, yet it has received relatively little attention from courts and commentators.

There are at least four possible standards courts might utilize to determine which torts in violation of the law of nations are actionable. The most expansive would be to read the Alien Tort Statute as authorizing the federal courts not just to apply customary international law established by existing state practice but to create new law, analogizing to *Lincoln Mills v. Textile Workers*.<sup>15</sup> The *Filartiga* court noted this possibility but did not need to adopt it,<sup>16</sup> and no court has done so subsequently.<sup>17</sup> A second possibility would be to read the Alien Tort Statute, in accordance with its plain language, to extend to all torts in violation of the law of nations determined in the usual way—by state practice followed out of a sense of legal obligation.<sup>18</sup> This seems to be what *Filartiga* intended, although only

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11. See, e.g., *Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1308-10 (C.D. Cal. 2000); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 441 (D.N.J. 1999).

12. See, e.g., *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 166 (5th Cir. 1999); *Aguinda v. Texaco, Inc.*, 1994 WL 142006, at \*6-7 (S.D.N.Y. Apr. 11, 1994); *Amlon Metals, Inc. v. FMC Corp.*, 775 F. Supp. 668, 670-71 (S.D.N.Y. 1991).

13. See, e.g., *Beanal*, 197 F.3d at 168.

14. For discussion of these questions, see, e.g., Richard L. Herz, *Litigating Environmental Abuses Under the Alien Tort Claims Act: A Practical Assessment*, 40 VA. J. INT'L L. 545 (2000); Sarah H. Cleveland, *Global Labor Rights and the Alien Tort Claims Act*, 76 TEX. L. REV. 1533 (1998).

15. 353 U.S. 488 (1957).

16. *Filartiga v. Pena-Irala*, 630 F.2d 876, 887 (2d Cir. 1980).

17. Some courts have relied on *Lincoln Mills* not to fashion new rules of international law but to fashion remedies in alien tort suits. See, e.g., *Abebe-Jira v. Negewo*, 72 F.3d 844, 848 (11th Cir. 1996); *In re Estate of Marcos Human Rights Litigation*, 910 F. Supp. 1460, 1469 (D. Haw. 1995), *aff'd sub nom.* *Hilao v. Estate of Marcos*, 103 F.3d 767, 777 (9th Cir. 1996).

18. The *Restatement (Third) of Foreign Relations Law* defines customary international law as “a general and consistent practice of states followed by them from a sense of legal obligation.” RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(2) (1987). In determining the content of that law, courts look primarily to state practice but also to judicial and arbitral decisions and to the writings of scholars. See *id.* § 103 & cmt. a; Statute of the International Court of Justice, June 26, 1945, art. 38, 59 Stat. 1055; see also *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-61

one court has expressly adopted this reading.<sup>19</sup> A third and arguably narrower reading would limit suits under the Alien Tort Statute to those that are “universal, definable, and obligatory,”<sup>20</sup> and a fourth reading would limit actionable torts to a still narrower category of those that violate *jus cogens* norms.<sup>21</sup>

As a historical matter, there is something to be said for the first and most expansive reading, which would authorize federal courts to recognize new obligations under the law of nations even if these were not supported by state practice. The first Congress, which enacted the Alien Tort Statute, viewed the law of nations as resting on natural law.<sup>22</sup> Blackstone wrote that “[t]he law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world.”<sup>23</sup> As Justice Story would subsequently write, “every doctrine, that may be fairly deduced by correct reasoning from the rights and duties of nations, and the nature of moral obligation, may theoretically be said to exist in the law of nations.”<sup>24</sup> If determining the law of nations is simply a matter of “correct reasoning,” then courts should be able to determine its content without regard to state practice.

We live in a more positivist age, however, and modern courts feel less comfortable “creating” international law than Justice Story did.<sup>25</sup> The modern understanding of customary international law is that it

(1820) (The law of nations “may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law.”)

19. See *Abebe-Jira*, 72 F.3d at 847 (“On its face, section 1350 requires the district courts to hear claims ‘by an alien for a tort only, committed in violation of the law of nations.’ . . . We read the statute as requiring no more than an allegation of a violation of the law of nations in order to invoke section 1350.”)

20. *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1540 (N.D. Cal. 1987).

21. *Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1304 (C.D. Cal. 2000).

22. Stewart Jay, *The Status of the Law of Nations in Early American Law*, 42 VAND. L. REV. 819, 822 (1989).

23. 4 WILLIAM BLACKSTONE, COMMENTARIES \*66.

24. *United States v. The La Jeune Eugenie*, 26 F. Cas. 832, 846 (C.C.D. Mass. 1822) (No. 15,551), *overruled on other grounds*, 23 U.S. (10 Wheat.) 66 (1825).

25. See, e.g., *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964):

It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice.

derives not from reason but from state practice. The *Restatement (Third) of Foreign Relations Law* says: "Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation."<sup>26</sup> State practice includes not only governmental acts but also "official statements of policy."<sup>27</sup> The comments explain that "[a] practice can be general even if it is not universally followed . . . , but it should reflect wide acceptance among the states particularly involved in the relevant activity."<sup>28</sup> As to the *opinio juris* aspect of the definition, the *Restatement (Third)* states that "[e]xplicit evidence of a sense of legal obligation (e.g., by official statements) is not necessary; *opinio juris* may be inferred from acts or omissions."<sup>29</sup> Even if we confine the law of nations to obligations derived from state practice, however, the text of the Alien Tort Statute strongly suggests that jurisdiction should extend to torts in violation of *any* such obligation.<sup>30</sup> As the Eleventh Circuit said in *Abebe-Jira v. Negewo*, "[o]n its face, section 1350 requires the district courts to hear claims 'by an alien for a tort only, committed in violation of the law of nations.' . . . We read the statute as requiring no more than an allegation of a violation of the law of nations in order to invoke section 1350."<sup>31</sup>

Perhaps surprisingly, this is not the reading that most courts have favored. A majority have read jurisdiction under the Alien Tort Statute as limited to international norms that are "universal, definable, and obligatory."<sup>32</sup> This interpretation seems to have originated in a 1981 law review article that sought to insulate the *Filartiga* decision from attack by limiting its potential scope to those torts that were "definable and identifiable as a tort committed by

26. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(2) (1987).

27. *Id.* § 102 cmt. b.

28. *Id.*

29. *Id.* § 102 cmt. c.

30. See 28 U.S.C. § 1350 (1993) ("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.") (emphasis added).

31. 72 F.3d 844, 847 (11th Cir. 1996).

32. *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1540 (N.D. Cal. 1987); see also *Hilao v. Estate of Marcos*, 25 F.3d 1467, 1475 (9th Cir. 1994) ("Actionable violations of international law must be of a norm that is specific, universal, and obligatory."); *Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1304 (C.D. Cal. 2000) ("Actionable violations of international law must be of a norm that is specific, universal, and obligatory."); *Beanal v. Freeport-McMoRan, Inc.*, 969 F. Supp. 362, 370 (E.D. La. 1997) ("To be recognized as an international tort under § 1350, the alleged violation must be definable, obligatory (rather than hortatory), and universally condemned.").

individuals,”<sup>33</sup> “textually obligatory,”<sup>34</sup> and “universal, so that derogations are not defended as ‘exercises of legitimate political diversity.’”<sup>35</sup> Judge Edwards noted these limitations in his *Tel-Oren* opinion,<sup>36</sup> and then Judge Jensen (citing both the law review article and Judge Edwards) adopted them as the standard for determining which torts were actionable under the Alien Tort Statute in *Forti v. Suarez Mason*.<sup>37</sup>

One might argue that the phrase “universal, definable, and obligatory” is simply a way of restating the requirements for recognizing a rule of customary international law. But the *Forti* formulation is arguably more stringent. *Forti*’s requirement that a practice be “universal,” in particular, seems more stringent than the *Restatement (Third)*, which requires only that it be “general and consistent.”<sup>38</sup> Certainly Judge Edwards in *Tel-Oren* thought that jurisdiction under the Alien Tort Statute extended only to a subset of customary international law norms.<sup>39</sup> He stressed the “extremely narrow scope” of the Statute and stated that it reached only “a handful of heinous actions.”<sup>40</sup> *Filaritiga*’s analogy of torture to piracy and slave-trading, Judge Edwards suggested, showed that the Alien Tort Statute extended only to offenses that hold “a special place in the law of nations.”<sup>41</sup> For a current list of such offenses, Judge

33. Jeffrey M. Blum & Ralph G. Steinhardt, *Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act after Filaritiga v. Penarala*, 22 HARV. INT’L L.J. 53, 88 (1981).

34. *Id.*

35. *Id.* at 89. The authors concluded that torture, genocide, summary execution, and slavery met their criteria. *Id.* at 90.

36. *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984) (Edwards, J., concurring) (“[C]ommentators have begun to identify a handful of heinous actions—each of which violates definable, universal and obligatory norms and in the process are defining the limits of section 1350’s reach.” (citations omitted)).

37. *Forti*, 672 F. Supp. at 1540.

38. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(2) (1987); see also *id.* cmt. b (“A practice can be general even if it is not universally followed . . .”). In ruling on a motion to reconsider, Judge Jensen subsequently explained that that “plaintiffs need not establish uniformity among nations. Rather they must show a general recognition among states that a specific practice is prohibited.” *Forti v. Suarez-Mason*, 694 F. Supp. 707, 709 (N.D. Cal. 1988). Nevertheless, *Forti*’s “universal” requirement has remained and has been followed by a number of courts. See *supra* note 32 and accompanying text.

39. See *Tel-Oren*, 726 F.2d at 781 (Edwards, J., concurring).

40. *Id.*

41. *Id.*

Edwards looked to section 702 of the *Restatement (Third)*,<sup>42</sup> most of which are in fact *jus cogens* norms.<sup>43</sup> But even if limiting jurisdiction under the Alien Tort Statute to a subset of customary international law violations were desirable as a matter of policy, it is difficult to find a textual justification for doing so. The first Congress did not put the words “universal, definable, and obligatory” in the Alien Tort Statute; indeed, it provided that jurisdiction would extend to “*all* causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.”<sup>44</sup>

Recently, courts have begun to articulate a fourth, and still narrower, reading of the Alien Tort Statute, limiting jurisdiction not simply to rules of customary international law that are “universal, definable, and obligatory” but to those that constitute *jus cogens* norms.<sup>45</sup> *Jus cogens* norms are those “rules of international law [that] are recognized by the international community of states as peremptory, permitting no derogation.”<sup>46</sup> As the Ninth Circuit

42. See *id.*; see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 702 (1987):

A state violates international law if, as a matter of state policy, it practices, encourages, or condones

- (a) genocide,
- (b) slavery or slave trade,
- (c) the murder or causing the disappearance of individuals,
- (d) torture or other cruel, inhuman, or degrading treatment or punishment,
- (e) prolonged arbitrary detention,
- (f) systematic racial discrimination, or
- (g) a consistent pattern of gross violations of internationally recognized human rights.

43. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 702 cmt. *n* (1987) (“Not all human rights norms are peremptory norms (*jus cogens*), but those in clauses (a) to (f) of this section are . . .”).

44. Judiciary Act, ch. 20, § 9, 1 Stat. 73, 77 (1789) (emphasis added).

45. *Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1304 (C.D. Cal. 2000); Nat'l Coalition Gov't of the Union of Burma v. Unocal, Inc., 176 F.R.D. 329, 345 (C.D. Cal. 1997); *Xuncax v. Gramajo*, 886 F. Supp. 162, 184-89 (D. Mass. 1995); see also Ryan Goodman & Derek P. Jinks, *Filartiga's Firm Footing: International Human Rights and Federal Common Law*, 66 FORDHAM L. REV. 463, 495 (1997) (arguing that, as a practical matter, alien tort suits are limited to *jus cogens* violations).

46. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 cmt. *k* (1987); see also Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 332, 8 I.L.M. 679 (1969) (“For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”).

pointed out in *Siderman de Blake v. Republic of Argentina*, a nation is bound by *jus cogens* norms even if it does not consent to them.<sup>47</sup>

Although Judge Edwards had pointed to a set of *jus cogens* rules in *Tel-Oren* as illustrative of those torts that were actionable under the Alien Tort Statute,<sup>48</sup> the *jus cogens* reading of the Statute seems to stem not from *Tel-Oren* but from a misreading of *Siderman*. In *Siderman*, the Ninth Circuit held that the prohibition against torture was a *jus cogens* norm but that there was no *jus cogens* exception to the Foreign Sovereign Immunities Act that would allow a plaintiff to bring suit against a foreign government on that basis alone.<sup>49</sup> Shortly thereafter in *Trajano v. Marcos*, the Ninth Circuit relied on *Siderman* in rejecting the argument that the Alien Tort Statute did not provide jurisdiction over torture claims:

Regardless of the extent to which other principles may appropriately be relied upon, the prohibition against official torture “carries with it the force of a *jus cogens* norm,” which “enjoy[s] the highest status within international law.” . . . We therefore conclude that the district court did not err in founding jurisdiction on a violation of the *jus cogens* norm prohibiting official torture.<sup>50</sup>

In the course of confirming that torture claims were cognizable because the prohibition against torture is a *jus cogens* norm, *Trajano* seemed to cast doubt on the actionability of other rules of customary international law, and several subsequent district court decisions seem to have adopted a *jus cogens* standard.<sup>51</sup>

It is as hard to justify limiting jurisdiction under the Alien Tort

47. 965 F.2d 699, 715-16 (9th Cir. 1992). By contrast, a state that dissents from an ordinary customary international law rule during its development is not bound by that rule. *Id.* at 715; RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 cmt. d (1987).

48. See *supra* notes 43-44 and accompanying text.

49. 965 F.2d at 717-19.

50. 978 F.2d at 500 (quoting *Siderman*, 965 F.2d at 715, 717).

51. See *Xuncax v. Gramajo*, 886 F. Supp. 162, 184-89 (D. Mass. 1995) (discussing plaintiffs' claims under the heading “Peremptory Norms of International Law”); *Nat'l Coalition Gov't of the Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329, 345 (C.D. Cal. 1997) (holding that expropriation was not actionable under the Alien Tort Statute because it “does not constitute a *jus cogens* violation of the law of nations”); *Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1304 (C.D. Cal. 2000) (“While the Ninth Circuit has not expressly held that only *jus cogens* norms are actionable, the Circuit’s holding in *Estate II* that actionable violations are only those that are specific, universal, and obligatory is consistent with this interpretation.”). But see *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 440 n.18 (D.N.J. 1999) (holding that forced labor claims are actionable even if they do not violate *jus cogens*).

Statute to *jus cogens* norms as it is to justify limiting the Statute to rules that are “universal, definable, and obligatory.” It bears repeating that the first Congress extended jurisdiction to “*all* causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.”<sup>52</sup> When the Alien Tort Statute was passed in 1789, the law of nations did not recognize any separate category of *jus cogens*.<sup>53</sup> Moreover, although assaults on ambassadors were clearly among the torts in violation of the law of nations that the first Congress meant to reach,<sup>54</sup> it is not clear that such assaults violate *jus cogens* norms today.<sup>55</sup> Limiting jurisdiction under the Alien Tort Statute to *jus cogens* norms cannot, therefore, be justified either on the basis of its text or the intentions of the first Congress. It is a limitation that has been judicially imposed.

Judges seem most inclined to read additional limitations into the Alien Tort Statute when pressed by plaintiffs to extend the Statute to new torts and new defendants. Judge Edwards stressed the “extremely narrow scope” of the Statute in *Tel-Oren*,<sup>56</sup> a case in which plaintiffs had asked the court to extend the prohibition against torture to a non-state actor (the Palestinian Liberation Organization) and to recognize terrorism as a violation of the law of nations.<sup>57</sup> Judge Jensen adopted the “universal, definable, and obligatory”

52. Judiciary Act, ch. 20, § 9, 1 Stat. 73, 77 (1789) (emphasis added).

53. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 reporters' note 6 (1987) (“The concept of *jus cogens* is of relatively recent origin.”). Although writers had long discussed the idea of a non-derogable international law, “the writings on the subject have been theoretical statements by learned authors, not substantiated by references to rulings or international courts or tribunals, to less authoritative state practice, or to diplomatic proceedings or correspondence.” Egon Schwelb, *Some Aspects of International Jus Cogens as Formulated by the International Law Commission*, 61 AM. J. INT'L L. 946, 949 (1967). The acceptance of *jus cogens* into international law stems from the work of the International Law Commission and the Vienna Conference on the Law of Treaties in the 1960s. See IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 516 (5th ed. 1998).

54. A 1784 attack on the French Consul General in Philadelphia seems to have been the most direct impetus for including the Alien Tort Statute in the first Judiciary Act. See Dodge, *supra* note 1, at 229-30. Blackstone also listed “[i]nfringement of the rights of ambassadors” among the “principal offences against the law of nations.” BLACKSTONE, *supra* note 23, at \*68.

55. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102 reporters' note 6 (1987) (“[*Jus cogens*] norms might include rules prohibiting genocide, slave trade and slavery, apartheid and other gross violations of human rights, and *perhaps* attacks on diplomats.” (emphasis added)).

56. *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984) (Edwards, J., concurring).

57. *Id.* at 795-96 (Edwards, J., concurring).

formulation in *Forti v. Suarez-Mason*,<sup>58</sup> a case in which the court was asked to recognize cruel, inhuman or degrading treatment and causing disappearance as customary international law violations.<sup>59</sup> And, most recently, Judge Lew adopted the *jus cogens* requirement in *Doe I v. Unocal Corporation*,<sup>60</sup> a case in which he was asked to recognize forced labor as a violation of the law of nations and to enforce that prohibition against a domestic corporation.<sup>61</sup> Judges seem uneasy with suits involving “new” torts that go beyond the paradigmatic, *Filartiga*-like, torture case and have responded by raising the standard for determining which torts are actionable under the Alien Tort Statute.

The standard that seems most consistent with the Alien Tort Statute’s text and the views of the Congress that enacted it, however, is that jurisdiction extends to *all* torts that violate customary international law—not just those that are “universal, definable, and obligatory” and not just those that violate a *jus cogens* norm. The first Congress recognized that the law of nations had evolved over time and expected that it would continue to do so.<sup>62</sup> This notion was endorsed by the 102nd Congress when it passed the Torture Victim Protection Act, which extended jurisdiction over claims of torture and extrajudicial killing to include suits by U.S. citizens.<sup>63</sup> The House Report accompanying the act explains: “[C]laims based on torture or summary executions do not exhaust the list of actions that may appropriately be covered [by] section 1350. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law.”<sup>64</sup>

I am not certain that all of the torts alleged in the “second wave” of alien tort litigation are in fact violations of modern customary international law. I am certain, however, that courts should not substitute their own policy views for those of Congress and confine the Alien Tort Statute to a subcategory of torts in violation of the law

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58. *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1540 (N.D. Cal. 1987).

59. *Id.* at 1542-43.

60. 110 F. Supp. 2d 1294, 1304 (C.D. Cal. 2000).

61. *Id.* at 1307-10.

62. See Dodge, *supra* note 1, at 241-43.

63. Pub. L. No. 256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 (1993)).

64. H.R. REP. NO. 367, 102d Cong., 2d Sess. 3-4 (1991), reprinted in 4 U.S.C.C.A.N. 84, 86 (1992) (emphasis added); see also *Filartiga v. Pena-Irala*, 630 F.2d 876, 881 (2d Cir. 1980) (“[I]t is clear that courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today.”).

of nations. If plaintiffs can prove the existence of a customary international law rule resulting from "a general and consistent practice of states followed by them from a sense of legal obligation"<sup>65</sup> and can prove that corporate defendants have committed torts in violation of such a rule, courts have a duty to exercise jurisdiction and impose liability under the Alien Tort Statute.

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65. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(2) (1987).