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Note

Taking Riggs Seriously: The ATCA Case Against a Corporate Abettor of Pinochet Atrocities

Shaw W. Scott*

In June 2004, a U.S. congressional investigation revealed that Riggs Bank (Riggs) had opened, maintained, and concealed at least six bank accounts for the former Chilean dictator, Augusto Pinochet. This news came as a surprise to many who believed that Pinochet, although a brutal dictator, was not a corrupt one. Pinochet, a general in the Chilean army, came to power during a bloody military coup in Chile on September 11, 1973. During his seventeen-year dictatorship, the military government committed numerous atrocities ranging from executions and torture to terrorist acts and disappearances. While Pinochet himself refuses to accept responsibility for these atrocities, the Chilean army recently admitted to its involve-

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ment in an institutionalized campaign of human rights violations during the Pinochet government.\(^5\)

Despite international knowledge and condemnation of widespread human rights abuses under Pinochet,\(^6\) Riggs has had a relationship with Pinochet and the Chilean military dating at least as far back as the mid-1970s.\(^7\) Records reveal that Riggs consistently turned a blind eye to Pinochet's atrocities by both financing his brutal military dictatorship\(^8\) and concealing and laundering millions of dollars in suspicious funds held in bank accounts for Pinochet.\(^9\)

Although a Chilean court recently indicted Pinochet on kidnapping and murder charges, he has thus far escaped prosecution for leading a violent campaign of human rights abuses.\(^10\)

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6. See, e.g., David Binder, *U.S.-Chilean Ties Called Strained*, N.Y. TIMES, Nov. 19, 1975, at 5 (noting that the United Nations Social, Cultural, and Humanitarian Committee voted on a resolution calling for human rights protections in Chile); Paul Hoffman, *Torture in Chile Is Charged by a U.N. Inquiry Team*, N.Y. TIMES, Oct. 15, 1975, at 8 (stating that a United Nations report on Chile found charges of torture, disappearance, and elimination); Jonathan Kandell, *Chile's Junta After a Year: Unrelenting Dictatorship*, N.Y. TIMES, Sept. 13, 1974, at 1 (stating that more than 2500 people died during the coup and afterwards); Thomas W. Netter, *U.N. Panel Urges Chile To Halt Rights Abuses*, N.Y. TIMES, Mar. 15, 1986, at 5 (reporting that a United Nations resolution urged a halt to torture and restoration of democracy in Chile); Juan de Onis, *Chile Study Says Torture Goes On*, N.Y. TIMES, June 8, 1976, at 1 (noting that the Inter-American Human Rights Commission, which is part of the Organization of American States, reported charges of arbitrary imprisonment, torture, persecution, and killings in Chile); U.N. Panel Asserts Chile Continues To Abuse Rights but on a Reduced Scale, N.Y. TIMES, Oct. 25, 1977, at 42 (stating that there was "evidence that violations of human rights were becoming institutionalized in Chile").


9. SENATE REPORT, supra note 1, at 2–3.

10. See Larry Rohter, *Chilean Judge Says Pinochet Is Fit for Trial*, N.Y. TIMES, Dec. 14, 2004, at A1. On December 13, 2004, a Chilean judge ruled that Pinochet was competent to stand trial for his alleged involvement in an intelligence operation to kidnap and murder political opponents. Id. Known as Operation Condor, this plan was a joint action set up by military dictatorships in Chile, Argentina, Bolivia, Brazil, Paraguay, and Uruguay in the mid-1970s. Id. The Chilean Supreme Court upheld Pinochet's indictment and house arrest
However, recent application of U.S. law may open the door to suits against Riggs for its association with Pinochet and his dictatorship. The Alien Tort Claims Act (ATCA), which allows foreigners to sue defendants in U.S. courts for alleged torts in violation of international law, has become an important weapon in the effort to hold human rights violators and their accomplices accountable. Victims of human rights abuse have filed an increasing number of these lawsuits against multinational corporations alleging both direct and indirect involvement in state-sponsored atrocities.

Those who view the ATCA as a powerful tool against human rights abuse argue that when corporate defendants willfully assist clients who have violated human rights, their complicity in the perpetrators' acts should create a legal liability under international law. A multinational corporation's economic wealth and power often allow it to exceed state boundaries and operate outside of state control, thus providing no effective recourse to those injured by its actions. This may be especially true of financial institutions that provide financing to support oppressive governments and terrorist organizations. There is arguably a point at which a bank, such as Riggs, ceases being a "passive repository" for illegally obtained funds of human rights violators and becomes an "active participant"...
in their breaches of international law.\textsuperscript{16} Proponents of this view would likely agree that this should be the case for financial institutions and corporations that provided significant assistance to perpetrators of gross human rights violations, such as al Qaeda, the Taliban, and Saddam Hussein. It is important that a precedent be established under the ATCA for holding such corporate actors responsible for their complicitous actions. Allowing victims of human rights abuse to seek recourse in U.S. federal courts against corporate violators of international law may serve as a powerful deterrent to others engaged in similar conduct.\textsuperscript{17} Moreover, it would provide just compensation to those victims who have found it nearly impossible to enforce judgments against governments and their officials.\textsuperscript{18}

This Note explores the possibility of bringing a lawsuit under the ATCA against Riggs for its alleged role in financing Chile’s former military government, as well as concealing accounts and laundering possibly looted money belonging to Pinochet. Part I details Riggs’s history and involvement with Pinochet.\textsuperscript{19} Part II provides a framework for understanding the legal issues by tracing the history of the ATCA, including the Supreme Court’s recent interpretation of the statute, and discussing several key cases involving corporate liability under the Act.\textsuperscript{20} Part III interprets the facts of the Pinochet-Riggs relationship through the legal lens provided by emerging ATCA jurisprudence.\textsuperscript{21} This Note concludes that international law has evolved to recognize that financial institutions may be held liable under the ATCA for financing human rights violators and concealing and laundering funds looted by state actors.

I. THICK AS THIEVES: RIGGS’S AND PINOCHET’S LONG-STANDING FINANCIAL RELATIONSHIP

To assess Riggs’s complicity in Pinochet’s campaign of human rights abuses, it is important to understand the extent of their relationship. Not only did a recent Senate Report uncover

\begin{itemize}
  \item \textsuperscript{16} See Ramasastry, supra note 12, at 335.
  \item \textsuperscript{17} Symposium, \textit{The Multinational Enterprise as Global Corporate Citizen}, 21 N.Y.L. SCH. J. INT’L & COMP. L. 1, 27 (2001).
  \item \textsuperscript{19} See infra Part I.
  \item \textsuperscript{20} See infra Part II.
  \item \textsuperscript{21} See infra Part III.
\end{itemize}
long-standing financial links between Riggs and Pinochet, but there is also significant evidence of financial ties and support for the Pinochet dictatorship dating back to the 1970s.

A U.S. Senate investigation to evaluate the enforcement and effectiveness of federal antimony-laundering provisions has created an enormous scandal within the banking community and within Chile. To conduct its evaluation, the U.S. Senate Permanent Subcommittee on Investigations performed a case study of Riggs, a multinational financial institution headquartered in Washington, D.C. Riggs, which has numerous clients from foreign countries, including some with "high risks of money laundering and foreign corruption," has a history of repeated citations for weak antimony-laundering (AML) controls. The Senate Report found that since at least 1997, "Riggs has disregarded its [AML] obligations, maintained a dysfunctional AML program despite frequent warnings from [regulators with the Office of the Currency Comptroller (OCC)], and allowed or, at times, actively facilitated suspicious financial activity."

To illustrate Riggs’s poor AML compliance, the Senate investigation analyzed two sets of accounts—one of which belonged to the former Chilean dictator, Augusto Pinochet. The report found that Riggs had "assisted Augusto Pinochet... to evade legal proceedings related to his Riggs bank accounts and resisted OCC oversight of the accounts, despite red flags involving the source of Mr. Pinochet's wealth, pending legal proceedings to freeze his assets, and public allegations of serious wrongdoing by this client."

22. SENATE REPORT, supra note 1, at 2.
23. See supra note 7 and accompanying text.
24. SENATE REPORT, supra note 1, at 1.
25. In May 2004, Riggs was fined $25 million for "willfully violating its legal obligations to implement an adequate antimony laundering program and file currency transaction and suspicious activity reports... This fine is the largest ever assessed under the Bank Secrecy Act." Id. at 17.
27. SENATE REPORT, supra note 1, at 1.
28. Id. at 12.
29. Id. at 15.
30. Id. at 2.
31. Id. at 12. The other set of accounts belongs to the government of Equatorial Guinea (EG), EG government officials, or their families. Id. at 3.
32. Id. at 7.
According to the Senate Report, from 1994 to 2002, Riggs opened at least six accounts and issued several certificates of deposits (CDs) for Pinochet. Three of these accounts were personal accounts and the other three were opened in the names of offshore shell corporations created by Riggs for Pinochet. In fact, senior Riggs officials had traveled to Chile to personally solicit Pinochet’s business. The aggregate deposits by Pinochet into these accounts ranged from $4 to $8 million.

Among its findings, the Senate Report determined that Riggs officials made practically no effort to inquire into the source of Pinochet’s wealth. Under OCC regulations, Riggs was required to implement AML programs such as a “know your customer” (KYC) policy. This policy was designed to guard against money laundering by verifying that a customer’s wealth was acquired through legitimate sources. However, at no time did the bank reveal in its KYC profiles on the Pinochet accounts that the owner was involved in “ongoing controversies and litigation associating Mr. Pinochet with human rights abuses, corruption, arms sales, and drug trafficking,” nor did

33. Id. at 2.
34. Id. at 21.
35. Id. at 19–20.
36. Id. at 2. According to Pinochet’s sworn financial statements, he received large commissions from services and travel abroad totaling $12.3 million while he was dictator and head of the Chilean military. Timothy L. O’Brien & Larry Rohter, The Pinochet Money Trail, N.Y. TIMES, Dec. 12, 2004, § 3, at 1. However, Chilean authorities are reviewing the documents, which were allegedly approved by the Chilean Defense Ministry, for their authenticity. Id.
37. SENATE REPORT, supra note 1, at 2.
38. Id. at 16–17 (noting that OCC regulations have required an AML program at nationally chartered banks since 1987); see also Terence O’Hara, Riggs Evidence Suggests Crimes by Employees; Inquiry Implicates Former Pinochet Account Managers, WASH. POST, Sept. 3, 2004, at E1 (stating that “[r]egulations requiring documentation of ‘politically exposed’ bank customers have been in force since 1986 for most banks”).
39. SENATE REPORT, supra note 1, at 24. Of the three KYC profiles prepared on Pinochet for 1998, 1999, and 2002, none identifies the owner of the accounts as Augusto Pinochet. Id. at 25–28. Rather, the owner of the accounts is described in one profile as a “retired professional” who held a “[h]igh paying position in investment income” and “in the public sector.” Id. at 25–26. In another profile, he is described as a “retired Army General” whose sources of wealth include “profits and dividends from several business[es] family owned” and “investment income, rental income, and pension fund payments from previous posts.” Id. at 27.
40. Id. at 24.
41. Id. at 27.
it acknowledge the “long-standing and ongoing controversies over the sources of [Pinochet’s] wealth.”

The report also disclosed that after an indictment was filed in Spain in 1996 accusing Pinochet of crimes against humanity, Riggs assisted Pinochet in creating two offshore shell corporations that same year and in 1998 in an effort to disguise his ownership of these accounts. The Senate investigation further found that Riggs officials aided Pinochet in evading legal proceedings surrounding his arrest in London in 1998. The Spanish magistrate who initiated the legal proceedings against Pinochet issued an attachment order in October 1998 “against all bank accounts held directly or indirectly by Mr. Pinochet, his family members, or third parties in any country.” Six months after the attachment order was issued, Riggs allowed Pinochet to transfer $1.6 million from a CD held in London to a new CD in the United States. A memorandum provided to the bank and obtained during the investigation revealed that “senior Riggs officials were fully aware of the Pinochet attachment order and seizure actions taking place in other countries, the questions about the source of Mr. Pinochet’s wealth, and the allegations of his involvement with a variety of crimes.” At no point did Riggs “file any suspicious activity reports that would have alerted British or U.S. law enforcement to the existence of the Pinochet funds.”

42. Id. at 26.
43. Id. at 20.
44. Id. at 2.
45. Id. at 29. Pinochet was arrested in London in October 1998 on charges of murder, torture, hostage taking, and conspiracy to commit those crimes. MADELINE DAVIS, THE PINOCHET CASE 1 (2000). The warrant for his arrest requested his extradition to Spain to stand trial for the alleged crimes. Id. The House of Lords ultimately decided that Pinochet could be extradited to Spain to answer charges for a limited number of the alleged crimes. Id. However, the British Home Secretary ruled that Pinochet was mentally unfit to stand trial and allowed him to return to Chile in March 2000 after seventeen months. Id.
46. SENATE REPORT, supra note 1, at 29.
47. Id.
48. Id. at 32.
49. Id. at 29. In response to a report in a British newspaper in December 2000 that Pinochet had more than $1 million in an account at Riggs in the United States, Riggs made further efforts to disguise Pinochet’s accounts. See id. at 30. Shortly thereafter, Riggs changed the official names on the personal account controlled by Pinochet from “Augusto Pinochet Ugarte & Lucia Hiriart de Pinochet” to “L. Hiriart &/or A. Ugarte” so that any search for the name “Pinochet” would be unable to identify the accounts. Id. at 30–31.
The investigation further revealed that “Riggs did not, at any time, volunteer information about the Pinochet accounts either to a bank examiner or to law enforcement.”\textsuperscript{50} Instead, Riggs hid its relationship with Pinochet from OCC examiners.\textsuperscript{51} In July 2000, when asked by the OCC to provide it with a “list of accounts controlled by foreign political figures, Riggs omitted the Pinochet accounts from that list.”\textsuperscript{52} Only when the OCC initiated a “targeted examination of the Pinochet accounts” in 2002 did Riggs finally agree to cooperate.\textsuperscript{53}

The Senate Report also points out that Riggs’s relationship with Pinochet began before 1994. One of Riggs’s KYC profiles on a Pinochet account stated that Pinochet had been a customer of the bank since 1985.\textsuperscript{54} Prior to that, one news account indicates that Pinochet had used Citibank; in 1984, however, Citibank requested that Pinochet close his account because the bank no longer wanted to do business with him.\textsuperscript{55}

Other reports reveal that both Chilean military officials and Chilean government agencies have had long-standing accounts with Riggs.\textsuperscript{56} Among those who maintained ties with Riggs was Manuel Contreras, the former head of the Directorate of National Intelligence (DINA),\textsuperscript{57} the Chilean secret policy agency created during Pinochet’s dictatorship.\textsuperscript{58} Contreras had two accounts at Riggs in Washington, D.C.\textsuperscript{59} One account was a personal account, which was opened in 1966,\textsuperscript{60} and the other was a service account for DINA, which was active as early as 1975,\textsuperscript{61} and disguised under a fictitious company name.\textsuperscript{62} Under the direction of Pinochet and Contreras, DINA’s operations expanded to include “organizing acts of international terrorism

\begin{itemize}
\item \textsuperscript{50} Id. at 35.
\item \textsuperscript{51} See id. at 3, 34.
\item \textsuperscript{52} Id. at 35.
\item \textsuperscript{53} Id. at 3, 35–36.
\item \textsuperscript{54} Id. at 19 n.38, 25. Riggs did not provide any account opening documentation for an account controlled by Pinochet prior to 1994. See id. at 19 n.38.
\item \textsuperscript{55} O’Brien & Rohter, supra note 36.
\item \textsuperscript{56} Glenn R. Simpson, Ex-Executive at Riggs Is Focus of Probe into Bank’s Pinochet Ties, WALL ST. J., Sept. 14, 2004, at A2.
\item \textsuperscript{57} KORNBLUH, supra note 7, at 224.
\item \textsuperscript{58} Id. at 165.
\item \textsuperscript{59} Id. at 224.
\item \textsuperscript{60} O’Brien & Rohter, supra note 36.
\item \textsuperscript{61} KORNBLUH, supra note 7, at 224.
\item \textsuperscript{62} Id.
\end{itemize}
against prominent exiles,"63 including the terrorist attack against a former Chilean ambassador in Washington, D.C. in 1976.64

Other news accounts indicate that Riggs provided financing to Chile in the form of loans during the late 1970s and possibly into the 1980s.65 In fact, a coalition of human rights groups began a campaign against Riggs to encourage those doing business with its banks to withdraw in part because of Riggs’s relationship with the military government of Chile.66 One report noted that Riggs had “extended at least $38 million worth of credits to the military missions of the Chilean dictatorship” during the 1970s.67

Much remains unknown about the extent of Riggs’s financial relationship with Pinochet and his former government.68 In February 2005, however, Riggs agreed to settle a lawsuit brought against it in a Spanish court for allegedly concealing assets and committing money-laundering offenses.69 Under the terms of the settlement, Riggs will pay victims of Pinochet’s regime $8 million.70 This announcement came only a month after Riggs entered a guilty plea to federal criminal charges in the United States for failing to report suspicious financial transac-

63. Id. at 175.
65. See supra notes 7–8 and accompanying text.
66. Bredemeier, supra note 8; Dickey, supra note 8.
67. Dickey, supra note 8.
70. O’Hara, supra note 69. Two bank directors of Riggs have also agreed to pay an additional $1 million. Id.
tions involving, among others, Pinochet’s accounts.\textsuperscript{71} In light of both these developments and other information that has surfaced regarding Riggs’s role in concealing and laundering potentially looted assets and financing Pinochet’s brutal dictatorship, an exploration of the ATCA’s evolving jurisprudence can help determine Riggs’s possible liability under the Act.

II. HUMAN RIGHTS COUP: BACKGROUND ON THE REDISCOVERY OF THE ALIEN TORT CLAIMS ACT

Originally enacted as part of the Judiciary Act of 1789, the ATCA is one of the United States’ oldest statutes,\textsuperscript{72} yet it is relatively new in terms of the courts defining the ATCA’s meaning and applicability.\textsuperscript{73} The Act itself comprises a single sentence that has changed little since its adoption: “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.”\textsuperscript{74} Despite its apparent simplicity, during the first 190 years of its existence, the ATCA was invoked fewer than twenty-two times,\textsuperscript{75} and jurisdiction was upheld only twice under the statute.\textsuperscript{76} Then, in 1980, the Second Circuit decided the landmark case of \textit{Filartiga v. Pena-Irala},\textsuperscript{77} which brought this unknown statute out of obscurity, providing a powerful new weapon to those demanding accountability for human rights abuses around the world.\textsuperscript{78}

\begin{footnotes}
\item[71] Eric Dash, \textit{Riggs Bank Is Penalized $16 Million}, N.Y. \textsc{Times}, Jan. 27, 2005, at C4. To avoid prosecution, Riggs will pay a penalty of at least $16 million. \textit{Id.}
\item[73] \textit{See} \textit{Filartiga v. Pena-Irala}, 630 F.2d 876, 878, 887 (2d Cir. 1980).
\item[74] 28 U.S.C. § 1350; cf. § 9(b), 1 Stat. at 77 (establishing that federal district courts “shall . . . have cognizance . . . 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”).
\item[76] \textit{Id.} (citing Adra v. Clift, 195 F. Supp. 887 (D. Md. 1961); Bolchos v. Darrell, 3 F. Cas. 810 (D.S.C. 1795)).
\item[77] 630 F.2d 876 (1980).
\item[78] \textit{See}, e.g., \textit{Doe I v. Unocal}, 395 F.3d 932, 946–48, 953–54 (9th Cir. 2002) (recognizing that a claim alleging forced labor, murder, and rape may be brought under the ATCA against a defendant corporation), \textit{reh’g en banc granted}, \textit{Doe I v. Unocal Corp.}, 395 F.3d 978 (9th Cir. 2003); \textit{Kadic v. Karadzic}, 70 F.3d 232, 242–43 (2d Cir. 1995) (holding that allegation of war crimes and genocide may be brought under the ATCA against a nonstate ac-
Filartiga held that two citizens of Paraguay could sue the perpetrator of state-sanctioned torture, which occurred in Paraguay, for the wrongful death of their relative in U.S. federal courts under the ATCA. Filartiga, 630 F.2d at 878, 884 (concluding that allegations of official torture may be brought under the ATCA by citizens of Paraguay against a state official); Burnett v. Al Baraka Inv. & Dev. Corp., 274 F. Supp. 2d 86, 99–100 (D.D.C. 2003) (holding that the ATCA recognizes a cause of action for violations of international law, including aircraft hijacking).

79. Filartiga, 630 F.2d at 878.
80. Id. at 887.
81. Id. at 878. The Second Circuit relied in part on the United Nations Charter, the Universal Declaration of Human Rights, and the Declaration on the Protection of All Persons from Being Subjected to Torture to reach its decision. Id. at 881–83. Congress passed the Torture Victim Protection Act “to codify the cause of action recognized ... in Filartiga, and to further extend that cause of action to plaintiffs who are U.S. citizens.” Kadic, 70 F.3d at 241.

82. Filartiga, 630 F.2d at 878, 887.
83. Id. at 884 (“[W]e conclude that official torture is now prohibited by the law of nations.”).
84. Kadic, 70 F.3d. at 241 (“In the aftermath of the atrocities committed during the Second World War, the condemnation of genocide ... quickly achieved broad acceptance by the community of nations.”).
86. Doe I v. Unocal Corp., 395 F.3d 932, 946 (9th Cir. 2002) (“Forced labor is a modern variant of slavery to which the law of nations attributes individual liability such that state action is not required.”), reh’g en banc granted, Doe I v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003).
from primarily state actors\textsuperscript{87} to private individuals,\textsuperscript{88} and increasingly to multinational corporations.\textsuperscript{89}

While some courts have supported the expansion of the scope of liability under the ATCA,\textsuperscript{90} not all courts have agreed with this broad approach to the ATCA's reach.\textsuperscript{91} In particular, disagreement exists as to whether the ATCA recognizes a cause of action or is purely a jurisdictional statute. The Second, Fifth, Ninth, and Eleventh Circuits reflected the majority view that the ATCA recognizes a cause of action for any alien seeking damages for tortlike injuries caused by a violation of international law.\textsuperscript{92} Judges on the D.C. Circuit concluded that the statute is primarily a jurisdictional grant to federal courts that allows plaintiffs to allege only violations of international law recognized in 1789.\textsuperscript{93}

Thus, the threshold question is whether the ATCA recognizes a cause of action at all. If it does, which claims are to be recognized as violations of the laws of nations? Finally, it is essential to ATCA jurisprudence to determine who may be sued under the Act.

A. \textit{Sosa v. Alvarez-Machain: The U.S. Supreme Court Weighs In}

In 2004, the U.S. Supreme Court attempted to resolve part of the debate over whether the ATCA provides for actionable

\textsuperscript{87} Filartiga, 630 F.2d at 878.
\textsuperscript{88} Kadic, 70 F.3d at 245.
\textsuperscript{90} \textit{See}, e.g., Unocal, 395 F.3d at 947; Kadic, 70 F.3d at 245; Burnett, 274 F. Supp. 2d at 91.
\textsuperscript{91} \textit{See}, e.g., Al Odah v. United States, 321 F.3d 1134, 1145–49 (D.C. Cir. 2003) (Randolph, J., concurring); Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 811 (D.C. Cir. 1984) (Bork, J., concurring); \textit{id.} at 826 (Robb, J., concurring).
\textsuperscript{92} Flores v. S. Peru Copper Corp., 343 F.3d 140, 153 (2d Cir. 2003); Beanal v. Freeport-McMoran, Inc., 197 F.3d 161, 165 (5th Cir. 1999); Abebe-Jira v. Negewo, 72 F.3d 844, 848 (11th Cir. 1996); \textit{In re Estate of Ferdinand Marcos}, 25 F.3d 1467, 1475 (9th Cir. 1994).
\textsuperscript{93} \textit{See}, e.g., \textit{Al Odah}, 321 F.3d at 1145–49 (Randolph, J., concurring) (reasoning that the ATCA confers only jurisdiction and that it does not recognize causes of action except those recognized in 1789); \textit{Tel-Oren}, 726 F.2d at 806 (Bork, J., concurring) (concluding that the ATCA grants federal courts jurisdiction to hear cases alleging violations of the "law of nations" as the term was understood in 1789).
claims, and if so, which actions violate the law of nations. Sosa v. Alvarez-Machain involved a claim alleging arbitrary detention brought under the ATCA by Dr. Humberto Alvarez-Machain, a Mexican national, against the U.S. government and Francisco Sosa, a Mexican policeman. Sosa helped the federal Drug Enforcement Agency (DEA) kidnap Alvarez-Machain from his office in Mexico and bring him to the United States to stand trial for the murder of a DEA agent. Alvarez-Machain was ultimately acquitted of the charges. Sosa, with the support of the U.S. government, argued that the ATCA is a jurisdictional statute only, which does not create or authorize the federal courts to recognize any causes of action without further legislative action. While the Court ultimately ruled that Alvarez-Machain did not have a viable claim under the ATCA, it more importantly denied Sosa's interpretation, thus allowing for the recognition of other claims under the statute.

To arrive at this conclusion, the Court reviewed the legislative history of the ATCA. It noted that when Congress enacted the ATCA in 1789, it "gave the district courts 'cognizance' of certain causes of action" in terms of "a grant of jurisdiction, not power to mold substantive law." However, the Court pointed out that federal courts had the authority to hear common law claims, such as torts in violation of the law of nations, once there was a statute granting jurisdiction. Adding that the United States was "bound to receive the law of nations" at the time of its independence, the Court noted that the law of nations covered "general norms governing the behavior of national states with each other" and "a body of judge-made law regulating the conduct of individuals situated outside domestic boundaries." It emphasized that three particular violations against the law of nations would likely have been the common law claims the drafters of the ATCA were thinking of in 1789:

95. Id. at 2739.
96. Id. at 2746–47, 2767.
97. Id. at 2746.
98. Id.
99. Id. at 2754.
100. Id. at 2761–62.
101. Id. at 2755.
102. Id.
103. Id. (citing Brief for Vikram Amar et al. as amici curiae).
104. Id. (quoting Ware v. Hylton, 3 Dall. 199, 281 1 L. Ed. 568 (1796)).
105. Id. at 2756.
"violation of safe conducts, infringement of the rights of ambassadors, and piracy."\textsuperscript{106}

As further support for this interpretation, the Supreme Court cited a resolution passed in 1781 by the Continental Congress encouraging state legislatures to enact laws punishing specific offenses, including breaches of treaties and conventions to which the United States was a party, violations of safe conducts, and infringement on the rights of ambassadors.\textsuperscript{107} The Continental Congress further recommended that the states "authorise [sic] suits . . . for damages by the party injured, and for compensation to the United States for damage sustained by them from an injury done to a foreign power by a citizen."\textsuperscript{108} While some scholars have argued that this resolution is the basis for the ATCA,\textsuperscript{109} it, at the very least, signals Congress's "commitment to enforce the law of nations."\textsuperscript{110}

Yet because there is no record of the congressional debate nor an enumeration of which private actions were subject to the ATCA, no general agreement exists as to what Congress intended.\textsuperscript{111} Despite this lack of consensus, the Supreme Court concluded that history did not support the interpretation that Congress created a jurisdictional statute that was "stillborn,"\textsuperscript{112} having no "practical effect."\textsuperscript{113} Rather, the Court noted that the first Congress "intended the [ATCA] to furnish jurisdiction for a relatively modest set of actions alleging violations of the law of nations."\textsuperscript{114} These actions are not limited to the three historical violations of international law.\textsuperscript{115} Instead, the Court determined that the federal common law provides the basis for creating new common law causes of action based on the federal courts' ability to incorporate the law of nations into the federal common law.\textsuperscript{116} Upon reaching this decision, the Court empha-

\begin{enumerate}
\item \textsuperscript{106} \textit{Id.} (citing 4 \textsc{William Blackstone}, \textsc{Commentaries on the Laws of England} 68 (1769)).
\item \textsuperscript{107} \textit{Id.} at 2756–57 (citing 21 \textsc{Journals of the Continental Cong.} 1136–37 (Gaillard Hunt ed., 1912)).
\item \textsuperscript{108} \textit{Id.} at 2757 (quoting 21 \textsc{Journals of the Continental Cong.} 1137 (Gaillard Hunt ed., 1912)).
\item \textsuperscript{109} Burley, \textit{supra} note 12, at 476–77.
\item \textsuperscript{110} \textit{Sosa}, 124 S. Ct. at 2757.
\item \textsuperscript{111} \textit{Id.} at 2758.
\item \textsuperscript{112} \textit{Id.} at 2755.
\item \textsuperscript{113} \textit{Id.} at 2758.
\item \textsuperscript{114} \textit{Id.} at 2759.
\item \textsuperscript{115} \textit{Id.} at 2764.
\item \textsuperscript{116} \textit{Id.} at 2761–62, 2764.
\end{enumerate}
sized that for two centuries, federal courts "have affirmed that the domestic law of the United States recognizes the law of nations."\textsuperscript{117} It underscored this point by acknowledging that its decision with regard to the ATCA aligns itself with the position the federal courts have taken since the Second Circuit decided \textit{Filartiga}.\textsuperscript{118} Adding further support to its conclusion, the Court highlighted the fact that Congress had done nothing to indicate that the law of nations should be set aside.\textsuperscript{119}

The Court also emphasized that federal courts "should require any claim based on the present-day law of nations to rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized."\textsuperscript{120} To make this determination, ATCA claims should be "gauged against the current state of international law" by examining certain sources, including treaties, executive and legislative acts, judicial opinions, and works by jurists and commentators.\textsuperscript{121}

Moreover, the Court encouraged the exercise of "judicial caution" for a number of reasons, including the substantial degree of discretion involved in recognizing common law claims based on internationally generated norms, as well as the changes since 1789 in the role of courts in making federal common law.\textsuperscript{122} It also noted that the "general practice has been to look for legislative guidance before exercising innovative authority over substantive law"\textsuperscript{123} and to leave the creation of private causes of action in most cases up to the legislative

\textsuperscript{117} Id. at 2764.
\textsuperscript{118} See id.
\textsuperscript{119} Id. at 2765; see also Jordan J. Paust, \textit{The History, Nature, and Reach of the Alien Tort Claims Act}, 16 FLA. J. INT'L L. 249, 256 (2004) (noting that Congress has imposed no limitations on the ATCA's reach, "including limits as to subject matter, its extraterritorial reach, or its provision of a cause of action or right to a remedy" (citation omitted)). As recently as 1991, Congress reaffirmed its support of the ATCA's broad scope by stating that the ATCA "should remain intact to permit suits based on... norms that already exist or may ripen in the future into rules of customary international law." See id. at 256 n.19 (quoting H.R. REP. No. 102-367, pt. 1, at 4 (1991)). Congress also expressed its support for the Second Circuit's interpretation of the ATCA in its \textit{Filartiga} decision. S. REP. No. 102-249, at 4 (1991) (noting that "the \textit{Filartiga} case has met with general approval").
\textsuperscript{120} Sosa, 124 S. Ct. at 2761–62.
\textsuperscript{121} Id. at 2766–67 (citing The Paquete Habana, 175 U.S. 677, 700 (1900)).
\textsuperscript{122} Id. at 2762.
\textsuperscript{123} Id.
The Court further cautioned federal courts to consider the potential consequences of recognizing new violations of international law on U.S. foreign relations and the role of the executive and legislative bodies in conducting such affairs.

While the Court's opinion in *Sosa* clarifies that certain violations of international law can result in a viable cause of action under the ATCA, it remains up to the lower federal courts to determine which violations of international law will be actionable. Legal scholars have argued that the standards of international law continue to evolve "with the international community and its consciousness." Under this theory, the scope of the ATCA's reach may arguably continue to expand as well. While *Sosa* sets a high bar for establishing international law-based causes of action under the ATCA, there is general agreement that certain acts such as torture, summary execution, war crimes, genocide and slavery are internationally denounced and widely considered violations of the law of nations. This list, however, is not exclusive, and arguments may be made to recognize other actions as violations of international law. Two such arguments will be explored later in this Note concerning corporate liability under the ATCA.

**B. UNANSWERED QUESTION: WHO CAN BE HELD LIABLE UNDER THE ATCA?**

Another question regarding the scope of the ATCA is who can be sued under the Act. This has become an increasingly debated topic as plaintiffs have filed ATCA claims against not only state actors and individuals for violations of international law, but also multinational corporations. Unfortunately,

124. *Id.* at 2762–63.
125. *Id.* at 2763.
126. *Id.* at 2764.
130. *See Sosa*, 124 S. Ct. at 2764.
131. *See infra* Part III.A–B.
Sosa, which involved defendant state actors, shed little light on this debate.\(^{133}\)

Under what some scholars describe as the "traditional view" of international law, only states are considered relevant actors.\(^{134}\) Proponents of such a view believe that international law binds only states and does not place obligations on private nonstate actors.\(^{135}\) However, an alternative approach views the international community as "compris[ing] not only states, but individuals, peoples, inter-governmental organizations, non-governmental organizations, and corporations."\(^{136}\) Some scholars argue that the Nuremberg trials held in the aftermath of World War II established the notion of individual accountability for human rights violations under international law.\(^{137}\)

In 1995, the Second Circuit recognized this notion of individual accountability when it extended its Filartiga precedent for trying state actors under the ATCA to private individuals.\(^{138}\) In Kadic v. Karadzic,\(^{139}\) Croat and Muslim citizens of Bosnia-Herzegovina brought a lawsuit under the ATCA against Radovan Karadzic, then-president of the self-proclaimed Bosnian-Serb republic within Bosnia-Herzegovina, alleging that he had directed a campaign of human rights violations, which included genocide, war crimes, and crimes against humanity.\(^{140}\) Karadzic argued he was not a state actor nor was he acting under color of a state's law, and thus he could not be bound by international law.\(^{141}\) The Second Circuit disagreed and held "that

\(^{133}\) Sosa, 124 S. Ct. at 2746. In a footnote, the Court simply points out that a "consideration [under the ATCA] is whether international law extends the scope of liability for a violation of a given norm to the perpetrator being sued, if the defendant is a private actor such as a corporation or individual." Id. at 2766 n.20.

\(^{134}\) Michael Byers, The Law and Politics of the Pinochet Case, 10 DUKE J. COMP. & INT'L L. 415, 417 (2000); see also Boyd, supra note 18, at 1148.

\(^{135}\) Ramasastry, supra note 12, at 398.

\(^{136}\) Byers, supra note 134, at 418 (emphasis added).


\(^{138}\) Kadic v. Karadzic, 70 F.3d 232, 239 (2d Cir. 1995).

\(^{139}\) Id. at 232.

\(^{140}\) Id. at 236-37.

\(^{141}\) Id. at 239.
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." 142 Although the court focused on the modern era's interpretation of the law of nations, 143 it cited pirates as an early example of nonstate actors who could be held liable for offenses against international law. 144 It further noted that nonstate actors may be held liable for other violations of international law such as war crimes and genocide even when there is no state involvement because these crimes are of international concern, and thus subject to universal jurisdiction. 145 However, the court concluded that certain actions such as torture or summary execution violate international law only when committed by state officials or under color of law, unless they are carried out in furtherance of one of the offenses subject to universal jurisdiction such as genocide or war crimes. 146 A nonstate actor "acts under color of law . . . when he acts together with state officials or with significant state aid." 147

Kadic's recognition of claims against private actors under the ATCA inevitably led to one of the most controversial issues surrounding the Act: whether corporations can be held liable for violations of international law. Although to date no corpo-

142. Id.
143. Id.
144. Id. (citing The Brig Malek Adhel, 43 U.S. (2 How.) 210, 232 (1844) (observing that pirates were "hostis humani generis" (an enemy of all mankind) because they acted "without . . . any pretense of public authority")).
145. Id. at 240 (citing RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 404 (1987)). The Restatement (Third) of Foreign Relations § 404 states that:
A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where none of the bases of jurisdiction indicated in § 402 is present.

RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 404 (1987).
146. See Kadic, 70 F.3d at 243. The Restatement (Third) of Foreign Relations § 702 states that:
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.

147. Kadic, 70 F.3d at 245 (citing Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).
rate defendant has been found liable for tortious violations of international law under the ATCA,\textsuperscript{148} numerous lawsuits have been filed under the statute against multinational corporations and financial institutions alleging violations of human rights.\textsuperscript{149} Some legal scholars attribute this recent phenomenon to the increased scrutiny of nonstate actors, including corporations, under international law.\textsuperscript{150} This trend finds support in the argument that a corporation is "simply a juridic person," who is bound by domestic and international laws applicable to individuals.\textsuperscript{151} Thus, corporations must avoid directly infringing on human dignity.\textsuperscript{152} Because the idea of complicity exists in international law, private actors and states have a duty not to engage in complicitous behavior, which violates human rights.\textsuperscript{153} Therefore, corporations are obligated "not to cooperate with [a] government when it is violating human rights . . . ."\textsuperscript{154} Some legal scholars have emphasized that a number of conventions, declarations, and documents of international organizations provide support for the proposition that corporations have obligations under international law, including upholding human rights.\textsuperscript{155}

\textsuperscript{148} Hufbauer & Mitrokostas, supra note 75, at 253.

\textsuperscript{149} E.g., Aguinda v. Texaco, Inc., 303 F.3d 470, 472–73 (2d Cir. 2002) (recognizing an ATCA claim against a defendant oil company but dismissing the case on forum non conveniens grounds); Bano v. Union Carbide Corp., 273 F.3d 120, 122 (2d Cir. 2001) (recognizing a corporate defendant but dismissing the ATCA claim against defendant as barred by previous litigation); Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 296 (S.D.N.Y. 2003) (upholding an ATCA claim brought against a Canadian energy company alleged to have collaborated with the Sudanese government); Burger-Fischer v. DeGussa Ag, 65 F. Supp. 2d 248, 282, 285 (D.N.J. 1999) (recognizing that the court had subject matter jurisdiction regarding an ATCA claim against two German corporations but dismissing the claim on justiciability grounds).

\textsuperscript{150} See, e.g., Boyd, supra note 18, at 1143; Ramasastry, supra note 12, at 330.

\textsuperscript{151} See Paust, supra note 15, at 803.

\textsuperscript{152} Symposium, supra note 17, at 29.

\textsuperscript{153} Id. at 28.

\textsuperscript{154} Id. at 30.

\textsuperscript{155} See, e.g., Paust, supra note 15, passim; see also Mark B. Baker, Tightening the Toothless Vise: Codes of Conduct and the American Multinational Enterprise, 20 Wis. Int'l L.J. 89, 119–29 (2001). As early as 1945, the Charter of the International Military Tribunal at Nuremberg included provisions concerning groups and organizations involved in criminal activities. Paust, supra note 15, at 803 n.4 (citing Charter of the International Military Tribunal at Nuremburg, Aug. 8, 1945, arts. 9–10, 82 U.N.T.S. 279). The Universal Declaration of Human Rights further recognized that human rights are "a common
ATCA jurisprudence reflects this trend by recognizing that corporations can be held liable under the Act for human rights violations even when another actor such as a state commits the offensive acts.\textsuperscript{156} Legal scholars have posited that theories of aiding and abetting, joint venture, agency, negligence, and recklessness "could be used to link all sorts of relationships that a corporation may have with government officials, government agencies, and state enterprises."\textsuperscript{157}

One particular area of corporate liability under the ATCA that has not been thoroughly explored is the issue of bank secrecy and financing. The question remains whether multinational banks that knowingly conceal looted assets in accounts, launder money, and provide financing can be held accountable under the ATCA for aiding and abetting state actors who have

\textsuperscript{156} Doe I v. Unocal Corp., 395 F.3d 932, 946–47, 952–54 (9th Cir. 2002) (recognizing that a claim alleging forced labor, murder, and rape may be brought under the ATCA against a defendant corporation), \textit{reh'g en banc granted}, Doe I v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003); Aguinda v. Texaco, Inc., 303 F.3d 470, 472–73 (2d Cir. 2002); Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 296 (S.D.N.Y. 2003) (upholding an ATCA claim brought against a Canadian energy company alleged to have collaborated with the Sudan government to commit gross human rights violations); Eastman Kodak Co. v. Kavlin, 978 F. Supp. 1078, 1092, 1094 (S.D. Fla. 1997) (upholding an ATCA claim brought against a Bolivian corporation for conspiring with state officials to arbitrarily detain the plaintiff).

committed serious breaches of international law. To provide a response, it must be determined whether these actions violate the law of nations. Four cases examined below provide possible insight into answering this question and analyzing the more specific question of whether Riggs may be held liable under ATCA for aiding and abetting Pinochet’s campaign of atrocities.

C. MARCOS HUMAN RIGHTS LITIGATION: SWISS BANKS AS AGENTS

The human rights litigation brought against former Filipino President Marcos was the first ATCA case to recognize Swiss banks as “agents” of human rights violators who were also their customers.158 During the presidency of Ferdinand Marcos, the Filipino military acting under martial law allegedly tortured, murdered, and forced the disappearances of as many as 10,000 people in the Philippines.159 After Marcos fled to Hawaii in response to a democratic uprising in the Philippines,160 individuals alleging to have been tortured by his government and family members of such victims of abuse brought lawsuits against Marcos under the ATCA.161 Five cases were ultimately filed against him,162 and although Marcos died in 1989, the lawsuits continued against his estate.163

A judicial panel consolidated the various cases against the estate in 1990, resulting in a class action lawsuit in 1991.164 In January 1995, a federal district court awarded the Marcos plaintiffs $1.9 billion in damages165 for human rights violations.166 Almost two years later, the court ordered the Swiss banks, holding an estimated $475 million of Marcos’s assets,167 to turn the money over to the plaintiffs to partially satisfy the judgment against the Marcos estate.168 Upon issuing this in-

158. See Ramasastry, supra note 12, at 430, 435.
159. In re Estate of Marcos, 25 F.3d 1467, 1469 (9th Cir. 1994).
160. Id.
161. Id.
162. Ramasastry, supra note 12, at 331.
163. Id.
164. Marcos, 25 F.3d. at 1469.
166. Id. at 430.
167. Id. at 434.
168. Id. (citing In re Estate of Marcos, 910 F. Supp. 1470, 1473 (D. Haw. 1995)).
junction, the district court characterized the banks as "agents" of Marcos.\textsuperscript{169} The Swiss banks appealed the district court ruling to the Ninth Circuit Court of Appeals,\textsuperscript{170} arguing that enforcement of the injunction by a U.S. court would "conflict with Swiss criminal law, Swiss sovereignty, and international law."\textsuperscript{171} The Ninth Circuit, while acknowledging the district court judge's characterization of the banks as "agents" of Marcos, reversed the decision because the banks were not parties in the original lawsuits.\textsuperscript{172}

In response to the Ninth Circuit's decision, the Marcos plaintiffs made another attempt to enforce the judgment by filing a lawsuit directly against the Swiss banks.\textsuperscript{173} In their complaint, the plaintiffs alleged that the "Swiss banks have laundered and invested the assets of Ferdinand E. Marcos for decades."\textsuperscript{174} They argued that the banks, as "agents" of Marcos, had played "an active role in concealing and disguising the assets."\textsuperscript{175} When the defendant Swiss banks petitioned the Ninth Circuit for writ of mandamus,\textsuperscript{176} the court responded by invoking the act of state doctrine,\textsuperscript{177} which precludes U.S. courts from examining the validity of a sovereign nation's public acts committed in its own territory,\textsuperscript{178} and dismissed the lawsuit.\textsuperscript{179}

\textsuperscript{169} Id. at 435 (quoting Plaintiffs/Real Parties in Interest Response in Opposition to Petitioners' Petition for Writ of Mandamus, Prohibition and/or Other Extraordinary Relief at 1, Credit Suisse v. United States Dist. Ct., Cent. Dist. of Calif., 130 F.3d 1342 (9th Cir. 1997) (No. 97-70193)).

\textsuperscript{170} Id.

\textsuperscript{171} See id. (citing Henry Weinstein, Swiss Threaten Retaliation Over L.A. Judges's Order in Marcos Case; Courts: U.S. Seeks to Pacify Individuals Who Complained About Ruling That They Should Turn Over $475 Million Linked to Dictator, L.A. TIMES, Feb. 11, 1996, at A3).

\textsuperscript{172} Id. at 436 (citing Hilao v. Estate of Marcos, 95 F.3d 848, 855 (9th Cir. 1996)).

\textsuperscript{173} Id. at 439.

\textsuperscript{174} Id. (quoting Plaintiffs/Real Parties in Interest Response in Opposition to Petitioners' Petition for Writ of Mandamus at 1, Credit Suisse (No. 97-70193)). During his presidency, Marcos, who had used pseudonyms and shell corporations to disguise his Swiss accounts, id. at 431, maintained control over the Philippine Treasury, id. (citing STERLING SEAGRAVE, THE MARCOS DYNASTY 194–95 (1988)). Evidence indicates that Marcos looted government money by transferring such monies to secret personal accounts. Id. (citing Pieter J. Hoets & Sara G. Zwart, Swiss Bank Secrecy and the Marcos Affair, 9 N.Y.L. SCH. J. INT'L & COMP. L. 75, 83 (1988)).

\textsuperscript{175} Id. at 440 (quoting [Proposed] Second Am. Compl. at 10–11, Tizon v. Credit Suisse (D. Haw. 1997) (MDL No. 840)).

\textsuperscript{176} Id.

\textsuperscript{177} Id. at 441 (citing Credit Suisse, 130 F.3d at 1346).

\textsuperscript{178} Underhill v. Hernandez, 168 U.S. 250, 252 (1897). The act of state doc-
However, at the end of 1997, the Swiss Federal Supreme Court ordered the Swiss banks to release the Marcos assets to the Philippine government, which had announced that it would negotiate a settlement with 10,000 human rights victims.

D. **HOLOCAUST LITIGATION: APPLYING NUREMBERG PRINCIPLES TO ATCA CLAIMS AGAINST SWISS BANKS**

While the *Marcos* litigation was significant in terms of raising the issue of third-party liability for banks under the ATCA, it was the *Holocaust* litigation against certain Swiss banks during the 1990s that opened the door to bringing ATCA claims against financial institutions alleged to have concealed bank accounts, laundered money, and financed governments responsible for human rights atrocities. By making claims of economic and property rights under the ATCA, the *Holocaust* plaintiffs helped further an expansion of the substantive human rights recognized by international law.

During the mid-1990s, Holocaust survivors and relatives of Holocaust victims filed several class action lawsuits against Swiss banks. The *Holocaust* plaintiffs claimed that the Swiss banks:

- knowingly aided and abetted the Nazi regime by providing them with the financing necessary to continue World War II for at least a year longer than it otherwise might have lasted;
- that the banks knowingly engaged in transactions with the Nazi regime that furthered criminal activities; and
- that the banks knowingly accepted and disposed of assets they knew, or should have known, were the result of looting, plunder and slave labor engaged in by or on behalf of the Nazi regime.

**trine** is based on the notion that "the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory." *Id.*

179. Ramasastry, *supra* note 12, at 440–41 (citing *Credit Suisse*, 130 F.3d at 1346).


181. *Id.* (citation omitted).


184. Ramasastry, *supra* note 12, at 391 (quoting Plaintiffs' Memorandum of Law in Opposition to Defendants' Motions to Dismiss for Lack of Subject
In particular, they argued that the ATCA and international law recognized their claims of human rights violations,\(^\text{185}\) and that among the torts committed by the banks was the tort of conversion based in part upon the Swiss banks' involvement in the use and concealment of Holocaust victims' assets looted by the Nazis.\(^\text{186}\)

To support these allegations, the Holocaust plaintiffs argued that the banks had violated "international treaties, customary international laws, and fundamental human rights laws prohibiting genocide, war crimes, crimes against humanity, crimes against peace, slavery, slave and forced labor and slave trade."\(^\text{187}\) In response to the banks' argument that they had not violated any international norms existing during the 1930s and 1940s,\(^\text{188}\) the Holocaust plaintiffs invoked the Nuremberg Principles, which are "widely considered to encapsulate principles of customary international law" during that time.\(^\text{189}\) In particular, the plaintiffs argued that the Swiss banks aided and abetted the commission of war crimes and crimes against humanity under the Nuremberg Principles.\(^\text{190}\)

However, because modern theories of collective liability had not been developed at the time the Nuremberg Principles were formulated, the Holocaust plaintiffs faced serious hurdles in proving their claims.\(^\text{191}\) Both the Holocaust plaintiffs and the

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\(^{185}\) Id. at 387.

\(^{186}\) Id. at 390. "Conversion is defined under the Restatement of Torts (Second) as 'an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may be justly required to pay the other the full value of the chattel.'" Id. at 391 (quoting 18 Am. Jur. 2d Conversion § 1 (1996)).

\(^{187}\) Id. (quoting Friedman, No. 96-CV-5161, ¶ 215 (E.D.N.Y. Oct. 21, 1996) [hereinafter Freidman Compl.]). The Holocaust plaintiffs, in support of their arguments that the Swiss banks violated international law, cited the following: the Genocide Convention; the United Nations Charter; the Universal Declaration of Human Rights; the Geneva Convention of 1929; the supplemental Geneva Convention on the Treatment of Non-Combatants During War Time; the Nuremberg Principles; the Slavery Convention of 1926; the Supplementary Convention on the Abolition of Slavery; the Slave Trade, and Institutions and Practices Similar to Slavery; the International Labor Conventions and Recommendations; the Covenant on Economic, Social and Political Rights; and the Hague Convention of 1907. Id. at 391 n.313.

\(^{188}\) Id. at 393–94.

\(^{189}\) Id. at 396–97.

\(^{190}\) Id. at 397.

\(^{191}\) Id. at 409.
Swiss banks looked to the actions of German bankers and industrialists convicted by the U.S. Military Tribunal (USMT) to support their respective cases. In particular, the plaintiffs cited the case of a private German banker, who was convicted for his active role in looting and plundering, and the case of another German banker, who was convicted for directing a "Nazi program of spoliation and transfer of assets." While such actions may have constituted a war crime because they involved "a systematic program of plunder," not all looting convictions before the tribunal involved systematic plunder. The Holocaust plaintiffs pointed to the trial of a German industrialist who was convicted for the "unlawful retention of illegally seized [private] property" in occupied territory. Arguably, by accepting and managing the plundered property, the industrialist's actions were comparable to that of the Swiss banks which accepted and managed illegally seized assets from the Nazis.

In the end, the validity of these claims was never fully adjudicated. The parties reached a settlement agreement in 1998, in which the defendant Swiss banks agreed to pay $1.25 billion to the Holocaust plaintiffs in exchange for a release of claims by the plaintiffs relating to the Holocaust, World War II, and targets of Nazi persecution. The court never ruled on the banks' pending motions to dismiss, and thus never resolved the questions concerning the scope of the ATCA's reach with regard to these claims.

E. DOE V. UNOCAL: HOLDING CORPORATIONS LIABLE

Six years after the Holocaust plaintiffs settled their claims against the Swiss banks, a landmark settlement of an ATCA claim brought against a U.S. corporation was tentatively

192. See id. at 413.
193. Id. at 416.
194. Id. at 418.
195. Id. at 426.
197. Id. at 426.
198. Id. at 422.
199. See id.
201. Doe I v. Unocal Corp., 395 F.3d 932 (9th Cir. 2002), reh'g en banc granted, Doe I v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003).
reached. This announcement came six months after the Supreme Court decided Sosa v. Alvarez-Machain and shortly before the full Ninth Circuit was to review whether human rights claims made by residents of Myanmar against a private corporation, Unocal, were viable under the ATCA. The plaintiffs alleged that Unocal, an American oil company, aided and abetted the Myanmar military in subjecting the plaintiffs to torture, rape, murder, and forced labor during the construction of a gas pipeline in Myanmar. A three-judge panel of the Ninth Circuit had previously held in this case that a claim alleging a theory of corporate complicity was actionable under the ATCA. Although this decision was ultimately vacated for review by the full Ninth Circuit, it is illustrative of how a court might rule on a similar case in the future.

Upon beginning its analysis of the plaintiffs' claims, the three-judge panel held that all the torts alleged by the plaintiffs, including forced labor, murder, rape, and torture, were violations of the law of nations. The court then extended the approach of Kadic, which found private individuals liable under the ATCA, to private corporate entities. In doing so, it held that Unocal "may be liable under the ATCA for aiding and abetting the Myanmar Military in subjecting Plaintiffs to forced labor" and that the standard for testing this claim under the ATCA is "knowing practical assistance or encouragement that has a substantial effect on the perpetration of the crime." The court pointed to evidence suggesting Unocal had

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204. Unocal, 395 F.3d at 936.
205. Id. at 954. Claims made by the plaintiffs against the Myanmar military and the state-owned oil company, Myanmar Oil, had been dismissed earlier by the district court under the Foreign Sovereign Immunities Act. Id. at 943 (citing Doe I v. Unocal Corp., 963 F. Supp. 880 (C.D. Ca. 1997)).
206. Id. at 954.
207. Id. at 946. The court first noted that slave trading was included on a narrow list of crimes, such as genocide and war crimes, that do not require state action for individual liability under the ATCA. Id. at 945–46. It further held that "even crimes like rape, torture, and summary execution, which by themselves require state action for ATCA liability to attach, do not require state action when committed in furtherance of other crimes like slave trading, genocide or war crimes, which by themselves do not require state action for ATCA liability to attach." Id. at 946.
208. Id. at 947. To have a substantial effect, "the criminal act most proba-
knowledge that forced labor was being used to facilitate the building of the pipeline and that the corporation had benefited from the practice.\textsuperscript{209} Rather than applying the law of Myanmar, state law, or federal common law, the Ninth Circuit agreed to apply international law developed in criminal tribunals, including the International Criminal Tribunal for the former Yugoslavia.\textsuperscript{210}

The court noted that in \textit{Prosecutor v. Furundzija},\textsuperscript{211} a case tried before the International Criminal Tribunal for the former Yugoslavia, the "\textit{actus reus} of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime."\textsuperscript{212} Similarly, the mens rea of aiding and abetting calls for actual or constructive knowledge that the accomplice's "actions will assist the perpetrator in the commission of the crime."\textsuperscript{213} However, this standard does not require the accomplice to share the mens rea of the principal or even know the exact crime the perpetrator intends to commit; rather, the accused need only be aware that "one of a number of crimes will probably be committed."\textsuperscript{214}

According to the Ninth Circuit, there was sufficient evidence in the case to raise an issue as to whether Unocal hired the Myanmar military\textsuperscript{215} and gave "practical assistance" to the Myanmar military,\textsuperscript{216} knew that forced labor was being used,\textsuperscript{217} and benefited from the Myanmar military's actions.\textsuperscript{218} The court adopted the standard from \textit{Kadic v. Karadzic} that certain acts such as torture, rape, and summary execution are violations of international law only when committed by state actors
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\textsuperscript{209} \textit{Id.} at 952.
\textsuperscript{210} \textit{Id.} at 950.
\textsuperscript{211} IT-95-17/1-T (Dec. 10, 1998), \textit{reprinted in} 38 I.L.M. 317 (1999).
\textsuperscript{212} \textit{Unocal}, 395 F.3d at 950 (quoting \textit{Furundzija}, IT-95-17/1-T, ¶ 235); cf. \textit{Restatement (Second) of Torts} § 876 (1979) ("For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself . . . ").
\textsuperscript{213} \textit{Unocal}, 395 F.3d at 950 (quoting \textit{Furundzija}, IT-95-17/1-T, ¶ 245).
\textsuperscript{214} \textit{Id.} at 950–51 (quoting \textit{Furundzija}, IT-95-17/1-T, ¶ 245).
\textsuperscript{215} \textit{Id.} at 937.
\textsuperscript{216} \textit{Id.} at 952.
\textsuperscript{217} See \textit{Id.} at 953.
\textsuperscript{218} See \textit{Id.} at 952–53.
or under color of law, unless they are committed in furtherance
of an offense subject to universal jurisdiction such as forced la-
bor. The court held that "Unocal may be liable under the
ATCA for aiding and abetting the Myanmar Military in subject-
ing Plaintiffs to murder and rape," in pursuit of a forced labor
program. However, it concluded that Unocal was not liable
for torture because the allegations of extreme physical abuse
concerned individuals other than the plaintiffs. As a defense
to these claims under the ATCA, Unocal asserted the act of
state doctrine. The court held that the doctrine did not pre-
clude the lawsuit because of the high degree of universal con-
demnation of the offenses, the fact that the U.S. government
had "denounced Myanmar's human rights abuses and imposed
sanctions," and the international human rights violations were
not considered to be in the public interest.

The announcement of a settlement precludes the full Ninth
Circuit's review of the three-judge panel's decision. Despite the
fact that no ATCA case against a corporation has gone to
trial, Unocal's willingness to settle the case may still have a
significant impact on the substantive development of ATCA
claims involving human rights violations.

F. BURNETT V. AL BARAKA INVESTMENT AND DEVELOPMENT
CORPORATION: RECOGNIZING TERRORISM FINANCING UNDER
THE LAW OF NATIONS

In the wake of Unocal and the recognition of corporate li-
ability under the ATCA, at least one federal court has upheld
ATCA claims against financial institutions and other entities
alleged to have knowingly financed acts of terrorism.

Victims and family members of victims of the September
11, 2001 terrorist attacks invoked the ATCA when they filed a
lawsuit against "the persons and entities that funded and sup-
pported the international terrorist organization known as al

219. Id. at 954 (citing Kadic v. Karadzic, 70 F.3d 232, 243–44 (2d Cir.
1995)).
220. Id.
221. Id. at 954–55.
222. Id. at 958.
223. Id. at 959.
224. See Girion, supra note 203, at 11.
225. See Boyd, supra note 18, at 1191.
Qaeda," alleging that they had each "directly or indirectly, provided material support, aided and abetted, or conspired with the terrorists who perpetrated the attacks." Among the numerous defendants are financial institutions and charitable foundations.

In denying the defendants' motion to dismiss the plaintiffs' ATCA claim, a federal district court concluded that an act of terrorism such as "aircraft hijacking is generally recognized as a violation of international law of the type that gives rise to individual liability." In their complaint, the plaintiffs alleged that "these terrorist activities constitute violations of the law of nations ... including those international legal norms prohibiting torture, genocide, air piracy, terrorism and mass murder." They cited the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, and several United Nations General Assembly resolutions on measures to prevent terrorism as examples of the law of nations and international agreements that had been violated. It is significant that the court noted that even though none of the defendants had been sued as "a direct perpetrator of a tort committed in violation of the law of nations, proof that they were accomplices, aiders and abettors, or co-conspirators would support a finding of liability under the ATCA."

The court closely scrutinized the plaintiffs' claims against particular defendants to ensure that they had been given fair notice of the claims and grounds due to the "extreme nature of the charge of terrorism." Among the allegations closely examined were those against Al-Haramain Foundation Incorporated, a private charitable organization, and Al Rajhi Banking & Investment Corporation (Al Rajhi), a banking network based in Saudi Arabia. The court concluded that under the theories of aiding and abetting and conspiracy, the plaintiffs' com-

227. Id. at 91.
228. Id.
229. Id. at 100. But see Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 795 (D.C. Cir. 1984) (Edwards, J., concurring) ("I do not believe that under current law terrorist attacks amount to law of nations violations.").
231. Id. ¶ 1125
233. Id. at 103–04.
234. Id. at 104.
235. Id. at 109.
236. The standard for aiding and abetting is:
plaint properly averred that al Qaeda committed a wrongful act that resulted in injury to the plaintiffs and that Al-Haramain Foundation Incorporated knowingly financed al Qaeda in an effort to further terrorism. 238 The court further noted that "[l]iability for aiding and abetting, or for conspiracy, must be tied to a substantive cause of action." 239 In this case, those causes of action involved the ATCA, as well as a number of common law torts, including wrongful death, survival, and intentional infliction of emotional distress. 240

In their complaint, the plaintiffs also alleged that Al Rajhi is one of a number of banks that "have acted as instruments of terror, in raising, facilitating and transferring money to terrorist organizations." 241 They further asserted that Al Rajhi served as the main bank for a number of charities acting as front groups for al Qaeda, which used the bank as a funnel for terrorism financing and support. 242 The court concluded that the "act of providing material support to terrorists, or 'funneling' money through banks for terrorists is unlawful and actionable." 243 However, the court found that the plaintiffs provided no support for "the proposition that a bank is liable for injuries done with money that passes through its hands in the form of deposits, withdrawals, check clearing services, or any other routine banking service." 244 Despite this conclusion, the court refused to dismiss the claim, and instead suggested that Al Rajhi file a motion for a more definite statement. 245 In doing so, this fed-

(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation.

Id. at 104 (quoting Halberstam v. Welch, 705 F.2d 472, 477 (D.C. Cir. 1983)).

237. The elements for conspiracy are:

(1) an agreement between two or more persons; (2) to participate in an unlawful act, or a lawful act in an unlawful manner; (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which overt act was done pursuant to and in furtherance of the common scheme.

Id. at 105 (quoting Halberstam, 705 F.2d at 477).

238. Id.
239. Id.
240. Id. at 91, 105.
241. Id. at 109 (quoting the Third Amended Complaint ¶ 136).
242. Id. (quoting the Third Amended Complaint ¶ 85).
243. Id.
244. Id.
245. Id. at 110.
eral court recognized that by asserting theories of aiding and abetting and conspiracy, banks and charities that provide financial and material support to terrorists may be held liable under the ATCA for violating both customary international norms and treaties against acts of terrorism.\textsuperscript{246}

This review of the legislative history of the ATCA and four cases based on ATCA claims reflects the Act's evolving jurisprudence in response to changes in the global community, including new actors, new rights, and new laws. These changes provide an important foundation for making the case that Riggs should be held liable under the ATCA for its actions related to Pinochet and his government.

III. YOU CAN RUN BUT YOU CAN'T HIDE—ATCA JURISPRUDENCE SHADOWS RIGGS

The release of the Senate Report in June 2004 has refocused attention on Pinochet and the atrocities committed during his regime. It has also raised important questions about financial institutions' relationships with customers who commit egregious human rights violations. At what point does such an institution cross the line from serving simply as a repository for the funds of those who perpetrate atrocities to becoming a facilitator of those who breach international law?\textsuperscript{247}

Evidence thus far does not suggest that Riggs itself committed the acts of torture, executions, terrorism, and forced disappearance that occurred during the Pinochet dictatorship.\textsuperscript{248} Rather, the focus is on Riggs's relationship with Pinochet and its role as an accomplice to the former dictator and his government. Thus, the question is whether a viable ATCA claim can be brought against Riggs for financing a military dictatorship responsible for gross human rights violations and concealing and laundering millions of dollars possibly looted by Pinochet during his dictatorship. An evolving theory, which recognizes corporate liability for serious human rights violations under international law, may support such a claim.\textsuperscript{249} Ex-

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{246} See id. at 107, 110.
  \item \textsuperscript{247} See Ramasastry, supra note 12, at 335.
  \item \textsuperscript{248} See 1 REPORT OF THE CHILEAN NAT'L COMM. ON TRUTH AND RECONCILIATION, supra note 4, at 35–39.
  \item \textsuperscript{249} See Ramasastry, supra note 12, at 412.
\end{itemize}
\end{footnotesize}
panded notions of liability for nonstate actors such as individuals and corporations further bolster this theory.\textsuperscript{250}

Both the Marcos and Holocaust litigation reveal that financial institutions, which actively assist state actors by concealing and laundering looted funds as part of an effort to further a campaign of human rights violations, may become liable under the ATCA for their complicity.\textsuperscript{251} The Holocaust and Unocal litigation add support to this theory of expanded corporate liability by suggesting that commercial institutions that knowingly finance and benefit from violations of human rights may be held accountable as agents or accomplices when they act in concert with state actors.\textsuperscript{252} Burnett advances a similar argument by suggesting that nonstate actors, who act in conjunction with a terrorist organization to finance terrorist activities, may also be held liable under the ATCA.\textsuperscript{253}

This evolution, along with the Supreme Court’s recent affirmation of the applicability of the ATCA in Sosa v. Alvarez-Machain, indicates that it may be possible to bring a viable claim against Riggs for its complicity in violations of international law committed by Pinochet. The first issue to address is whether Pinochet’s underlying acts of torture, terrorism, forced disappearance, and summary execution are recognizable violations of the law of nations for the purpose of bringing an ATCA claim. ATCA jurisprudence prior to Sosa suggests that is the case for most if not all of these crimes.\textsuperscript{254} Consideration of

\textsuperscript{250} See, e.g., Doe I v. Unocal Corp., 395 F.3d 932, 946–47 (9th Cir. 2002), reh’g en banc granted, Doe I v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003); Kadic v. Karadzic, 70 F.3d 232, 245 (2d Cir. 1995); Burnett, 274 F. Supp. 2d at 109–10.

\textsuperscript{251} See Hilao v. Estate of Marcos, 95 F.3d 848, 855 (9th Cir. 1996); Ramaswasty, supra note 12, at 388.

\textsuperscript{252} See supra Part II.D; Unocal, 395 F.3d at 952. But see In re South African Apartheid Litig., 346 F. Supp. 2d 538, 554 (S.D.N.Y. 2004) (“This Court finds that doing business in apartheid South Africa is not a violation of international law that would support jurisdiction in federal court under the ATCA.”).

\textsuperscript{253} See Burnett, 274 F. Supp. 2d at 91, 99–100.

\textsuperscript{254} See, e.g., Unocal, 395 F.3d at 945 (concluding that murder and torture committed by a nonstate actor in furtherance of forced labor violate the law of nations); Kadic, 70 F.3d at 243 (concluding that official state torture and summary execution are violations of the law of nations); In re Estate of Marcos, 25 F.3d 1467, 1475 (9th Cir. 1994) (holding that torture, forced disappearance, and summary execution are violations of the law of nations); Filartiga v. Pena-Irala, 630 F.2d 876, 878, 890 (2d Cir. 1980) (holding that official state torture violates the law of nations); Burnett, 274 F. Supp. 2d at 91–92 (concluding that an ATCA claim may be brought against financial institutions and
Sosa's requirements of "definite content" and "acceptance among civilized nations" of modern international norms comparable to that of the historical examples recognized in 1789 adds additional strength to this argument.\textsuperscript{255} Just as the drafters of the ATCA likely viewed the pirate in 1789 as "an enemy of all mankind,"\textsuperscript{256} the modern international community has taken a similar view of those who commit acts of torture, terrorism, extrajudicial killing, and forced disappearance by expressly recognizing and condemning such acts in treaties and international agreements.\textsuperscript{257} Further, Congress has also supplied a mandate by creating an express right of action to bring federal claims of torture and extrajudicial killing under the Torture Victim Protection Act.\textsuperscript{258} In addition, it created a private action for damages for U.S. nationals who are victims of acts of inter-

\begin{itemize}
  \item other organizational entities alleged to have knowingly financed acts of terrorism); Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 296, 325–26 (S.D.N.Y. 2003) (concluding that torture and extrajudicial killings violate international law); Xuncax v. Gramajo, 886 F. Supp. 162, 185 (D. Mass. 1995) (concluding that disappearance and summary execution are violations of the law of nations for purposes of a claim under the ATCA).
  \item 256. Filartiga, 630 F.2d at 890.
  \item 258. Sosa, 124 S. Ct. at 2763.
\end{itemize}
national terrorism under the Anti-Terrorism Act of 1990.\textsuperscript{259} Finally, Sosa's avoidance of the issue of corporate liability under the ATCA\textsuperscript{260} does little to detract from the viability of theories of aiding and abetting and complicity proffered in cases such as Unocal and Burnett.\textsuperscript{261}

However, an important distinction may need to be made between those internationally accepted offenses subject to universal jurisdiction, such as genocide, war crimes, and certain acts of terrorism,\textsuperscript{262} and those which require state action when committed in isolation, such as torture, forced disappearance, and summary execution.\textsuperscript{263} According to Kadic, the ground-breaking case announcing liability of nonstate actors under the ATCA, a private actor can be held liable under the Act for violations of international law requiring official state action when that actor commits such an offense in pursuit of one or more violations subject to universal jurisdiction.\textsuperscript{264} Thus, acts such as torture, forced disappearance, and summary execution committed by a private actor in furtherance of certain acts of terrorism, genocide, and war crimes meet this standard. Based upon this recognition of actionable violations of the law of nations by nonstate actors, the information that is currently available regarding Riggs's relationship with Pinochet suggests that there are at least two theories of liability that may be argued under the ATCA.

A. FINANCING A CAMPAIGN OF ATROCITIES

One theory of liability that may be proposed against Riggs under the ATCA is a theory of aiding and abetting the Pinochet dictatorship's commission of acts of terrorism, torture, execution, and forced disappearance by providing financing to the government.\textsuperscript{265} Arguments made by the Burnett plaintiffs and

\textsuperscript{260} See Sosa, 124 S. Ct. at 2766 n.20.
\textsuperscript{261} Doe I v. Unocal Corp., 395 F.3d 932, 952 (9th Cir. 2002), reh'g en banc granted, Doe I v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003); Burnett v. Al Baraka Inv. & Dev. Corp., 274 F. Supp. 2d 86, 100 (D.D.C. 2003).
\textsuperscript{262} See RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 404 (1987).
\textsuperscript{263} See id. § 702.
\textsuperscript{264} Kadic v. Karadzic, 70 F.3d 232, 244 (2d Cir. 1995).
\textsuperscript{265} A number of federal courts have recognized application of the aiding and abetting standard to claims brought under the ATCA. See, e.g., Unocal, 395 F.3d at 952; Burnett, 274 F. Supp. 2d at 100; Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 296 (S.D.N.Y. 2003); Eastman Kodak Co. v. Kavlin, 978 F. Supp. 1078, 1091 (S.D. Fla. 1997). But see
TAKING RIGGS SERIOUSLY

the *Unocal* plaintiffs lend credence to this theory that providing material support to those who commit gross human rights violations such as terrorism and murder violates the law of nations.\textsuperscript{266} The standard for aiding and abetting such violations introduced in both of these cases emphasizes the defendant’s actual or constructive knowledge of the perpetrator’s breaches of international law and the significant assistance provided by the defendants to the perpetrators.\textsuperscript{267} The defendants’ assistance must be shown to have had a “substantial effect” on the perpetrator’s actions such that the violations would not have occurred in the same way without someone serving in the same role of the defendants.\textsuperscript{268}

Based upon reports, Riggs’s relationship with Pinochet and the Chilean military extends at least as far back as the mid-1970s.\textsuperscript{269} During the 1970s and possibly into the 1980s, Riggs provided millions of dollars in loans necessary to help support Pinochet’s military government.\textsuperscript{270} According to the recent revelations in the Senate Report, Riggs also has had a direct financial relationship with Pinochet.\textsuperscript{271} This information demonstrates that Riggs’s actions rise above the minimum needed to aid and abet. According to the *Unocal* decision, simple encouragement or moral support satisfies the requirements of the actus reus of aiding and abetting.\textsuperscript{272} Financing arguably serves as more than encouragement to a government seeking to secure its power through a campaign of torture, disappearance, and murder; rather, it may directly enable a regime to maintain its control. Moreover, the Senate Report itself emphasized that “[h]istory has shown that financing is key to terrorism, corruption, and other criminal acts.”\textsuperscript{273} Therefore, this evidence suggests that Riggs had the “substantial effect” on Pinochet and

\textsuperscript{266} See *Burnett*, 274 F. Supp. 2d at 91–92 (concluding that an ATCA claim may be brought against financial institutions and other organizational entities alleged to have knowingly financed acts of terrorism); see also *Unocal*, 395 F.3d at 937 (finding it undisputed that Unocal hired the Myanmar military to provide security for its pipeline project).

\textsuperscript{267} See supra notes 212–13, 236, and accompanying text.

\textsuperscript{268} See *Unocal* 395 F.3d at 950 (citing Prosecutor v. Tadic, ICTY-94-1, ¶ 688 (May 7, 1997)).

\textsuperscript{269} See *Kornbluh*, supra note 7, at 224.

\textsuperscript{270} See supra notes 7–8.

\textsuperscript{271} *Senate Report*, supra note 1, at 2.

\textsuperscript{272} *Unocal*, 395 F.3d at 950.

\textsuperscript{273} *Senate Report*, supra note 1, at 9.
his government necessary to satisfy the aiding and abetting standard.274

Throughout its relationship with Pinochet, Riggs had actual knowledge or constructive knowledge that the regime it was financing was committing grave human rights abuses condemned by the international community.275 At least 3196 people were killed or forcibly disappeared during the dictatorship while thousands more were tortured or exiled.276 Reports of these atrocities and denouncements by the international community occurred throughout the almost two decades of Pinochet’s control of the government.277 In fact, one of the Pinochet government’s most serious acts of terrorism occurred in Washington, D.C., the headquarters for Riggs, in 1976.278 This car bombing, which targeted a former Chilean diplomat, was executed in part by the head of Pinochet’s secret police, who also held an account with Riggs in Washington, D.C.279 Numerous international organizations, including the United Nations and the Organization of American States, reported “systematic and gross violations” of human rights in Chile during the Pinochet era.280 Thus, Riggs had at least constructive knowledge of Pinochet’s atrocities, which is all that the mens rea standard for aiding and abetting in Unocal demands.281

While acts of terrorism, summary execution, torture, and forced disappearance have been recognized to violate the law of nations,282 the issue concerning Riggs is whether financing such acts is one of the “modest set of actions” that the Supreme Court held in Sosa would rise to the level of a breach of the law of nations.283 The Holocaust plaintiffs argued that the Swiss banks helped finance the Holocaust by laundering, converting, and concealing assets looted by the Nazis.284 However, at the

274. See Unocal, 395 F.3d at 950.
275. See supra note 6 and accompanying text.
277. See supra note 6 and accompanying text.
278. See Robinson, supra note 64.
279. See id.; KORNBLUH, supra note 7, at 224.
281. Doe I v. Unocal Corp., 395 F.3d 932, 945 (9th Cir. 2002), reh’g en banc granted, Doe I v. Unocal Corp., 395 F.3d 978 (9th Cir. 2003).
282. See supra notes 254–57 and accompanying text.
284. Ramasastry, supra note 12, at 391 (citing Plaintiff’s Memorandum of
time of the USMT trials, the tribunal did not conclude that providing loans to finance war crimes or crimes against humanity breached international law. Yet later cases, such as Unocal and Burnett, suggest that international law has evolved in its denunciation of financing human rights abuses. While the settlement concerning the Holocaust plaintiffs' claims meant their validity was never judicially decided, the fact that among these claims was one alleging that the Swiss banks should be held liable in part because of their financing activities suggests that this may be a viable argument.

The international community's concerns regarding multinational corporate conduct and financial support of brutal governments and terrorist organizations has also evolved. In 1974, the United Nations approved a declaration calling for a code of conduct for transnational corporations that would "prevent economic exploitation of host countries." This declaration was followed by a resolution in 1975 establishing a United Nations commission to form a corporate code of conduct. In 1989, the G7 Heads of State and Government established the Financial Action Task Force on Money Laundering to "focus[, ] exclusively on the promotion of international action to combat money laundering and to facilitate the confiscation of the proceeds of crime." This mandate was expanded to specifically include the issue of terrorism financing in 2001. Similarly, in 1999, the United Nations General Assembly adopted the Con-

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285. Id. at 415 (quoting United States v. Von Weizsaecker (Ministries Case), XIV Trials of War Criminals Before the Nuremburg Military Tribunals, 622).


288. Id. (citing E.S.C. Res. 1913, U.N. ESCOR, 57th Sess., Supp. No. 1, at 3, U.N. Doc. 5570/Add. 1 (1975)). The United Nations has since abandoned its efforts to create a corporate code of conduct. Id. at 1195. However, in 1999, the United Nations implemented the Global Compact, which encourages international corporations to follow nine principles of corporate responsibilities, including one against human rights abuses. Baker, supra note 155, at 125.


290. Id. at 197–98.
vention for the Suppression of the Financing of Terrorism.\textsuperscript{291} These acts support a finding of an international norm against financing perpetrators of human rights abuse, including terrorism.

This condemnation by the international community of those who provide financial support to gross human rights violators is further reflected in \textit{Burnett}.\textsuperscript{292} In that case, a federal district court held that the plaintiffs could bring a viable claim under the ATCA against certain entities, including possibly a bank, which were alleged to have knowingly funded and supported terrorism.\textsuperscript{293} By recognizing that certain terrorist activities violate the law of nations, the court concluded that a claim brought under the ATCA can be made against entities shown to be accomplices or aiders and abettors to terrorists.\textsuperscript{294}

Although the district court denied the motion to dismiss the \textit{Burnett} plaintiffs' ATCA claim, it questioned whether a bank that served as a funnel for other organizations, which in turn financed terrorism, could be found liable.\textsuperscript{295} If it is ultimately held that the Al Rajhi Banking & Investment Corporation simply acted as an unknowing repository for other organizations that were involved in financing terrorism, the Riggs case is clearly distinguishable. Riggs did not simply serve as a funnel for other third-party organizations to finance terror. Rather, Riggs directly provided material support to Pinochet and the Chilean military in the forms of credits\textsuperscript{296} and money laundering.\textsuperscript{297} Thus, its situation more closely mirrors that of Al Haramain Foundation Incorporated, a private charity, which is alleged to have knowingly financed the September 11 terrorist activities,\textsuperscript{298} and that of the Swiss banks, which are alleged

\textsuperscript{291} \textit{International Convention for the Suppression of the Financing of Terrorism}, G.A. Res. 109, U.N. GAOR, 54th Sess., Supp. No. 49, at 408, U.N. Doc. A/54/49 (1999). The Convention requires financial institutions to implement "the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity." Gilmore, \textit{supra} note 289, at 192.

\textsuperscript{292} \textit{See Burnett v. Al Baraka Inv. & Dev. Corp.}, 274 F. Supp. 2d 86, 100 (D.D.C. 2003).

\textsuperscript{293} \textit{Id.} at 99–100.

\textsuperscript{294} \textit{Id.} at 100.

\textsuperscript{295} \textit{Id.} at 109.

\textsuperscript{296} \textit{See supra} note 8 and accompanying text.

\textsuperscript{297} \textit{See} SENATE REPORT, \textit{supra} note 1, at 2.

\textsuperscript{298} \textit{See Burnett}, 274 F. Supp. 2d at 105.
to have been involved in financing the commission of the Holocaust by the Nazis. Riggs knowingly provided support to Pinochet and his dictatorship, even at a time when the international community had condemned the former dictator and his military government for committing human rights atrocities. Thus, Riggs should be held responsible under the ATCA for its actions.

B. SUSPICIOUS ACCOUNTS: LOOTING CLAIMS UNDER THE ATCA

Another theory that may be posited against Riggs under the ATCA is one of aiding and abetting Pinochet in his efforts to conceal, launder, and convert funds potentially looted by the former dictator. This theory is similar to that argued by the Marcos and Holocaust plaintiffs. However, to make such a claim, it must first be established that the funds in the Riggs secret accounts were indeed looted by Pinochet during his dictatorship.

From practically the moment the Senate Report became public in late June 2004, speculation began as to the source of Pinochet's accounts. It did not take long for that speculation to turn to accusations that Pinochet's wealth may have come from the personal funds of victims of atrocities that occurred during his dictatorship or looted government money. The current president of the Chilean agency that oversees government funds "said it was mathematically impossible for Pinochet to have saved that much from his government salary and pension," particularly in light of the fact that he is "not known to have had any other source of income." According to one account, Pinochet's family was not "among the elites or well-to-do." Rather, his father was a customs official who sold insur-

299. See supra text accompanying note 184.
300. See supra note 8 and accompanying text.
301. See supra note 6 and accompanying text.
303. See SENATE REPORT, supra note 1, at 35.
305. Tobar & Vergara, supra note 26.
306. BURBACH, supra note 3, at 21.
ance on the side, and his mother was a housekeeper.307 Pinochet himself entered the military at the age of seventeen.308

In response to the disclosure of the Riggs secret accounts, Pinochet, his family, and his attorneys have claimed various sources for the money, including personal savings, campaign donations, interest, and most recently, commissions from foreign governments.309 According to a Riggs internal memorandum discovered by investigators, Riggs "estimated Pinochet's net worth at between $50 million and $100 million."310 Reports also indicate that Pinochet had at least four other secret bank accounts in the United States in addition to those at Riggs.311 These accounts were opened in his name and in the names of two of his children in four other U.S. banks.312

Opponents of Pinochet have said that the disclosure of the Riggs secret bank accounts "give[s] credibility to claims that [Pinochet] took bribes from arms dealers and, possibly, siphoned off money from military accounts."313 The Senate Report adds credence to both of these suggestions, which notes speculation of illegal arms deals and the long-standing relationship between Riggs and the Chilean military.314 It further notes that one OCC examiner questioned why Riggs would take such a risk when it knew that Pinochet had "total control over the Chilean economy" during his seventeen-year dictatorship and there was the "potential of funds derived from possible terror and personal funds of the thousands of missing people."315

These reports add strength to a theory of looting similar to that alleged by the Holocaust plaintiffs and the plaintiffs in the Marcos litigation. At a minimum, the recognition by the federal courts in the Marcos litigation that the Swiss banks were characterized as "agents" of Marcos lends support to the theory that Riggs served as Pinochet's "agent" by concealing his assets, laundering his money, and assisting him in evading legal pro-

307. Id. at 21–22.
308. Id. at 23.
309. Tobar & Vergara, supra note 26; O'Brien & Rohter, supra note 36.
311. O'Hara, supra note 38.
312. Id.
314. SENATE REPORT, supra note 1, at 26–27.
315. See id. at 36.
ceedings. It is important to emphasize that Riggs’s complicity in maintaining secret accounts for Pinochet’s dictatorship dates at least as far back as 1975. During this thirty-year relationship, there have been credible reports of gross human rights violations committed by Pinochet’s government, questions about the source of Pinochet’s wealth, and a long extradition battle in London. Yet Riggs, similar to the Swiss banks, voluntarily accepted assets it knew or should have known were suspicious and possibly came from Pinochet’s looting during his dictatorship. In fact, Riggs not only has agreed to plead guilty to federal criminal charges for failing to report suspicious financial transactions involving Pinochet’s accounts, but also it recently settled a lawsuit in Spain, which alleged that the bank had illegally concealed Pinochet’s assets and committed money-laundering offenses.

Thus, it is possible to make an argument similar to that made by the Holocaust plaintiffs that Riggs, by accepting looted funds and engaging in a conspiracy to convert them, aided and abetted Pinochet’s brutal campaign of torture, extrajudicial killings, forced disappearance, and terrorism. Claims made by the Holocaust plaintiffs also support this argument. They cited the cases of German bankers and industrialists convicted by the USMT for crimes related to plundering and looting property. These convictions indicate that accepting and maintaining looted assets as part of a campaign of egregious human rights abuses violate customary international law.

Opponents of such a recognition under international law argue that looting, which amounts to a government’s expropriation of its citizens’ property, does not rise to the level of a violation of the law of nations. However, even those who have

316. Hilao v. Estate of Marcos, 95 F.3d 848, 855 (9th Cir. 1996).
317. See supra text accompanying notes 61–62.
318. See supra note 6 and accompanying text.
319. SENATE REPORT, supra note 1, at 26.
320. See supra note 45.
321. See SENATE REPORT, supra note 1, at 2, 36 (noting that Riggs never filed a suspicious activity report regarding the Pinochet accounts).
322. See supra notes 304, 313, and accompanying text.
323. Dash, supra note 71; Hansell, supra note 69.
325. See supra text accompanying note 192.
326. See Ramasastry, supra note 12, at 422.
327. See Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 428–30 (1964) ("[W]e decide only that the Judicial Branch will not examine the validity of a
made this argument admit that opinion is divided on this issue.\textsuperscript{328} In fact, the tribunals held after World War II recognized that spoliation and seizure of Jewish property by Germans, who aided the Nazi government, were war crimes, particularly when they "involved a systematic program of plunder."\textsuperscript{329} More recently, a federal court in 2003 held in a case involving a claim under the ATCA that a government's expropriation of its own citizens' property, when "committed as part of a genocide or war crimes, may violate the law of nations."\textsuperscript{330}

Pinochet, too, may have violated international law by conducting a "systematic program of plunder" in furtherance of genocide, war crimes, or both. As part of the military junta directing the coup in 1973, Pinochet issued a decree declaring a "state of siege,"\textsuperscript{331} which was to be understood as constituting a "state of war."\textsuperscript{332} Moreover, the Spanish magistrate who brought charges against Pinochet in London in 1998 originally charged him with genocide, among other crimes.\textsuperscript{333} If investigations find that Pinochet participated in or directed a "systematic program of plunder," in furtherance of either of these crimes or possibly even acts of terrorism,\textsuperscript{334} Riggs may be held liable under international law for its complicity in receiving,

taking of property within its own territory by a foreign sovereign government, extant and recognized by this country . . . in the absence of a treaty or other unambiguous agreement regarding controlling legal principles . . . .")}; Jafari v. Islamic Republic of Iran, 539 F. Supp. 209, 215 (S.D. Ill. 1982) ("[T]he law of nations' does not prohibit a government's expropriation of the property of its own nationals."); cf. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 712 (1987) ("A state is responsible under international law for injury resulting from: (1) a taking by the state of the property of a national of another state that (a) is not for a public purpose, or (b) is discriminatory, or (c) is not accompanied by provision for just compensation . . . .").

\textsuperscript{328} See Sabbatino, 376 U.S. at 428.
\textsuperscript{329} Ramasastry, supra note 12, at 425–26.
\textsuperscript{330} Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 325 (S.D.N.Y. 2003); see also Bodner v. Banque Paribas, 114 F. Supp. 2d 117, 128 (E.D.N.Y. 2000) (upholding an ATCA claim alleging defendant French financial institutions "aid[ed] and abett[ed] the Vichy and Nazi regimes to plunder plaintiffs' private property, depriving members of the Jewish community in France the means to finance their escape").

\textsuperscript{331} 1 REPORT OF THE CHILEAN NAT'L COMM. ON TRUTH AND RECONCILIATION, supra note 4, at 99.
\textsuperscript{332} Id. at 100. Throughout Pinochet's dictatorship, military tribunals were held in Chile to try civilians. Id. at 99–116.
\textsuperscript{333} Jonas, supra note 276, at 36.
\textsuperscript{334} Certain acts of terrorism may also be subject to universal jurisdiction. RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 404 (1987).
concealing, and laundering Pinochet's plundered wealth.\textsuperscript{335} Thus, Riggs's voluntary actions of knowingly concealing and laundering funds potentially looted by a dictator allegedly responsible for numerous atrocities may lead to a finding of liability for the financial institution under the ATCA.

C. ON THE DEFENSIVE: RESPONSES TO CLAIMS UNDER THE ATCA

Multinational enterprises that engage in activities similar to Riggs are not without arguments against applying the ATCA to their commercial conduct. In addition to rejecting the claims themselves, corporations have invoked a variety of procedural objections and policy arguments against the use of the ATCA. The Supreme Court in \textit{Sosa v. Alvarez-Machain}, by cautioning lower courts to consider the practical consequences of recognizing an actionable violation of international law, bolstered the use of at least two defenses by ATCA defendants.\textsuperscript{336} In particular, the Court pointed to considerations concerning the potential impact of a claim under the ATCA on U.S. foreign affairs, as well as the application of a domestic exhaustion requirement.\textsuperscript{337} In addition to making both of these arguments, a potential corporate defendant such as Riggs may also invoke a statute of limitations as a defense to ATCA liability.

Even before \textit{Sosa} gave its nod of approval, corporations had increasingly begun to look to foreign relations as a defense,\textsuperscript{338} and in particular, the act of state doctrine.\textsuperscript{339} Articulated more than a century ago, the act of state doctrine is based on the notion that "[e]very sovereign State is bound to respect the independence of every other Sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."\textsuperscript{340} Thus, following this reasoning, the judiciary "should not decide cases which have vast foreign policy implications, since the Executive and Legislative branches are Constitutionally endowed with such power."\textsuperscript{341} The Supreme Court has set out three factors to consider in deciding whether the doctrine should be applied in a

\textsuperscript{335} See supra notes 327–29 and accompanying text.
\textsuperscript{337} \textit{Id.} at 2766 n.21.
\textsuperscript{338} O'Donnell, supra note 14, at 224.
\textsuperscript{339} See id.; Burley, supra note 12, at 461–62.
\textsuperscript{340} Underhill v. Hernandez, 168 U.S. 250, 252 (1897).
\textsuperscript{341} Bowersett, supra note 129, at 366.
particular case: (1) the "degree of codification or consensus concerning a particular area of international law"; (2) the importance of "the implications of an [international law] issue . . . for [U.S.] foreign relations"; and (3) whether "the government which perpetrated the challenged act of state" is still "in existence."342 The Ninth Circuit has added a fourth factor to consider: "whether the foreign state was acting in the public interest."343

The use of this doctrine to dismiss ATCA lawsuits brought against U.S. corporations has found a strong supporter in the current Bush administration.344 Arguing that such cases might damage U.S. foreign relations, both the U.S. Departments of State and Justice have intervened on behalf of defendant U.S. corporations sued under the ATCA.345 Advocates of the Bush administration's efforts to limit the scope of the ATCA claim that the Act may seriously harm U.S. relations with other countries and "could devastate global trade and investment" particularly in developing countries.346 A recent district court decision heeded this argument when it dismissed a lawsuit filed against more than thirty corporations for their role in financing the apartheid regime in South Africa.347

Similar arguments under the act of state doctrine are likely to be posited if an ATCA lawsuit were brought against Riggs for its relationship with Pinochet and his military dictatorship, particularly in light of Chile's reinstatement of democracy and its growing trade ties with the United States. However, an examination of the factors to consider before applying the act of state doctrine weighs in favor of not dismissing such a case. There is a high degree of worldwide condemnation of atrocities committed by Pinochet's regime.348 The dictatorship no longer exists, and it was not acting in the public interest

343. Liu v. Republic of China, 892 F. 2d 1419, 1432 (9th Cir. 1989).
344. See Schrage, supra note 157, at 161.
346. Hufbauer & Mitrokostas, supra note 75, at 245-47.
348. See supra note 6 and accompanying text.
when it murdered over 3000 people and committed numerous other human rights abuses.349

The one factor that weighs toward application of the doctrine is the consideration of foreign relations between the United States and Chile. However, this would not be a repeat of Pinochet’s trial in London;350 the target would be Riggs in this hypothetical ATCA lawsuit, a U.S.-based financial institution, and not Pinochet himself. Moreover, the ATCA plaintiff in such a case may not be a Chilean; victims of human rights abuse under Pinochet’s dictatorship came from a variety of countries.351 And as a “self-proclaimed human rights leader,”352 the United States should recognize that corporate accountability advances its global economic interests.353 Further, corporations that profit from their relationships with governments responsible for gross human rights violations, such as the Pinochet government, “should not get to do business as usual in the United States.”354

Another defense that a corporation such as Riggs could make if an ATCA claim were filed against it is the domestic exhaustion requirement.355 Proponents of this principle argue that “[m]ost countries and regional courts defer to a home state, requiring domestic remedies be exhausted or unavailable before other options may be utilized.”356 Thus, if a claim is filed against Riggs in a U.S. court under the ATCA, the U.S. court should defer to the Chilean judiciary, for instance, to resolve the matter. However, others have pointed out that the ATCA contains no such limitation.357 The Supreme Court in Sosa noted in a footnote that it would consider this limitation in an appropriate case but did not specifically state what an appropriate case would be.358 Even if such a requirement were considered in a potential lawsuit against Riggs under the ATCA, a remedy provided by a U.S. court is appropriate in part because

349. See Jonas, supra note 276, at 36.
350. See supra note 45.
351. See 2 REPORT OF THE CHILEAN NAT’L COMM. ON TRUTH AND RECONCILIATION, supra note 4, at 901.
353. Schrage, supra note 157, at 153 (citation omitted).
354. See Ramasastry, supra note 12, at 408.
355. Similarly, Riggs could argue dismissal on forum non conveniens grounds. See Agunda v. Texaco, Inc., 303 F.3d 470, 472 (2d Cir. 2002).
356. Thorp, supra note 137, at 172.
357. Hufbauer & Mitrokostas, supra note 75, at 252.
Riggs itself is headquartered in Washington, D.C. Moreover, thousands of Chileans sought refuge in foreign countries, including the United States, during the Pinochet dictatorship.\textsuperscript{359} It is possible that Chilean nationals living in the United States could seek to bring such a claim.

Riggs also has another potential defense against an ATCA lawsuit. More than fourteen years have passed since Pinochet's dictatorship ended in Chile.\textsuperscript{360} Arguably, a statute of limitations could bar a lawsuit based on atrocities committed during Pinochet's dictatorship. However, the ATCA contains no provision time barring lawsuits.\textsuperscript{361} Some courts, such as the Ninth Circuit, have implemented a ten-year limitation.\textsuperscript{362} Others have made exceptions for ongoing violations of international law, based on the notion that a "limitations period for a continuing offense does not begin until the offense is complete."\textsuperscript{363} Such an exception may apply to an ATCA claim brought against Riggs based on the fact that many of those who disappeared during the Pinochet regime have not been found; thus their disappearances may be viewed as ongoing crimes.\textsuperscript{364} Further, Riggs does not come to the table with clean hands, as it helped conceal knowledge of potentially looted assets by Pinochet.\textsuperscript{365} Thus, any such claim has been frustrated by Riggs's actions. For this reason and the ones concerning the act of state doctrine and the domestic exhaustion requirement, a claim brought against Riggs under the ATCA should not be precluded by any of these defenses.

\begin{itemize}
\item \textsuperscript{360} \textit{1 REPORT OF THE CHILEAN NAT'L COMM. ON TRUTH AND RECONCILIATION}, supra note 4, at xxiii (noting that Patricio Aylwin became the elected president of Chile on March 11, 1990, thus ending the military government).
\item \textsuperscript{361} 28 U.S.C. § 1350 (2000).
\item \textsuperscript{362} See Deutsch v. Turner Corp., 317 F.3d 1005, 1028 (9th Cir. 2003).
\item \textsuperscript{363} See United States v. Rivera-Ventura, 72 F.3d 277, 281 (2d Cir. 1995).
\item \textsuperscript{364} To prevent the application of Chile's amnesty law for human rights violations committed by Pinochet's regime occurring before 1978, some Chilean judges have concluded that in cases of forced disappearances, these crimes are actually ongoing, and thus may be prosecuted as aggravated kidnappings. Jonas, supra note 276, at 36.
\item \textsuperscript{365} See Stephanie A. Bilenker, Comment, In re Holocaust Victims' Assets Litigation: \textit{Do The U.S. Courts Have Jurisdiction Over the Lawsuits Filed by Holocaust Survivors Against the Swiss Banks?}, 21 MD. J. INT'L L. & TRADE 251, 277 n.180 (1997).
\end{itemize}
While courts are only beginning to interpret Sosa and its impact on the future of the ATCA, "the trend toward expanding the duties and obligations of global corporations to the individuals and communities touched by their operations seems destined to accelerate" in light of globalization, advances in communications, and the availability of "theories such as negligence, product liability, and conspiracy" to "challenge corporate conduct."366 In fact, at least one state court has accepted a case linking the activities of multinational corporations to human rights violations committed by government actors.367 This is, perhaps, evidence that restrictions on corporate conduct in the global community are tightening as courts demand greater accountability for corporations' actions.

CONCLUSION

The rediscovery of the ATCA in 1980 has resulted in a powerful tool to hold violators of human rights accountable. Over the last quarter of a century, U.S. courts have held both state actors and private individuals liable under the Act. More recently, ATCA's evolving jurisprudence has turned to corporate complicity in violations of international law.

This expansion has brought the actions of financial institutions, such as Riggs, that turn a blind eye to atrocities committed by their customers within the reach of the ATCA. Over a period of at least three decades, Riggs both financed Pinochet's brutal dictatorship and assisted Pinochet in concealing and laundering millions of dollars in potentially looted funds. As investigations continue to uncover more evidence of ties between Riggs and Pinochet's crimes, an ATCA claim against Riggs continues to strengthen. Even now, individuals and organizations who seek compensation for victims of the Pinochet regime can look to ATCA jurisprudence for the possibility of obtaining justice.