# SUPREME COURT LIMITS CLAIMS UNDER ALIEN TORT STATUTE

On June 29, 2004, in *Sosa v. Alvarez-Machain*, Nos. 03-339 and 03-485, slip op., 542 U.S. ___ (2004), the United States Supreme Court adopted significant limitations on the types of international law violations that may give rise to cognizable claims under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350.

The ATS was originally enacted in 1789 and gives federal courts jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of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." *Id.* The statute lay virtually dormant until the Second Circuit's decision in *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), which held that present-day violations of the law of nations, such as torture, may give rise to ATS claims in U.S. federal courts. Since then the statute has been repeatedly invoked in federal court litigation against multinational companies accused of violating individual rights under international law, including environmental torts and labor rights.

In *Sosa*, the Court significantly limited the types of international norms that may give rise to an actionable claim under the ATS. The Court noted that the ATS was originally intended to furnish jurisdiction over "a relatively modest set of actions alleging violations of the law of nations," including violations of safe conduct, offenses against ambassadors, and piracy. *Sosa*, slip op. at 25. Nevertheless, the Court also held that federal courts should not be categorically precluded from recognizing present-day violations of the law of nations under the ATS, thus leaving the door ajar to judicial development of a narrow class of international norms that may be cognizable under the statute.

The Court provided limited guidance for discerning such present-day violations potentially cognizable under the ATS. Nevertheless, the Court adopted the fairly strict standard that "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 of [violations of safe conduct, offenses against ambassadors, and piracy]." *Id.*, slip op. at 30. The Court held that the plaintiff's arbitrary arrest claim did not meet that standard, and in so holding specifically rejected the notion that actionable rights under the ATS could be created by international declarations or covenants, such as the Universal Declaration of Human Rights or International Covenant on Civil and Political Rights. Similarly, the Court rejected the claim that treaty provisions that were not self-executing could give rise to an ATS claim. In a concurring opinion, Justice Breyer suggested that potentially cognizable present-day violations may include torture, genocide, crimes against humanity, and war crimes. *Id.*, slip. op. at 3 (Breyer, J., concurring).

The Court further noted that federal courts should act cautiously "when considering the kinds of individual claims that might implement the jurisdiction conferred by [the ATS]." *Id.*, slip op. at 31. Considerations based on modern conceptions of common law, the role of the federal courts

in making common law, appropriate deference to the legislative branch, and potential interference with U.S. foreign relations all must be factored into a determination whether to craft a remedy for the violation of a new norm of international law.

In an important footnote, the Court noted that it did not intend the requirement of a clearly defined international violation to be the only limitation on the availability of relief in federal court for violations of the law of nations, though it sufficed to dispose of the plaintiff's claim. Rather, the Court suggested that in appropriate cases, federal courts should consider exhaustion of remedies, including available remedies in the domestic legal system where the violation occurred and perhaps even remedies available in other fora, such as international claims tribunals, before allowing a suit to proceed in U.S. federal court. *Id.*, slip op. 39 n.21. Additionally, the Court acknowledged that in appropriate cases "federal courts should give serious weight to the Executive Branch's view of the case's impact on foreign policy." *Id.* The Court illustrated this proposition by reference to *In re South African Apartheid Litigation* (S.D.N.Y.), in which the Government of South Africa and the U.S. State Department have each expressed the view that these cases interfere with the Government of South Africa's policy as reflected in its Truth and Reconciliation Commission.

Thus, although the Supreme Court has now adopted substantial limitations on the claims that may be brought under the ATS, it has not closed the door to further judicial development of present-day violations of international norms cognizable under the statute. As such, companies can expect to see a continuation in these lawsuits as the lower courts grapple with these new standards.

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If you have any questions concerning the foregoing or would like additional information, please call Martin J. Weinstein (Chair, Compliance & Enforcement Practice Group) at 202-303-1122, or Robert J. Meyer (Vice-Chair) at 202-303-1123.

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