
FEDERAL STATUTES — ALIEN TORT STATUTE — SECOND
CIRCUIT HOLDS THAT HUMAN RIGHTS PLAINTIFFS MAY PLEAD
AIDING AND ABETTING THEORY OF LIABILITY. — *Khulumani v.
Barclay National Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007) (per curiam).

Some of the most interesting and unsettled questions in human rights litigation after *Sosa v. Alvarez-Machain*¹ concern the status of secondary liability theories, prominently including aiding and abetting. Although several courts have held that aiding and abetting liability is available in Alien Tort Statute² (ATS) cases, there is continuing debate over whether it should be available at all, how it should be defined, and what sources of law courts should consult for answers to these questions.³ Recently, in *Khulumani v. Barclay National Bank Ltd.*,⁴ a Second Circuit panel held that ATS plaintiffs “may plead a theory of aiding and abetting liability,”⁵ but split on whether courts should look to customary international law or federal common law to determine the availability and scope of this liability theory. Although the three separate opinions in *Khulumani* indicate the difficulty of the issue, the best reading of the key U.S. cases and of customary international law is that courts should look primarily to federal common law to decide questions about aiding and abetting liability in ATS cases.

Three groups of South African plaintiffs brought ATS claims “against approximately fifty corporate defendants and hundreds of ‘corporate Does’”⁶ for “active . . . collaborat[ion]”⁷ with the former South African government in maintaining apartheid.⁸ The actions were consolidated in the Southern District of New York,⁹ which dis-

¹ 542 U.S. 692 (2004).

² 28 U.S.C. § 1350 (2000).

³ See, e.g., *Doe I v. Unocal Corp.*, 395 F.3d 932, 947–51 (9th Cir. 2002), *vacated & reh’g granted*, 395 F.3d 978 (9th Cir. 2003), *and dismissed*, 403 F.3d 708 (9th Cir. 2005) (en banc); *id.* at 964–69 (Reinhardt, J., concurring); Curtis A. Bradley, Jack L. Goldsmith & David H. Moore, *Sosa, Customary International Law, and the Continuing Relevance of Erie*, 120 HARV. L. REV. 869, 924–29 (2007); William R. Casto, *The New Federal Common Law of Tort Remedies for Violations of International Law*, 37 RUTGERS L.J. 635, 650 (2006).

⁴ 504 F.3d 254 (2d Cir. 2007) (per curiam).

⁵ *Id.* at 260.

⁶ *Id.* at 258.

⁷ Brief for Plaintiffs-Appellants at 10, *Khulumani*, 504 F.3d 254 (No. 05-2326). For instance, government and corporate security forces allegedly worked together to violently suppress black trade unions. See *id.* at 11–16. The defendants argued that they were being sued for merely doing business in apartheid South Africa. See *Khulumani*, 504 F.3d at 289 (Hall, J., concurring).

⁸ *Khulumani*, 504 F.3d at 258 (per curiam).

⁹ *In re S. African Apartheid Litig.*, 238 F. Supp. 2d 1379 (J.P.M.L. 2002).

missed the cases, holding — contrary to most courts¹⁰ — that aiding and abetting liability is not available under the ATS.¹¹

The Second Circuit vacated the dismissal of the ATS claims.¹² However, the majority could not agree on a rationale: Judge Katzmman looked to international law as the basis for aiding and abetting liability under the ATS, whereas Judge Hall favored federal common law. After a brief per curiam, both judges wrote detailed concurrences.

Judge Katzmman,¹³ arguing that courts should look first to international law,¹⁴ relied on language from *Sosa* suggesting that the scope of liability under the ATS is “defined by the law of nations.”¹⁵ He also pointed to *Sosa*’s twentieth footnote, which tells courts to look to international law to determine whether each particular norm extends liability to private actors.¹⁶ Judge Katzmman argued that individual liability for aiding and abetting human rights violations was settled as a matter of customary international law. In support of this position, he drew on sources ranging from post-World War II tribunals to post-9/11 regulations establishing military commissions for accused terror-

¹⁰ See *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257, 287 (E.D.N.Y. 2007) (“In contrast to the vast body of law finding aiding and abetting liability available under the ATS, one district court judge in this circuit has found otherwise.”).

¹¹ *In re S. African Apartheid Litig.*, 346 F. Supp. 2d 538, 550 (S.D.N.Y. 2004). The district court also dismissed the plaintiffs’ claims under the Torture Victim Protection Act (TVPA), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note (2000)), and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C.A. §§ 1961–1968 (West 2000 & Supp. 2007).

¹² *Khulumani*, 504 F.3d at 260 (per curiam). The court vacated the district court’s denial of leave to amend the complaints, *id.* at 260–61, and declined to dismiss the case on prudential grounds including international comity and political question, *id.* at 261–64. The per curiam opinion directed the district court to consider these doctrines in light of the amended complaints. *Id.* at 263–64.

¹³ Part I of Judge Katzmman’s concurrence concluded that the district court had erred in conflating subject matter jurisdiction with failure to state a claim. *Khulumani*, 504 F.3d at 264–68 (Katzmann, J., concurring). In Judge Katzmman’s view, after *Sosa*, courts must consider two distinct questions in ATS cases: first, “whether jurisdiction lies under the ATS,” and second, whether to recognize a federal common law cause of action for the particular violation of international law alleged. *Id.* at 266. Under *Sosa*, the decision whether to recognize a cause of action depends not only on whether a violation of the law of nations has been adequately pled, but also on courts’ exercising “an element of judgment about the practical consequences of making that cause available to litigants in the federal courts.” *Id.* at 268 (quoting *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732–33 (2004)) (internal quotation mark omitted). Thus, an ATS plaintiff may adequately plead that the defendant committed a tort “in violation of the law of nations,” 28 U.S.C. § 1350, for jurisdictional purposes and still fail to survive a motion to dismiss if a court declines to recognize the cause of action because of a “judgment about the practical consequences.” The district court, in Judge Katzmman’s view, erred by conflating the two questions. *Khulumani*, 504 F.3d at 268.

¹⁴ Judge Katzmman left open the possibility that federal common law might also provide aiding and abetting liability “even if such liability did not exist under international law.” *Khulumani*, 504 F.3d at 277 n.13.

¹⁵ *Id.* at 269 (emphasis omitted) (quoting *Sosa*, 542 U.S. at 712) (internal quotation mark omitted).

¹⁶ *Id.* (citing *Sosa*, 542 U.S. at 732 n.20).

ists.¹⁷ Judge Katzmman looked to the Rome Statute of the International Criminal Court¹⁸ for the mens rea element of aiding and abetting: “[A] defendant is guilty of aiding and abetting . . . only if he does so ‘[f]or the *purpose* of facilitating the commission of . . . a crime.’”¹⁹

Judge Katzmman next addressed a counterargument based on *Central Bank of Denver v. First Interstate Bank of Denver*,²⁰ in which the Supreme Court held that “there is no general presumption” of civil aiding and abetting liability.²¹ This counterargument interpreted *Central Bank* to mean that civil aiding and abetting liability can be imposed only through a deliberate choice made by Congress.²² Judge Katzmman, adopting the reasoning of Professor William R. Casto,²³ argued that *Central Bank*’s reliance on congressional intent was inapplicable to ATS cases because “[u]nder the [ATS], the relevant norm is provided not by domestic statute but by the law of nations.”²⁴ Consequently, the principle of *Central Bank* — that courts should look to the source of the underlying norm to decide whether aiding and abetting is available — meant that the court should look to international law.

Judge Hall concurred, agreeing that there was aiding and abetting liability under the ATS, but contended that it should be drawn from U.S. rather than international law.²⁵ Since the statute itself did not provide clear guidance on secondary liability, Judge Hall argued that “federal courts [should] look to the federal common law to fill such an interstice.”²⁶ Judge Hall also relied on the “hornbook principle that international law does not specify the means of its domestic enforcement,”²⁷ and that domestic legal systems supply the rules through

¹⁷ See *id.* at 270–77.

¹⁸ July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

¹⁹ *Khulumani*, 504 F.3d at 275 (second alteration in original) (emphasis added) (quoting Rome Statute, *supra* note 18, art. 25(3)(c)).

²⁰ 511 U.S. 164 (1994).

²¹ *Id.* at 182.

²² See Brief for the United States of America as Amicus Curiae at 12, *Khulumani*, 504 F.3d 254 (Nos. 05-2141-cv, 05-2326-cv). This argument is a common one made by defendants in ATS aiding and abetting cases. See, e.g., Brief for the Chamber of Commerce of the United States of America as Amicus Curiae in Support of Defendant-Appellee Talisman Energy, Inc., and in Support of Affirmance at 19–22, *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, No. 07-0016-cv (2d Cir. May 8, 2007); Bradley, Goldsmith & Moore, *supra* note 3, at 926–27.

²³ See Casto, *supra* note 3, at 650.

²⁴ *Khulumani*, 504 F.3d at 282 (Katzmann, J., concurring).

²⁵ *Id.* at 284 (Hall, J., concurring). Similarly to Judge Katzmman, Judge Hall did not claim that federal common law was the only source that courts could legitimately consult, but he argued that courts should look to federal common law first. He did not reach the issue of whether an international standard might also apply, or what that standard would be. *Id.* at 286.

²⁶ *Id.* at 287.

²⁷ *Id.* at 286 (quoting Brief Amici Curiae of International Law Scholars Philip Alston et al. in Support of Appellants at 6, *Khulumani*, 504 F.3d 254 (Nos. 05-2141, 05-2326) [hereinafter Brief Amici Curiae of International Law Scholars]) (internal quotation marks omitted).

which states enforce international norms.²⁸ “Moreover,” Judge Hall wrote, “when international law and domestic law speak on the same doctrine, domestic courts should choose the latter.”²⁹

In Judge Hall’s view, the proper U.S. standard for civil aiding and abetting could be found in section 876(b) of the Restatement (Second) of Torts³⁰ and cases applying it.³¹ These sources specify a mens rea of knowledge, rather than purpose. Judge Hall acknowledged “important concerns” about the broader mens rea standard’s potential for exposing corporate defendants to “liability for merely doing business in countries with repressive regimes or for participating in activities that, with twenty-twenty hindsight, can be said to have been indirectly linked to human rights abuses.”³² Nonetheless, he contended that the section 876(b) standard would not result in such inappropriate liability, and offered illustrations of how the standard could be fairly applied.³³

Judge Hall also responded to the *Central Bank* argument. He noted that *Central Bank* required an assessment of legislative intent.³⁴ The ATS, unlike the securities statute at issue in *Central Bank*, is very brief and has almost no legislative history; however, there was evidence that the founding generation expected the ATS to provide aiding and abetting liability via the common law of the time.³⁵ Therefore, in Judge Hall’s view, imposing aiding and abetting liability as a matter of interstitial federal common law was supported by legislative intent.

District Judge Korman, sitting by designation, concurred in part and dissented in part. Arguing that the case should be dismissed outright rather than remanded, both on prudential grounds and because the plaintiffs had failed to state a valid claim,³⁶ he took issue with the aiding and abetting theories of both Judges Hall and Katzmann. According to Judge Korman, both judges’ approaches disregarded foot-

²⁸ *Id.* (citing, inter alia, *Kadic v. Karadžić*, 70 F.3d 232, 246 (2d Cir. 1995) (“The law of nations generally does not create private causes of action to remedy its violations, but leaves to each nation the task of defining the remedies that are available for international law violations.”)).

²⁹ *Id.* at 287.

³⁰ RESTATEMENT (SECOND) OF TORTS § 876(b) (1977).

³¹ *Khulumani*, 504 F.3d at 287–88 (Hall, J., concurring) (citing *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983)).

³² *Id.* at 289.

³³ *Id.* at 289–90.

³⁴ *Id.* at 288 n.5 (citing *Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 176 (1994)).

³⁵ *Id.* (citing *Talbot v. Janson*, 3 U.S. (3 Dall.) 133, 156 (1795); *Breach of Neutrality*, 1 Op. Att’y Gen. 57, 59 (1795)).

³⁶ *See id.* at 295 (Korman, J., concurring in part and dissenting in part). Judge Korman gave greater weight than did the other judges to a *Sosa* footnote that commented on the apartheid litigation, *id.* at 295–96, and which, in his view, “instructed us that this is the very sort of case in which [for prudential reasons] jurisdiction should not be exercised,” *id.* at 295 (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 733 n.21 (2004)). *But see id.* at 261 n.9 (per curiam) (“We view summary dismissal at the behest of a footnote as premature.”).

note twenty in *Sosa*, which in his view required courts to consider separately whether each norm of international law (for instance, the norms against torture and war crimes) provides for aiding and abetting.³⁷ Judge Korman also argued that Judge Katzmman had erred by deriving a general aiding and abetting standard from international law rather than undertaking the “norm-by-norm analysis” required by *Sosa*’s footnote twenty.³⁸ And he argued that Judge Hall had erred by looking to U.S. law and by misinterpreting historical sources.³⁹ However, Judge Korman joined the part of Judge Katzmman’s opinion that identified the Rome Statute as providing the proper international aiding and abetting standard, so that the district court could apply it on remand.⁴⁰

The three opinions explored an important question for the future of ATS litigation. The choice between international law and federal common law is a necessary starting point in deciding whether aiding and abetting liability is available and how it is defined.⁴¹ But Judges Katzmman and Korman erred in declaring that courts should look primarily to international law to answer this question; the key cases on which they relied do not actually point in that direction. First, *Sosa*’s twentieth footnote is simply irrelevant. Second, if *Central Bank* means that courts should look to international law for finding aiding and abetting, international law in turn directs courts back to U.S. law.

One of the touchstones of Judges Katzmman and Korman’s reasoning was *Sosa*’s twentieth footnote,⁴² which tells courts to look to international law to determine whether private actors (as opposed to government officials) can be held liable for violations of particular international norms. According to Judges Katzmman and Korman, it also requires courts to look to international law to determine whether aiding and abetting liability is available. But this reasoning depends

³⁷ *Id.* at 326, 331 (Korman, J., concurring in part and dissenting in part) (citing *Sosa*, 542 U.S. at 732 n.20).

³⁸ *Id.* at 331.

³⁹ *Id.* at 328–30.

⁴⁰ *Id.* at 333.

⁴¹ Even if one concludes that both sources of law provide for aiding and abetting liability, the choice between the two may still matter because Restatement section 876(b) offers a more plaintiff-friendly mens rea standard than the Rome Statute, requiring only knowledge rather than purpose. However, other courts have found that the customary international aiding and abetting standard is the one identified by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, ¶¶ 236–49 (Trial Chamber Dec. 10, 1998), which is essentially the same as the section 876(b) standard. See, e.g., *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 453 F. Supp. 2d 633, 666–68 & n.69 (S.D.N.Y. 2006).

⁴² See *Khulumani*, 504 F.3d at 269 (Katzmann, J., concurring); *id.* at 326, 331 (Korman, J., concurring in part and dissenting in part). The footnote in *Sosa* reads: “A related consideration 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.” *Sosa*, 542 U.S. at 732 n.20 (2004) (citations omitted).

on an untenable analogy between the aiding and abetting question and the private-actor question. Whether an international norm applies to private actors is a question of substantive international law, since it concerns the definition of the norm itself. A norm that imposes a duty has to specify to whom the duty applies. But a liability theory, such as aiding and abetting, is not inherently part of a substantive norm in the same way.⁴³ To the contrary, authorities ranging from the Restatement to the Rome Statute to the rules for U.S. military commissions define liability theories separately from underlying offenses.⁴⁴ Therefore, this footnote is entirely inapposite to aiding and abetting cases. *Sosa* says nothing directly about whether federal common law or international law is controlling with respect to aiding and abetting.

Judges Katzmman and Korman both suggested that *Central Bank* supports the view that courts should look to international law.⁴⁵ But *Central Bank* can just as easily be read to require consideration of Congress's intent in 1789, when it passed the ATS.⁴⁶ Historical materials from this period suggest that the First Congress expected aiding and abetting to be available in ATS cases via the common law.⁴⁷ A court might also apply the principle of *Central Bank* — in which legislative intent is key⁴⁸ — by looking at Congress's intent in 1992, when it passed the Torture Victim Protection Act⁴⁹ (TVPA). As several courts have recognized, this was the moment when Congress most clearly expressed an intent with respect to modern ATS human rights litigation, which is clearly endorsed in the TVPA's legislative history.⁵⁰

⁴³ See *id.* at 281 (Katzmann, J., concurring) (describing aiding and abetting as “a theory of identifying who was involved in an offense . . . rather than as an offense in itself”); see also Hamdan v. Rumsfeld, 126 S. Ct. 2749, 2785 n.40 (2006) (plurality opinion) (calling aiding and abetting “a species of liability for the substantive offense . . . not a crime on its own”); Hefferman v. Bass, 467 F.3d 596, 601 (7th Cir. 2006).

⁴⁴ See Rome Statute, *supra* note 18, art. 25; Crimes and Elements for Trials by Military Commission, 32 C.F.R. § 11.6(c) (2007) (defining aiding and abetting as a “form[] of liability” under which a “person is criminally liable as a principal” for war crimes); RESTATEMENT (SECOND) OF TORTS § 876(b) (1977).

⁴⁵ See *Khulumani*, 504 F.3d at 282 (Katzmann, J., concurring) (citing Casto, *supra* note 3, at 650); *id.* at 327 (Korman, J., concurring in part and dissenting in part) (discussing *Central Bank* and concluding that the ATS “can support the recognition of a cause of action for aiding-and-abetting . . . only if . . . an international law norm . . . provides for such liability”).

⁴⁶ This was Judge Hall's view. See *id.* at 288 n.5 (Hall, J., concurring).

⁴⁷ See, e.g., *Talbot v. Janson*, 3 U.S. (3 Dall.) 133, 156 (1795); *Breach of Neutrality*, 1 Op. Att'y Gen. 57, 59 (1795). See generally William R. Casto, *The Federal Courts' Protective Jurisdiction over Torts Committed in Violation of the Law of Nations*, 18 CONN. L. REV. 467, 488–508 (1986).

⁴⁸ See *Cent. Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 176–77 (1994); *cf. Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1016–21 (7th Cir. 2002) (focusing on legislative intent in analyzing the relevance of *Central Bank* to 18 U.S.C. § 2333 (2000), which provides civil remedies for violations of the Antiterrorism Act of 1990).

⁴⁹ Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note (2000)).

⁵⁰ See, e.g., *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 247 (2d Cir. 2003) (citing S. REP. NO. 102-249, at 5 (1991)).

The same legislative history also anticipated that liability under the TVPA would extend to aiding and abetting, even though the TVPA — like the ATS — says nothing about secondary liability theories.⁵¹

According to Judges Katzmman and Korman, however, *Central Bank* requires courts to look to the source of the underlying norm — in this case, international law — to determine the availability and scope of aiding and abetting liability.⁵² But even if this is the best reading of *Central Bank*, the inquiry should not end there. International law, in turn, contemplates that domestic courts will make use of domestic law to enforce international norms. The landmark treaties that shaped international human rights law were written with the expectation that the norms they defined would be enforced through the domestic legal systems of states.⁵³ “[I]nternational law determines only general principles . . . and relies on domestic law to supplement it with necessary detail and to adjust it to the domestic context” when it is enforced in domestic courts.⁵⁴ This is not surprising, given the substantial differences among domestic legal systems around the world.⁵⁵ States must

⁵¹ See S. REP. NO. 102-249, at 8.

⁵² Professor Casto’s application of *Central Bank* to ATS cases, which Judge Katzmman adopted, see *Khulumani*, 504 F.3d at 282 (Katzmann, J., concurring), depends on fitting aiding and abetting into a category of “conduct-regulating norm[s]” which must be drawn from international law. Casto, *supra* note 3, at 650. But the boundaries of this category are unclear. Aiding and abetting is not an independent cause of action, but a liability theory under which an actor can be sued for the underlying tort. And although the threat of aiding and abetting liability certainly may influence the conduct of potential defendants, the same is true of many other subsidiary legal rules — for instance, agency, constructive knowledge, state action, and rules of evidence. Yet no one argues that all these rules must be drawn from international law. See Paul L. Hoffman & Daniel A. Zaheer, *The Rules of the Road: Federal Common Law and Aiding and Abetting Under the Alien Tort Claims Act*, 26 LOY. L.A. INT’L & COMP. L. REV. 47, 53 (2003). Rather than trying to determine which rules fit into Professor Casto’s “conduct-regulating” category, one can draw a far simpler line between subsidiary rules, like aiding and abetting or agency, and underlying human rights violations, like torture or apartheid.

⁵³ See, e.g., Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 14(1), *adopted* Dec. 10, 1984, S. TREATY DOC. NO. 100-20 (1988), 1465 U.N.T.S. 113, 116 (“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation . . .”); International Covenant on Civil and Political Rights art. 2(3), Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368; International Convention on the Elimination of All Forms of Racial Discrimination art. 6, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 212. Although all these treaties state that the human rights norms they define are to be enforced through domestic legal systems, none of them address secondary liability theories.

⁵⁴ André Nollkaemper, *Internationally Wrongful Acts in Domestic Courts*, 101 AM. J. INT’L L. 760, 795 (2007).

⁵⁵ See *Xuncax v. Gramajo*, 886 F. Supp. 162, 180 (D. Mass. 1995) (“To posit . . . international law as a putative source for the legal mechanics of a cause of action is to misconstrue the basic nature of international law. . . . [I]t is both unnecessary and implausible to suppose that, with their multiplicity of legal systems, . . . diverse nations should . . . be expected or required to reach consensus on the types of actions that should be made available in their respective courts to implement those principles.”). See generally Beth Stephens, *Translating Filártiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations*, 27

enforce human rights norms using the rules — including doctrines of secondary liability — that are already available within their legal systems.⁵⁶ This is what Judge Hall called the “hornbook principle that international law does not specify the means of its domestic enforcement.”⁵⁷

In short, even if *Central Bank* is best read as counseling courts to look to international law for aiding and abetting liability, international law in turn says that such liability rules can be supplied by domestic law. This does not mean that no customary international aiding and abetting standard exists; but it does mean that when U.S. courts invoke the federal common law of aiding and abetting, they are acting in accordance with the principles of international law. It is true that some sources of international law do insist on particular liability theories in addition to underlying norms.⁵⁸ Such specific instances, however, do not negate the general principle that international law leaves subsidiary rules to domestic legal systems. Moreover, relying on federal common law does not mean excluding international law; U.S. courts have always been able to incorporate relevant principles of customary international law into federal common law.⁵⁹

Those who argue that U.S. courts must look first or exclusively to customary international law for aiding and abetting liability in human rights cases, in effect ask that body of law to perform a function for which it was not designed. Human rights treaties define basic norms which are to be enforced primarily through domestic legal systems, using the subsidiary rules available in those systems. Neither *Sosa* nor *Central Bank* prevents U.S. courts from using domestic law to supply and define aiding and abetting liability; and customary international human rights law expects domestic courts to do exactly that.

YALE J. INT'L L. 1 (2002) (discussing differences among national legal systems' remedies for human rights violations).

⁵⁶ See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 703 cmt. c (1986).

⁵⁷ *Khulumani*, 504 F.3d at 286 (Hall, J., concurring) (quoting Brief Amici Curiae of International Law Scholars, *supra* note 27, at 6) (internal quotation marks omitted).

⁵⁸ See *id.* at 273–74 (Katzmann, J., concurring) (citing treaties mandating liability for aiding and abetting); see also Nollkaemper, *supra* note 54, at 792–94 (noting that international law may prescribe specific remedies or require particular results to be achieved through domestic legal systems).

⁵⁹ See *The Paquete Habana*, 175 U.S. 677, 700 (1900) (“International law is part of our law . . .”); see also *First Nat'l City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611, 623 (1983) (reaffirming *The Paquete Habana* and applying federal common law “informed . . . by international law principles”); *Doe I v. Unocal Corp.*, 395 F.3d 932, 967 (9th Cir. 2002) (Reinhardt, J., concurring), *vacated & reh'g granted*, 395 F.3d 978 (9th Cir. 2003), and *dismissed*, 403 F.3d 708 (9th Cir. 2005) (en banc).