No. 10-3675

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Boimah Flomo, et al.,
Plaintiffs-Appellants,

v.

Firestone Natural Rubber Co., et al.,
Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Indiana, Indianapolis Division
Case No. 1:06-cv-00627
The Honorable Jane Magnus-Stinson, Presiding Judge

Brief of *Amici Curiae* International Law Scholars in Support of Plaintiffs-Appellants and Reversal

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INTEREST OF *AMICI*

Amici—listed in the Appendix—are legal experts in the field of international law and human rights. Their work has been cited by courts at all levels of the federal judiciary for guidance in determining the content and impact of international law in domestic proceedings, including those under the Alien Tort Statute. *Amici* respectfully submit that the decision of the district court, relying in large part on *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), is both methodologically and substantively flawed and believe that they can offer the Court particular expertise on these issues that may not be available from the parties themselves. *Amici* are concerned that the district court's ruling, if adopted, would effectively immunize from liability entities that commit serious human rights violations.[1]

SUMMARY OF ARGUMENT

The district court, and the *Kiobel* decision on which it relied, committed clear errors of method and substance in its interpretation of the liability of corporations for violations of

[1] No party or counsel to any party authored this brief.

international law. The district court relied primarily on the erroneous position that the lack of an international tribunal for corporate crimes entails that corporations cannot violate international law. *Kiobel* similarly looked for the wrong kinds of evidence of international law, inferring from the absence of cases imposing corporate civil liability for human rights violations that no norm imposed or allowed such liability. Both decisions betray a basic misunderstanding of international law and the Supreme Court's decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). In fact, international law provides for civil liability for corporations.

Additionally, the international law doctrine of exhaustion of local remedies, which is applied in many human rights treaty mechanisms, is motivated by concerns of elevating claims against a state to the international level, a rationale that does not apply to transnational cases in domestic courts against private parties.

ARGUMENT

I. Customary International Law Is Not Limited to Matters Prosecuted by International Tribunals, and It Allows States to Define the Means of Its Implementation.

A. The Absence of Corporate Liability in International Criminal Tribunals Does Not Indicate Immunity From International Violations.

The district court placed great weight on "the fact that international tribunals don't impose criminal liability on corporations but insist instead that the individual wrongdoers be prosecuted." *Flomo v. Firestone Natural Rubber Co.*, 2010 U.S. Dist. LEXIS 108068 at *15 (S.D. Ind. Oct. 5, 2010). This focus on international criminal tribunals was misplaced for two reasons. First, international criminal tribunals do not set the limits of international criminal law, which exists independently of international tribunals and is primarily enforced through domestic legal systems. Second, international law leaves questions of implementation to individual States, which generally craft remedies that are in accordance with domestic law.

1. International criminal law is primarily enforced through domestic legal systems, not international tribunals.

International criminal tribunals have never set the limits of international criminal law. The Rome Statute of the International Criminal Court, on which *Kiobel* relies, makes clear that its definitions of crimes should not be read "as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute."[2] It also provides that limitations on the International Criminal Court's own jurisdiction—including the exclusion of legal persons from jurisdiction—"shall not affect the characterization of any conduct as criminal under international law independently of this Statute."[3]

International crimes exist independently of any extraordinary international means of punishing such crimes. Genocide, for example, was prohibited by both customary

[2] Rome Statute of the International Criminal Court ("Rome Statute"), July 17, 1998, 2187 U.N.T.S. 90, art. 10.
[3] *Id.* art. 22(3).

international law and the Genocide Convention,[4] which entered into force in 1951, long before tribunals such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court were created to prosecute particular instances of genocide.

In fact, international crimes have always been primarily enforced through domestic mechanisms. Before the modern tribunals were established, Professor Cherif Bassiouni—a noted expert on international crimes whose work is cited in the *Kiobel* opinion—explained that international criminal prohibitions were enforced "subject to the municipal criminal laws of the states."[5] In recent decades, this municipal enforcement has been supplemented by international tribunals in a few discrete cases, and now the International Criminal Court provides a more general forum for prosecution of some international crimes. But even the Rome Statute expresses a preference for domestic prosecution through its complementarity provisions, which

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[4] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

[5] Cherif Bassiouni, *An appraisal of the growth and developing trends of international criminal law*, 45 Revue Internationale de Droit Pénal 405, 429 (1974).

prohibit ICC jurisdiction if a State undertakes domestic enforcement in good faith.[6] Other modern criminal treaties, such as the Terrorism Financing Convention, are enforced exclusively through domestic means. *See* International Convention for the Suppression of the Financing of Terrorism ("Terrorism Financing Convention") art. 4, Dec. 9, 1999, S. Treaty Doc. 106-49, 2178 U.N.T.S. 279 (requiring States to criminalize terrorism financing).

Because the district court (and *Kiobel*) focused only on international criminal tribunals, it missed the fact that corporate liability is *not* absent from international criminal law. Instead, because international crimes are typically enforced in domestic legal systems, corporations generally may be prosecuted for international crimes in jurisdictions that allow corporate criminal liability. In other words, corporate liability is a choice made according to domestic law. Thus, countries such as Belgium and the Netherlands, which recognize corporate criminality and which

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[6] *See* Rome Statute art. 17(1)(a). For a further discussion of the Rome Statute and its treatment of corporate liability under international law, see David Scheffer and Caroline Kaeb, *The Five Levels of CSR Compliance: The Resiliency of Corporate Liability under the Alien Tort Statute and the Case for a Counterattack Strategy in Compliance Theory*, 29 Berkeley J. Int'l L. 101 (2010).

incorporate international law directly into their domestic law,[7] provide that corporations can be criminally prosecuted for violations of the crimes set forth in the Rome Statute.[8] Andrew Clapham, in the very same article on which the *Kiobel* majority relies, notes that as a general matter there is universal jurisdiction for domestic prosecutions of international crimes committed by corporations: "We can therefore consider that corporations commit international crimes, including war crimes and that these corporations may be tried, in some circumstances outside the jurisdiction where the crime took place. In other words, the 'Pinochet phenomenon' is applicable in the sphere of corporate international crimes."[9] Another commentator agrees

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[7] This approach to international law is known as "monism," which is the prevailing mode in Belgium and the Netherlands. *See* John H. Jackson, *Status of Treaties in Domestic Legal Systems: A Policy Analysis*, 86 Am. J. Int'l L. 310, 320 (1992).

[8] For Belgium, see Jan Wouters & Leen De Smet, *De strafrechtelijke verantwoordelijkheid van rechtspersonen voor ernstige schendingen van internationaal humanitair recht in het licht van de Belgische genocidewet* 5-6, Katholike Universiteit Leuven, Faculteit Rechtsgleerheid, Instituut voor Internationaal Recht Working Paper Nr. 39 (Jan. 2003); for the Netherlands, see *Wet internationale misdrijven*, Kammerstuk 2001-2002, 28337, Nr. 3 (Dutch government's explanatory memorandum).

[9] Andrew Clapham, *The Question of Jurisdiction Under International Criminal Law Over Legal Persons: Lessons from the Rome Conference on an International Criminal Court,* in *Liability of Multinational Corporations*

with this conclusion: "It is equally clear that there is jurisdiction for any domestic court of any state to prosecute the multinational corporation if the allegation relates to a violation of a jus cogens norm like the prohibition of torture."[10]

2. International law does not define the means of its domestic implementation, but leaves this question to individual States.

Even if international criminal law exempted corporations from criminal liability, nothing in international law precludes the imposition of civil or tort liability for corporate misconduct. The proper question is not whether human rights treaties explicitly impose liability on corporations, as concluded by the district court and *Kiobel*; it is whether the treaties distinguish between juristic and natural individuals in a way that exempts the former from all responsibility.

Kiobel erroneously concluded, from the alleged absence of human rights cases against corporations in other countries, that

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Under International Law 139, 141 (Menno T. Kamminga & Saman Zia-Zarifi eds., 2000).

[10] Muthucumaraswamy Sornarajah, *Linking State Responsibility for Certain Harms Caused by Corporate Nationals Abroad to Civil Recourse in the Legal Systems of Home States*, in *Torture as Tort* 492 (Scott ed., 2000).

they are exempt from human rights norms. This is wrong, because international law generally does not define the means of its domestic implementation and remediation, leaving States a wide berth in assuring that the law is respected and enforced as each thinks best. The Permanent Court of International Justice—precursor to the modern International Court of Justice—established that international norms could not be inferred from the *absence* of domestic proceedings. In a case where France made the kind of argument that *Kiobel* found persuasive, the PCIJ declared: "Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove the circumstance alleged by the French government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so." *The Lotus Case* (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 28 (Sept. 7).

It hardly follows that States remain free to allow violations so long as a corporation commits the wrong. Equally important, Congress has already exercised its discretion by directing the

federal courts to allow civil actions for those violations of international law that take tortious form, without specifying the types of defendants who might be sued. As recognized by the Supreme Court, "[t]he Alien Tort Statute by its terms does not distinguish among classes of defendants…." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 438 (1989).

The *Kiobel* panel relied heavily on *dicta* in a footnote in the Supreme Court's decision in *Sosa*, 542 U.S. 692, to conclude that corporations are beyond the reach of customary international law, but its reading of that footnote is erroneous. To the contrary, the *Sosa* Court rejected the aggressive corporate immunity positions advanced by business groups appearing as *amicus curiae*, reasoning only that "the determination whether a norm is sufficiently definite to support a cause of action" is "related . . . [to] 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 732 n.20. The Supreme Court thus distinguished between those wrongs that require state action (*e.g.*, torture) from those

that do not (*e.g.*, genocide). The text shows that the Court was referring to a single class of non-state actors (natural and juristic individuals), not two separate classes as assumed by the *Kiobel* panel.

Nor is it relevant that the *Sosa* court would only recognize a cause of action, derived from the common law, for certain violations of international law:

> The jurisdictional grant is best read as having been enacted on the understanding that the common law would provide a cause of action for the modest number of international law violations with a potential for personal liability at the time.

542 U.S. at 724. The ATS requires only that the tort be "*committed*" in violation of a specific, universal, and obligatory norm of international law, not that international law itself recognize a right to sue or distinguish for purposes of civil liability between natural and juristic individuals.

B. *Filartiga* Itself Was Wrongly Decided If the *Kiobel* Approach Is Correct.

The mark of the *Kiobel* decision's error is its fundamental conflict with another decision of the Second Circuit, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980)—a globally respected

advance in the development of human rights standards and the fountainhead of ATS jurisprudence for a generation. The *Kiobel* approach would have required the *Filartiga* plaintiffs to demonstrate that torturers were held liable by international criminal tribunals, or universally held civilly liable in the courts of third countries. Of course, no such demonstration could have been made at the time, because state-sponsored torture—though common—had never grounded an award of civil damages from the torturer to the victim in the domestic courts of that State, let alone some other country. Moreover, even today, no international tribunal has ever had jurisdiction to prosecute torture as a stand-alone crime.[11] Equally telling, every element of proof relied upon in *Filartiga* would be rejected by *Kiobel*: the various treaties cited in *Filartiga* would be irrelevant because the United States was not a party to any of them and not a single torturer had ever been found civilly liable under any of them. The international tribunal decisions cited in *Filartiga* would also be irrelevant, because not

[11] Torture may, in some circumstances, constitute a war crime, a crime against humanity, or an act of genocide—all of which may be prosecuted by international criminal tribunals—but state-sponsored torture that lacks these special circumstances has never fallen under the jurisdiction of any international tribunal.

one of them involved a private right of action for civil damages against the torturer himself.

Filartiga was methodologically sound. The approach in *Kiobel*, adopted by the district court here, is not.

II. Modern International Law Provides Civil Liability for Corporations.

Developments in international law and international human rights law make clear that corporations are prohibited from violating international law and that civil liability attaches to violations committed by corporations.

A. International Treaties and Custom Allow The Imposition Of Civil Liability On Corporations.

A diverse array of treaties reveals the accepted understanding within the international community that corporations have international obligations and can be held liable for violations of international law. *See, e.g.*, Council of Europe Convention on the Prevention of Terrorism art. 10(1), May 16, 2005, C.E.T.S. No. 196 ("Each Party shall adopt such measures as may be necessary, in accordance with its legal principles, to

establish the *liability of legal entities* for participation in the offences set forth in Articles 5 to 7 and 9 of this Convention."); Convention against Transnational Organized Crime art. 10(1), Nov. 15, 2000, T.I.A.S. No. 13,127, 2225 U.N.T.S. 209 ("Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the *liability of legal persons* for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.");, Terrorism Financing Convention art. 5 (requiring States to provide liability against legal entities for terrorism financing); Convention on Combating Bribery of Foreign Public Officials in International Business Transactions art. 2, Dec. 17, 1997, S. Treaty Doc. No. 105-43 ("Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the *liability of legal persons* for the bribery of a foreign public official."); Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, S. Treaty Doc. No. 106-32, 1673 U.N.T.S. 57; International Convention on

the Suppression and Punishment of the Crime of Apartheid art. I(2), Nov. 3, 1973, 28 U.S.T. 1975, 1015 U.N.T.S. 243 ("The States Parties to the present Convention declare criminal those *organizations, institutions, and individuals* committing the crime of apartheid."); Convention on the Elimination of All Forms of Discrimination Against Women art. 2(e), Dec. 18, 1979, 27 U.S.T. 1909, 1249 U.N.T.S. 14 (requiring States to take measures to eliminate discrimination by any "organization or enterprise"); International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, 26 U.S.T. 765, 973 U.N.T.S. 3; Convention on Third Party Liability in the Field of Nuclear Energy, July 29, 1960, 956 U.N.T.S. 251 (emphasis added in all cases). The fact that so many long-standing international instruments either explicitly hold or implicitly assume that juristic persons can violate the conduct they prohibit clearly indicates that corporate liability is well established principle of customary international law.

B. Corporate Civil Liability is Recognized as a General Principle of Law, Which Forms Part of International Law.

The uniform recognition of corporate liability in legal systems around the world demonstrates that legal responsibility accompanies legal personality—a proposition that qualifies as a general principle of law. *See* Statute of the International Court of Justice art. 38(1)(c) Jun. 26, 1945, art 38, 59 Stat. 1031, 33 U.N.T.S. 993 (enumerating general principles as one of the three primary sources of international law). In essence, general principles encompass maxims that are "accepted by all nations in *foro domestico*"[12] and are discerned by reference to the common domestic legal doctrines in representative jurisdictions worldwide.[13] Section 102(1)(c) of the Restatement (Third) of U.S. Foreign Relations Law ("Restatement") similarly provides that "[a] rule of international law is one that has been accepted as such by the international community of states . . . by derivation from

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[12] Permanent Ct. of Int'l Justice, Advisory Committee of Jurists, *Procès Verbaux of the Proceedings of the Committee* ("*Procès Verbaux"), July 16th–July 24th, 1920, with Annexes* (The Hague 1920), at 335 (quoting Lord Phillimore, the proponent of the general principles clause).

[13] *See* Bin Cheng, *General Principles of Law as Applied by International Courts* 390 (1953) (noting that general principles encompass "the fundamental principles of every legal system" and that they "belong to no particular system of law but are common to them all").

general principles common to the major legal systems of the world." The Second Circuit, in an opinion by the same judge who authored *Kiobel*, recognized that "general principles of law recognized by civilized nations" form part of international law. *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 251 (2d Cir. 2003). Thus, courts may consult the general principles of law common to legal systems around the world in order to give content to the law of nations for purposes of the ATS. International law is routinely established through this exercise in comparative law and would have been especially familiar to the founding generation and the drafters of the ATS.[14]

Because corporate liability for serious harms is a universal feature of the world's legal systems, it qualifies as a general principle of law. In most legal systems, this takes the form of actual criminal or quasi-criminal liability in addition to civil

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[14] *Jus gentium* was the precursor to what the 18th-century lawyers called "the law of nations," and it consisted essentially of general principles among civilized nations that the Roman praetors would consider in resolving "transnational" cases. It was by no means limited to state responsibility norms, because it would apply whenever the case involved two aliens (i.e., non-Roman citizens) in what we would today characterize as a torts or contracts case. *See, e.g.,* Genc Trnavci, *The Meaning and Scope of the Law of Nations in the Context of the Alien Tort Claims Act and International Law*, 26 U. Pa. J. Int'l Econ. L. 193, 199-202 (2005).

liability, and no domestic jurisdiction exempts legal persons from all liability. To the contrary, every legal system around the world encompasses some form of tort law (or delicts), and none exempts a corporation from the obligation to compensate those it injures.

All legal systems also recognize corporate personhood. The Supreme Court has recognized the international principles governing corporate personhood, holding under international law that "the legal status of *private* corporations . . . is not to be regarded as legally separate from its owners in all circumstances." *First Nat'l City Bank ("Citibank") v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 628-29, n.20 (1983). The Supreme Court relied on the decision of the International Court of Justice in *Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain)*, 1970 I.C.J. 3 (Feb. 5). *See* 462 U.S. at 628 n.20. In *Barcelona Traction*, the ICJ resorted to general principles of law to determine whether a corporation should be considered a separate person from its shareholders. The ICJ found that international custom could not answer this question because there were "no corresponding institutions . . . to which the Court could resort,"

and, therefore, the ICJ needed to look to general principles of domestic law instead. *Id.* at 33–34, 37. The ICJ found general principles to be appropriate to answer the question of corporate separateness because corporations are entities "created by States," within their domestic jurisdiction. *Id.* at 33, 37. For the same reason, general principles are also appropriate to answer the question of whether international law recognizes civil remedies against corporations.

Indeed, the Supreme Court in *Citibank* did precisely what the *Kiobel* majority claimed may not be done—held a corporation liable for a violation of an international law norm. There, the Court upheld a counterclaim "aris[ing] under international law" against a Cuban government corporation for the illegal expropriation of property by the Cuban government. 462 U.S. at 623, 633. Because the Cuban corporation was found to be the government's alter-ego under general principles of international law, the Court held that the state-owned corporation was liable for Cuba's expropriation of Citibank's property, and that this liability was appropriately set off against the state-owned corporation's

claims against Citibank. This Court should therefore apply international law rules drawn from general principles of law common to the world's legal systems as the Supreme Court did in *Citibank*.

Of course, the law of civil remedies does not necessarily use the terminology of human rights law. But in every jurisdiction, it protects interests such as life, liberty, dignity, physical and mental integrity, and it includes remedial mechanisms that mirror the reparations required by international law for the suffering inflicted by abuse. *See* International Commission of Jurists, *Report of the Expert Legal Panel on Corporate Complicity in International Crimes* (2008), http://www.business-humanrights.org/Updates/Archive/ ICJPanelonComplicity. The fact that all national legal systems recognize corporate personhood, combined with the insight that corporate entities can already be held liable for just about every type of conduct that amounts to violations of international human rights law, proves that the district court's conclusion is inconsistent with general

principles of law common to all civilized nations and, thus, international law.

III. The International Law Doctrine of Exhaustion of Local Remedies Has Little Application to Human Rights Claims Brought in Domestic Courts Against Private Parties.

Exhaustion of local remedies is common requirement for cases brought to international human rights bodies, including the Inter-American Commission on Human Rights, the European Court of Human Rights, and the U.N. Human Rights Committee. This requirement, however, is motivated by concerns arising out of the vertical relationship between states and international bodies; the rule is exclusive to international litigation in which states are parties, and may not translate to transnational human rights litigation against private parties in domestic courts.

The doctrine of exhaustion of local remedies grew out of the law of diplomatic protection, in which a state pursues remedies against another state for violations of the rights of nationals of the first state. The Restatement notes that exhaustion of remedies under the "domestic law of the accused state" is required by customary international law when a state "pursue[s] formal,

bilateral remedies" against another state on behalf of its citizens.[15] A treatise on the subject identifies the basic motivation behind the rule as "a recognition of the sovereignty of the host state, in so far as such state is in reality being permitted to settle through its own organs a dispute of an international nature *to which it is a party*." Chittharanjan F. Amerasinghe, *Local Remedies in International Law* 62 (2004) (emphasis added).

The importation of the exhaustion rule into international human rights tribunals, in which claims are often brought by individuals rather than by states, is a matter of treaty law rather than custom. Restatement § 703 cmt. d. Amerasinghe likewise notes that it may be argued that the rule of exhaustion "is not applicable to human rights protection in the absence of express provision or by necessary implication." Amerasinghe at 66.

Even if exhaustion is a customary requirement in human rights protection, the rule in both the diplomatic protection and human rights contexts applies solely when a dispute is being elevated to an international level. As the ICJ noted in the

[15] Restatement § 703 cmt. d.

Interhandel Case (Switz. v. U.S.), exhaustion is required "[b]efore resort may be had to an international court." 1959 I.C.J. 6 (Mar. 21), at 27. The European Commission similarly noted that exhaustion is "a condition of the presentation of an international claim." *Nielsen v. Denmark*, App. No. 343/57, at 37, Eur. Comm'n H.R. (1960), *available at* http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=65974319&skin=hudoc-en&action=request. As one commentator has described it, exhaustion "usually applies in a vertical exercise of jurisdiction between national and international tribunals." Emeka Duruigbo, *Exhaustion of Local Remedies in Alien Tort Litigation*, 29 Fordham Int'l L. J. 1245, 1275 (2006).

Moreover, exhaustion applies only where the respondent party in the international case is the state. It is a rule of respect for sovereignty of the state, giving the state the opportunity to respond through its domestic means before being called to an international mechanism; it is not a rule that "emanate[s] from a basic principle of justice inherent in the international legal order." Amerasinghe at 62. Thus exhaustion "excuse[s] *the State* from

having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means." *The Matter of Viviana Gallardo et al.*, 1981 Inter-Am. Ct. H.R. (ser. A) No. 101, at ¶ 26 (Nov. 13, 1981) (emphasis added).

The international rule of exhaustion of remedies therefore has little direct application to a situation in which *domestic*, not international, litigation is brought against *private parties*, and not the state. The more analogous doctrine here is the notion of subsidiarity, in which a state may decline to prosecute an individual for international crimes if the host state is able and willing to do so. But while international treaties often only require a state to prosecute such crimes when other states are unwilling to do so, *see, e.g.*, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 7, Dec. 10, 1984, 1988 U.S.T. 202, 1486 U.N.T.S. 85 (requiring that states prosecute torturers *or* extradite them to other countries for prosecution), states are generally not prohibited from prosecuting such crimes regardless of whether other states are willing to do so.

See, e.g., Cedric Ryngaert, *Applying the Rome Statute's Complementarity Principle: Drawing Lessons From The Prosecution of Core Crimes by States Acting Under the Universality Principle*, 19 Crim. L.F. 153, 175 (2008) (concluding that "the subsidiarity principle is not a norm of customary international law"). For example, the Spanish Constitutional Court has rejected subsidiarity as a requirement for the exercise of universal jurisdiction, finding that for international crimes there is no "hierarchy of potential jurisdictions," but rather "concurrent jurisdiction." *See* Naomi Roht-Arriaza, *Guatemala Genocide Case: Spanish Constitutional Tribunal decision on universal jurisdiction over genocide claims*, 100 A.J.I.L. 207, 210 (2006) (citing *Guatemala Genocide*, Judgment No. STC 237/2005 (Tribunal Constitucional Sept. 26, 2005)). There is no customary international law principle that requires the domestic courts of one state to defer adjudication of human rights claims arising out of another state until the courts of that state have heard the case.

CONCLUSION

For these reasons, *Amici* respectfully request that the Court of Appeals reverse the district court's conclusions that corporations are not subject to international human rights law and that the exhaustion of local remedies doctrine applies to human rights claims.

Dated: February 3, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and 29(d) because this brief contains 2,885 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), the type style requirements of Fed. R. App. P. 32(a)(6), and the type size requirements of Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office in Times New Roman 14-point font.

This brief complies with the binding requirements of Circuit Rule 32(a) because it is bound securely and in such a way as not to obscure the text.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

Respectfully submitted,

February 3, 2011

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CIRCUIT RULE 31(e)(1) CERTIFICATION

I, William J. Aceves, hereby certify, pursuant to Fed. R. App. P. 31(e)(1), that a digital version of this brief was furnished to the Court at the time the paper brief was filed.

Dated: February 3, 2011

_____
William J. Aceves

APPENDIX

LIST OF AMICI

N.B. Institutional affiliations are for identification purposes only.

Philip Alston is John Norton Pomeroy Professor of Law and Director of the Center for Human Rights and Global Justice, at New York University Law School. Since 2004, he has served as Special Rapporteur of the United Nations Commission on Human Rights, on Extrajudicial, Summary, or Arbitrary Executions. He chaired the UN Committee on Economic, Social and Cultural Rights from 1991 to 1998 and was Editor-in-Chief of the *European Journal of International Law* from 1996-2007.

Gregory H. Fox is a Professor of Law at Wayne State University School of Law, where he is the Director of the Program for International Legal Studies. In 2006 he became the inaugural Cohn Family Scholar in Legal History at Wayne State. In the spring of 2009 Professor Fox was a Visiting Fellow at the Lauterpacht Research Centre for International Law at Cambridge University. Professor Fox is the author of *Humanitarian Occupation* (Cambridge 2008) and the editor of *Democratic Governance and International Law* (Cambridge 2000) (with Brad Roth) and *International Law Decisions in National Courts* (Transnational 2005) (with Thomas M. Franck). He is also the author of numerous articles and book chapters on international legal topics. Professor Fox was co-counsel to the State of Eritrea in an arbitration with the Republic of Yemen concerning the status of a group of islands in the southern Red Sea. He has also served as counsel in several international human rights cases in US courts. Prior to teaching, Professor Fox worked in the litigation department of Hale & Dorr in Boston and held fellowships at the Max Planck Institute for Comparative Public Law and Public International Law in Heidelberg, Germany and at the Schell Center for Human Rights at Yale Law School. From 1992-1995 he was the co-Director of the Center for International Studies at NYU Law School. He was also the recipient of a

MacArthur Foundation/Social Science Research Council Fellowship in International Peace and Security. Professor Fox is a member of the Executive Council of the American Society of International Law, a former Chair of the International Organizations Interest Group of the American Society and the first Chair of the Committee on International Human Rights of the Michigan Bar Association. Professor Fox is a graduate of Bates College (BA 1982 *phi beta kappa*, *with highest honors*) and New York University (JD 1986).

David Scheffer is Mayer Brown/Robert A. Helman Professor of Law and Director of the Center for International Human Rights at Northwestern University School of Law, and a former U.S. Ambassador at Large for War Crimes Issues (1997-2001). In the latter capacity, he represented the United States at the Rome Conference where the Statute of the International Criminal Court was negotiated.

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