FOREIGN ALTERNATIVES TO THE ALIEN TORT CLAIMS ACT:
THE SUCCESS (OR IS IT FAILURE?) OF BRINGING CIVIL SUITS AGAINST MULTINATIONAL CORPORATIONS THAT COMMIT HUMAN RIGHTS VIOLATIONS

Bahareh Mostajelean*

I. INTRODUCTION

Many independent nations, especially within the developed countries of the Western World, have complete, functioning domestic legal systems that are capable of handling both civil and criminal cases that arise within their boundaries.¹ A variety of cultural, legal, and political barriers have prevented these nations, however, from developing a truly global system of justice to allow for civil suits that arise from injuries sustained outside of the territories of the individual countries.² The rise of the multinational corporation (MNC) has made this gap in the justice system even more prevalent.³ Victims of actions by MNCs are often unable to seek redress for their injuries because of insufficient domestic legal systems in the country where the acts occurred and jurisdictional roadblocks within foreign legal systems.⁴ This problem is especially unfortunate when MNCs are guilty of human rights violations.⁵

The United States has attempted to overcome this barrier through its use of the Alien Tort Claims Act (ATCA).⁶ The ATCA allows aliens to bring tort claims for violations of international law

1. See SARAH JOSEPH, CORPORATIONS AND TRANSNATIONAL HUMAN RIGHTS LITIGATION 11 (2004) (explaining that developed countries tend to have sufficient domestic accountability laws).
2. See id. at 12 (finding that international human rights law has not developed to create liability for nationals who commit human rights violations abroad).
3. See id. at 13-14 (discussing the difficulty of holding a multinational corporation (MNC) criminally liable for acts committed abroad).
4. See discussion infra Part II.C.2.
5. See JOSEPH, supra note 1, at 12-13.
6. 28 U.S.C. § 1350 (2006). This statute has alternatively been referred to as the Alien Tort Statute.
or treaties of the United States in U.S. federal courts, regardless of where the tort occurred.\textsuperscript{7} By passing the ATCA as well as the Torture Victims Prevention Act (TVPA),\textsuperscript{8} which grants both aliens and U.S. citizens the right to sue for torture or extrajudicial executions, the United States developed one feasible avenue for bringing civil suits against MNCs that commit human rights violations. The ATCA is still bound by jurisdictional issues, however, and is not a global solution to the problem.\textsuperscript{9} Only a truly multinational agreement, such as a jurisdictional treaty, or the establishment of universal jurisdiction across nations can provide more thorough legal relief from these corporate human rights violations.\textsuperscript{10}

This Note will look at several foreign alternatives to the ATCA,\textsuperscript{11} focusing on options that allow an injured party to bring a civil suit against an MNC that has committed human rights violations.\textsuperscript{12} The first section of this Note will offer a brief discussion of the obligations of MNCs in today’s international community.\textsuperscript{13} The next section will discuss the development of the ATCA within the United States, with a focus on the modern ATCA’s effectiveness and its limitations in civil suits against MNCs.\textsuperscript{14}

This Note will then present the alternatives to the ATCA in two broad categories: 1) public international law alternatives that allow for private civil suits and 2) alternatives within the domestic legal systems of individual countries.\textsuperscript{15} The discussion of the first category will focus on a number of declarations and conventions that have opened the door toward developing human rights norms and permitting civil suits against human rights violators.\textsuperscript{16} The discussion of the second category will focus on the likelihood of ATCA-type litigation in a common-law legal system, the United Kingdom.


\textsuperscript{9} See Developments in the Law, supra note 7, at 2042-43 (discussing certain procedural limitations to ATCA).


\textsuperscript{11} See discussion infra Part II.C.

\textsuperscript{12} See discussion infra Part II.C.

\textsuperscript{13} See discussion infra Part II.A.

\textsuperscript{14} See discussion infra Part II.B.

\textsuperscript{15} See discussion infra Parts II.C.1-2.

\textsuperscript{16} See discussion infra Parts II.C.1.a-b.
and a civil law legal system, France. The discussion of the second category will also examine the possibility of restructuring these human rights violations as garden-variety torts, in order to create a cause of action under the civil codes of different nations.

The last section of this Note will present an analysis of these different alternatives and will evaluate their likelihood of success through a comparison of the discussed alternatives. Of the current alternatives, redefining human rights violations as garden-variety torts will provide the greatest opportunity for successful civil suits. These current alternatives are not as effective as the ATCA, however, and a convention or treaty is necessary to establish either universal jurisdiction or, more plausibly, a firmly established right within each signatory country’s legal system to bring civil suits of this nature.

II. Discussion

A. Multinational Corporations: Obligations and Liabilities

MNCs are prevalent in most aspects of today’s society—from the clothes we wear to the goods we consume and the services we obtain. The presence of MNCs throughout the world has led to the development of some international legal standards on corporate obligations and liabilities. A major hurdle in bringing civil suits against MNCs for human rights violations is that MNCs often have complex corporate structures that separate the parent corporation’s companies from the local subsidiaries that commit the human rights violations. In some instances, however, the MNC

17. See discussion infra Parts II.C.2.a-b.
18. See discussion infra Part II.C.2.c.
19. See discussion infra Part III.A.
20. See discussion infra Part III.B.
21. See discussion infra Part III.C.
itself may be just as culpable as the subsidiary corporation because
MNCs
usually comprise companies or other entities established in
more than one country and so linked that they may co-ordinate
their operations in various ways. While one or more of these
entities may be able to exercise a significant influence over the
activities of others, their degree of autonomy within the enter-
prise may vary widely from one multinational enterprise to
another.25

While international legal standards guiding the actions of MNCs
do exist, they are, in general, voluntary instruments that assume
that MNCs will be responsible for their own actions.26 Several
international organizations, such as the Organization for Eco-
nomic Cooperation and Development, the United Nations, and
the International Labor Organisation, have established codes of
conduct and have set out guidelines on the corporate accountabil-
ity of MNCs.27 These codes are broadly drafted non-binding texts,
however, as opposed to enforceable global standards.28 Though
these instruments are non-binding, they provide a moral guide and
a baseline of health and safety standards that may be influential on
MNCs.29

With regard to human rights, the obligations and liabilities of
MNCs have developed from the basic doctrines of international
human rights that were originally imposed on state entities.30
Today, MNCs have an independent legal personality with respect
to human rights obligations (similar to state actors) and are no

25-1-52. This Note’s discussion of MNCs will include the actions of both the parent com-
pany and its subsidiaries, regardless of where they are located.
25. Organization for Economic Co-operation and Development [OECD], Working
Party on the OECD Guidelines for Multinational Enterprises, The OECD Guidelines for Mul-
26. Binda Preet Saini, TRANSNATIONAL CORPORATE LIABILITY: ACCOUNTABILITY FOR
27. See generally OECD, supra note 25; U.N. Econ. & Soc. Council [ECOSOC], Sub-
Comm. on Promotion & Protection of Human Rights, Norms on the Responsibilities of Trans-
CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003); U.N. Econ. & Soc. Council [ECOSOC], Sub-
Commission on Human Rights on the Responsibilities of Transnational Corporations and Related
International Labor Organisation [ILO], Tripartite Declaration of Principles Concerning Mul-
tinational Enterprises and Social Policy, ILO Doc. No. GN 204/4/2 (Nov. 16, 1977), (amended
in November 2000).
28. See sources cited supra, note 27.
29. Saini, supra note 26, at 47.
30. Nicola Jagers, CORPORATE HUMAN RIGHTS OBLIGATIONS: IN SEARCH OF ACCOUNTA-
BILITY 32 (2002).
longer immune from liability for their human rights violations. MNCs, just like states, are bound by customary norms of international law and may not engage in slavery, forced labor, genocide, torture, extrajudicial murder, piracy, crimes against humanity, and other basic human rights violations. This Note will focus on imposing civil liability for violations of these basic human rights that MNCs are obligated to protect.

B. The Alien Tort Claims Act and Civil Suits in the United States

The ATCA, originally enacted in the United States as part of the Judiciary Act of 1789, has only made a significant impact on the U.S. and international legal systems within the past three decades. The ATCA allows aliens to sue in U.S. federal court for violations of international laws or treaties of the United States. The landmark case of Filártiga v. Pena-Irala marked the first successful use of the ATCA on a human rights issue. Filártiga, a citizen of Paraguay, brought this case under the ATCA against Pena-Irala, a citizen and government official of Paraguay accused of torturing Filártiga’s son to death while both parties still resided in Paraguay. The Second Circuit found “that an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations.” This decision created the possibility that torture, and other human rights violations, could trigger the ATCA’s jurisdiction.

Since the Filártiga decision, U.S. courts have continued to broaden the ACTA’s jurisdictional reach through a number of dif-

31. See id. at 34.
32. See Kamminga & Zia-Zarifi, supra note 23, at 8. For an interesting chart describing the obligations of MNCs under international law norms, see JACERS, supra note 30, at 73.
33. For a few examples of human rights violations committed by MNCs, see Abadie, supra note 22, at 752-55.
35. See Stephens, supra note 10, at 7-8 (discussing the beginning of modern ATCA jurisprudence in U.S. courts).
37. 630 F.2d 876, 878 (2d Cir. 1980).
38. Id.
39. Id. at 880.
40. See id. at 884-87 (holding that torture is prohibited by the law of nations and that the ATCA “open[s] the federal courts for adjudication of the rights already recognized by international law”).
ferent cases. The Supreme Court, however, in the case of *Sosa v. Alvarez-Machain*, defined the ATCA's jurisdictional reach fairly narrowly. It held that the ATCA was only jurisdictional in its terms and did not create any new rights of action under international law. While this may be seen as a blow to the ATCA on its face, the Court also added that:

>[T]he statute was intended to have practical effect the moment it became 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.

The Court continued by stating that nothing would prevent the courts from recognizing private causes of action in violation of the law of nations, but it set out two requirements: 1) that a claim based on present-day law of nations should rest on a norm of international law accepted by the civilized world and 2) that the claim be defined with a specificity that would be comparable to a violation recognized in the 18th century (when the ATCA was originally enacted).

Scholars have debated the effect of the *Sosa* decision on the ATCA and the extent of the jurisdictional limitations imposed upon it. Some argue that *Sosa* marks the beginning of the end of transnational human rights litigation, while others argue that the decision in *Sosa* demonstrates that a future still exists for such actions, especially in the realm of corporate liability. Since the *Sosa* decision, the Ninth Circuit, in *Sarei v. Rio Tinto, PLC*, reversed the district court's dismissal of a case brought under the ATCA by residents of Papua New Guinea against an international mining

---

41. *See, e.g.*, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (requiring that ATCA claims meet a threshold level of acceptance in the international community and that claims be comparable to one of the original violations in existence when the Statute was enacted); *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996) (including torture as a sufficient claim); *Kadic v. Karadžic*, 70 F.3d 232, 244 (2d Cir. 1995) (considering genocide, war crimes, summary execution, and torture as sufficient claims).
42. *See 542 U.S. 692, 710 (2004).*
43. *Id.* at 710.
44. *Id.* at 725.
45. *Id.* at 725-26. The Court refers to three primary offenses from the 18th Century: violation of safe conduct, infringement of the rights of ambassadors, and piracy. *Id.* at 725. It is likely that any claim brought today would therefore have to be comparable to one of these primary offenses.
47. *See id.* at 112 (arguing that the limitations imposed by the Court's decision in *Sosa* still allow for ATCA litigation, particularly for issues involving corporations).
The circuit court found violations of international-law norms that implicated the corporation under federal-common-law theories of vicarious liability. While this one post-Sosa decision seems to support the argument that the ATCA has not been seriously hampered, it is still too early to determine the effect of the Sosa decision over the long run. One thing, however, is clear: The decision extended the ATCA’s jurisdictional reach to include not just state actors, but also private MNCs that commit human rights violations.

The ATCA is unique in that it allows for aliens, regardless of where they are domiciled, to bring actions for torts in U.S. courts, regardless of where the tort occurred. The long-arm aspects of the ATCA are limited, however, by a number of hurdles: the prop-er-ness of the claims (subject-matter jurisdiction), personal jurisdic-tion, and forum non conveniens. The ATCA, before it can be invoked, requires the plaintiff to “identify an enforceable and universal international norm and properly allege its violation by the corporation concerned. This requires a very specific account of the facts, which are often difficult to establish for the plaintiffs.” Therefore, in order to have proper subject-matter jurisdiction, the claim must be one brought under generally accepted principles of international law or norms that are “definable, obligatory, and universally condemned.”

Furthermore, all civil cases within the United States require the plaintiff to establish personal jurisdiction. In the case of an individual defendant, the plaintiff can establish personal jurisdiction by properly serving the defendant according to the Federal Rules of Civil Procedure, either at the defendant’s place of residence in

---

48. 456 F.3d 1069, 1074 (9th Cir. 2006).
49. Id. at 1078.
50. See Fuks, supra note 46, at 145 (concluding that the Sosa decision will likely not adversely affect future ATCA litigation against corporate actors).
51. See Kadic, 70 F.3d at 239 (expanding the reach of the ATCA to apply to private actors who violate international laws, not just state actors); Doe I v. Unocal Corp., 963 F. Supp. 880 (C.D. Cal. 1997) (treating corporations as “private individuals” for ATCA purposes).
52. See Developments in the Law, supra note 7, at 2033.
53. See Jägers, supra note 30, at 200-03 (discussing procedural limitations of the ATCA).
54. Id. at 201.
the United States or personally upon the defendant while he or she is traveling through the United States.\(^{57}\) If the defendant is a corporation, personal jurisdiction will be more difficult to establish if the corporation does not have a U.S. headquarters or a place of business in the United States.\(^{58}\) Given the size of many of today's MNCs,\(^{59}\) however, it is possible that the MNC will have a subsidiary company, branch, or local office somewhere within the United States.

Even if the plaintiff establishes both personal and subject-matter jurisdiction, the court may refuse to hear an ATCA case under the doctrine of *forum non conveniens*.\(^{60}\) Defendants invoke this doctrine when they wish to remove a case into the jurisdiction where the alleged injury occurred or into another jurisdiction that has a more substantial connection.\(^{61}\) The courts will consider a number of factors, such as location of the evidence and witnesses and convenience to both parties, in deciding whether to dismiss.\(^{62}\) Corporate defendants are particularly likely to invoke this doctrine, because they stand to gain from having their cases moved to jurisdictions with less stringent laws or poorly structured legal systems.\(^{63}\) These limitations on the ATCA show that the statute, while capable of being successfully invoked, still faces several hurdles that may prevent foreign victims from using it.\(^{64}\) With this in mind, it is important to consider several alternatives to the ATCA.

### C. Foreign Alternatives to the ATCA

This section will focus on the existing alternative avenues through which victims can bring civil suits in their domestic legal system against MNCs that commit human rights violations.

---


58. See generally *Asahi Metal Indus. Co. v. Sup. Ct.*, 480 U.S. 102 (1987) (foreign defendant’s selling of parts that were eventually made into components sold in the United States was insufficient to establish minimum contacts for personal jurisdiction purposes); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (foreign defendant’s negotiation of a contract within the United States and drawing checks in the United States was not sufficient to establish personal jurisdiction).

59. See Kamminga and Zia-Zarifi, *supra* note 23, at 2-4 (discussing the traits, particularly the size and scope, of MNCs).

60. See generally JAGERS, *supra* note 30, at 196-98.

61. *Id.*

62. *Id.* at 196-97.


64. See generally JAGERS, *supra* note 30, at 196-200 (mentioning *forum non conveniens*, the act of state doctrine, and the political question doctrine).
1. Public International Law Paving the Way for Private Civil Suits

a. The International Framework for Human Rights

Treaties have developed into an essential component of the global legal system, as they spell out rights of citizens and the obligations of signatory nations to ensure that those rights are protected. Of particular importance to the development of human rights standards throughout the world is the United Nations’ Universal Declaration of Human Rights, which is aimed at “every individual and every organ of society.” While this declaration is non-binding, its focus seems broad enough to encompass corporations, as well as individuals and state actors. The declaration states that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized,” and further that “[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) contain provisions on the basic rights of individuals and on the right to self-determination held by each individual. These declarations, and others like them, establish principles of international law and common understandings about the status of human rights. While the declarations do set out requirements for the signatory states, they still require state action before they can enter into force. Article 2(1) of the ICCPR requires states to protect individuals within their territories and subject to their jurisdiction, while Article 2(2) requires states to

65. See, e.g., Developments in the Law, supra note 7, at 2046-47 (discussing the role of a multilateral treaty in transnational jurisdiction for human rights violations).
67. Id. at 76.
68. Id. at 77.
71. See ICESCR, supra note 69, at 4; ICCPR, supra note 70, at 173.
72. See generally ICESCR, supra note 69; ICCPR, supra note 70.
73. ICCPR, supra note 70, at 173-74; ICESCR, supra note 69, at 4.
implement legislation to protect these rights.\textsuperscript{74} These declarations set out human rights that have been commonly established, but, at the same time, they make clear that it is up to the individual states, rather than the global community as a whole, to protect these rights.\textsuperscript{75}

b. Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

Another example of public international law that is actionable through the individual states is the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention).\textsuperscript{76} The Brussels Convention, which has been codified as the Brussels Regulation,\textsuperscript{77} is the only international convention that deals with the issue of jurisdiction.\textsuperscript{78} The Brussels Convention sets out limitations on when jurisdiction is appropriate for civil cases by creating specific bases of jurisdiction by which all members must abide.\textsuperscript{79}

The Brussels Convention states that general jurisdiction is available in the country of the defendant’s domicile.\textsuperscript{80} When dealing with corporate defendants, the domicile is considered the location of the corporation’s “seat,” which is to be defined by the private international law of the individual courts.\textsuperscript{81} The “seat” of the corporation has been defined as the center of managerial control, the location of the “principal establishment” of the corporation, or the place of incorporation.\textsuperscript{82} The Brussels Convention also provides that specific jurisdiction is available for torts in the place where the tort occurred.\textsuperscript{83}

\begin{itemize}
  \item \textsuperscript{74} ICCPR, \textit{supra} note 70, at 173-74.
  \item \textsuperscript{75} \textit{See generally} ICESCR, \textit{supra} note 69; ICCPR, \textit{supra} note 70 (requiring and emphasizing State action throughout).
  \item \textsuperscript{76} Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Sept. 27, 1968, as amended, 1990 O.J. (C 189) 1 [hereinafter Brussels Convention].
  \item \textsuperscript{77} Council Regulation 44/2001, 2001 O.J. (L 12) 1 (EC) [hereinafter Brussels Regulation]. The Regulation applies to all EU Member states, with the exception of Denmark. \textit{Id.} at 2-3.
  \item \textsuperscript{78} \textit{See} Stephens, \textit{supra} note 10, at 22-23.
  \item \textsuperscript{79} \textit{See generally} Brussels Convention, \textit{supra} note 76, at tit. II.
  \item \textsuperscript{80} \textit{See} Brussels Convention, \textit{supra} note 76, art. 2.
  \item \textsuperscript{81} \textit{Id.} art. 53.
  \item \textsuperscript{83} Brussels Convention, \textit{supra} note 76, art. 5(3).
\end{itemize}
The Brussels Convention also sets out the jurisdictional requirements to which contracting states must adhere during litigation with other contracting states. When the litigation involves a defendant domiciled in a non-contracting state, however, the Convention allows each individual state to use its own jurisdictional rules. Therefore, countries such as the United Kingdom and Ireland, which allow jurisdiction based on transitory physical presence, may only use that basis of jurisdiction when litigating against a non-contracting state. Aside from these few exceptions to the Brussels Convention, the basic rules allow only for jurisdiction over foreign actors for domestic violations, or against domestic actors for violations committed in foreign countries, but not for violations committed by foreign actors in a foreign country—the type of litigation permitted by the ATCA.

2. Civil Suits Within a Nation’s Domestic Legal System

Opportunities for civil suits against MNCs also exist within both common law and civil law countries. This section will examine the possibility of transforming human rights violations into garden-variety torts to create a cause of action for civil suits within domestic legal systems.

a. A Common Law Country Alternative: the United Kingdom

The United Kingdom’s legal system, while in many regards similar to that of the United States, does not have an ATCA equivalent that offers an explicit authorization for civil suits against aliens who commit torts abroad. Furthermore, procedural differences and different cultural views on the use of civil litigation for legal reform are a significant barrier to the success of civil suits against MNCs within the United Kingdom.

Bringing a civil suit in the United Kingdom against a foreign defendant for an act committed in a foreign territory carries with it

84. See id. art. 3.  
85. See id. art. 4.  
86. See id. art. 3.  
87. See id. art. 4. See also Stephens, supra note 10, at 23.  
89. See, e.g., Joseph, supra note 1, at 15-16 (explaining that common law countries are more likely than civil law countries to have these types of suits).  
90. See, e.g., Stephens, supra note 10, at 31-53 (discussing the possibility of defining human rights violations as torts to allow for civil suits).  
91. See id. at 18 (introducing a discussion into the limitations of Filartigo-style civil suits brought by victims of torture in the United Kingdom).  
92. See id.
several procedural hurdles, the most important of which is obtaining jurisdiction for the court to even hear the case.\footnote{93} In obtaining jurisdiction, the plaintiff must be able to serve the defendant with a claim form, similar to service of process in the United States.\footnote{94} The British courts have allowed service on individuals based on mere transient presence, including on a person passing through for only a few days.\footnote{95} Requirements for effecting service on a corporation depend on whether the corporation is foreign and its presence within the United Kingdom.\footnote{96} If the defendant is a foreign corporation that has a branch in the country, jurisdiction can be obtained through service of process to an authorized agent.\footnote{97} Similarly, if the foreign corporation has a place of business in the United Kingdom but no branch, jurisdiction can still be obtained by service of process to an authorized agent.\footnote{98} Foreign companies with branches or places of business in Great Britain also must file the names and addresses of all authorized agents with the Registrar of Companies, thereby aiding in the service process.\footnote{99} The U.K. Civil Procedure Rules also allow for service of process to be effected at any of the places of business of the company within the jurisdiction.\footnote{100}

While MNCs may have at least one place of business within the United Kingdom, some do not. In those instances, the plaintiff must serve process outside of the jurisdiction of the court.\footnote{101} The U.K. Civil Procedure Rules allow this to occur in a limited number of circumstances, but strict procedural requirements must be met for service of this type to be proper.\footnote{102} The British court must grant the plaintiff permission to serve process outside of the jurisdiction so that only those defendants with sufficiently close connections to the United Kingdom can be brought into the courts.\footnote{103}

\footnote{94} See id. at 139-41.
\footnote{96} British ILA Report, supra note 93, at 140-41.
\footnote{97} Companies Act, 1985, c. 6, §§ 690A, 694A (Eng.). See also British ILA Report, supra note 93, at 140.
\footnote{98} Companies Act § 695.
\footnote{99} Id. §§ 690A, 694A, 695.
\footnote{101} U.K. CIV. P. R. 6.17-6.20.
\footnote{102} U.K. CIV. P. R. 6.19-6.20.
\footnote{103} U.K. CIV. P. R. 6.21. See also British ILA Report, supra note 93, at 141.
The British ILA Report sets out three requirements that generally must be met in order for a plaintiff to obtain permission to serve a defendant outside of the United Kingdom: “(a) that he has a good arguable case that his claim falls within one of the categories prescribed by Rule 6.20 of the Civil Procedure Rules; (b) that, on the merits, there is at least a serious issue to be tried; and (c) that England is the appropriate forum for the trial of the action—the forum conveniens.”104 The procedural difficulties in instituting suits of this nature arise in meeting these three requirements.105

The determination of the United Kingdom as the forum conveniens can be difficult to show.106 Under the British development of the forum conveniens doctrine, the court where the proceeding is brought must consider a number of factors—such as connection of the case to the forum, location of the witnesses and documents, and procedural aspects of the two forums—in order to determine which forum is most appropriate for bringing the action.107 The burden is first on the defendant to show that there is another, more appropriate forum; but once the defendant shows that, the burden shifts to the plaintiff to show that justice cannot be done in the alternative forum.108 The British courts have interpreted this doctrine in a number of cases involving MNCs.109 The defendant corporations generally claim forum non conveniens. The court must then perform a forum non conveniens analysis to determine the most appropriate forum for the case to be heard. In this analysis it must consider which forum has sufficient connections to the claims and which forum would permit justice to be done.110 In order to effectuate a civil suit within the British courts, the plaintiff must therefore overcome the hurdle of showing that justice cannot be done

104. British ILA Report, supra note 93, at 142 (citing generally Seaconsar Far East Ltd. v. Bank Markazi Jomhouri Islami Iran, [1994] 1 A.C. 438 for (a) and (b), and Spiliada Maritime Corp. v. Cansulex Ltd., [1987] A.C. 460 for (c)).

105. Id. at 142.

106. See JAGERS, supra note 30, at 205.

107. See Meeran, supra note 24, at 254.


109. See generally Spiliada Maritime Corp. v. Cansulex Ltd., [1987] 1 A.C. 460 (H.L.) (Eng.); Mohammed v. Bank of Kuwait, [1996] 1 W.L.R. 1483 (Eng.); Connelly, [1998] A.C. 854 (in all these cases, defendant corporations moved to apply the doctrine of forum non conveniens to have their cases removed to forums outside of England, but the courts dismissed the motions in the interest of justice). (Detailed analysis of these cases is beyond the scope of this Note, but see Meeran, supra note 24, for a thorough explanation of the courts’ reasoning in Connelly).

110. See British ILA Report, supra note 93, at 145.
in what would likely be the more appropriate forum, the country where the violation occurred.\textsuperscript{111}

A final consideration within the British system is the proper law to apply to civil cases against MNCs.\textsuperscript{112} A civil suit filed under the domestic laws of the United Kingdom would be ideal; as there is no ATCA equivalent, however, victims of these violations may have to file their claims under customary international law.\textsuperscript{113} In general, British courts, in considering a civil suit under customary international law for a tort committed abroad, must apply the law of the country where the event that led to the tort occurred.\textsuperscript{114} Therefore, the courts should apply the law of the country where the tort occurred, even though that might be a developing country with less stringent human rights laws.

There is, however, an exception to the general rule. If upon comparison it is determined that

it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue (as the case may be) is the law of that other country.\textsuperscript{115}

In making the determination for this exception, the court must compare the significance of the factors connecting the tort to the country under the general law to the factors connecting the tort to the other country.\textsuperscript{116} These are factors relating to the parties, to the events that constitute the tort, and to any other circumstances of the specific events.\textsuperscript{117} This choice of law question becomes important in circumstances where the tort or human rights violation is not one that is recognized globally as illegal.\textsuperscript{118}

Plaintiffs must meet these procedural requirements before they can successfully bring a civil suit before the British courts.\textsuperscript{119} Part III of this Note will offer an analysis of the likelihood of effectuating civil suits against MNCs in the British courts, in light of the

\begin{itemize}
  \item \textsuperscript{111} See id. at 145-46.
  \item \textsuperscript{112} See id. at 158-59.
  \item \textsuperscript{113} Id. at 158-59.
  \item \textsuperscript{114} Private International Law (Miscellaneous Provisions) Act, 1995, c. 42, § 11(1) [hereinafter U.K. Private International Law Act]. See also Michael Byers, English Courts and Serious Human Rights Violations Abroad: A Preliminary Assessment, in LIABILITY OF MULTINATIONAL CORPORATIONS UNDER INTERNATIONAL LAW, supra note 23, at 241, 244.
  \item \textsuperscript{115} U.K. Private International Law Act, supra note 114, § 12(1).
  \item \textsuperscript{116} Id.
  \item \textsuperscript{117} British ILA Report, supra note 93, at 161.
  \item \textsuperscript{118} See id.
  \item \textsuperscript{119} See id. at 165.
\end{itemize}
above-mentioned procedural requirements, and will provide a comparison to the success of similar suits in U.S. courts under the ATCA.

b. A Civil Law Country Alternative: France

Many civil law countries, such as France, Spain, and Sweden, offer an alternative method of bringing civil suits: attaching the civil claim to an existing criminal prosecution. In France, the plaintiff who brings the claim is referred to as the *partie civile*. Within this *partie civile* system, the main claim is the criminal prosecution, and any civil claims must be a direct result of the criminal act of which the defendant is accused. This system is encompassed within the French Code of Criminal Procedure, which states that any “[c]ivil action aimed at the reparation of the damage suffered because of a felony, a misdemeanor or a petty offence is open to all those who have personally suffered damage directly caused by the offence.”

While it is possible to bring a civil action separately, if a criminal proceeding has already been initiated, all separate civil actions will be placed on hold until the prosecution has concluded its case. This rule creates an incentive for victims of abuses to utilize the *partie civile* system, as the victim can bring an action under this system simultaneously with the public prosecution and in front of the same court. Furthermore, if the government has not yet initiated a criminal prosecution, the *partie civile* system still allows the private citizen to initiate a civil claim in the criminal court.

Becoming a *partie civile* provides procedural advantages, as using the criminal process is often faster, easier, and less expensive than initiating a separate civil proceeding. An additional benefit is that the investigatory means used by the prosecutor, as well as the prosecutor’s specialized skills, can be used to prove both the crimi-

---

122. Id.
125. See FRENCH CODE CRIM. P. art. 3.
nal and civil case simultaneously. The partie civile system includes several limitations as well, which could have implications for bringing civil suits against corporations. First of all, recovery as a partie civile consists simply of restitution, and not punitive damages. This diminishes some of the deterrent effect of the civil action. Furthermore, determining the proper amount of damages can also be a hindrance, especially in cases where the extent of the injuries may not be known for many years to come.

c. Transforming Human Rights Violations Into Torts

In both common-law and civil-law domestic systems, civil actions must be based on a claim that is recognized as a violation. Some aspects of human rights are considered jus cogens principles, which are peremptory and mandatory norms of international law that no nation may violate. Jus cogens principles are considered "so fundamental that no nation may ignore them or attempt to contract out of them through treaties. For example, genocide and participating in a slave trade are thought to be jus cogens." The difficulty of bringing a proper claim for a civil case arises when the human rights violation committed by the corporation is one that is based entirely on international-law norms but that is not settled as a jus cogens principle. In this situation, in order to prevent the case from being thrown out for lack of an actionable claim, the possibility exists of reframing the human rights violation as a garden-variety tort that is already grounded in the domestic legal systems of the individual countries.

128. See id.
129. See Larguier, supra note 124, at 688, 697 (discussing procedural difficulties generally and particularly those difficulties in bringing civil actions against certain parties).
130. See id. at 688-89.
131. Joutsen, supra note 121, at 117.
132. See, e.g., Joseph, supra note 1, at 15-16.
135. See British ILA Report, supra note 93, at 158.
The human rights violation would have to equate to a claim actionable as a domestic tort, like wrongful death, assault, or false imprisonment. For example, plaintiffs would have to allege the domestic tort of assault in cases of torture, wrongful death for disappearances and killings, and negligence for injuries from unsafe working conditions. In these kinds of cases, tort litigation provides not only a domestic cause of action, but also compensation to victims and deterrence to MNCs. One court has stated that human rights violations require global attention and that reducing them “to no more (or less) than a garden-variety municipal tort” would be inappropriate. In light of the current limitations on many domestic legal systems, however, converting the violations to basic torts would be the only way to bring a civil case capable of withstanding an attempt to dismiss it for failure to state a claim.

III. Analysis

The foreign alternatives to the ATCA, as discussed above, are each subject to their own procedural limitations. Within the existing alternatives, redefining human rights violations as common torts will provide the greatest likelihood that individual nations’ domestic courts will hear civil claims against MNCs. These alternatives do not guarantee jurisdiction for civil claims to the extent that the ATCA does, however. Instead, the global community as a whole must establish that universal jurisdiction applies to civil human rights cases, through a treaty or convention, and each individual country must authorize its legal system to hear these civil cases.

This Part of the Note will compare the ATCA to the above-mentioned alternatives: existing public international law, jurisdiction within the domestic legal systems of the United Kingdom and France, and finally, the use of garden-variety torts to create civil claims within individual countries’ domestic legal systems. While each alternative offers a possibility of civil suits, such suits are

139. See Saini, supra note 26, at 181.
141. See British ILA Report, supra note 93, at 159.
142. This section will discuss these procedural limitations in greater detail.
143. See discussion infra Part III.B.
144. See, e.g., Stephens, supra note 10, at 39-53 (arguing that universal jurisdiction should obtain for civil as well as criminal responses to human rights violations).
145. See discussion infra Parts III.A, III.B.
never guaranteed. As this analysis will present, a major weakness of these alternatives is that none of them has statutory authority like the ATCA.\textsuperscript{146}

A. Three ATCA Alternatives and Their Limitations

1. The ATCA in Comparison to Public International Law

Public international law, in the form of treaties and conventions, has yet to offer a civil remedy for human rights violations comparable to the statutory authorization the ATCA created.\textsuperscript{147} While treaties, declarations, and conventions have developed human rights obligations, “[t]hese obligations have tended to focus exclusively on or, at least, to emphasize the taking of criminal sanctions against the alleged offenders.”\textsuperscript{148} The authorization for civil remedies for human rights violations has been left primarily to the discretion of individual states and their private international laws.\textsuperscript{149} Both the ICESCR and the ICCPR require individual state action before their requirements can enter into force.\textsuperscript{150} Public international law of this sort is therefore dependent upon individual state authorization before its obligations are legally binding.\textsuperscript{151} The requirement that states authorize these declarations, in combination with a strictly criminal view of human rights violations, have made public-international-law declarations unlikely to guarantee jurisdiction for civil human rights suits.\textsuperscript{152}

The Brussels Convention, codified by the Brussels Regulation, specifically focuses on the issue of jurisdiction for civil suits within its signatory states.\textsuperscript{153} Signatory states must adhere to the Brussels Convention’s jurisdictional requirements.\textsuperscript{154} This guarantees that under the specific circumstances set out in the Brussels Convention, the domestic courts will have jurisdiction to hear claims.\textsuperscript{155}

\textsuperscript{146} See Terry, supra note 136, at 118 (stating that third country civil remedies should ideally be implemented by domestic legislation, like ATCA and TVPA).

\textsuperscript{147} See discussion supra Part II.C.1.

\textsuperscript{148} Andrew Byrnes, Civil Remedies for Torture Committee Abroad: An Obligation Under the Convention Against Torture?, in Torture as Tort, supra note 136, at 537, 538.

\textsuperscript{149} Id. at 539. See generally U.K. Private International Law Act, supra note 114; Alien Tort Claims Act, 28 U.S.C. § 1350 (2006).

\textsuperscript{150} ICESCR, supra note 69, at 4; ICCPR, supra note 70, at 173.

\textsuperscript{151} See generally ICESCR, supra note 69; ICCPR, supra note 70.

\textsuperscript{152} See discussion supra Part II.C.1.

\textsuperscript{153} See discussion supra Part II.C.1.b and accompanying footnotes for an explanation of the Brussels Regulation and Brussels Convention.

\textsuperscript{154} See generally Brussels Convention, supra note 76 (with articles 2-24 describing the jurisdictional requirements).

\textsuperscript{155} See generally id. arts. 2-24.
The problem, however, is that the Brussels Convention can actually limit the ability of certain courts to take jurisdiction in litigation between contracting states, when those courts would otherwise have jurisdiction under their domestic laws.\(^{156}\)

Both the United Kingdom and Ireland within their domestic laws allow for jurisdiction against a defendant based on transitory physical presence.\(^{157}\) The Brussels Convention, however, does not recognize transitory physical presence as a proper means of jurisdiction.\(^{158}\) In litigation with another Brussels Convention contracting state, neither the United Kingdom nor Ireland would be allowed to use transitory presence to establish jurisdiction, despite the existence of that option in their domestic laws.\(^{159}\) This problem is mitigated to some extent by the fact that contracting states are free to use their own domestic laws when involved in litigation with non-contracting states—such as the developing countries in which MNCs would be more likely to commit human rights violations.\(^{160}\)

Public international law is unlikely to provide for a solid alternative to the ATCA without individual state action.\(^{161}\) While these public laws, conventions, and declarations set out general obligations and understandings, without individual state authorizations, these obligations are mostly symbolic.\(^{162}\) In particular, public international law has yet to address the notion of civil human rights litigation, let alone establish universal jurisdiction for these suits.\(^{163}\) These international sources of law, therefore, cannot fully respond to the major roadblock of civil human rights litigation against MNCs: obtaining jurisdiction within the domestic courts of a country.\(^{164}\)

\(^{156}\) See Stephens, supra note 10, at 23.

\(^{157}\) Id.

\(^{158}\) Brussels Convention, supra note 76, arts. 2, 3. See also Terry, supra note 136, at 120 (discussing limitations to service based on transient jurisdiction under the Brussels Convention).

\(^{159}\) See Brussels Convention, supra note 76, art. 3 (explaining that certain State-specific jurisdictional rules will not apply to persons domiciled in a Contracting State). See also Stephens, supra note 10, at 23.

\(^{160}\) Brussels Convention, supra note 76, art. 4.

\(^{161}\) See discussion supra Part II.C.

\(^{162}\) See Stephens, supra note 10, at 24 (“restrictions [such as jurisdiction] make core human rights lawsuits impossible in many legal systems”).

\(^{163}\) See Developments in the Law, supra note 7, at 2025-26 (“International law has neither articulated the human rights obligations of corporations nor provided mechanisms to enforce such obligations.”).

\(^{164}\) Cf. id. at 2045 (explaining that universal jurisdiction of the international legal system generally concerns only criminal jurisdiction).
Public international law leaves countries with an understanding of what a human rights violation is but no specific guarantee of jurisdiction. Individual countries are left to use their own laws to establish jurisdiction for civil suits of this type, just as the United States has done with the establishment of the ATCA. The ATCA is an example of a private international law that establishes jurisdiction for civil suits of this nature. The ATCA, as a statute, has already authorized U.S. courts to find jurisdiction where there is a violation of an international norm as established by public international law. This authorization sets the United States apart as the only nation to authorize transnational civil human rights litigation by statute. The ATCA has enabled public international law to take effect within the United States, and it is an example of the type of authorization other nations should also implement to allow for civil suits against MNCs for human rights violations.

2. The ATCA in Comparison to Alternatives of the United Kingdom

The United Kingdom does not have an ATCA statutory equivalent. Civil suits against MNCs are therefore dependant on establishing jurisdiction through domestic laws. The U.K. courts, despite having no statutory authorization of jurisdiction for civil human rights litigation, may hear these cases in certain specific circumstances. As discussed above, for civil human rights litigation to come to fruition in U.K. courts, the procedural requirements of service of process must be met, the U.K. court must be considered the forum conveniens, and the proper choice of law must be determined. These requirements make jurisdiction

165. See generally id. (discussing the use of ATCA in the United States to hold corporations liable for their human rights violations).


167. See Developments in the Law, supra note 7, at 2044-45 (considering ATCA an example of private international law that extends universal jurisdiction to civil suits).

168. See Stephens, supra note 10, at 3.

169. Cf. id. at 5 (“Victims of human rights abuses around the world seek comparable results [to U.S.-style ATCA litigation] through varied procedural models, tailored to the requirements of their local legal systems.”).

170. See id. at 18.

171. See discussion supra Part II.C.2.a for an explanation of the procedural roadblocks U.K. courts face in obtaining jurisdiction for civil human rights litigation.

172. See, e.g., Byers, supra note 114, at 245-47 (discussing the possibility of human rights liability for MNCs in the United Kingdom).

173. See discussion supra Part II.C.2.a and accompanying notes.
more difficult to establish in the United Kingdom than under the ATCA.\textsuperscript{174}

The doctrine of \textit{forum non conveniens} is a procedural roadblock that both U.S. and U.K. courts face in civil human rights litigation.\textsuperscript{175} Defendants invoke this doctrine only after jurisdiction has been established and process has been properly served.\textsuperscript{176} Both U.S. and U.K. courts must determine whether their courts are the \textit{forum conveniens}, or the most appropriate forum in which to bring the case. U.K. courts, through a number of cases, have discussed the issue of \textit{forum non conveniens} and seem less likely to apply the doctrine when justice could not be done in the forum where the violation occurred.\textsuperscript{177} The court in \textit{Mohammed v. Bank of Kuwait} expressed its unwillingness to stay a proceeding on the basis of \textit{forum non conveniens} solely because the foreign forum was the more appropriate forum.\textsuperscript{178} Instead, the court required that the foreign forum also be an “available” forum, which it defined as one that is “available in practice to [a] plaintiff to have his dispute resolved” and one where “substantial justice is likely to be achieved . . . .”\textsuperscript{179}

Despite the possible edge U.K. courts have over U.S. courts in the invocation of the \textit{forum non conveniens} doctrine, a greater concern is the ability of U.K. courts to even reach the point at which \textit{forum conveniens} is an issue after jurisdiction has been established and process has been served on a defendant.\textsuperscript{180} U.K. courts, like U.S. courts, allow for service of process to be made based on transient presence, thereby allowing for service upon defendants when they are only passing through the country.\textsuperscript{181} U.K. courts, however, are bound by the Brussels Regulation, which prohibits service against contracting members based on transient presence, while U.S. courts are not similarly bound.\textsuperscript{182} This gives U.S. courts greater leeway in serving defendants who would be subject to ATCA litigation. U.K. courts, however, can serve process to a defendant who is abroad under certain limited circumstances,
while U.S. courts cannot. While this gives the U.K. courts a minor advantage, the circumstances are extremely limited and often require some damage to have accrued in the United Kingdom. Therefore, this type of service is unlikely to be used against MNCs that commit human rights violations abroad, especially when it usually would be possible to serve process on the MNC at a place of business within the forum.

A further jurisdictional roadblock to civil human rights litigation in U.K. courts is in bringing an actionable claim. The ATCA authorizes a cause of action for civil suits of this sort, but the United Kingdom, without an equivalent authorization, must establish its claim under its existing laws and public international law. If the claim is a violation of a jus cogens norm by an MNC such as slavery or forced labor, U.K. courts will likely hear the case. The hurdle arises, however, when the violation is not so firmly established in international law. In these situations, the court must decide whether a personal remedy is available through civil litigation, as no explicit authorization exists. While international public law has established obligations, “it is important to note that even in respect of these conventional provisions the right to a remedy remains poorly developed.” Therefore, despite certain procedural advantages that exist in the U.K. system, the absence of an explicit statute that authorizes civil suits of this nature presents a significant hurdle.

3. The ATCA in Comparison to France’s *Partie Civile*

The *partie civile* system in France faces even greater hurdles than the U.K. system in providing a civil remedy for victims of human rights violations. A *partie civile*, as explained above, is a party that attaches a civil claim onto an on-going criminal prosecution. This system can be efficient and extremely beneficial for victims with a strong criminal case, because it saves time and money and allows the prosecution to prove both the underlying criminal case

---

183. See Byers, supra note 114, at 245.
184. Id.
185. See discussion supra Part II.C.2.a for a more detailed discussion of service of process in the United Kingdom.
186. See British ILA Report, supra note 93, at 139-49.
187. See id. at 138.
188. See id. at 137.
189. See id.
190. See id. at 138.
191. Id.
192. See discussion supra Part II.C.2.b and accompanying notes.
and the attached civil matter. A drawback, however, is that the success of any civil remedies for human rights violations rely exclusively on the existence and successful prosecution of a criminal matter. A foreign victim, suffering from harms committed in a foreign country, will likely be incapable of initiating a criminal case to which they can then attach a civil complaint.

Assuming that a criminal prosecution was commenced, and the victim has attached a civil complaint, the victim would still have to address the question of the proper amount of damages. Under the parti civil system, recovery is limited to restitution only, thereby removing the deterrent effect of punitive damages. This is an especially unfortunate drawback of the parti civil system, as victims could stand to obtain a significant sum of money given the deep pockets of many MNCs. Limiting the amount of recovery to reparations also does not take into consideration possible future damages, whereas a significant punitive recovery could make up for that difference.

The parti civil system, as opposed to the ATCA, does not establish an independent right to bring civil human rights litigation, as any civil remedy is tied in with the criminal case. While this is a nice option for victims of crimes committed within France, the foreign plaintiff, whose rights were violated by an MNC in a foreign jurisdiction, will have a more difficult time using this system. More than anything else, the parti civil system offers only an additional benefit of a civil remedy for a victim who actually has a criminal case. Victims who cannot obtain criminal justice, however, are left in the same position as before: without an established right to bring civil human rights litigation within a foreign jurisdiction.

B. A Fourth ATCA Alternative and Today’s Best Alternative: Changing Human Rights Violations into Torts

The final alternative considered in this Note is the transformation of human rights violations into common torts. One of the

---

193. See Larguier, supra note 124, at 687 (discussing the advantages of the parti civil system in France).
194. See id. at 688 (discussing the disadvantages of the parti civil system).
195. Id. at 688-89. See also Stephens, supra note 10, at 20 (describing how recovery has been extremely minimal in civil human rights cases in Europe).
196. Cf. Stephens, supra note 10, at 20 (stating that recovery under the current parti civil is mostly symbolic).
197. Larguier, supra note 124, at 689 (“the civil action must be grounded on the commission of a criminal offense”).
198. See id.
major roadblocks to civil human rights litigation against MNCs is that human rights obligations of corporations have yet to develop to the extent of human rights obligations of individuals. This means that international law alone may not provide a claim against an MNC that commits these violations, especially if the domestic laws of a country do not also provide a remedy for those violations. The concept of converting human rights violations into domestic torts is a response to this absence of civil relief otherwise.

The ATCA is a uniquely American statute that creates a civil cause of action for violations of the law of nations. Despite the lack of an explicit statute authorizing this kind of litigation in other nations, the use of a tort remedy offers a workable alternative. In the United Kingdom, as discussed above, civil suits for human rights violations are more plausible when the remedy is based on a domestic cause of action, such as a tort. That tort law is already established within the domestic legal system of these countries is advantageous as well. While a tort remedy does not guarantee service of process or establishment of jurisdiction, at least it guarantees that a cause of action exists for victims.

Legal scholars have presented numerous arguments about the legal benefits of transforming the human rights violation of torture into a tort remedy for civil relief. The extensive international discussions about the rights of torture victims, which established the prohibition on torture as a jus cogens norm, make this tort remedy particularly effective for civil suits. Domestic courts are more willing to exercise jurisdiction over violations that occurred in another forum when the violation was of a jus cogens international norm, such as torture. While the jurisdictional reach of these courts has generally been for criminal matters, a court will

199. See Developments in the Law, supra note 7, at 2025-26. See also discussion supra Part II.A about obligations of MNCs.
200. See discussion supra Part III.A.1.
202. See Terry, supra note 136, at 110-11 (advocating a tort remedy when there is no explicit legislative authorization for these kinds of civil cases).
203. See discussion supra Part III.A.2.
204. See Terry, supra note 136, at 115 (discussing the advantages of the tort remedy over criminal remedy).
205. See generally Torture as Tort, supra note 136 (exploring numerous issues on the subject of treating torture as a tort).
207. Id.
likely still extend its jurisdiction for civil matters where the tort is a torture equivalent.\textsuperscript{208}

Courts may also exercise jurisdiction over civil cases involving human rights violations that occurred abroad when the damages inflicted upon the victim continue to accrue during the time the victim is within the court's jurisdiction.\textsuperscript{209} Emotional or mental distress, as well as future physical injuries, are just some examples of damages that may occur well after the human rights violations have stopped and the victim is within the new forum.\textsuperscript{210} By converting the human rights violation into a tort, a court will have greater options regarding whether a civil suit states a cause of action and when the court can properly take jurisdiction.

The conversion of human rights violations into torts may also prove particularly effective in light of the structure of the modern-day MNC.\textsuperscript{211} MNCs can be held liable not only for direct human rights violations but also for negligence if plaintiffs use a tort remedy.\textsuperscript{212} Under a negligence theory, an MNC can be held liable for human rights violations to which it contributed by recklessly disregarding working standards or, worse yet, deliberately ignoring them.\textsuperscript{213} MNCs are frequently structurally complex and composed of not only the corporate entity but also of wholly owned subsidiaries, partially owned subsidiaries, and other affiliated groups.\textsuperscript{214} A tort remedy would permit these MNCs to be held liable under a theory of vicarious liability.\textsuperscript{215} This type of liability could implicate MNCs that attempt to shield themselves from the actions of their subsidiaries in other countries.\textsuperscript{216} If the third-party subsidiaries that actually commit the human rights violations are government

\textsuperscript{208} See id. at 120 (discussing the requirement of the ICCPR that states ensure that persons have an effective remedy and that the remedy is not limited to the state where the alleged action occurred).

\textsuperscript{209} See British ILA Report, supra note 93, at 161 (explaining that the British courts may hear cases where later damages accrued in England, but the original tort was committed abroad).

\textsuperscript{210} See id.

\textsuperscript{211} See discussion supra Part II.A.

\textsuperscript{212} For a discussion of negligence principles as applied to MNCs, see generally Sahn, supra note 26, at 183-88.

\textsuperscript{213} Cf. id. (discussing the duty of care doctrine and how it may apply to MNCs); see Sarah Joseph, An Overview of the Human Rights Accountability of Multinational Enterprises, in LIABILITY OF MULTINATIONAL CORPORATIONS UNDER INTERNATIONAL LAW, supra note 23, at 76 (listing potential examples of such negligence).

\textsuperscript{214} See Meeran, supra note 24, at 292 (explaining the composition of many MNCs).

\textsuperscript{215} See generally Sahn, supra note 26, at 213-15 (discussing vicarious liability of parent companies for intentional torts committed by their subsidiaries).

\textsuperscript{216} See id.
actors, the Act of State Doctrine often renders them immune from suit.\textsuperscript{217} Under a vicarious liability tort theory, however, a victim could at least attempt to recover damages from the MNC through a civil suit.\textsuperscript{218}

In comparison to the other discussed alternatives, a tort theory of liability seems to offer the greatest opportunity for civil suits against MNCs that commit human rights violations. Tort remedies, however, do not offer jurisdictional guarantees to the same extent as the ATCA.\textsuperscript{219} While the ATCA allows civil suits for violations of the law of nations, this tort remedy requires the transformation of serious human rights violations into garden-variety torts.\textsuperscript{220} Some consider that using tort terminology lessens the egregiousness of the violations in many cases.\textsuperscript{221} Furthermore, there is still no guarantee that a court will be willing to accept a tort cause of action.\textsuperscript{222} The following section will propose a solution to the limitations of these ATCA alternatives.

C. \textit{Tomorrow’s Better Alternative: Universal Jurisdiction for Civil Claims and Other Jurisdictional Guarantees}

The use of civil litigation against MNCs that commit human rights violations is an idea that has developed fairly recently within the United States.\textsuperscript{223} This concept has developed in the United States because of the ATCA and the TVPA’s statutory implementation of jurisdiction based on international laws.\textsuperscript{224} Civil suits for human rights violations in other nations face significantly greater procedural roadblocks, however, particularly because of this absence of statutory authorization.\textsuperscript{225} While international law on human rights exists, none specifically deals with this type of civil remedy.\textsuperscript{226} Furthermore, without domestic legislation, none of the existing international laws can be fully enforced within these coun-

\textsuperscript{217} See generally \textit{British ILA Report}, supra note 93, at 149-51 (discussing the procedural hurdles of State immunity).

\textsuperscript{218} See \textit{SAINTI}, supra note 26, at 214 (stating that the motivation for imposing vicarious liability is to provide deterrence and fair compensation).

\textsuperscript{219} See Stephens, supra note 10, at 31-32.

\textsuperscript{220} See id.

\textsuperscript{221} Id. at 31.

\textsuperscript{222} Id. at 32.

\textsuperscript{223} See discussion supra Part II.B.

\textsuperscript{224} See discussion supra Part II.B.

\textsuperscript{225} See discussion supra Part II.B.

\textsuperscript{226} See discussion supra Part II.B.
An effective civil remedy alternative “would be expressly permitted or required by treaty and then implemented by means of domestic legislation comparable to the TVPA.” Therefore, both the global community and individual nations must explicitly authorize a civil remedy for victims of human rights violations.

The international community must acknowledge the importance of permitting victims of human rights violations to bring civil suits against their offenders. As other basic rights and norms have been established through treaties, declarations, and conventions, the same must occur for this type of civil remedy. An agreement must be established that expressly guarantees universal jurisdiction for civil suits within independent nations for victims of human rights violations. Currently, only *jus cogens* norms of international law are guaranteed universal jurisdiction, and, in those instances, universal jurisdiction is primarily for criminal actions. A new international agreement is necessary to guarantee universal jurisdiction for all human rights violations, not just *jus cogens* norms. This agreement could incorporate other existing declarations as well, such as the ICESCR and the ICCPR. Most importantly, however, this agreement must guarantee the rights of victims to pursue a civil remedy for human rights violations in addition to any criminal actions.

While an international agreement that establishes universal civil jurisdiction is necessary to effectively develop this remedy, without state action it may not be enough. Individual nations, especially in the developed world, must be willing to enforce an international agreement and guarantee that their domestic legal systems will allow a civil action to go forward. These nations can guarantee civil actions in one of two ways: 1) authorizing civil suits by an alien for a violation committed abroad with ATCA-equivalent legislation or 2) enforcing public international law within their domestic courts through more lenient jurisdictional requirements and a greater willingness to accept the concept of a civil remedy for human rights violations. The first option is preferable as it would create a statutory obligation to enforce these civil remedies. Both would, however, effectively develop this civil remedy.

---

227. *See discussion supra* Part III.A.
228. Terry, *supra* note 136, at 118.
229. *See discussion supra* Part II.C.
230. *See Byrnes, supra* note 148, at 537.
Victims of human rights violations caused by MNC activities are located throughout the world given the global presence of the modern-day MNC.232 These victims often live in developing countries and look to nations with developed legal systems to help them obtain justice.233 The establishment of universal civil jurisdiction for human rights violations would provide a guaranteed civil remedy for victims of human rights violations. Furthermore, these victims need individual nations to support their claims and to understand that a civil remedy, with monetary damages, could provide a significant amount of relief from their suffering. Therefore, each nation should enact an ATCA-equivalent statute that is supported by an international convention that has established an explicit right for victims of human rights violations to sue in a court of their choosing.

IV. CONCLUSION

The United States is the only nation that has statutorily authorized an alien to bring a civil action against another alien for a violation of international law.234 The ATCA should be a model to other nations, especially in how it has allowed for civil suits against MNCs that commit human rights violations in their activities within developing countries. A number of alternatives to the ATCA currently exist—namely, public international law, civil suits within the United Kingdom, the partie civile system of France, and converting human rights violation to torts.235 Of the current alternatives, redefining the human rights violations as common torts will provide for the greatest opportunity for civil suits to succeed.236 Without any statutory authorization for civil suits of this nature, however, none of these alternatives can guarantee jurisdiction to the extent of the ATCA.

To develop and guarantee a civil remedy for a human rights victim, an international agreement, like a convention or treaty, is necessary to explicitly establish universal jurisdiction for these claims.237 Each individual signatory nation must be willing to enforce international law in order to provide for civil jurisdic-

232. See Abadie, supra note 22, at 750.
233. See Joseph, supra note 1, at 11.
234. Alien Tort Claims Act, 28 U.S.C. § 1350 (2006); see also Terry, supra note 136, at 110.
235. See discussion supra Parts II.C, III.A.-B.
236. See discussion supra Part III.B.
237. See discussion supra Part III.C.
tion. Ideally, this should be done through the establishment of ATCA-equivalent legislation within their domestic legal systems. A global agreement to provide a civil remedy for human rights violations is essential for victims of human rights violations to begin their road to recovery.

238. See discussion supra Part III.C.
239. See discussion supra Part III.C.