INTRODUCTORY REMARKS – ALIEN TORT CLAIMS ACT

*Charles Curlett**

Good morning ladies and gentlemen, and welcome. We are fortunate to have with us today a distinguished panel of professors and practitioners who will be speaking about various aspects of current Alien Tort Claims Act[1] (ATCA) litigation. Before I introduce them, I thought we might begin with the language of the Statute itself. The ATCA states that "[t]he district court shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[2] This language, I think, illustrates the wisdom of our Congress in recognizing that certain universal principles of law transcend national boundaries, overcome issues and defenses of sovereignty, and must be enforced whenever possible by a court competent to hear such claims. Essentially, our courts are competent, because our Congress says that they are. For certain categories of torts, it does not matter that the acts were committed outside the borders of the United States, that the acts were neither committed by a national of the United States, nor were against a national of the United States. These issues are irrelevant because international law, the law of nations, is part of our federal common law. These actions violate international law, and as such violate our laws. Accordingly, our courts should be permitted to do their part in maintaining, wherever possible, international peace and stability through the administration of justice.

These notions of justice and accountability seem right in step with this post cold-war era in which recognition of the universal nature of human rights is of paramount importance. It is of such importance, and recognition is becoming so global, that in just this past year we have seen the arrest of former Chilean dictator Augusto Pinochet, the path for whom is now virtually clear so that he might be extradited to Spain for crimes committed in Chile under his direction when Head of State. In this past year, we have also seen the first international criminal indictment of a sitting Head of State, Slobodan Milosevic, for crimes against humanity committed within the borders of his

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* Panel Chair, Special Assistant in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia. Speech Given at the 1999 ILA-American Branch Annual Conference in New York.

1. 29 USCA §1350 (West, 1999).
2. Id.

own country. So, yes, our Congress seems to be for once right in step with the most current thinking regarding international enforcement of human rights norms. However, this is not recent legislation. The language of the ATCA was drafted 210 years ago as part of the Federal Judiciary Act of 1789.[3] Indeed, this legislation illustrates a Congress ahead of its time to such extent that the Act was ignored for 200 years. Enacted originally to address those few norms which at the time violated the law of nations, such as piracy and the slave trade – the Act was laid to rest after only a handful of early cases. Then came *Filartiga*.[4] In 1976 a man and his daughter came to the Center for Constitutional Rights in search of a means to take action against a Paraguayan police official who had tortured and killed their seventeen year old son and brother. The officer, Americo Norberto Pena-Irala, fled Paraguay after the *Filartigas* charged him with murder. He was living in New York City at the time the lawsuit was filed. The central holding to emerge from that case was that courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today. I mention briefly that shortly after *Filartiga*, Judge Bork in the *Tel-Oren*[5] disagreed with the *Filartiga* court and argued just the opposite. Fortunately, his view has been roundly rejected and the fundamental holding of *Filartiga* remains, and shall remain, intact.

Today, in an era when the international community is taking great strides to recognize, and courts around the world are attempting to enforce fundamental human rights, the ATCA has again become a vital sword for the litigator who champions the rights of victims from around the world. However, I will leave you and our panelists with two questions. First, just how sharp is this sword? In the brief revival of ATCA litigation we have seen fewer than two dozen lawsuits. Although they have generated two billion dollars in damage awards, none has been collected. This area of litigation faces the same practical difficulties of enforcement that plagues much of international law. While we applaud the indictments of Slobodan Milosevic, Radovan Karadzic, and Ratko Mladic, none are in custody. Which brings me to my second question, how can we sharpen this sword? With that, I turn to our panelists. We are privileged to have with us today a remarkable and distinguished group of scholars and litigators. The attorneys who join us this morning are true pioneers and I am pleased to welcome them.

MICHAEL RATNER

Our first speaker is Mr. Michael Ratner. Mr. Ratner is a human rights practitioner who has made his legal and political home at the Center for

3. USCA Const.. Art. III § 1 (West, 1999).
4. Filartigo v. Pena-Irala, 630 F.2d 876 (2d. Cir, 1980).
5. Tel-Oren v. Libyan Arab Republic, 469 U.S. 811 (1984).

Constitutional Rights in New York for over twenty-five years. In the course of his career, he has sued many of the world's worst killers and torturers. Mr. Ratner is a former director of the Center for Constitutional Rights and past president of the National Lawyers Guild. Never content to identify human rights atrocities committed only by foreign individuals and regimes, he has filed a lawsuit challenging the constitutionality of the Gulf War. Mr. Ratner co-authored, with fellow panelist Beth Stephens, the book *International Human Rights Litigation in U.S. Courts.* Of special interest to human rights litigators and activists, it addresses lawsuits in the United States under the Alien Tort Claims Act, the Torture Victim Protection Act, and related statutes for human rights abuses committed in other countries. The authors also discuss jurisdictional issues, immunity, choice of law, and sources of international law.

BETH STEPHENS

Beth Stephens is presently an associate professor of law at Rutgers University. A magna cum laude graduate of Harvard University and the law school at UC Berkeley, Professor Stephens clerked for Chief Justice Rose Bird of the California Supreme Court before going on to study the changing legal system of Nicaragua. Before going to Rutgers, Ms. Stephens was in charge of the international human rights docket at the Center for Constitutional Rights in New York. Catharine A. MacKinnon is the Elizabeth A. Long Professor of Law at the University of Michigan School of Law. She holds a B.A. from Smith College, a J.D. from Yale Law School, and a Ph.D. in political science from Yale University. Professor MacKinnon, who practices and consults nationally and internationally, has also taught at Yale, the Univeristy of Chicago, UCLA, Minnesota, Harvard, York (Osgoode Hall), and Stanford. Her fields of concentration include constitutional law and political theory. She is the author of numerous articles and books. Professor MacKinnon pioneers the legal claim for sexual harassment as a form of sex discrimination. In 1983, with Andrea Dworkin, she conceived and wrote ordinances recognizing pornography as a violation of civil rights. The United States Supreme Court accepted her theory of sexual harrassment in 1986. The Supreme Court of Canada adopted, in part, approaches that she created with the Women's Legal Education and Action Fund with respect to equality, pornography, and hate speech. Professor MacKinnon is the lead counsel in *Kadic v. Karadzic*, filed in 1993 under the Alien Tort Claims Act and Torture Victim Protection Act (TVPA), in which she represents Bosnian Muslim and Croat survivors of Serb atrocities seeking international justice for genocide.

BETH VAN SCHAAK

Beth Van Schaak is an associate at the law firm Morrison & Foerster. Ms. Van Schaak recently spent the second year of a Soros Justice Fellowship at the

Center for Justice & Acountability (CJA). CJA is an international human rights legal services organization launched in 1988 with initial support from Amnesty International, USA and the United Nations Voluntary Fund for Victims of Torture. CJA aims to close off the United States as a safe haven for torturers and other violators of human rights. Ms. Van Schaak has filed civil lawsuits in the courts of the United States under the ATCA and the TVPA against human rights violators from abroad who reside, visit, or keep assets in the United States. In May 1999, CJA filed its most recent lawsuit *Romagoza et al. v. Garcia and Vides-Cassanova*, involving claims of torture, cruel, inhuman, and degrading treatment or punishment; and crimes against humanity against two former Ministers of Defense from El Salvador who retired in Florida. A graduate of Stanford University and Yale Law School, Ms. Van Schaak served as a law clerk in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia in the Hague. She previously worked for the Schell Center for International Human Rights and as a teaching assistant for the Lowenstein International Human Rights Clinic at Yale Law School.