DEVELOPMENTS

Transnational Terrorist Financing: Criminal and Civil Perspectives

By Mark A. Drumbl[*]

A. Introduction

This note addresses the proscription of terrorist financing under transnational law. It considers both criminal and civil regulatory frameworks. Although the 9/11 attacks certainly galvanized jurisgeneration in this area, important treaties and customary principles preexisted those attacks. Insofar as the law on this topic is quite robust, this note does not provide a typology of every legal prohibition that touches upon terrorist financing. Instead, it offers an overview of the subject matter through case-studies drawn from international treaties and Alien Tort Claims Act litigation in the United States, and it also places the regulatory framework of terrorist financing within both *lex lata* and *lex ferenda* regarding the proscription of terrorism generally.

B. Criminal Prosecution

Any discussion of the criminalization of terrorist financing must first generally address the status of the prohibition of terrorism under international law. Conventional or customary international law does not contain a fully comprehensive definition of terrorism. As such, some observers suggest that terrorism itself is not formally an international crime, because no crime can exist without a definition thereof.[1] Others, such as Antonio Cassese, posit that disputes over the scope of the crime of terrorism occur at the margins of the impugned activity and, at the core, "[a] definition of terrorism does exist, and the phenomenon also amounts to a customary international law crime."[2] Assuredly,

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[1] *See, e.g.*, Adrian Hunt, "*Terrorism" as an International Crime*, *available at* http://www.counter-terrorism-law.org/internatlaw.pdf.

[2] ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 120 (2003). Cassese points out as a matter of international humanitarian treaty law that art. 33(1) of the Fourth Geneva Convention, art. 4(2)(d) of the

whether states or movements of national liberation can commit acts of terrorism that engender legal consequences is a debate that remains unresolved. Nonetheless, this debate signifies a lack of agreement regarding a possible *exception* to the criminalization of terrorism, rather than a disagreement regarding terrorism's core proscription. In any event, Jelena Pejić concludes:

> Regardless of the lack of a comprehensive definition at the international level, terrorist acts are crimes under domestic law, under the existing international and regional conventions on terrorism, and may, provided the requisite criteria are met, qualify as war crimes or as crimes against humanity. [. . .] There is near unanimity that terrorist acts are crimes under both domestic and international law.[3]

I go a step further than Pejić and, similar to Cassese, contend that if terrorist attacks: (1) are widespread in nature; (2) are international or transboundary in effect, means, or design; and (3) deliberately target civilians with a view to intimidate a civilian population, then the attacks constitute atrocity crimes that have recently percolated to the level of customarily prohibited crimes or, in the least, of grave violations of *erga omnes* obligations. Acts of terrorism may also constitute other international crimes, such as war crimes or crimes against humanity, provided that the specific *actus reus* and *mens rea* requirements are met for those crimes.[4] In a nutshell, crimes against humanity are violent attacks (for example, those enumerated in article 7 of the Rome Statute of the International Criminal Court (ICC)) undertaken as part of a widespread or systematic attack against a civilian population. War crimes are certain violations of the laws of war. Whereas the commission of war crimes requires the existence of an armed conflict, the commission of crimes against humanity has no such requirement. Unless a terrorist

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Second Additional Protocol of 1977, and art. 4 of the ICTR Statute prohibit terrorism. *Id*. at 121. *See also* Salvatore Zappala, *Do Heads of State in Office Enjoy Immunity from Jurisdiction for International Crimes? The* Ghaddafi *Case Before the French* Cour de Cassation, 12 EUR. J. INT'L L. 595, 609 (2001) ("although not all acts that may amount to a crime of terrorism under national or treaty law are also covered by customary norms, at least some of them may have turned into customary law […] Other classes of crimes of terrorism under customary law could be […] mass murder of innocent civilians.")

[3] Jelena Pejić, *Terrorist Acts and Groups: A Role for International Law?*, 2004 BRITISH YEARBOOK OF INT'L LAW 71, 73, 95 (2005).

[4] *See* Nico J. Shrijver, *Responding to International Terrorism: Moving the Frontiers of International Law for 'Enduring Freedom?'*, 48 NETH. INT'L L. REV. 271, 289 (2001); Mark A. Drumbl, *Judging the 11 September Terrorist Attack*, 24:2 HUMAN RIGHTS QUARTERLY 323, 336-338 (2002).

act meets the criteria of a crime against humanity or a war crime, it would not fall within the ICC's jurisdiction (assuming the ICC otherwise had jurisdiction and the matter were admissible under the relevant provisions of the Rome Statute).[5] The Rome Statute does not create jurisdiction to prosecute terrorism specifically.

On the specific topic of terrorist financing, the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter Financing Convention), which entered into force in 2002,[6] defines terrorism in regard to nine preexisting treaties (art. (2)(1)(a)) and then complements that definition in art. 2(1)(b) with what Cassese calls an "all-encompassing formula."[7] Article 2(1)(b)'s formula for a prohibited act is as follows:

> Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing an act.

The Financing Convention characterizes the following as criminal conduct: when persons "by any means, directly or indirectly, unlawfully and willfully, provide[] or collect[] funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out" the acts prohibited in articles 2(1)(a) or 2(1)(b).[8] Under the Financing Convention, persons commit offenses when they attempt to commit an offense, participate as an accomplice to the commission of an offense, organize or direct others to commit an offense, or contribute to the commission of an offense by a group of persons acting with a

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[5] *See, e.g.,* Rome Statute of the International Criminal Court, arts. 12-17, July 17, 1998, 2187 U.N.T.S. 93 [hereinafter Rome Statute]. The specific language of the ICTY Statute has grounded terrorism-related prosecutions, as well, under the rubric of war crimes. *See e.g.* Prosecutor v. Galić, Case No. IT-98-29-T, Judgment, ¶138 (Dec. 5, 2003) (finding that "[. . .] the crime of terror as a violation of the laws or customs of war [. . .] formed part of the law to which the Accused and his subordinates were subject [. . .]. Terror as a crime within international humanitarian law was made effective in this case by treaty law. The [ICTY] has jurisdiction *ratione materiae* by way of Article 3 of the Statute.")

[6] *See* International Convention for the Suppression of the Financing of Terrorism, art. 2(1)(b), Dec. 9, 1999, S. TREATY DOC. No. 106-49 (2000), 39 I.L.M. 270 (2000).

[7] CASSESE, *supra* note 2, at 121–22.

[8] Financing Convention, *supra* note 6, at art. 2(1).

common purpose.[9] Article 4 of the Financing Convention provides that state parties shall adopt measures as necessary to establish the criminal offenses set forth in Article 2 under domestic law and make them punishable by appropriate penalties.

There are 160 parties to the Financing Convention,[10] which is one of thirteen "sectoral" UN conventions on terrorist acts. Other conventions focus on aircraft hijacking, hostage taking, attacks on diplomats and other internationally protected persons, safety of civil aircraft, airport violence, nuclear terrorism, and terrorist bombings.[11] This methodology of law-making reflects the international community's "prefer[ence] to draw up Conventions prohibiting individual sets of well-specified acts."[12] Although, as Pejić notes, these conventions explicitly do "not establish[] universal jurisdiction over these international crimes, [they] provide for an 'extradite or prosecute' (*aut dedere aut judicare*) regime."[13] Moreover, conduct prohibited by transnational criminal law can percolate upward into the domain of core international criminal law.

In the wake of the September 11 attacks, the United Nations Security Council unanimously adopted Resolution 1373, which requires all UN member states to criminalize the financing of terrorism and freeze terrorist assets.[14] Because Resolution 1373 was adopted under Chapter VII of the Charter of the United Nations, it applies to all states regardless whether they have ratified the Financing Convention. The Security Council also "established a monitoring mechanism, the Counter-Terrorism Committee (CTC), to oversee the implementation of Resolution 1373."[15]

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[9] *See id*. at arts. 2(4)–2(5).

[10] As of June 23, 2008. Information *available at* www.un.org/sc/ctc/law.shtml.

[11] *See* Pejić, *supra* note 3, at 95–96. The thirteenth convention, the International Convention for the Suppression of Acts of Nuclear Terrorism, entered into force on July 7, 2007.

[12] CASSESE, *supra* note 2, at 123.

[13] Pejić, *supra* note 3, at 96.

[14] S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001). "The core provisions of Resolution 1373 were taken directly from the Terrorism Financing Convention […]." Laurence R. Helfer, Nonconsensual International Lawmaking, 2008 U. ILL. L. REV. 71, 81 (2008).

[15] Helfer, *supra* note 14, at 81.

Charges for terrorist financing have been brought in many states. Examples include the United States,[16] the United Kingdom,[17] Sweden,[18] elsewhere in Europe,[19] and Indonesia.[20] When effectively and equitably undertaken, prosecutions can play a role in incapacitating terrorist funders and funding networks. Successful prosecutions also may transcend incapacitation to unpack the diffuse and multicausal origins of terrorist violence and, thereby, serve an important pedagogical and didactic purpose. In so doing, prosecutions serve important expressive purposes. I have elsewhere argued that, in matters of transnational concern, the expressive value of international sanction may serve relevant, though modest, justificatory purposes.[21]

That said, convictions are hard to obtain. A March 2006 report in the *Christian Science Monitor* concluded that: "actual convictions for financing terrorism have been few and far between. Last September, a Spanish court sentenced Imad Yarkas to 27 years for helping fund the 9/11 attacks; two months earlier, Yemeni cleric Mohammed Ali Hassan al-Moayad was sentenced to 75 years in the U.S. for conspiring to provide financial support to Al Qaeda and Hamas."[22]

For numerous reasons, convictions for terrorist financing are difficult to obtain. Terrorist financing can involve many individual actors combining in the concert of collective agency.[23] A criminal law system based on individual culpability and the

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[16] There were reportedly 18 "FBI convictions" in the U.S. in 2005 for terrorist financing. *See* http://trac.syr.edu/tracfbi/findings/05/criminal/district/us/usgprg05.html. In 2004, 25 such convictions were reported. *See* http://trac.syr.edu/tracfbi/findings/04/criminal/district/us/usgprg04.html.

[17] *See, e.g.,* http://www.hm-treasury.gov.uk/documents/international_issues/terrorist_financing/int_terrorfinance_ combatfinance.cfm.

[18] *See, e.g.,* http://www.silkroadstudies.org/new/docs/publications/2007/0701JIR.htm.

[19] *See, e.g.,* http://moscow.usembassy.gov/crt2005.html. In March 2008, the Dutch Court of Appeals in The Hague acquitted a Dutch businessman of involvement in war crimes and of illegally supplying arms to the regime of former Liberian President Charles Taylor.

[20] *See, e.g.* http://www.sinarmandiri.co.id/20070328/indonesia-money-laundering-and-terrorist-financing-report-2007/.

[21] *See* MARK A. DRUMBL, ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW (2007).

[22] Mark Rice-Oxley, *Why Terror Financing Is So Tough to Track Down*, CHRISTIAN SCIENCE MONITOR (March 8, 2006) *available at* http://www.csmonitor.com/2006/0308/p04s01-woeu.html ("What was once a global network financed by elusive donors and administered by Al Qaeda 'fund- managers' has now fragmented into a constellation of franchises that sustain themselves primarily through crime.")

[23] *See* Michael Dougherty, *Money Laundering: Current Status of Our Efforts to Coordinate and Combat Money Laundering and Terrorist Financing*, (March 4, 2004), *available at*

salience of individual *mens rea* may experience difficulty when interfacing with group behavior. Moreover, as a matter of evidence, much terrorist financing is accomplished indirectly without a formal 'paper trail'. Authorities can also experience difficulty distinguishing the financing of legitimate causes/charities from the financing of criminal organizations. Given these ambiguities, prosecutors may overreach and, thereby, create due process concerns that, in turn, may undermine the legitimacy of the prosecutions. Aggressive implementation of the law may trigger new rights violations or, in the least, create the taint of partisan justice. In some cases, judicial systems that prosecute terrorist financing may have ulterior agendas.

Moreover, when pursued, terrorist financiers adapt. Evidence indicates that the financing of terrorism has become more decentralized, small-scale, and modest over time, paradoxically in part as a result of efforts to hold those who finance al-Qaeda accountable.[24] The geography and methods of terrorist financing have changed:

> Estimates suggest that the 9/11 attacks may have cost as much as $500,000 to stage. By contrast, the Madrid bombings of 2004 are believed to have cost no more than $15,000, and last year's London attacks perhaps $2,000. Four bombs, four rucksacks, some train tickets, a little gasoline, and a few phone calls.[25]

As terrorist financing becomes smaller in scale, and potentially more local, effective prosecution may necessitate deeper implication of domestic and local actors. Regardless of the jurisdictional level at which criminal prosecutions are undertaken, the unsettled deterrent value of these prosecutions suggests that the defusing of financing networks requires outreach, education, public relations, and cultivation of political stability. Reform of banking and financial institution laws

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http://drugcaucus.senate.gov/moneylaundering04dougherty.html ("In the realm of terrorist financing, it has proven difficult to link the profits from the sale of narcotics, counterfeit merchandise or contraband cigarettes directly to a terrorist organization, or that an unlicensed money broker was sending millions of dollars directly to a terrorist organization. [. . .] Actual terrorist financing cases are relatively rare and very difficult to prove. [. . .] So while it is imperative that we aggressively prosecute specific terrorist cases, it is equally imperative that we take a systemic—rather than case-by-case—approach to financial and economic crime as a way to dismantle the funding mechanisms for criminal and terrorist organizations.")

[24] *See* Rice-Oxley, *supra* note 22.

[25] *Id*.

https://doi.org/10.1017/S2071832200000201 Published online by Cambridge University Press

and monitoring may permit suspicious transactions to be spotted *ex ante*, and not merely traced back *ex post*.

C. Civil Litigation in the U.S. Under the ATCA

In recent years, there has been some Alien Tort Claims Act (ATCA) (also known as the ATS) litigation in the United States involving civil liability for terrorist acts. The ATCA provides that "[t]he District Courts 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."[26] The ATCA therefore creates a civil remedy for a violation of the laws of nations, which means the possibility of tort liability for conduct that rises to the level of a serious international crime. This section takes up three cases as illustrations: *Al Baraka*, *Saperstein*, and *Arab Bank*.

In *Burnett v. Al Baraka*, victims or relatives of victims of the 9/11 terrorist attacks brought an action against nearly two hundred defendants for their alleged financial support of al Qaeda and terrorist events.[27] The District Court held that subject matter jurisdiction was present for the 198 foreign nationals who adequately stated an ATCA claim against defendant Al-Haramain Islamic Foundation (AHIF).[28] The alleged tort violated the law of nations because the 9/11 attacks commenced with aircraft hijackings that are "generally recognized as a violation of international law of the type that gives rise to individual liability."[29] The District Court also recognized that, in certain situations, ATCA claims can be brought against non-state actors.[30] In terms of locating individual civil responsibility, evidence indicating defendants were "accomplices, aiders and abetters, or co-conspirators

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[26] Alien Tort Claims Act, 28 U.S.C. § 1350 (2000). ATCA claims have been brought for a variety of *jus cogens* violations, including genocide and torture.

[27] *See* Burnett v. Al Baraka, 274 F. Supp. 2d 86, 91 (D.D.C. 2003). Plaintiffs sought punitive damages "in excess of one trillion dollars." *Id*.

[28] *See id*. at 91–95.

[29] *Id*. at 100. The court supported this premise with various ATCA case holdings, as well as the Restatement (Third) of the Foreign Relations Law of the United States § 404 (1987) that defines internationally recognized offenses as including "piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism . . . ." *Id*. It also relied upon *United States v. Yunis*, 924 F.2d 1086, 1092 (D.C. Cir. 1991) ("Aircraft hijacking may well be one of the few crimes so clearly condemned under the law of nations that states may assert universal jurisdiction to bring offenders to justice, even when the state has no territorial connection to the hijacking and its citizens are not involved."). *See also* In re Terrorist Attacks on September 11, 2001, 392 F. Supp. 2d 539 (S.D.N.Y. 2005).

[30] *See* Al Baraka, 274 F. Supp. 2d at 100.

would support a finding of liability under the ATCA."[31] Later, the District Court transferred this case to the Southern District of New York. After repeatedly losing preliminary challenges, plaintiffs' counsel voluntarily dismissed all ATCA claims against the defendants.[32] Only one domestic, *pro se* plaintiff continued the suit.[33]

In *Saperstein v. Palestinian Authority*, plaintiffs brought ATCA claims in the Southern District of Florida against the Palestinian Authority and the Palestinian Liberation Organization, alleging that these groups "advocated, encouraged, solicited, facilitated, incited, sponsored, organized, planned and executed acts of violence and terrorism against Jewish civilians" in various parts of the Middle East.[34] Plaintiffs cited defendants' alleged support of the families of the Al Aksa Brigade, a violent terrorist group, claiming that this support provided a "strong financial incentive to continue to carry out the violence and terrorism[. . . .]"[35] Defendants responded with a motion to dismiss, claiming there was no subject matter jurisdiction over ATCA claims made against a private actor and also challenging the status of terrorism as a violation of the law of nations. The District Court granted defendant's motion to dismiss, holding that plaintiffs failed to plead a breach of the law of nations sufficient to invoke proper subject matter jurisdiction. The District Court concluded "that politically motivated terrorism has not reached the status of a violation of the law of nations,"[36] in particular when committed by private actors. The court relied heavily on the 1984 judgment of the D.C. Circuit in *Tel-Oren*, which held that the law of nations did not outlaw politically motivated terrorism.[37] Furthermore, the court stated that if alleged violations of Common

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[31] *Id*. *See also* The Presbyterian Church of Sudan v. Talisman Energy Inc., 244 F.Supp.2d 289, 321 (S.D.N.Y. 2003) (holding claims under the ATCA may "proceed based on theories of conspiracy and aiding and abetting."); Khulumani v. Barclay Nat'l Bank Ltd., 504 F.3d 254, 260 (2nd Cir. 2007) (per curiam) *aff'd by United States Supreme Court (which lacked quorum owing to financial and personal conflicts of interest among four judges and, hence, unable to decide whether to grant cert.).* Am. Isuzu Motors, Inc. v. Ntsebeza, 2008 U.S. LEXIS 3868 (May 12, 2008); Linda Greenhouse, *Justices' Conflicts Halt Apartheid Appeal*, N.Y. TIMES (May 13, 2008). *See also generally* Kristen Hutchens, *International Law in American Courts* – Khulumani v. Barclay National Bank Ltd.: *The Decision Heard 'Round the Corporate World*, 9 GERMAN L.J. 639 (2008).

[32] *See In re* Terrorist Attacks on September 11, 2001, 2007 U.S. Dist. LEXIS 74356, at *1 (S.D.N.Y. Oct. 5, 2007) (magistrate opinion).

[33] *See id.* at *1–*2.

[34] Saperstein v. Palestinian Authority, 2006 U.S. Dist. LEXIS 92778 at *6 (S.D. Fla. 2006).

[35] *Id*. at *7.

[36] *Id*. at *26.

[37] *See id.* at *25–*26 (citing Tel Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003 (1985)).

Article 3 of the Geneva Conventions could trigger ATCA jurisdiction, then vague, amorphous violations of other provisions such as "violence to life" and "outrages upon personal dignity" would as well, thereby violating the explicit standards of specificity and caution encouraged by the U.S. Supreme Court in its ATCA judgment in *Sosa*.[38] The District Court also was concerned about a floodgates/slippery slope issue—if allegations of a murdered civilian during armed conflict could create a cause of action under the ATCA, then federal courts could potentially have jurisdiction over any homicide against an innocent civilian if it occurred during "armed conflict."[39]

On January 29, 2007, Judge Gershon of the Eastern District of New York ruled that terrorist financing can constitute a violation of the laws of nations for purposes of ATCA liability.[40] She did so within the context of claims made by over 1,600 plaintiffs against the Arab Bank for allegedly knowingly providing banking and administrative services to various terrorist organizations or organizations that sponsored suicide bombings and other murderous attacks on innocent civilians in Israel.[41] Judge Gershon canvassed various international treaties—such as the International Convention for the Suppression of Terrorist Bombings[42] and the Financing Convention[43]—as well as customary law of war and domestic U.S. jurisprudence before concluding that "organized, systematic suicide bombings and other murderous attacks against innocent civilians for the purpose of intimidating a civilian population are a violation of the law of nations for which this court can and does recognize a cause of action under the [ATCA]."[44] In the latter part of her order, which ultimately denied in part the motion to dismiss brought by the Arab Bank defendants, she addressed aiding and abetting and complicity as theories of

[38] *See* Saperstein 2006 U.S. Dist. LEXIS 92778 at *30 (citing Sosa v. Alvarez-Machain, 542 U.S. 692 (2004)).

[39] *Id*. at *31 (giving examples of murders in Bosnia, the Middle East or Darfur, Sudan and positing these could lead to a litigation explosion under the ATCA).

[40] *See* Almog v. Arab Bank, 471 F. Supp. 2d 257, 286 (E.D.N.Y. 2007).

[41] *Id*. at 259–60.

[42] The District Court described the Bombing Convention's significance: over 120 nations, including the U.S., have ratified it. The District Court also mentioned how the Bombing Convention was incorporated in the Terrorist Bombings Convention Implementation Act of 2002.

[43] Article 6 condemns suicide bombings and similar attacks, stating that these acts "are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

[44] Arab Bank, 471 F. Supp. 2d at 285.

liability through which an actor—including a private actor—can be held liable for the underlying violation of the laws of nations.[45]

Moreover, relying on the *Sosa* opinion, the District Court in *Arab Bank* found that, under the established standards of the Genocide Convention and the Rome Statute, the plaintiffs alleged sufficient claims for genocide and crimes against humanity as violations of the law of nations. Specifically, the complaints accused the defendants of directly targeting a group of people through shared aims to eradicate the Israeli nation and to eliminate Jews through suicide bombings and other acts. Other claims included the planning of bombings to cause "the systematic and continuous killing and injury" of Israeli civilians and the development and implementation of "a sophisticated financial structure" to achieve terrorist objectives. The District Court concluded that both claims met the standards for "'widespread' and 'systematic' action" required for acts of genocide and crimes against humanity.[46]

Arab Bank prominently recognizes terrorist financing as a violation of the laws of nations which, under ATCA litigation, is a turn of phrase essentially synonymous with customary international law. *Arab Bank* therefore comes to a different outcome than the District Court in *Saperstein*. *Arab Bank* postdates the District Court decision in *Saperstein*, which it distinguishes on the basis that the conduct allegedly financed and aided and abetted by the Arab Bank is "specifically condemned"[47] by international law. Looking beyond the specific claims at hand, I contend that the *Arab Bank* judgment does justice to the many important legal developments regarding the proscription of terrorism that have taken place in the 24 years since *Tel Oren* was decided.

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[45] Judge Gershon relied on numerous ATCA cases, and the Financing Convention's condemnation of "acts of complicity or aiding and abetting by non-primary actors," to hold that aiding and abetting is an available cause of action under the ATCA. The District Court emphasized, contrary to the *Saperstein* court, that Arab Bank's status as a private entity did not exonerate it from liability.

[46] *See* Arab Bank, 471 F. Supp. 2d at 276.

[47] *See id.* at 281. *Arab Bank* also distinguishes United States v. Yousef, 327 F.3d 56 (2nd Cir. 2003), an earlier criminal case in which the Second Circuit held that the lack of a definition of terrorism defeated the universal nature of the crime in international law. The distinction was based on a number of grounds, *inter alia* that *Yousef* was a case involving criminal jurisdiction under the universality principle and not a case involving the civil jurisdictional grant of the ATCA. Arab Bank, 471 F. Supp. 2d at 280–81. To this end, *stricto sensu*, *Arab Bank* establishes that, for the purposes of the ATCA grant of civil jurisdiction over the laws of nations, it is a violation of the laws of nations to commit "organized, systematic suicide bombings and other murderous attacks on innocent civilians intended to intimidate or coerce a civilian population [. . . .]" *Id.* However, *Arab Bank* also found that this conduct was "universally condemned." *Id.*

In addition to significant expressive value, the specter of civil liability under the ATCA might deter institutional conduct that aids and abets terrorism. For certain financial institutions, such as banks, ATCA liability could trigger oversight and standardization that might diminish their deliberate or inadvertent use to funnel or launder monies. Although, in the past, collecting judgments against aliens has been difficult (*e.g.* when foreign officials have no assets or physical presence in the U.S.), the enforceability of judgments against corporate actors who may site some of their assets in the United States may be more feasible. Assuredly, policy drawbacks to ATCA litigation also exist. ATCA claims may have a chilling effect on foreign investment, may upend comity among nations, may prompt "plaintiffs' diplomacy"[48] instead of state diplomacy, and may underscore the long-arm universal civil jurisdiction of U.S. courts at a time when the United States resists claims of universal jurisdiction, in particular criminal jurisdiction, by other courts.

D. Conclusion

This brief note outlines transnational criminal and civil law regarding terrorist financing. Although criminal prosecutions and civil lawsuits can play a role in combating terrorist financing, this role is a modest one. Consequently, legal process should never substitute for other regulatory mechanisms. Instead, such process, conducted at a variety of jurisdictional levels, should complement a broad array of initiatives.

[48] Anne-Marie Slaughter and David Bosco, *Plaintiffs' Diplomacy*, 79 FOREIGN AFFAIRS 102 (2000).

https://doi.org/10.1017/S2071832200000201 Published online by Cambridge University Press

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