MUJICA v. OCCIDENTAL PETROLEUM CORPORATION: A CASE STUDY OF THE ROLE OF THE EXECUTIVE BRANCH IN INTERNATIONAL HUMAN RIGHTS LITIGATION

Amy Apollo∗

I. INTRODUCTION

Federal courts faced with international human rights claims must balance their duty to adjudicate claims with the concern for separation of powers and the executive branch's constitutional role in defining foreign policy. Under the Federal Constitution, foreign relations have been assigned to two political branches of government—the Legislature and the Executive. However, the Supreme Court has noted that this does not mean that any and every case that involves foreign relations is beyond the reach of judicial review. This Comment examines the issues that typically arise in international human rights litigation and, specifically, how one court handled these issues in *Mujica v. Occidental Petroleum Corp.*, a case currently on appeal to the Ninth Circuit.[1]

II. SETTING THE STAGE: *MUJICA V. OCCIDENTAL PETROLEUM CORP.*

The plaintiffs' claims arose from an attack on the town of Santo Domingo, Colombia, on December 13, 1998.[2] They alleged that Colombian military helicopters dropped cluster bombs on the town, destroying homes and killing seventeen civilians, including six children, while wounding twenty-five others.[3] The plaintiffs further alleged that the military helicopters

∗ J.D. Candidate, Rutgers University School of Law–Camden, May 2006; B.A., Northeastern University.

1. The details about this case are taken from two opinions issued by the District Court for the Central District of California. The first addressed the defendants' motions to dismiss based on *forum non conveniens* and international comity. *See* Mujica v. Occidental Petroleum Corp. (*Mujica I*), 381 F. Supp. 2d 1134, 1138 (C.D. Cal. 2005). The second opinion addressed the defendants' motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* Mujica v. Occidental Petroleum Corp. (*Mujica II*), 381 F. Supp. 2d 1164 (C.D. Cal. 2005). In *Mujica II*, the court specifically decided whether the plaintiffs' claims were barred by the act of state or political question doctrines. *See id.* at 1188-95.

2. *Mujica I*, 381 F. Supp. 2d at 1138.

3. *Id.* at 1138-39.

shot civilians that tried to escape and that troops entered the town, blocking civilians from leaving and ransacking their homes.[4] Their complaint states that left-wing insurgents, who were the purported targets of the raid, were known to be one to two kilometers outside of the town and that none of the insurgents were actually killed in the raid.[5]

The plaintiffs sued two American corporations under the Alien Tort Statute ("ATS"),[6] a federal law enacted in 1789 that permits aliens to sue in federal court for violations of international law.[7] They also asserted claims under the Torture Victim Protection Act of 1991 ("TVPA"),[8] as well as under several state laws.[9]

Defendant Occidental Petroleum Corp. ("Occidental") operates an oil production facility and pipeline as a joint venture with the Colombian government.[10] Defendant AirScan, Inc. ("Airscan") provided security for Occidental's pipeline against left-wing insurgents.[11] According to the plaintiffs' complaint, defendants worked with the Colombian military, providing financial and other support, in order to further Occidental's commercial interests.[12] The plaintiffs alleged that Occidental provided AirScan and the Colombian military with a room in its facilities to plan the raid on Santo Domingo.[13] The plaintiffs further alleged that Occidental paid the necessary expenses for AirScan to provide aerial surveillance using a plane with Colombian military markings and helped to identify targets for the raid.[14]

---

4. *Id.* at 1139.

5. *Id.*

6. 28 U.S.C. § 1350 (2000).

7. The Alien Tort Statute was revived in *Filartiga v. Pena-Irala*, 630 F.2d 876, 887 (2d Cir. 1980), and recently clarified in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 (2004). *See* discussion *infra* note 25.

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

9. The state law claims included wrongful death, intentional infliction of emotional distress, negligent infliction of emotional distress, and violations of section 17200 of the California Business & Professions Code. *Mujica I*, 381 F. Supp. 2d at 1139.

10. *Id.* at 1138.

11. *Id.*

12. *Id.*

13 *Id.*

14. *Id.*

The defendants moved to dismiss the suit based on *forum non conveniens* and the doctrines of international comity abstention and justiciability.

III. KEEPING IT OUT: ABSTENTION AND THE USE OF THE DOCTRINE OF JUSTICIABILITY

First, the court denied the defendants' motion to dismiss based on *forum non conveniens*[15] and international comity.[16] International comity "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other."[17] Instead, international comity is the recognition in one nation of the "legislative, executive or judicial acts of another nation,"[18] where the federal court voluntarily defers to the judgment of a foreign forum, even though the court has jurisdiction.[19] The court found that there was no "true conflict" between the domestic and the foreign law[20] and

15. The court found the defendants did not meet their burden of showing that Colombia was an adequate alternative forum and that the balance of private and public interest factors favored dismissal. *Id.* at 1154. The court also found that Colombia was not an adequate alternative forum for the plaintiffs' claims since there was no remedy available in Colombia because the plaintiffs' existing case in Colombia against the military barred a case against the defendants there. *Id.* at 1148. Additionally, the court found that the private interest factors favored the plaintiffs, but that the public interest factors slightly favored the defendants. *See id.* at 1149-54.

16. *Id.* at 1163.

17. *Id.* at 1154 (internal quotation marks omitted) (quoting *In re* Simon, 153 F.3d 991, 998 (9th Cir. 1998)).

18. *Id.* (internal quotation marks omitted) (quoting Hilton v. Guyot, 159 U.S. 113, 164 (1895)).

19. *Id.* at 1155 (citing Ungaro-Benages v. Dresdner Bank AG, 379 F.3d 1227, 1237 (11th Cir. 2004)).

20. Although the court stated that a "true conflict" is generally a threshold requirement for application of the international comity doctrine in the Ninth Circuit, the court also discussed the lack of a true conflict in terms of international abstention, a related doctrine. *See id.* at 1155-57. The court described international abstention as dealing with the potential of conflicting findings, but focused more on parallel judicial proceedings than on international comity. *Id.* at 1157. Although an international abstention analysis would typically involve the application of the *Colorado River* principles, *see generally* Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 813-21 (1976), the court did not perform this analysis because the defendants in *Mujica* were not parties to the foreign suit and the resolution of the foreign suit would not resolve the current proceeding. *See Mujica I*, 381 F. Supp. 2d at 1157-58 (discussing Neuchatel Swiss Gen. Ins. Co. v. Luthansa Airlines, 925 F.2d 1193, 1194 (9th Cir. 1991)).

that the inadequacy of the alternative forum in Colombia precluded the court from abstaining on the basis of the international comity doctrine.[21]

As mentioned above, the plaintiffs in *Mujica* brought several claims against the defendants.[22] The plaintiffs' state law claims were dismissed pursuant to the foreign affairs doctrine.[23] The plaintiffs' TVPA claims were also dismissed based on the court's interpretation of the statute.[24] The

21. *Mujica I*, 381 F. Supp. 2d at 1163. In applying the international comity doctrine prospectively to this case, the court evaluated the strength of the United States' interest in using the foreign forum, Colombia's general interests, and the adequacy of the alternative forum. *See id.* at 1160 (citing *Ungaro-Benages*, 379 F.3d at 1238). Looking at the State Department's statement of interest, the court held that the United States had a substantial interest, although not as significant of an interest as in the German Foundation Agreement case, where the United States helped to mediate an agreement for payment to victims of the Nazi regime in World War II. *Id.* at 1161-62 (comparing the Eleventh Circuit's holding in *Ungaro-Benages* to the case in *Mujica I*). The court also looked at a letter from the Colombian government and determined that although the Colombian government had a strong interest in the case, it was not a party to the suit, and it had not targeted legislation to prevent these types of cases. *See id.* at 1162-63. Ultimately, the court held that the doctrine was inapplicable in this case because, despite these interests, the alternative forum was inadequate. *Id.* at 1163-64; *see also supra* note 20.

22. *See supra* notes 6-9 and accompanying text.

23. *Mujica II*, 381 F. Supp. 2d 1164, 1188 (C.D. Cal. 2005). The foreign affairs doctrine emphasizes that the power over foreign affairs is reserved to the federal government and "that state laws may not intrude 'into the field of foreign affairs which the Constitution entrusts to the President and the Congress.'" *Id.* at 1171 (quoting Zschernig v. Miller, 389 U.S. 429, 432 (1968)). The court dismissed the state claims after finding that California had only a weak interest in the plaintiffs' claims, which was easily overcome by the foreign policy concerns stated in the State Department's Supplemental Statement of Interest. *Id.* at 1187-88.

24. *Id.* at 1176. The court held that the defendants, as corporations, were not "individuals" under the plain language of the statute. *Id.*; *accord* Beanal v. Freeport-McMoRan, Inc., 969 F. Supp. 362, 382 (E.D. La. 1997), *aff'd on other grounds*, 197 F.3d 161 (5th Cir. 1999); *see also* Arndt v. UBS AG, 342 F. Supp. 2d 132, 141 (E.D.N.Y. 2004) (citing Friedman v. Bayer Corp., No. 99-CV-3675, 1999 WL 33457825, at *2 (E.D.N.Y. Dec. 15, 1999)). *But see* Sinaltrainal v. Coca-Cola Co., 256 F. Supp. 2d 1345, 1359 (S.D. Fla. 2003) (holding a private corporation is included under the term "individual" because the legislative history of the TVPA does not reveal an intent to exempt corporations from the statute); Estate of Rodriquez v. Drummond Co., 256 F. Supp. 2d 1250, 1266-67 (N.D. Ala. 2003) (same). The TVPA states that "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture shall . . . be liable for damages." Pub. L. No. 102-256, § 2(a), 106 Stat. 73, 73 (1992) (codified at 28 U.S.C. § 1350 note (2000)).

remaining claims for the court to consider were the ATS claims for extra-judicial killing, torture, crimes against humanity, and war crimes.[25]

A. Act of State Doctrine

After dismissing some of the plaintiffs' ATS claims, the *Mujica* court considered whether the remaining claims were barred by the act of state doctrine.[26] "The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory."[27] The Supreme Court has stated that, in order for the act of state doctrine to be applied, the outcome of the case must turn upon "the effect of official action by a foreign sovereign."[28] The *Mujica* court began its act of state doctrine analysis by finding that the case involved official acts, because military force was allegedly used.[29] However, the court noted that the defendants had the burden of proving that the act of state doctrine should apply under the factors

25. *See Mujica II*, 381 F. Supp. 2d at 1178-83. The court dismissed the plaintiffs' ATS claim of cruel, inhuman, and degrading treatment because the court found that it would be impractical to make this cause of action available in federal courts due to the broad nature of the claim. *Id.* at 1183. In discussing the plaintiffs' ATS claims, the *Mujica* court explained its understanding of the U.S. Supreme Court decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). *See Mujica II*, 381 F. Supp. 2d at 1176-77. In *Sosa*, the Supreme Court held that, although the ATS is stated in jurisdictional terms only, "at the time of enactment the jurisdiction enabled federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law." 542 U.S. at 712. The *Mujica* court noted that *Sosa* directs federal courts to "not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations that the historical paradigms familiar when § 1350 was enacted." *Mujica II*, 381 F. Supp. 2d at 1177 (quoting *Sosa*, 542 U.S. at 732).

26. *See Mujica II*, 381 F. Supp. 2d at 1188-91.

27. *Id.* at 1171 (internal quotation marks omitted) (quoting Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401 (1964)). The *Mujica* court also noted that "'[t]he text of the Constitution does not require the act of state doctrine,'" *id.* (quoting *Sabbatino*, 376 U.S. at 423); instead, it is "'a prudential doctrine designed to avoid judicial action in sensitive areas,'" *id.* (quoting Liu v. Republic of China, 892 F.2d 1419, 1431 (9th Cir. 1989)).

28. W.S. Kirkpatrick & Co. v. Envtl. Tectonics Corp., Int'l, 493 U.S. 400, 406, 410 (1990) (holding that the act of state doctrine did not apply to allegations that a company bribed Nigerian government officials in order to procure a military contract).

29. *Mujica II*, 381 F. Supp. 2d at 1189-90. The court stated that a private citizen could not have committed the alleged actions. "Private citizens do not generally have the ability to maintain an air force and authorize the use of military force." *Id.* at 1190.

set out by the Supreme Court in *Banco Nacional de Cuba v. Sabbatino*.[30] The *Mujica* court listed the three factors:

> (1) the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it;
>
> (2) the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches; and
>
> (3) whether the government which perpetrated the challenged act of state is no longer in existence.[31]

The *Mujica* court also considered whether the foreign state was acting in the public interest.[32] The court found that, although the second *Sabbatino* factor weighed in favor of applying the act of state doctrine, the first *Sabbatino* factor and the public interest factor weighed against applying the doctrine.[33] Therefore, the court held that the act of state doctrine did not apply in *Mujica*.[34]

B. The Political Question Doctrine

Finding that the remaining ATS claims were not barred by the act of state doctrine, the *Mujica II* court turned to the political question doctrine.[35] The political question doctrine recognizes that some matters have "been committed by the Constitution to" the political branches of government.[36]

---

30. *Id.* at 1190 (discussing *Sabbatino*, 376 U.S. 398).

31. *Id.* (internal quotation marks omitted) (quoting *Sabbatino*, 376 U.S. at 427-28).

32. *Id.* The Ninth Circuit added this "fourth consideration" to the *Sabbatino* test in *Liu v. Republic of China*. *Id.* (citing *Liu*, 892 F.2d at 1432). The *Mujica II* court noted that the application of this public interest factor would have the same effect as finding that military action that is "illegitimate warfare" is not an "official" act. *Id.* at 1189 n.19 (internal quotation marks omitted) (citing Sarei v. Rio Tinto PLC, 221 F.2d 1116, 1189 (C.D. Cal. 2002)).

33. *Id.* at 1190-91. The court stated that the third *Sabbatino* factor was not important to its decision. *Id.* at 1191.

34. *Id.*

35. *See id.*

36. Baker v. Carr, 369 U.S. 186, 211 (1962). "The political question doctrine, however, is neither a defense nor a privilege, but a constitutional limitation on the power of the courts to

Therefore, "[t]he nonjusticiability of a political question is primarily a function of the separation of powers."[37] However, deciding whether a matter is to be left to the political branches "is itself a delicate exercise in constitutional interpretation, and is a responsibility of [the] Court as ultimate interpreter of the Constitution."[38] The Supreme Court, in the seminal case *Baker v. Carr*, acknowledged that foreign relations are typically a matter for the political branches, but stated that it would be "error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance."[39] The Court set out six factors for courts to consider in determining whether a case does, in fact, involve a nonjusticiable political question.[40]

The *Mujica* court stated that it would closely follow the Ninth Circuit decision in *Alperin v. Vatican Bank*[41] in deciding this case and in applying the standard set out in *Baker*.[42] Echoing the *Baker* Court, the Ninth Circuit in *Alperin* stated that the political question doctrine is "one of 'political questions' not 'political cases' and should be applied on a case-by-case basis."[43] With this in mind, the *Mujica* court considered the first, second,

---

adjudicate issues that are allocated to the political branches of government." Anderman v. Fed. Republic of Austria, 256 F. Supp. 2d 1098, 1111 (C.D. Cal. 2003).

37. *Mujicia II*, 381 F. Supp. 2d at 1171 (internal quotation marks omitted) (quoting *Baker*, 369 U.S. at 211). *Baker* has been described as offering the "most detailed discussion of the political question doctrine." Rachel E. Barkow, *More Supreme than Court? The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy*, 102 COLUM. L. REV. 237, 264 (2002). Justice Brennan attempted in *Baker* to remedy the "disorderliness" of the political question doctrine by creating a meaningful standard for applying the doctrine. 369 U.S. at 210.

38. *Baker*, 369 U.S. at 211.

39. *Id.* The *Baker* Court listed several examples of cases that only touched upon foreign relations, yet where the courts could and should play a role. *See id.* at 211-13.

40. *Id.* at 217.

41. 410 F.3d 532 (9th Cir.), *cert. denied*, 126 S. Ct. 1141 (2005), *and cert. denied*, 126 S. Ct. 1160 (2006). The plaintiffs in *Alperin* brought claims against the Vatican Bank for handling the profits during World War II of the Croatian Ustasha political regime, which was supported by Nazi Germany. *Id.* at 538. The Ninth Circuit held that the plaintiffs' war-related claims were barred by the political question doctrine, but that the property-related claims were not. *Id.* at 562.

42. *Mujica II*, 381 F. Supp. 2d at 1191.

43. *Id.* (quoting *Alperin*, 410 F.3d at 537). "*Alperin* warned against 'jumping to the conclusion' that all cases that touch on foreign relations and potentially controversial political issues are barred by the political question doctrine." *Id.* (quoting *Alperin*, 410 F.3d at 537).

fourth, and sixth factors articulated by the Supreme Court in *Baker*.[44] The *Mujica II* court reiterated the six *Baker* factors:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the case to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[45]

In order for the political question doctrine to apply, the court would only need to find that one of these factors was "inextricable" from the case.[46] In addition, the *Mujica* court explicitly stated that it would "focus on the Supplemental Statement of Interest" of the U.S. Department of State in evaluating the *Baker* factors.[47]

C. Two Sides of the Argument

In its Supplemental Statement of Interest, the Department of State opposed the pursuit of this litigation in U.S. federal court, asserting that allowing the litigation to go forward would severely impact diplomatic relations with Colombia.[48] The State Department stressed that the United States' policy of encouraging foreign countries to establish legal processes to address and resolve claims of human rights abuses would be undermined by

---

44. *See id.* at 1191-95.

45. *Id.* at 1171 (internal quotation marks omitted) (quoting *Baker*, 369 U.S. at 217).

46. *See id.* at 1191-92 (quoting *Baker*, 369 U.S. at 217).

47. *Id.* at 1191. For a more complete discussion of the use of State Department Statements of Interest, see generally Derek Baxter, *Protecting the Power of the Judiciary: Why the Use of State Department "Statements of Interest" in Alien Tort Statute Litigation Runs Afoul of Separation of Powers Concerns*, 37 RUTGERS L.J. 807 (2006).

48. Letter from William H. Taft, IV, to Daniel Meron, Principal Deputy Asst. Att'y Gen., Civil Div., U.S. Dep't of Justice (Dec. 23, 2004) (on file with author) [hereinafter Taft Letter].

separately adjudicating the claim in a U.S. court.[49] According to the State Department, questioning the legitimacy of Colombian judicial institutions could potentially have a negative effect on United States-Colombian relations and their partnership in combating terrorism and narcotics trafficking.[50] In addition, the State Department emphasized "the potential for deterring present and future U.S. investment in Colombia."[51] The Supplemental Statement of Interest also attached letters from the Colombian government that stated that it was investigating the plaintiffs' claims and that any decision in the case in U.S. court may affect the relations between Colombia and the United States.[52]

The plaintiffs argued that the court should not defer to the State Department letter, but should rather consider the letter only insofar as it supported an established doctrine of abstention.[53] Plaintiffs stated several reasons why the abstention doctrines did not apply, including that Colombia was not an adequate alternative forum for the claims;[54] that the case only

---

49. *Id.* The letter stated that the Colombian legal system is handling the claim and that an administrative court ruling that the Colombian government must pay damages to the plaintiffs is currently on appeal. *Id.* Defendant Occidental stipulated to service of process and consented to jurisdiction in Colombia. *Id.* Furthermore, certain military personnel were dismissed from their positions and face criminal investigations. *Id.* Additionally, the United States suspended assistance to the Colombian Air Force unit involved in the attacks. *Id. But see* Baxter, *supra* note 47, at 843-44 (arguing that the public act of suspending assistance indicated that the United States would not be "embarrassed" by a lawsuit in U.S. court).

50. Taft Letter, *supra* note 48. Specifically, the Statement of Interest stresses the importance of "Colombia's role in helping to maintain Andean regional security, our trade relationship, and our national interests in the security of U.S. persons and U.S. investments in Colombia." *Id.*

51. *Id.* Not only does the Taft Letter express concern for "the vital U.S. policy goal of expanding and diversifying our sources of imported oil," but it also warns that reduced U.S. investment in Colombia could seriously harm Colombia's economy and stability, thereby putting the U.S. interests at even greater risk. *Id.*

52. *See* Letters from the Ministry of Foreign Affairs of Colombia, to the U.S. Embassy in Bogota, Colombia (Feb. 25, 2004 & Mar. 12, 2004) (on file with author).

53. Plaintiffs' Supplemental Brief in Support of Their Opposition to Defendants' Motion to Dismiss at 3-4, Mujica v. Occidental Petroleum Corp., 381 F. Supp. 2d 1134 (C.D. Cal. 2005); 381 F. Supp. 2d 1164 (C.D. Cal. 2005) (No. 03-2860-WJR-JWJx) [hereinafter Plaintiffs' Brief]. The Plaintiffs' brief referred the court to the ATS, the TVPA, and the recent United States Supreme Court decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), as evidence that Congress and the Court approve of this type of litigation being handled by the U.S. federal courts. Plaintiffs' Brief, *supra*, at 4-5.

54. Plaintiffs' Brief, *supra* note 53, at 10-15 (arguing primarily for the application of the doctrine of international comity); *see also supra* notes 15-21 and accompanying text

involved private parties;[55] and that because the claims involved two federal statutes, resolution of the claims was a judicial, rather than an executive, function.[56] Plaintiffs specifically argued that the political question doctrine did not apply to this case.[57] They stressed that the case involved private defendants and, therefore, did not require the court to decide a political question.[58]

D. The Mujica *Court's Decision*

Although the *Mujica* court held that the doctrines of international comity and act of state should not be applied in this case,[59] it disagreed with the plaintiffs regarding the political question doctrine.[60] After applying the *Baker* factors, the court held that two of the factors were implicated and, therefore, dismissed the case under the political question doctrine.[61] The court found that "the third *Baker* factor, an initial policy determination unsuitable for the judiciary," was inapplicable.[62] The court also held that three of the remaining *Baker* factors did not support the application of the political question doctrine.[63] These included a textually demonstrable commitment to a

---

(discussing international comity and the adequacy of Colombia as an alternative forum). The *Mujica* court ultimately held that Colombia did not provide an adequate alternative forum. *Mujica I*, 381 F. Supp. 2d at 1148.

55. Plaintiffs' Brief, *supra* note 53, at 19. The plaintiffs contended that the case did not involve an official act of a foreign government, and therefore the act of state doctrine should not apply. *Id.* at 18; *see also supra* notes 26-34 and accompanying text (discussing the applicability of the act of state doctrine). The *Mujica II* court held that the act of state doctrine did not apply in this case. *Mujica II*, 381 F. Supp. 2d at 1191.

56. Plaintiffs' Brief, *supra* note 53, at 6-8. The plaintiffs stated that uncritically accepting the State Department Statement of Interest would provide the executive branch with a "dispositive veto" over international human rights cases and would "divest the judiciary of its power under Article III of the Constitution, violating the separation of powers doctrine." *Id.* at 6 (citing Marbury v. Madison, 5 U.S. 137, 177 (1803)).

57. *Id.* at 22-23.

58. *Id.*

59. *See supra* notes 16-21, 26-34 and accompanying text.

60. *Mujica II*, 381 F. Supp. 2d at 1195.

61. *Id.*

62. *Id.* at 1191 n.21. The court stated that "there ha[d] already been a policy determination by the Executive regarding the . . . bombing." *Id.*

63. *See id.* at 1192-95.

coordinate branch,[64] judicially discoverable and manageable standards,[65] and potentiality of embarrassment from multifarious pronouncements.[66]

The two *Baker* factors that the court found to apply were the lack of respect for coordinate branches and adherence to a policy decision.[67] In doing so, the court appeared to unquestioningly accept the State Department's statement of interest as dispositive as to these factors. The court reasoned that deciding this case "would indicate a 'lack of respect' for the Executive's preferred approach of handling the Santo Domingo bombing and relations with Colombia in general."[68] The court cited the State Department's view in the statement of interest that deciding the suit would negatively impact foreign policy.[69] Furthermore, "for similar reasons," the court found that the "adherence to a policy decision" factor applied because "the Executive ha[d] indicated that it [preferred] to pursue non-judicial" remedies in this case.[70]

---

64. *Id.* at 1192-93. The court acknowledged that, although "the management of foreign affairs predominantly falls within the sphere of the political branches and the courts consistently defer to those branches," there is no explicit commitment to the political branches. *Id.* at 1192 (internal quotation marks omitted) (quoting Alperin v. Vatican Bank, 410 F.3d 532, 548-49 (9th Cir. 2005). Focusing on the types of claims presented in this case, the court found that the claims "more closely resemble a 'tort suit' than a 'war crimes tribunal'" and, therefore, were not committed to the political branches. *Id.* at 1192-93 (quoting *Alperin*, 410 F.3d at 562, 559-60).

65. *Id.* at 1193.

66. *Id.* at 1194-95. The court found that this suit was "the 'only game in town' for Plaintiffs." *Id.* at 1195. The court distinguished this case from *In re Nazi Era Cases Against German Defendants Litigation*, 129 F. Supp. 2d 370 (D.N.J. 2001), where the Executive had helped to negotiate a foundation to provide reparations for victims of the Nazi regime in Germany, because in this case the Executive had not "conducted any negotiations or settlement on behalf of individuals like Plaintiffs." *Mujica II*, 381 F. Supp. 2d at 1195.

67. *Mujica II*, 381 F. Supp. 2d at 1194. Although the court discussed the lack of respect factor, it merely concluded in a footnote that adherence to a policy decision factor applied. *See id.* at 1194 n.25.

68. *Id.* at 1194.

69. *Id.* It is not clear in the opinion what the court regards as the "Executive's preferred approach." *See id.*

70. *Id.* at 1194 n.25.

IV. CONCLUSION

Both opinions from the *Mujica v. Occidental Petroleum Corp.* case raise several questions about the role of the executive branch in human rights litigation, including whether the courts must always defer to the executive branch's litigation dismissal requests and, if not, what standards the courts can use to evaluate such requests. Unfortunately, as evidenced by *Mujica*, some courts may be reluctant to address these difficult issues, and it seems that these questions will remain unanswered until cases like *Mujica* reach the Supreme Court.