

Pearson & Spector, LLP

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Re: Atid Family - Alien Tort Statute

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Research Issues

- I. Do the claims brought by the Atid family have jurisdiction under the Alien Tort Statute?
- II. Is Staff Inc. liable if Alien Tort Statute is found applicable to this case?
- III. Do their claims rebut the presumption of Extraterritoriality under the Alien Tort Statute?

Short Answers

- I. Yes

These families are “aliens” who are suing for a tort and whose claims are that of potential violations of law of nations through aiding and abetting, and “touching and concerning” U.S. territory with sufficient force.

- II. Liability of Staff Inc.

- A. Yes

Staff Inc. is liable based on the accumulation of evidence of the correspondence between officials of the company and officials of the Thai government on the soil of a territory of the United States, Guam. This piece of evidence coupled with the obvious torture of Mr. Atid before his execution should be sufficient evidence to declare liability under the ATS.

B. Unless,

There is sufficient evidence that the defendants bring in disproving any correspondence of their officials with a proxy of the Thai government that was the basis of our argument of liability.

III. Yes

With regards to the Atid family's claim that this torture and execution was at the hand of the Thai government but initiated by officials of Staff Inc., there is proof that this correspondence occurred on a U.S. territory

Facts

Aromdeed Atid, a Thai Native, was an employee of Staff Inc., a company based in Michigan who worked as an employee in their factory based in Thailand. He and other factory workers were subject to inhumane treatment conditions such as tortuous action brought against them if their quotas were not regularly met. Mr. Atid was bringing these working conditions to his superior's attention as well as outside asylum organizations such as Amnesty International, who then provided and substantiated Atid's tortuous treatment, and the torture of his coworkers. This was then brought to the attention of the executive officials of Staff Inc., who then coordinated the torture and execution of Mr. Atid, which was also confirmed by Amnesty International. This arrangement is believed to have been negotiated between Staff Inc. and the Thai Government in the U.S. territory of Guam. The Atid family soon after moved to the United States where they have since obtained green cards. They aim to bring claims against Staff Inc. alleging the previously stated events.

Analysis/Discussion

Dear Partners,

We are using the following rule as a basis for evaluating the legal questions that are raised in the case brought to us by the Atid family. Please reference this rule when reviewing the the following aspects of this memo. This analysis will examine the related topics of jurisdiction, liability, and extraterritoriality in order to determine if the Atid family's claims are justiciable.

⇒ Rule:

IF the alien's claims fall under ATS jurisdiction

AND the defendant's actions violate the law of nation through aiding and abetting with full knowledge and intent

OR "touches and concerns" U.S. territory with sufficient force

OR state-sponsored actions
OR breaches human rights norms concerning war crimes
OR violates the jus cogens norm prohibiting genocide
OR “other crimes against humanity”,
THEN an individual, any state actor, or a corporation
may be liable under ATS jurisdiction UNLESS diplomatic immunity excludes them from liability.

Jurisdiction

The Alien Tort Statute (ATS), 28 U.S.C.A. § 1350, also referred to as the Alien Tort Claims Act (ATCA), allows for district courts of the United States judicial system to have authority over civil action brought by an alien, for a tort. This applies only if the claim proves a violation of the Law of Nations or any Treaty that the United States is an actor in. Determination of said violation is dependent on the judge’s discretion at the district court.

Enacted in 1789, the most prominent violations of the law of nations were mistreatment of ambassadors, violation of safe conducts, and piracy (*Sosa v. Alvarez-Machain*). While it had no explicit legislative history prior its single-line codification in the Judiciary Act of 1789, it “clearly established federal jurisdiction over three common law torts as violations of international law: 1) Acts of Piracy; 2) Violations of Safe Conducts; and 3) Interference with the Rights of Ambassadors (id).”

The contemporary understanding of the ATS derives from two important, seminal cases.

(*Sosa v. Alvarez-Machain*) The *Sosa* case “defined the scope of the ATS in terms of internationally accepted norms and frames the question of whether a particular defendant may be held liable in terms of the nature of the particular norm alleged to have been violated” (*Sosa*). Although the court ruled to dismiss the plaintiffs claims as they didn’t fall under the original categories of the ATS (1)(2)(3), “in using the broad term ‘law of nations’, Congress allowed the coverage of the statute to change with changes in customary international law” (id). As a result, ATS was limited in scope to “the customs and usages of civilized nations, that are specific, universal, and obligatory, and accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms”(id). As consequence, “*Sosa* clearly contemplated that courts would at least have subject-matter jurisdiction, under appropriate circumstances, to hear cases brought under the ATS in which foreign plaintiffs allege that they have been wronged by their (foreign) governments (*Sarei v. Rio Tinto, PLC*)”. In sum, *Sosa* birthed the jurisdictional threshold that a defendant’s actions must violate the law of nations, otherwise referred to as customary international law.

(*Filartiga v. Pena-Irala*) The deciding court reasoned, in *Filartiga*, 630 F.2d at 885, that “common law courts of general jurisdiction regularly [have] adjudicate[d] transitory tort claims between individuals over whom they exercise personal jurisdiction, wherever the tort occurred.” At the same time, it is only in cases where nations have agreed upon a wrong as one that is of mutual concern, “by means of express international accords, that a

wrong generally recognized becomes an international law violation within the meaning of the Alien Tort Statute”(id). An important consequence of *Filartiga* arises out of the court’s analysis where it held 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 (*Tachiona v. Mugabe*)”, extended ATS to incur that action by the international community is necessary and acceptable, when a state’s actions violate human rights.

One important aside, in order to grant U.S. jurisdiction over a claim, the “relevant conduct” which violates the ATS must also “touch and concern” the U.S. to the point where it overrides the presumption against extraterritoriality. In deciding whether the court had overstepped its jurisdiction by hearing a tort which occurred internationally in a United States court, the deciding court in *Filartiga* reasoned and held that the ATS provides a right of action in that it “opens the federal courts for adjudication of the rights already recognized by international law”(*Filartiga*).

Liability

Second, if the jurisdiction of the Atid case is proven to fall under the Alien Tort Claims Act, the next step would be to determine whether Staff Inc. is liable for legal consequences. This process would primarily concern two factors: whether Staff Inc. violated the law of nations, and if Staff Inc. is found guilty of aiding and abetting to the coordination of Atid’s torture and subsequent execution.

A. Law of Nations

The Law of Nations is defined as “the specific and universally accepted rules that the nations of the world treat as binding in their dealings with one another” as referenced in [Kiobel v. Royal Dutch Petroleum Co.](#)), which is a central concept to understanding situations that the Alien Tort Claims Act can potentially offer remedies for legal wrongdoings. Pertinent to the Atid situation, is torture and murder covered in violations of the law of nations? *Tachiona v. Mugabe* serves as a great case to draw from to answer this question, even though the circumstances regarding the two cases do not completely parallel each other. In *Tachiona*, the plaintiffs filed a class action lawsuit against the president of Zimbabwe Robert Mugabe, other government officials, and their entire political party (Zanu-PF) for planning and executing a “campaign of terror” that resulted in the rape, murder, and torture of members of the competing political party. The court held that the defendants clearly violated international law in the acts of murder, rape, and torture, but could not hold Robert Mugabe or any other active government leaders liable because it would violate comity between nations and potentially lead to international conflict between the United States and Zimbabwe, and because these government actors had diplomatic immunity through the United Nations and other conventions. However, this case was appealed and the appellate court held that Mugabe’s political party, the Zanu PF, was liable for the aforesaid law of nation’s violations and was required to pay in excess of seventy-million dollars in punitive and compensatory damages. This is good

news for the Atid family because, to our firm's knowledge, there is nobody in Staff Inc. that has diplomatic immunity, and the staggering amount of money that the Court found suitable in the *Tachiona* settlement gives us great hope that the Atid family will not only find justice against Staff Inc., but will also become financially secure in the wake of Aromdeed's death.

B. Aiding and Abetting

Moreover, another element central to the Atid case concerns whether Staff Inc. was involved in aiding and abetting the torture and murder of Aromdeed Atid, and if so whether there are legal consequences. With cases that utilize the Alien Tort Claims Act, the statute itself is very brief and does not explain how the ATCA is supposed to relate to aiding and abetting, rather it is up to the courts to decide the scope of the statute and determine precedent through case law. One such case that has elements of the ATCA, aiding and abetting, and private companies is [*Khulumani v. Barclay Nat. Bank Ltd.*](#), and is a class action lawsuit where the plaintiffs were injured by the practice of apartheid in South Africa. This case is important because it discusses and confirms that aiding and abetting is applicable under the Alien Tort Claims Act, and the court even goes as far to argue that criminal aiding and abetting is often used in international law. More pertinent to the Atid case is the court's discussion of how aiding and abetting is defined in international security tribunals, where liability comes from any person "who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution" of a crime (Statute of the International Tribunal for the Former Yugoslavia, art. 7, S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993)) This statute provides a basis for determining whether Staff Inc. is liable under aiding and abetting, and based on our current information it seems as if Staff Inc. would be liable because of the correspondence that is on record that connects the Guam company with the Thailand government officials. To be clear, we cannot use the [*Khulumani v. Barclay Nat. Bank Ltd.*](#) case to hypothesize possible legal consequences because the court held that while aiding and abetting is applicable under the ATCA, and could lead to private companies being liable for legal consequences, it was ultimately up to the South African judicial system to decide, not the United States. Obviously, our client's situation of whistleblowing that led to torture and death is very different than the institutional legal consequences of apartheid, but it is necessary to understand because Thailand may determine that the Atid case should be adjudicated where the murder and torture took place, which would lead to a different strategy that our law firm would take.

Extraterritoriality Claim

Plaintiffs are the surviving members of Atid Aromdeed's family and allege that Staff Inc.'s subsidiary based in Thailand committed tortious acts against Atid and his fellow employees. They are attempting to displace the ATS's presumption against extraterritoriality.

Under ATS claims cannot be brought against defendants who violated the law of nations if the violations occurred within the territory of another sovereign nation and not in the United States. In order to allege sufficient conduct to displace the ATS presumption against extraterritoriality, plaintiffs must show that the relevant conduct sufficiently “touches and concerns” the United States. Step two is determining whether the same conduct states a claim for a violation of the law of nations or aiding and abetting another’s violation of the law of nations. Furthermore, in order to satisfy the second step of analysis a plaintiff stating a claim under aiding and abetting theory must demonstrate that the defendant (1) provides practical assistance to the principle which has a substantial effect on the perpetration of the crime, and (2) does so with the purpose of facilitating the commission of the crime. The *mens rea* standard is full knowledge and intent (purpose). Knowledge or complicity in perpetration of the crime – without evidence that a defendant purposefully facilitated the commission of that crime – is thus insufficient to establish a claim of aiding and abetting liability under the ATS. [*Balintulo v. Ford Motor Co.*, 796 F.3d 160, 168 \(2d Cir. 2015\)](#).

In establishing whether the conduct carried out by the subsidiary of Staff Inc. in Thailand touches and concerns the United States, plaintiffs must show that the parent company Staff Inc. headquartered in Michigan controlled the actions of their subsidiary. And provide sufficient evidence of this to have the parent company held directly liable as opposed to vicariously liable for the conduct of their subsidiary under the ATS. This requirement must be met in order not to disrupt well-settled principles of corporate law, [*Balintulo v. Ford Motor Co.*, 796 F.3d 160, 168 \(2d Cir. 2015\)](#) which treats parent corporations and their subsidiaries as legally distinct entities and will only “pierce the corporate veil” and ignore a subsidiary separate legal status in extraordinary circumstances, when the parent company is clearly controlling the actions of their subsidiaries. [*Carte Blanche \(Singapore\) Pte., Ltd. v. Diners Club Int'l, Inc.*, 2 F.3d 24, 26 \(2d Cir. 1993\)](#).

The plaintiffs claim that the parent company in Michigan advised their subsidiary to silence Atid by coordinating with the subsidiary in Guam in order for their actions to remain unknown and therefore avoid persecution and the ramifications that would follow if anyone found out they were silencing whistleblowers. Furthermore, the plaintiffs show that the parent company of Staff Inc. suggested, prompted and demanded the execution of Atid Amoreed. Furthermore, the plaintiffs allege that Staff Inc. subsidiary in Thailand’s actions violated the law of nations because the working conditions within the factory in Thailand were inhumane as employees were regularly coerced into meeting the quotas set out by their superiors. And failure to do so would result in their being tortured, this was supported and endorsed with the full knowledge of the parent company located in Guam. This type of behavior is in direct violation of the law of nations as torture is stipulated as a crime against humanity. Therefore, the actions of the Thai subsidiary were the result of

demands made by their parent company Staff Inc. after corresponding in Guam, and sufficiently fulfills the “touches and concerns” requirement. Furthermore, in regards to the aiding and abetting requirement, Staff Inc. acted with the full knowledge and intent as well as fulfilled the *mens rea* requirement, as their aim was to have Atid Amoreed executed and for the employees at the Thai subsidy to be harmed if they did not meet the quotas outlined by the company.

Therefore, the plaintiffs claims do provide sufficient evidence to displace the presumption of extraterritoriality under ATS.

Potential Non-Liability Areas of Concern

I. Extraterritoriality

A. The fact that this correspondence, while we can use it for proof of sufficient “touch and concern” for the United States, it can also be used for the other side of the debate. They will claim that the correspondence happening on Guam will not be sufficient in terms of displacing the assumption of extraterritoriality because even through Guam is a U.S. territory, it is not a state that has the same rights in connection to the mainland that a state would. Staff Inc. will most likely cite [*Doe v. Drummond Co., Inc.*](#) as precedent to discredit our claim and argue that even through Guam is a U.S. territory, it is still not truly U.S. soil and thus will not displace the assumption of extraterritoriality.

II. Proof of Correspondence

A. There can be arguments about insufficient evidence to truly prove the correspondence between Staff Inc. and the Thai government. While we can prove where and when these officials/delegates were at the same time on U.S. territory (in Guam), there is no concrete evidence that the proxies met and discussed the execution of alleged events. The evidence is purely circumstantial so we will have to create a timeline and story for the jury to piece together and come to the conclusion we want them to.

III. Arbitrary Detention

A. We will not be able to declare arbitrary detention as a portion of the violation of the law of nations as enacted by Staff Inc. In [*Sosa*](#), the court’s decision declared a requirement of arbitrary detention is that the custody of the detainee must be prolonged over the course of twenty-four hours or more, and in our case it did not reach that threshold.

Recommendation

While taking into consideration the facts discussed supra, we recommend that the Atid family pursues action for liability against Staff Inc. under the Alien Torts Statute for the torture and execution of Aromdeed Atid. If the claims are not triable under the Alien Tort Statute, we recommend that the Atid family explore the option of seeking further relief under the Torture Victim Protection Act of 1991.

In the event the Atid family's claim is not triable, we then suggest plaintiffs bring their case before the International Court of Justice to seek restitution in regards to the acts of torture committed as well as the premeditated execution of Atid Aromdeed.

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