



**CORPORATIONS AS ACCOMPLICES
OF GROSS HUMAN RIGHTS VIOLATIONS:**
some lessons from ATS litigation

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relevance for **Ukraine**

Case No 308/9708/19
(Judgment of the Supreme
Court, 14 April 2022)

the widow of the army sergeant, acting in her own interests and on behalf of two minor children, filed a lawsuit against the Russian Federation claiming compensation for non-pecuniary damage caused by the death of her husband. He served in the Armed Forces of Ukraine and, in 2014, took part in the defense of the Luhansk region. The man received deadly shrapnel injuries when the Luhansk Airport was shelled by Russian-backed separatists using the 'Grad' system.

***Russia shall not
enjoy immunity***

- the European Convention on State Immunity (Basel, 16 May 1972)
- the UN Convention on Jurisdictional Immunities of States and Their Property (UN Convention)

Territorial **Tort** Exception

- immunity does not apply in a tort case as long as the harmful act or omission occurred **in the territory** of the state of the court and the tortfeasor **was present** there while committing the harmful act or omission.

For more details see:

- Karnaukh B ‘Territorial Tort Exception? The Ukrainian Supreme Court Held that the Russian Federation Could Not Plead Immunity with regard to Tort Claims Brought by the Victims of the Russia-Ukraine War’ 2022 3(15) Access to Justice in Eastern Europe 165-177. DOI: <https://doi.org/10.33327/AJEE-18-5.2-n000321>

Co-defendants:

- The Russian Federation;
- Joint-Stock Company ‘Sberbank’
- Public stock company ‘Joint-Stock Commercial Industrial & Investment Bank’



01 Nov Wagner Group put on notice of legal action in landmark case

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Matthew Jury
@MattJ... · Nov 3



Flattered to be asked to speak at FPC's anti [#SLAPP](#) conference on 28 November. Much to say on the ethics of lawyers who'd put 🇺🇸 before upholding fundamental freedoms, and who'd support hostile actors in attacking our democracy. An important issue that's never been more timely.



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Официальная

"Putin's war machine uses Wagner to do the dirty work around the world."

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Ukraine

Drone analysis in Ukraine suggests Iran has supplied Russia since war began

Guardian visits space used by Ukrainian military intelligence to examine captured drones

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Isobel Koshiw *in Kyiv*

Thu 10 Nov 2022 11.37 GMT



Beavers, Elizabeth (2021) "War Crimes, Inc.: The ATS Case against the U.S. Weapons Industry for Aiding and Abetting Atrocities in Yemen," *Florida Journal of International Law*: Vol. 31: Iss. 2, Article 1.

ATS (28 U.S.C. § 1350)

“[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”.

milestone cases

1. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980)
2. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004)
3. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).
4. *Jesner v. Arab Bank*, 138 U.S. 1386, 1401 (2018)

questions:

1. Is aiding and abetting actionable?
2. What law (national or international) should provide standard for aiding and abetting?
3. What is the proper *mens rea* for aiding and abetting?
4. Can corporations be held liable for aiding and abetting human rights violations?

“We hold that standard for aiding and abetting under the ATCA is... knowing practical assistance or encouragement that has a substantial effect on the perpetration of the crime”.

Doe I v. Unocal Corp. 395 F.3d 932 (9th Cir. 2002)

mens rea **confusion**

- Knowledge standard?
- Purpose standard?

takeaways

- tort law can utilize the criminal law doctrines on secondary liability;
- the scope of secondary liability in tort law shall be no less than in its criminal counterpart;
- corporations may be held responsible for aiding and abetting;
- one has to be prepared for the debate over *mens rea* for aiding and abetting.

thank you for attention!