

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PROCEDURAL BACKGROUND 1

STATEMENT OF FACTS..... 4

ARGUMENT..... 5

**I. THIS COURT HAS FEDERAL SUBJECT-MATTER JURISDICTION
 OVER CLAIMS AGAINST DEFENDANT UNITY UNDER THE ATS.** 5

**A. Plaintiff Has Adequately Pleaded A War Crime In Violation Of The
 Law Of Nations.** 5

**B. State Action Is Not Required To Adequately Plead War Crimes
 Under The ATS.** 10

**C. The DC District Court Did Not Rule On Subject Matter Jurisdiction
 With Regard To ATS Claims Against Defendant Unity.** 12

**II. SUPPLEMENTAL JURISDICTION EXISTS OVER RELATED
 COMMON-LAW CLAIMS.**..... 14

CONCLUSION 16

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

Cases

Abdullahi v. Pfizer, Inc., 562 F.3d 163 (2d Cir. 2009) 7, 11

Almog v. Arab Bank, 471 F. Supp. 2d 257 (E.D.N.Y. 2007)..... 11

Axel Johnson v. Carroll Carolina Oil Co., 145 F.3d 660 (4th Cir. 1998)..... 14

City of Chi. v. Int’l Coll. of Surgeons, 522 U.S. 156 (1997)..... 14

Council of Unit Owners of Wisp Condominium, Inc. v. Recreational Industries, Inc., 793 F. Supp. 120 (D. Md. 1992) 15

Doe v. Unocal, 395 F.3d 932 (9th Cir. 2002), *reh’g en banc ordered*, 395 F.3d 978 (9th Cir. 2003) 11

Hamdan v. Rumsfeld, 548 U.S. 557 (2006) 7

Hardin v. Belmont Textile Mach. Co., 2009 U.S. App. LEXIS 26668 (4th Cir. Dec. 8, 2009).... 15

In re LimitNone, LLC, 551 F.3d 572 (7th Cir. 2008)..... 12

In re Xe Servs. Alien Tort Litig., 665 F. Supp. 2d 569 (E.D. Va. 2009)..... passim

In re Xe. Servs. 12

Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995)..... passim

Lanford v. Prince George’s County, 175 F. Supp. 2d, 797 (D. Md. 2001) 15

Manook v. Unity Resources Group, 5:10-CV-00072-D, 2010 U.S. Dist. LEXIS 17257 (D.D.C. Feb. 5, 2010) passim

Presbyterian Church of Sudan v. Talisman Energy Co., 582 F.3d 244 (2d Cir. 2009)..... 11

Romero v. Drummond Co., Inc., 552 F.3d 1303 (11th Cir. 2008)..... 11

Rosmer v. Pfizer, Inc., 263 F.3d 110 (4th Cir. 2001)..... 14

Ruhrgas Ag v. Marathon Oil Co., 526 U.S. 574 (1999) 12

Saleh v. Titan Corp., 580 F.3d 1 (D.C. Cir. 2009)..... 12

Sanchez-Espinoza v. Reagan, 770 F.2d 202 (D.C. Cir. 1985)..... 11

Sarei v. Rio Tinto, PLC, 487 F.3d 1193 (9th Cir. 2007)..... 7

<i>Shanaghan v. Cahill</i> , 58 F.3d 106 (4th Cir. 1995).....	14
<i>Shavitz v. Guilford Cty Bd. of Educ.</i> , 100 Fed. Appx. 146 (4th Cir. 2004)	14, 15
<i>Sinaltrainal v. Coca-Cola Co.</i> , 578 F.3d 1252 (11th Cir. 2009)	7, 8, 11
<i>Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.</i> , 549 U.S. 422 (2007).....	12
<i>Sosa v. Alvarez-Machain</i> , 542 U.S. 692 (2004).....	6, 7, 11
<i>Steel Co. v. Citizens for a Better Env’t</i> , 523 U.S. 83 (1998).....	12
<i>Tel-Oren v. Libyan Arab Republic</i> , 726 F.2d 774 (D.C. Cir. 1984)	11, 12
<i>United Mine Workers of America v. Gibbs</i> , 383 U.S. 715 (1966)	14, 15

Statutes

18 U.S.C. § 2441(b)	10
18 U.S.C. § 2441(c)(3), <i>amended by Military Commissions Act of 2006</i> , Pub. L. No. 109-366, 120 Stat. 2633 (2006).....	9
28 U.S.C. § 1367.....	15
28 U.S.C. § 1367(a)	passim
28 U.S.C. § 1367(c)(3).....	4, 14
28 U.S.C. §1404(a)	3, 12
Alien Tort Statute (“ATS”), 28 U.S.C. § 1350	passim
Fed. R. Civ. P. 12(b)(1).....	1, 3, 13
Fed. R. Civ. P. 12(b)(2).....	1, 13
Fed. R. Civ. P. 12(b)(5).....	1, 13
Fed. R. Civ. P. 12(b)(6).....	1
Fed. R. Civ. P. 12(g)(2).....	3
Fed. R. Civ. P. 12(h)(3).....	3
Fed. R. Civ. P. 8(a)	2
The War Crimes Act of 1996, 18 U.S.C. § 2441	7

Other Authorities

32 C.F.R. § 11.6(a)(1)(i) (2009) 9

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949
..... 7, 8, 10

Jack L. Goldsmith III, "*Protected Person*" Status in Occupied Iraq Under the Fourth Geneva
Convention 5-7 (2004), available at <http://www.usdoj.gov/olc/2004/gc4mar18.pdf>..... 8

Jean S. Pictet, *Commentary on Geneva Convention Relative to the Protection of Civilian Persons
in Time of War* 46-47 (1958) 8

U.S. Dep't of State, Treaties in Force 435-37 (2009)..... 7

Unity Resources Group, L.L.C. (“Unity”), acting as an agent of Research Triangle Institute, International (“RTI”), inflicted severe bodily injury and death upon Marani Awanis Manook (“Manook”), a civilian, during the Iraq war in Iraq in October 2007. This conduct constitutes torts in violation of the law of nations, specifically war crimes (Count I), civil conspiracy to commit war crimes (Count II), aiding and abetting war crimes (Count III), and related common law claims.¹ RTI and Unity move this Court to dismiss Plaintiff Manook’s claims. These motions should be denied for the reasons set forth below.

PROCEDURAL BACKGROUND

In the U.S. District Court for the District of Columbia (“DC District Court”), Defendant Unity moved to dismiss under Fed. R. Civ. P. 12(b)(2) (lack of personal jurisdiction) and Fed. R. Civ. P. 12(b)(5) (improper service of process). *See* Docket Entry No. 15. The DC District Court reserved determination of Defendant Unity’s Motion to Dismiss for lack of personal jurisdiction pending additional jurisdictional discovery and denied Defendant Unity’s Motion to Dismiss for improper service of process. *Manook v. Unity Resources Group*, 5:10-CV-00072-D, 2010 U.S. Dist. LEXIS 17257, at *41-42 (D.D.C. Feb. 5, 2010) (“Manook”).² Defendant Unity did not move to dismiss for lack of subject matter jurisdiction, nor did the DC District Court do so *sua sponte. Id.*

RTI separately moved to dismiss in the DC District Court under Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(6) (failure to state a claim), requesting the

¹ Plaintiff Manook also brings actions for assault and battery (Count IV), civil conspiracy to assault and battery (Count V), aiding and abetting assault and battery (Count VI), wrongful death (Count VII), civil conspiracy to cause wrongful death (Count VIII), aiding and abetting wrongful death (Count IX), intentional infliction of emotional distress (Count X), civil conspiracy to inflict emotional distress (Count XI), aiding and abetting intentional infliction of emotional distress (Count XII), negligence (Count XIII), negligent infliction of emotional distress (Count XIV), negligent hiring, training, and supervision (Count XV), and civil conspiracy (Count XVI).

² The Memorandum Opinion and Order was issued by the Honorable Jack D. Shansstrom, Senior District Judge in the District of Montana, sitting as a visiting judge for the District Court of the District of Columbia.

following relief: (1) dismissal of the Manook complaint because no one was authorized to assert Plaintiff Manook's claims; (2) dismissal under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, because these claims, even taken as true, do not constitute war crimes; (3) an order directing Plaintiff Manook to provide a more definite statement on Counts IV-XVI, identifying both the statutes and governing law under which Plaintiff seeks relief; and (4) a transfer of any remaining claims to the U.S. District Court for the Eastern District of North Carolina. *See* Docket Entry No. 13 and *Manook v. Unity Resources Group*, 2010 U.S. Dist. LEXIS 17257, at *41-42 (D.D.C. Feb. 5, 2010).

The DC District Court denied RTI's argument that the complaint should be dismissed because Plaintiff Manook failed to name an authorized representative. *Manook*, 2010 U.S. Dist. LEXIS 17257, at *21-22. The Court concluded that "the fact that Plaintiff Manook has obtained the Qassam Sharie is sufficient to establish the existence of a personal representative" and any failure to register that personal representative appropriately was curable.³ *Id.* Likewise, the DC District court denied RTI's request for a more definite statement because "[a]fter having reviewed Fed. R. Civ. P. 8(a) and applied it to Plaintiff Manook's First Amended Complaint, this Court concludes that she has sufficiently met her obligation to notify RTI of the claims and the proposed relief to an adequate degree such that Defendant is able to formulate its responses." *Id.* at *37-38.

The DC District Court granted Defendant RTI's motion to dismiss with respect to Plaintiff Manook's ATS claims (Counts I-III). While reasoning that Plaintiffs plausibly pleaded war crimes, *id.* at *28 ("From a facial review of the Geneva Convention and 'War Crime' statute and balancing that against the factual allegations in the Complaints, it appears that Plaintiffs have

³ As ordered by the DC District Court, Plaintiff Manook registered the Qassam Sharie appointing Nora Azad Kegham as the personal representative on Mar. 12, 2010. The Certificate of Filing Will is attached as Exhibit A.

alleged sufficient facts to establish that Defendants have allegedly committed war crimes and thus met their burden in order to survive a motion to dismiss.”), the DC District Court granted the motion to dismiss Plaintiff Manook’s ATS claims on the limited ground that Plaintiff did not adequately allege that Defendant RTI acted “in joint activity with the State or its agents.” *Id.* at *29. At no point did Defendant Unity move to dismiss Plaintiff’s ATS claims in the DC District Court, and the DC District Court never ruled on this specific issue prior to the transfer of the case to this Court.

Lastly, the DC District Court transferred the remainder of *Manook*, along with *Antranick v. Research Triangle Institute, Int’l*, 5:10-CV-00073-D (“Antranick”), to the U.S. District Court for the Eastern District of North Carolina (“EDNC”) pursuant to 28 U.S.C. §1404(a). *Manook*, 2010 U.S. Dist. LEXIS, at *38-41, 43.

Defendant Unity now moves to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), 12(h)(3), and 12(g)(2). This motion fails because EDNC has federal subject matter jurisdiction over the claims against Unity under the ATS, which reads: “The 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.” 28 U.S.C. § 1350 (Sept. 24, 1789) (emphasis added). Plaintiff Manook has pleaded ATS claims for war crimes, civil conspiracy to commit war crimes, and aiding and abetting war crimes. In the Fourth Circuit, like the overwhelming majority of circuits who have considered the issue, there is no state-action requirement in order to plead a violation of the law of nations under the ATS.

Because this Court possesses original jurisdiction under 28 U.S.C. § 1350, this Court has supplemental jurisdiction over the related common-law causes of action against Defendant Unity *and* against Defendant RTI under 28 U.S.C. § 1367(a). 28 U.S.C. § 1367(a) states that “the

district courts shall have supplemental jurisdiction over *all other claims that* are so related to claims in the action within such original jurisdiction that they *form part of the same case or controversy* under Article III of the United States Constitution.” 28 U.S.C. § 1367(a) (emphasis added). All of the common-law claims alleged against Defendant Unity *and* Defendant RTI form part of the same case or controversy as the war crimes claims over which this court has original jurisdiction under the ATS. As such, this Court need not consider whether it should retain supplemental jurisdiction over the related common-law claims pursuant to 28 U.S.C. § 1367(c)(3).

STATEMENT OF FACTS

Decedent Marani Awanis Manook was an Iraqi civilian. Compl. ¶ 2.

RTI, a North Carolina non-profit corporation, contracted with the U.S. Agency for International Development (“USAID”) to provide governmental development and support to the Iraqi government in the context of, and in association with, the international armed conflict in Iraq. *Id.* ¶¶ 3, 8, 23-25 and *Manook*, 2010 U.S. Dist. LEXIS 17257, at *2-3 (Factual Background).

Unity, a corporation with principal places of business in Singapore and the United Arab Emirates, and mercenaries acting on behalf of Unity, were employed by RTI to provide security services and protection for RTI during their contract with USAID. *Id.* ¶¶ 3-6, 9 and *Manook*, 2010 U.S. Dist. LEXIS 17257, at *2-3 (Factual Background).

On October 9, 2007, Marani Awanis Manook was severely injured and killed by heavily-armed Unity mercenaries, agents of RTI, acting in the course of their service to Defendant RTI. *Id.* ¶¶ 12-13, 15 and *Manook*, 2010 U.S. Dist. LEXIS 17257, at *2-3 (Factual Background).

The shooting by Unity was unjustified. Decedent was driving her personal car down Karrada Street in Baghdad, which is a civilian street. Ms. Manook did not provoke Unity nor did Ms. Manook or any of her passengers pose any threat to Unity. *Id.* ¶¶ 13-14 and *Manook*, 2010 U.S. Dist. LEXIS 17257, at *2-3 (Factual Background).

This unjustified shooting was indicative of a pattern of conduct by Unity and Unity personnel. Both RTI and Unity had knowledge of an illicit pattern of conduct whereby heavily-armed Unity personnel continually operated in an unsafe and aggressive manner.⁴ *Id.* ¶ 16. Such conduct included the reckless use of deadly force. *Id.* ¶ 17. Neither defendant exercised any oversight or control to eradicate the conduct. *Id.* ¶¶ 16-22 and *Manook*, 2010 U.S. Dist. LEXIS 17257, at *2-3 (Factual Background).

ARGUMENT

I. THIS COURT HAS FEDERAL SUBJECT-MATTER JURISDICTION OVER CLAIMS AGAINST DEFENDANT UNITY UNDER THE ATS.

A. Plaintiff Has Adequately Pleaded A War Crime In Violation Of The Law Of Nations.

This Court has federal subject matter jurisdiction over the claims against Defendant Unity under the ATS, which provides: “The 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.” *See Kadic v. Karadzic*, 70 F.3d 232, 238 (2d Cir. 1995) (ATS “confers federal subject-matter jurisdiction when the following three conditions are satisfied: (1) an alien sues (2) for a tort (3) committed in violation of the law of nations”). Here, ATS jurisdiction exists over

⁴ This pattern of conduct included, but was not limited to, the shooting and wounding of a civilian on Karrada Street, Baghdad, Iraq on or about June 24, 2007, Compl. ¶ 19, and the shooting and killing of a civilian at a security checkpoint on or around March 2006. *Id.* ¶ 20. Reasonable discovery is likely to produce evidence of additional killings, additional injuries, and additional failures to investigate by Defendants. *Id.* ¶ 21-22.

this action by the Estate of Marani Awanis Manook for torts committed by Unity in violation of the law of nations.

In *Sosa*, the Supreme Court clarified that under the ATS federal courts may hear certain claims defined by the law of nations and recognized at common law. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 (2004). *Sosa* held that federal courts may recognize ATS claims based “on the present-day law of nations” that “rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th century paradigms we have recognized.” *Id.* at 725, 732.

Here, there is no dispute that Plaintiff is an alien who bring tort claims against Unity for war crimes (Count I), civil conspiracy to commit war crimes (Count II), and aiding and abetting war crimes (Count III). What is disputed is whether these tort claims for war crimes, civil conspiracy to commit war crimes, and aiding and abetting war crimes violate norms of customary international law so well defined and accepted among civilized nations as to support a private ATS remedy under *Sosa*. Unity Br. at 6-7. The sole argument presented by Unity is that this pleading fails because pleading a war crime in violation of the law of nations requires allegation of state action. *Id.* That incorrect statement of the law fails.

While the Fourth Circuit has not yet reached the question of whether war crimes, civil conspiracy to commit war crimes, or aiding and abetting war crimes are cognizable under the ATS, at least one other district court within the Fourth Circuit has held that war crimes are cognizable under the ATS. *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d 569, 582-83 (E.D. Va. 2009).

The Eastern District of Virginia held:

[b]y ratifying the Geneva Conventions, Congress has adopted a precise, universally accepted definition of war crimes. Moreover, through enactment of a separate federal statute, Congress has incorporated this precise definition into the federal criminal law. Thus, Congress has clearly defined the law of nations to include a binding prohibition on

the commission of war crimes. Given this, and given *Sosa*'s teachings, it follows that an allegation of a war crime states a cause of action under the [ATS].

Id. citing The War Crimes Act of 1996, 18 U.S.C. § 2441; *see also*, U.S. Dep't of State, Treaties in Force 435-37 (2009) (specifically "grave breaches" as defined in the Fourth Geneva Convention) and *Hamdan v. Rumsfeld*, 548 U.S. 557, 642 (2006) (Kennedy, J., concurring) (concluding that by ratifying the Geneva Conventions and enacting the War Crimes Act of 1996 Congress has with "no doubt" defined the law of war by the content of the Geneva Conventions).

That holding accords with all circuit courts that have considered war crimes as a violation of the law of nations under the ATS post-*Sosa*. *See Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009) (recognizing ATS claims of war crimes); *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 175-87 (2d Cir. 2009) (*citing Kadac v. Karadzic*, 70 F.3d 232, 240 (2d Cir. 1995) (concluding that medical experimentation on non-consenting human subjects is a sufficiently universal and definite norm to be covered by the ATS); and *Sarei v. Rio Tinto, PLC*, 487 F.3d 1193, 1202 (9th Cir. 2007), *rev'd in part en banc on other grounds*, (allowing war crimes claims to proceed under the ATS, noting that such claims "form the least controversial core of modern day [ATS] jurisdiction"). Accordingly, applying *Sosa* and prevailing precedent post-*Sosa*, the ATS confers subject-matter jurisdiction over properly-stated violations of certain international norms such as war crimes.

It is a "grave breach" of the Fourth Geneva Convention intentionally to kill or inflict serious bodily injury upon innocent civilians during the course of an armed conflict. *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d at 582-83. More specifically, the Fourth Geneva Convention, which concerns the protection of civilians during armed conflicts of an international character, deems a "grave breach" of the Convention acts against "protected persons" consisting of "willful killing, torture or inhuman treatment, including biological experiments, [or] wilfully

causing great suffering or serious injury to body or health.” Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 147 [hereinafter Fourth Geneva Convention]. Moreover, protected persons are “those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power.” *Id.* at Art. 4. The “in the hands of” language is interpreted extremely broadly, and includes any time that a civilian is in territory controlled by a party to the conflict. See Jean S. Pictet, *Commentary on Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 46-47 (1958). Indeed, in a 2004 memorandum, the Office of Legal Counsel of the U.S. Department of Justice opined that all noncombatant Iraqi nationals qualified as protected persons under the Fourth Geneva Convention. See Jack L. Goldsmith III, “*Protected Person*” Status in Occupied Iraq Under the Fourth Geneva Convention 5-7 (2004), available at <http://www.usdoj.gov/olc/2004/gc4mar18.pdf>.

War crimes as a violation of the law of nations under the ATS require an appropriate nexus between the conduct of Unity and the underlying armed conflict. See, *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d at 587 and *Kadic*, 70 F.3d at 242. There must be “a more substantial relationship...between the armed conflict and the alleged conduct than the mere fact that the conduct occurred while an armed conflict was ongoing.” *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d at 587. The Second Circuit in *Kadic* required that acts be “committed in the course of hostilities” in order to constitute a war crime. 70 F.3d at 242. Similarly, the Eleventh Circuit, citing *Kadic*, recently held that alleged war crimes must occur “during the course” of the armed conflict, clarifying that such a showing would require that the conduct occurred “because of” or “in the course of the [conflict].” *Sinaltrainal*, 578 F.3d 1252, 1267. Congress and the Executive Branch have also adopted a nexus requirement in defining war

crimes in related contexts. Congress requires that the conduct occur “in the context of and in association with” the armed conflict. 18 U.S.C. § 2441(c)(3), *amended by Military Commissions Act of 2006*, Pub. L. No. 109-366, 120 Stat. 2633 (2006). Similarly, the Secretary of Defense requires that the willful murder of protected persons by enemy combatants “took place in the context of and was associated with armed conflict” in order to constitute violations of the law of war triable before military commissions. 32 C.F.R. § 11.6(a)(1)(i) (2009). Notably, it would be too narrow to require there to be a “military objective” for the nexus requirement to be met. *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d at 587. While “it is true that acting with a purpose related to the objectives of the armed conflict is evidence of the alleged conduct's association with the armed conflict[,]...purpose cannot be the only factor to consider.... Other factors such as temporal and geographic proximity to the armed conflict, the nature of the conduct, and the identity of the victims must also be considered.” *Id.* “Accordingly, to state a valid ATS claim for murder or infliction of bodily injury as a war crime, plaintiffs must plead that the alleged conduct was perpetrated in the context of, and in association with, the armed conflict.” *Id.*

Plaintiff states claims of war crimes, civil conspiracy to commit war crimes, and aiding and abetting war crimes. Plaintiff alleges that Unity, Compl. ¶¶ 12-15, in conspiracy with and as an agent of RTI, *Id.* ¶¶ 9, 26-27, 37, during a period of armed conflict, *Id.* ¶¶ 32, 38, 42, caused serious bodily injury to and killed innocent civilians, *Id.* ¶¶ 1, 2, 12, 13, 35, 39, 43, without provocation and in a manner contrary to the laws of war. *Id.* ¶¶ 1, 14, 16-22, 31, 33, 34.⁵

Plaintiffs also adequately pleads the appropriate nexus between the conduct of Unity and the underlying armed conflict. Unity and RTI were in Iraq pursuant to and under a contract with

⁵ The DC District Court expressly stated that Plaintiff adequately pleaded war crimes. *Manook v. Research Triangle Institute, Int'l*, 2010 U.S. Dist. LEXIS 17257, at *28 (D.D.C. Feb. 5, 2010) (“From a facial review of the Geneva Convention and ‘War Crime’ statute and balancing that against the factual allegations in the Complaints, it appears that Plaintiffs have alleged sufficient facts to establish that Defendants have allegedly committed war crimes and thus met their burden in order to survive a motion to dismiss.”).

the United States Government. *Id.* ¶¶ 3. Defendant Unity was an agent for RTI providing security services during wartime because the United States is involved in an international armed conflict in Iraq, specifically in Baghdad. *Id.* ¶9. Defendant Unity is in Iraq at the behest of the United States Government as part of the United States’ wartime efforts to rebuild local communities and win hearts and minds. *Id.* at 23-25. The Plaintiff has adequately plead that alleged conduct was perpetrated in the context of, and in association with, the armed conflict in Iraq.

B. State Action Is Not Required To Plead Adequately War Crimes Under The ATS.

There is no state action requirement to plead a war crime under the ATS. The Eastern District of Virginia has determined that war crimes claims “clearly are” cognizable against private actors. *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d at 584. Specifically, the Eastern District of Virginia held:

The relevant provisions of the Geneva Conventions and their incorporating federal criminal statute, the War Crimes Act, clearly do not, by their terms, limit their applicability to state actors. While other prohibitions contained within the Geneva Conventions, such as the ban on summary executions,..., require that the conduct be committed by a party to the armed conflict, there is no such requirement for grave breaches such as the murder of protected persons. Instead, the grave breach is defined in terms of the status of the victim, not the status of the perpetrator. *See* Fourth Geneva Convention art. 146 (“Grave breaches . . . shall be those involving any of the following acts, if committed against persons or property protected by the present Convention.”). Indeed, the War Crimes Act, in codifying the Geneva Conventions’ “grave breach” provisions into federal criminal law, subjects all United States nationals to liability with no reference to color of law or status as a party to the armed conflict. *See* 18 U.S.C. § 2441(b).

Id. at 584-85.

That prevailing view has its genesis in the Second Circuit’s decision in *Kadic*, which held that “certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals.” *Kadic*, 70 F.3d at 239-44. And the

courts of appeals that have considered this issue after *Kadic* have recognized that ATS war crimes claims are cognizable against non-state actors. *See, e.g., Presbyterian Church of Sudan v. Talisman Energy Co.*, 582 F.3d 244, 254-55 (2d Cir. 2009), *citing Kadic v. Karadzic*, 70 F.3d 232, 244 (2d Cir. 1995); *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1267 (11th 2009) (stating “The war crimes exception dispenses with the state action requirement for claims under the ATS” and “[W]ar crimes...negate the need for state action.”) (emphasis added); *Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1316 (11th Cir. 2008) (holding “individuals may be liable, under the law of nations, for some conduct, such as war crimes, regardless of whether they acted under color of law of a foreign nation”); *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 173 (2d Cir. 2009) (“ATS claims may sometimes be brought against private actors...when the tortious activities violate norms of universal concern that are recognized to extend to the conduct of private parties—for example, slavery, genocide, and *war crimes*” (internal quotation marks omitted)(emphasis added)); and *Almog v. Arab Bank*, 471 F. Supp. 2d 257, 293 (E.D.N.Y. 2007) (no state action requirement for terrorism financing or aiding and abetting crimes against humanity).⁶ As such, this Court should follow its sister court within the Fourth Circuit, along with the overwhelming majority of other circuit courts that have considered the issue, and find that allegations of state action are not required to plead claims of war crimes, civil conspiracy to commit war crimes, or aiding and abetting war crimes under the ATS adequately.⁷

⁶ The Ninth Circuit has intimated its support for this principle; however, the decisions reaching these conclusions have been withdrawn on other grounds. *See, e.g., Doe v. Unocal*, 395 F.3d 932, 946 (9th Cir. 2002), *reh’g en banc ordered*, 395 F.3d 978 (9th Cir. 2003) (stating “crimes like rape, torture, and summary execution, which by themselves require state action for ATCA liability to attach, do *not* require state action when committed in furtherance of other crimes like slave trading, genocide or war crimes, which by themselves do not require state action for AT[S] liability to attach”).

⁷ The minority view, which is the law only in the DC Circuit, holds that state action is required to allege violations of the law of nations for all but a “handful of crimes.” *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 795 (D.C. Cir. 1984) (Edwards, J. concurring). While acknowledging an emerging consensus that customary international law reaches non-state actors, the *Tel-Oren* court concluded that, in 1984, there was no consensus that the law of nations

C. The DC District Court Did Not Rule On Subject Matter Jurisdiction With Regard To ATS Claims Against Defendant Unity.

Contrary to the argument made by Defendant Unity, federal subject-matter jurisdiction under the ATS over the claims against Defendant Unity remains an outstanding issue after transfer of this action. Unity attempts to improperly bootstrap the DC District Court's holding with regard to RTI and have it apply to Unity, post-transfer, in this court.⁸ Such averments are

reached non-state actors who committed acts of torture. *Id.* See also, *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 206-207 (D.C. Cir. 1985). In *Sosa* the Supreme Court acknowledged the issue of whether international law extends the scope of liability for a violation of a given norm to the perpetrator being sued where the defendant is a private actor such as a corporation or an individual. *Sosa*, 542 U.S. at 733 n. 20. The Supreme Court urged a comparison between *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 791-795 (D.C. Cir. 1984) (Edwards, J., concurring) (insufficient consensus in 1984 that torture by private actors violates international law) and *Kadic v. Karadzic*, 70 F.3d 232, 239-241 (2d Cir. 1995) (sufficient consensus in 1995 that genocide by private actors violates international law). It is worth noting that the Eastern District of Virginia, conducting precisely this comparison held in *In re Xe Servs. Alien Tort Litig.*, that the two opinions cited in *Sosa's* footnote 20 are consistent with one another. *In re Xe Servs. Alien Tort Litig.*, 665 F. Supp. 2d at 584-586. “*Tel-Oren* acknowledges that private actors are liable for some violations, just not torture, and *Kadic* in fact requires state actors for torture and summary execution claims, but not for genocide and *war crimes*....” *Id.* at 584 n. 18. Moreover, a recent D.C. Circuit opinion recognizes that war crimes may have a broader reach than torture with respect to non-state actors. See *Saleh v. Titan Corp.*, 580 F.3d 1, 15 n.13 (D.C. Cir. 2009) (dismissing torture claims on state actor grounds, but assuming without deciding that war crimes claims may be cognizable against non-state actors) (“Even if torture suits cannot be brought against private parties—at least not yet—it may be that ‘war crimes’ have a broader reach.”). As such, even under the minority view, it remains an open question whether state action is required to allege war crimes under the ATS.

⁸ Arguably, the DC District Court erred by determining subject matter jurisdiction vis-à-vis Defendant RTI before making the non-merits determination to order a 28 U.S.C. § 1404(a) “convenience transfer” from the DC District Court to EDNC. It is well-established that the proper order in which to determine venue (non-merits determination), subject matter jurisdiction (merits determination), and personal jurisdiction (merits determination) is left to the discretion of the court. See, e.g., *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 436 (2007). Equally clear, however, is that a court can err in this determination sufficient to warrant reversal on appeal. See, *In re LimitNone, LLC*, 551 F.3d 572, 576-78 (7th Cir. 2008), comparing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998) and *Sinochem*, 549 U.S. at 436; see also, *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (holding that there is no set order of operations for the determination of subject matter jurisdiction and personal jurisdiction). In *Sinochem*, the Supreme Court stated that “where subject-matter or personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal, the court properly takes the less burdensome course” and determines *forum non conveniens* first. *Sinochem*, 549 U.S. at 436, citing *Ruhrgas*, 526 U.S. at 587-588. *In re LimitNone* extends this logic to convenience transfers pursuant to 28 U.S.C. § 1404(a). The Seventh Circuit held that it was appropriate for the district court to transfer a case pursuant to 28 U.S.C. § 1404(a) where the issue of venue was fairly easy to resolve because “the relative ease of determining venue before subject-matter jurisdiction is an issue of judicial economy.” *In re LimitNone*, 551 F.3d 572, 576 (7th Cir. Ill. 2008). This makes good sense based on the logic in *Sinochem* because § 1404(a) is nothing more than a codification of the traditional *forum non conveniens* rules without the attendant disadvantages of outright dismissal. In short, these cases hold that when a court is considering a *transfer* rather than dismissal, the proper procedural determination is based on judicial efficiency considerations. This fosters efficient court administration, avoids unnecessary litigation, eliminates expense for the parties, and reduces the risk of producing inconsistent results. Here, just like in *Sinochem* and *In re LimitNone*, the determination of venue and transfer was straight-forward. Without equivocation the DC District Court held that:

not supported by the record in this case or the decision of the DC District Court. This is a fact that Unity admits when it states that “the Court *effectively* held that there is no federal jurisdiction under 28 U.S.C. § 1350.” Unity Br. at 2. This attempt to stretch the decision beyond its four corners is improper. Since Defendant Unity’s motion to dismiss rests on this faulty foundation, it collapses.

The DC District Court’s holding with regard to Unity states that “Defendant Unity’s Motion to Dismiss the First Amended Complaint (Doc. #15) is DENIED IN PART and RESERVED IN PART. Specifically, (a) Defendant Unity’s Motion to Dismiss for improper service of process is DENIED; [and] (b) Defendant Unity’s Motion to Dismiss for lack of personal jurisdiction is RESERVED pending additional jurisdictional discovery....” *Manook*, 2010 U.S. Dist. LEXIS 17257, at *41-42. Nothing in this holding states that Plaintiff has failed to state a claim against Defendant Unity. Moreover, that decision never suggested that this Court cannot determine whether it has federal subject-matter jurisdiction with regard to claims against Defendant Unity. This logically follows from the fact that Defendant Unity did not move to dismiss for failure to state a claim in the DC District Court. In the DC District Court, Unity only moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) (personal jurisdiction) and 12(b)(5) (improper service of process). And the DC District Court did not, *sua sponte*, dismiss the ATS claims against Unity for lack of subject matter jurisdiction. Unity’s argument cannot magically transform its failure to move under Rule 12(b)(1) into a holding on those grounds. Nothing in the DC District Court’s opinion suggests in any way a *sua sponte* ruling on this issue. As such,

The record reflects that (1) RTI is subject to personal jurisdiction in North Carolina; (2) the District of Columbia has no meaningful ties to the controversy; (3) the District of Columbia is not Plaintiffs’ home forum; (4) North Carolina is RTI’s place of incorporation and principal place of business; (5) the Unity/RTI contract was negotiated and is presently administered in North Carolina; and (6) the overwhelming witnesses involved in both cases that are found in the United States are located in North Carolina. *Manook*, 2010 U.S. Dist. LEXIS 17257, at *40-41.

the issue of whether there is federal subject matter jurisdiction is outstanding for this Court. And as explained above, this Court has federal subject matter jurisdiction over this action under 28 U.S.C. § 1350 and in accordance with the prevailing precedent that holds that allegations of war crimes, civil conspiracy to commit war crimes, and aiding and abetting war crimes are actionable against private non-state actors under the ATS.

II. SUPPLEMENTAL JURISDICTION EXISTS OVER RELATED COMMON-LAW CLAIMS.

Because this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1350, this Court need not consider whether it should retain supplemental jurisdiction over the related common-law claims pursuant to 28 U.S.C. § 1367(c)(3). Where a district court has original jurisdiction under 28 U.S.C. § 1350, it “*shall* have supplemental jurisdiction over *all other claims that* are so related to claims in the action within such original jurisdiction that they *form part of the same case or controversy* under Article III of the United States Constitution.” 28 U.S.C. § 1367(a) (emphasis added); *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 115 (4th Cir. 2001). Section 1367(a) is a general grant of supplemental jurisdiction. *Rosmer*, 263 F.3d at 115. Section 1367(a) “is broadly phrased to provide for supplemental jurisdiction over claims appended to ‘any civil action’ over which the court has ‘original jurisdiction.’” *Shanaghan v. Cahill*, 58 F.3d 106, 109 (4th Cir. 1995) (quoting 28 U.S.C. § 1367(a)).

To determine whether a state-law claim is part of the same “case or controversy” for purposes of the supplemental jurisdiction statute, we look to the standard set by the Supreme Court in *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966). *See also* *Shavitz v. Guilford Cty Bd. of Educ.*, 100 Fed. Appx. 146, 150 (4th Cir. 2004); *City of Chi. v. Int’l Coll. of Surgeons*, 522 U.S. 156, 164-65 (1997); *Axel Johnson v. Carroll Carolina Oil Co.*, 145 F.3d 660, 662 (4th Cir. 1998). In *Gibbs*, the Supreme Court explained that pendent jurisdiction, in the

sense of judicial power, exists whenever there is a federal question, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional “case.” *Shavitz*, 100 Fed. Appx. At 150. The federal claim must have substance sufficient to confer subject matter jurisdiction on the court. The state and federal claims must derive from a *common nucleus of operative fact*. *Id.* (emphasis added). If, considered without regard to their federal or state character, a plaintiff’s claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole. *Id. citing Gibbs*, 383 U.S. at 725. *See also Hardin v. Belmont Textile Mach. Co.*, 2009 U.S. App. LEXIS 26668 (4th Cir. Dec. 8, 2009). (Under 28 U.S.C. § 1367(a) and *Gibbs*, federal courts may have supplemental jurisdiction over a state cause of action if both the state and federal claims arise from the same transaction or occurrence); *Council of Unit Owners of Wisp Condominium, Inc. v. Recreational Industries, Inc.*, 793 F. Supp. 120, 122 (D. Md. 1992) (“Under the *Gibbs* analysis of the doctrine of pendent jurisdiction, claims are part of the same case or controversy if they ‘derive from a common nucleus of operative fact’ and ‘are such that...[they] would ordinarily be expected to...[be tried] in one judicial proceeding....’”); *Lanford v. Prince George’s County*, 175 F. Supp. 2d, 797, 803 (D. Md. 2001).

Here, the common-law claims against Defendant Unity *and* Defendant RTI derive from a common nucleus of operative fact—specifically, from the war crimes allegations upon which original jurisdiction under the ATS rests. The claims rest on the same facts from the same event on the same day. The claims apply common rules of law. Applying the same law to the same facts, the same judicial proceeding should resolve those claims. Hence, as those claims form part

of the same case or controversy under 28 U.S.C. § 1367, this Court should exercise supplemental jurisdiction to resolve them here.

CONCLUSION

Defendant Unity's and Defendant RTI's motions to dismiss for lack of subject matter jurisdiction fail. Unity, acting as an agent of RTI, inflicted severe bodily injury and death upon Marani Awanis Manook ("Manook"), a civilian, during the Iraq war in Iraq in October 2007. As explained above, this constitutes war crimes (Count I), civil conspiracy to commit war crimes (Count II), and aiding and abetting war crimes (Count III). This court properly exercises original federal subject matter jurisdiction over these allegations under the ATS, 28 U.S.C. § 1350. Because this court has original jurisdiction under 28 U.S.C. § 1350, it properly exercises supplemental jurisdiction over related common law claims against Defendant Unity and Defendant RTI under 28 U.S.C. § 1367(a). For the foregoing reasons, Plaintiff respectfully submits that this Court should DENY Defendant Unity's and Defendant RTI's motions to dismiss and provide such further and just relief as the Court deems proper.

This the 14th day of April, 2010.

Respectfully submitted,

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