powerful state in the military aspect, a country with an effective structure of state administration and a judicial system based on the postulates of Islam, but at the same time, in the above-mentioned period, the government declared a policy of religious tolerance, which existed not only de facto, but also de jure.

Key words: Middle East, sultanate, politics, leadership, Ottoman Empire, meritocracy, women’s sultanate.

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THE LONG ARM OF UNITED STATES LAW IN WARTIME:
POSSIBLE UKRAINIAN SUITS FOR RUSSIAN ATROCITIES

INTRODUCTION
Attorneys for Ukrainians who lost family or suffered personal injury or property damage in the 2022 war can file lawsuits against Vladimir Putin and other responsible Russians under the Alien Tort Claims Act (ATCA) ** in United States district courts. Evidence developed by the Ukraine Prosecutor General,1 the International Criminal Court,2 and the United Nations Commission of Inquiry3 can be used in the Ukrainians’ potential tort cases. A quest for justice in U.S. courts would enhance the historical record, shame the Kremlin, and potentially win monetary damages for some Ukrainians. It wouldn’t be the first time seized foreign assets have been awarded to plaintiffs who filed claims in U.S. district court.5

I. CIVIL ACTIONS ARISING FROM CRIMES IN WAR
A. SUITS ALLOWED BY THE ALIEN TORT CLAIMS ACT
Egregious facts that give rise to claims of wrongful death, torture, intentional infliction of emotional distress, terrorism, trespass, vandalismo, and grand larceny5 may in wartime reach the level of violations of the law of war covered by the Alien Tort Claims Act. Heightened charges may include waging war of aggression, war crimes, crimes against peace, crimes against humanity, genocide, or conspiracy to commit such offenses as recognized in customary international law. Claims under the ATCA may be based also on violations of the 1907 Hague Convention IV,6 which codifies core values such as avoiding unnecessary suffering and withholding fire on the defenseless and noncombatants.

B. PAST RUSSIAN ACKNOWLEDGEMENT OF THE LAW OF WAR
The 1907 Hague Convention was signed by Russia, the predecessor and successor of the Soviet Union. In 1945 the Soviet Union joined with the United States, Britain and France to establish the Nuremberg Tribunal, which tried and sentenced officials of the Third Reich for war crimes and crimes against humanity.7 The Soviet Union in 1945 also signed the United Nations Charter, outlawing aggressive war.8

C. HUMANITARIAN LAW BASIS FOR TORT CLAIMS
The requirement to distinguish between legitimate military targets and noncombatants is articulated in a 1968 resolution of the United Nations General Assembly recapitulating this basic norm of the law of armed conflict.9 The resolution evinces a standard of international humanitarian law recognized as part of the customary law of nations.10 Although collateral damage inevitably occurs in war when civilians who are not intended targets become casualties, intentional killing of civilians constitutes an offense expected to be punishable under the criminal statutes or military justice code of a state having jurisdiction – and potentially is actionable in U.S. courts under the Alien Tort Claims Act. The ATCA, enacted in 1789, 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.”11 Waging war of aggression, genocide, and crimes against humanity – such as targeting civilian populations – violate the Nuremberg precedent and the universally recognized customary law of nations. The 1907 Hague Convention and other treaties also apply.

II. PARAMETERS OF SOVEREIGN IMMUNITY
A. THE ‘TERRORISM EXCEPTION’
President Volodymyr Zelensky asked President Biden to designate Russia as a state sponsor of terrorism,12 thus to add to the standing of some Ukrainians seeking remedies for wartime acts of terror. On account of the peculiarities

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of American law, a Ukrainian harmed by an act not found to violate a nonderogable norm or applicable treaty then would be able to sue in an American court if he or she has a Green card, dual citizenship, or a federal job.\textsuperscript{15} As a permanent U.S. resident, dual citizen, or federal employee, one generally can sue a foreign state for torture, extrajudicial killing, or hostage taking, according to the “terrorism exception” in the Foreign Sovereign Immunities Act (FSIA),\textsuperscript{16} a U.S. statute enacted in 2008. Furthermore, as the Supreme Court held in a 2020 decision written by Justice Neil Gorsuch concerning the 1998 al Qaeda bombings of U.S. embassies in Kenya and Tanzania, punitive as well as compensatory damages may be claimed in controversies allowed under the FSIA.\textsuperscript{17}

**B. DEFAULT JUDGMENTS**

Judgment can be won by default if defendants don’t show up in court. Families of some of the victims of the September 11, 2001 terror attacks thereby had a default judgment of more than $2 billion entered in their favor against Ayatollah Ali Huseini, the Islamic Republic of Iran, the Taliban, and others found jointly and severally liable under the FSIA terrorism exception for economic damages, solatium, pain and suffering, and punitive damages.\textsuperscript{18} Likewise, Croat and Muslim citizens of Bosnia-Herzegovina were allowed to claim ATCA compensation from Radovan Karadžić in absentia for rape, torture and summary execution by Serb forces he led in the Bosnian civil war.\textsuperscript{19} Also, victims and families affected by the 1983 terrorist bombing of the U.S. Embassy in Beirut were found to be entitled to damages against the Islamic Republic of Iran for economic losses, mental anguish and intentional infliction of emotional distress.\textsuperscript{18} And the Syrian Arab Republic was held liable by default under the FSIA terrorism exception, for economic damages, pain and suffering, solatium, and punitive damages after execution-style shootings in the 1983 hijack of an EgyptAir flight from Athens.\textsuperscript{16} In a seminal case, the Second Circuit Court of Appeals (New York) found Paraguayan immigrants were entitled to $10 million ATCA damages for the torture and murder of their family member, Joélito Filartiga, by a no-show Asuncion police official (\textit{who, in the end, lacked ability to pay}).\textsuperscript{20}

**C. EXCEPTIONS TO IMMUNITY**

The FSIA\textsuperscript{21} provides that a foreign government generally can claim it has total immunity from jurisdiction of U.S. courts, except in commercial, admiralty, and terrorism cases. However, it has been held in a U.S. Supreme Court case, Samantar v. Yousuf, that a foreign official sued for conduct undertaken in official capacity is not a “foreign state” entitled to FSIA immunity from suit.\textsuperscript{22} In that high court case, natives of Somalia sued Lt. Gen. Mohamad Ali Samantar, who was Somalia’s minister of defense and later prime minister.

This is a point on which United States law contravenes relevant authoritatively declared international law. According to a decision by the International Court of Justice, “in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal.”\textsuperscript{23} In the I.C.J. case, Belgium sought arrest of DRC Foreign Minister Abdulaye Yerodia Ndombasi, who was accused of committing war crimes and genocide against Rwandan and Congolese Tutsis.

The I.C.J. sovereign immunity rule in DRC v. Belgium was contrary to the rationale the British House of Lords had used in the case of Augusto Pinochet. Britain in 1999 granted an extradition request by Spain, which was ready to exercise universal jurisdiction to try Chile’s former dictator for crimes against Chilean citizens. Lord Brown-Wilkinson reasoned that head-of-state immunity did not apply because Torture Convention violations of which Pinochet was accused could not reasonably be deemed to have been “done in an official capacity on behalf of the state.”\textsuperscript{24} Even before extradition could take place, Pinochet was released on grounds of ill health and returned to Chile where he was indicted for kidnappings, torture, disappearances and assassination.\textsuperscript{25} As fate would have it, he died less than two weeks after being placed under house arrest, without being put on trial.

**III. INTERNATIONAL ‘CIVIL DISOBEDIENCE’**

Inconsistency between U.S. Supreme Court doctrine in the Samantar case and the I.C.J. rule on sovereign immunity gives rise to a dilemma. If a U.S. court exercises civil or criminal jurisdiction against Russia’s president, minister of defense, or minister of foreign affairs, the United States would be engaging in “civil disobedience” on the international level – intentionally violating a rule of law recognized by the community of nations. Like an individual who violates U.S. law – \textit{e.g.}, blocking the main gate of a national laboratory to protest nuclear arms research – the United States or its courts could decide to violate the I.C.J. rule on sovereign immunity by exercising jurisdiction over high Russian officials accused of responsibility for barbaric acts in Ukraine – and accept the any opprobrium that would be a consequence of U.S. technical violation of the rule of law on sovereign immunity as asserted at The Hague.

**IV. POTENTIAL REMEDIES**

Assets of Putin and other defendants, if frozen or seized by the United States or other countries, potentially could be used to pay damages awarded by U.S. courts, as well as to pay penalties and reparations that may be ordered by international bodies. More than 500 “well-connected” Russians were sanctioned by the U.S. Treasury Department in first two months of the Ukraine war in 2022.\textsuperscript{26} Russian oligarchs reportedly have billions of dollars invested in funds managed by U.S. firms and own property in the United States which, if seized by writ of execution, may be subject to confiscation by civil or administrative forfeiture – a normally slow process which still might be expedited.\textsuperscript{27}
When damages are awarded in a U.S. district court case, a court in a different U.S. district where defendants’ assets are located may be able to issue an order to use the assets to satisfy the judgment. However, U.S. courts would not be able to reach assets outside the United States that belong to President Putin, Defense Minister Sergei Shoigu, or Foreign Minister Sergey Viktorovich Lavrov unless their assets are in a country that itself is ready to violate the I.C.J. rule on sovereign immunity.

Nonetheless, it appears that civil cases against culpable lesser officials and military personnel of the Russian Federation, not being covered by the I.C.J. interpretation of sovereign immunity, could be subject to judgment with their assets in the U.S. or elsewhere potentially subject to seizure. There is precedent or persuasive authority. Alvaro Rafael Saravia, a former captain in the Salvadoran air force living in Modesto, California, thus was found liable under the ATCA for a “crime against humanity,” the 1980 assassination of Oscar Romero archbishop of San Salvador.28 A $10 million judgment against Savaria was entered by the U.S. district court in the Eastern District of California.29

V. RUSSIANS’ LIABILITY

Russian soldiers know what they did in Ukraine is wrong. At the United Nations, Ukraine’s ambassador Serhiy Kyslytsya of Ukraine read aloud from the transcript of a Russian soldier’s final text message to his mother, “Mama, I’m in Ukraine. There is a real war raging here. I’m afraid. We are bombing all of the cities together, even targeting civilians.”30 Ukrainian officials released a video in which Russian National Guard Lt. Col. Astakhov Dmitry Mikhailovich expressed “shame that we came to this country” and said, “We will go to jail or whatever we deserve” because “this is genocide.”31 Most Russian soldiers undoubtedly lack assets against which judgment could be enforced. However, Putin and other culpable Russian officials or oligarchs are believed to be beneficial owners of assets outside Russia – which potentially could be applied toward satisfaction of civil judgments in U.S. courts.32

Tort actions in American courtrooms could help confirm historical truth, shame Russian aggressors, and achieve justice for Ukrainians.

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1 Saskya Vandoorne and Daria Markina, Ukrainian prosecutor general is investigating more than 11,000 alleged war crimes by Russia, CNN (13 May 2022), https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-05-13-22/h_ac40ace6dca40a44e8514585b6f057d (last visited May 14, 2022).
5 Industrial-scale theft of food supplies could be an element of a genocide charge. See Ben Hall, Farmers accuse invaders of large-scale plunder, FINANCIAL TIMES 2 (May 13, 2022).
11 ATCA, supra note 1.
17 Kadie v. Karadzic, 70 F.3d 232, 236-7, 251 (2d Cir. 1995).
Anthony Peirson Xavier Bothwell. The long arm of united states law in wartime: potential Ukrainian suits for Russian atrocities.

This article makes a legal argument that Ukrainian victims of Russia’s war of aggression can sue for damages in U.S. courts. The extraterritorial reach of the Alien Tort Claims Act enables noncitizens to seek redress for harm caused by violations of treaty or customary law. Russian forces in Ukraine have violated the 1907 Hague Convention and the Nuremberg precedent. The U.S. Supreme Court, like the British House of Lords, takes exception to International Court of Justice doctrine that says high officials of a foreign state enjoy absolute sovereign immunity. The I.C.J. rule does not protect most sub-cabinet officials. The Foreign Sovereign Immunity Act recognizes immunity of a foreign state but not its officials at any level, and never in a “terrorism” case. Ukraine’s president asked Washington to designate Russia as a terrorist state, which would allow Ukrainians having certain U.S. connections to sue the Russian Federation. Even without a “terrorism” finding, the Alien Tort Claims Act lets any injured Ukrainians sue individual Russians for violations of the law of war. Assets held in the U.S. or U.K. by defendants found liable may be subject to seizure and used to satisfy civil judgments in wartime cases.

Key words: long arm, law, wartime, Ukrainian suits, Russian atrocities.