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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KARUNAMUNIGE CHAMILA KRISHANTHI, et al.,	:	Civil Action No. 2:09-cv-05395 (DMC)(MF)
Plaintiffs,	:	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT AGAINST DEFENDANT TAMIL REHABILITATION ORGANIZATION
v.	:	
RAJAKUMARA RAJARATNAM, JESUTHASAN RAJARATNAM, and TAMIL REHABILITATION ORGANIZATION,	:	Motion Date: May 3, 2010
Defendants.	:	ORAL ARGUMENT REQUESTED

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Introduction

This Memorandum of Law is respectfully submitted on behalf of defendant Tamil Rehabilitation Organization of the United States (hereinafter "TRO-USA"), in support of its motion to dismiss the Complaint. As detailed below, the Complaint suffers from several fatal defects, some of which have been identified and discussed in the Motion to Dismiss filed by defendants Rajakumara Rajaratnam and Jesuthasan Rajaratnam (hereinafter "Rajaratnam Motion" and "Rajaratnam Defendants," respectively). This Memo of Law will attempt to avoid repetition as much as possible, and join in the positions set forth in the Rajaratnam Motion while, when appropriate, discussing specific facts and legal issues that relate particularly to TRO-USA.

The Complaint alleges that TRO-USA is liable for the death and injuries caused by five specific bombings by the Liberation Tigers of Tamil Eelam (hereinafter "LTTE") that occurred in Sri Lanka in 2007 and 2008. The Complaint claims that TRO-USA is directly responsible for those bombings because it allegedly functioned as a "front group" for the collection of funds for LTTE. Complaint at ¶ 53.

However, as detailed below, those claims must be dismissed because (1) the Court lacks personal jurisdiction over TRO-USA; (2) the Court lacks subject

matter jurisdiction over this case; (3) the Complaint fails to state a claim because, *inter alia*, it fails to establish that TRO-USA caused plaintiffs' injuries; and (4) Plaintiffs have failed to exhaust the available remedies in Sri Lanka and/or for *forum non conveniens*.

The Complaint alleges personal jurisdiction over TRO-USA on two fundamentally erroneous premises: (1) contrary to the allegations in the Complaint, TRO-USA is *not* a branch of the Tamil Rehabilitation Organization in Sri Lanka (herinafter "TRO-Sri Lanka"). Rather, TRO-USA is an independently incorporated charity established in the United States in 1994; and (2) TRO-USA has never had a New Jersey office. TRO-USA's only office or place of business is located in Maryland. Thus, the Complaint fails to establish personal jurisdiction.

Regarding subject matter jurisdiction, TRO-USA's donation of funds to charities in Sri Lanka does not constitute a violation of the "law of nations," which violation is a prerequisite for a claim under the Alien Tort Statute (under which Plaintiffs proceed herein). At all times relevant to the Complaint, TRO-USA was a tax-exempt charity. TRO-USA raised funds to alleviate the humanitarian crisis in Sri Lanka, and donated those funds to a number of charities in Sri Lanka, including, *but certainly not limited to*, TRO-Sri Lanka.

TRO-USA never provided funds directly to LTTE; nor does the Complaint even allege such donations. Nor does the Complaint establish that any of TRO-USA's donations went even *in*directly to LTTE, or knowingly or intentionally so. As a result, this Court lacks subject matter jurisdiction.

The Complaint also fails to establish the necessary level of causation between TRO-USA's donations to charities in Sri Lanka and the five bombings in Sri Lanka in 2007-2008. Indeed, TRO-USA ceased all operations November 15, 2007 – *before any of the bombings enumerated in the Complaint occurred* – upon its designation by the U.S. government as a Specially Designated Global Terrorist (which also resulted in an order freezing all of TRO-USA's assets, and blocking any financial transactions by or with TRO-USA).

As discussed below, the case law, some of which has been developed in strongly analogous circumstances involving allegations of financial contributions to terrorist organizations and activities, establishes that the allegations in this Complaint simply do not satisfy the standard for proximate cause of plaintiffs' injuries. Consequently, the Complaint's claims against TRO-USA do not state a claim, and should be dismissed.

In addition, the Complaint's choice of forum is erroneous. The five bombings listed in the Complaint were perpetrated by Sri Lankans in Sri Lanka,

and the victims were all Sri Lankan (and suffered their injuries in Sri Lanka). Thus, while Sri Lanka is clearly the appropriate forum for these claims, Plaintiffs have not pursued them at all in Sri Lanka. In that context, Plaintiffs' failure to exhaust local remedies mandates dismissal of these claims. Moreover, the Complaint should be dismissed on *forum non conveniens* grounds as well.

Statement of the Facts

Defendant TRO-USA adopts and incorporates by reference the "Factual and Procedural History" set forth in the Rajaratnam Motion, at 3-6, except that both the Complaint and Rajaratnam Motion err when they describe the Tamil Rehabilitation Organization as a single organization in the U.S. and Sri Lanka.

Rather, TRO-USA was incorporated in 1994 under the laws of the State of Maryland. *See* Articles of Incorporation, attached to the March 12, 2010, Declaration of Stuart A. White, Esq., in Support of Defendant TRO-USA's Motion To Dimiss (hereinafter "White Declaration") as Exhibit 1. The U.S. Department of the Treasury granted TRO-USA Section 501(c)(3) tax exempt charity status November 19, 1997. *See* Department of Treasury Determination letter, dated November 19, 1997, granting TRO-USA §501(c)(3) tax exempt status, attached as

Exhibit 2 to the accompanying White Declaration.[1]

In Executive Order 13224, issued November 15, 2007, the President designated TRO a Specially Designated Global Terrorist, and concurrently froze TRO-USA's assets and issued a blocking order prohibiting transactions by or with TRO.[2] Complaint at ¶ 70. The Complaint relies on the findings of the Department of Treasury with regards to TRO-Sri Lanka, and does not address TRO-USA as a separate entity. However, due to the designation and attendant blocking order, and prior to the first bombing alleged in the Complaint, TRO-USA ceased all operations as of November 15, 2007.

ARGUMENT

POINT I

THE COMPLAINT AGAINST TRO-USA SHOULD BE DISMISSED BECAUSE IT FAILS TO ESTABLISH PERSONAL JURISDICTION OVER TRO-USA

As detailed below, the Complaint fails to establish that the Court possesses personal jurisdiction over TRO-USA. As explained below, that conclusion

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[1] In order to avoid unnecessary repetition, additional facts are integrated within the respective POINTs to which they are relevant.

[2] TRO-USA is challenging the designation in Executive Order 13244 on the basis, *inter alia*, that while the findings pertained only to TRO-Sri Lanka, TRO-USA and TRO-Sri Lanka are separate organizations.

applied either to "general jurisdiction" or "personal jurisdiction," and to either statutory jurisdiction, common law jurisdiction, or personal jurisdiction as narrowed by the principles of Due Process.

A. *General Principles Regarding Personal Jurisdiction*

The Court must dismiss the Complaint if it lacks personal jurisdiction over TRO-USA. *See* Fed.R.Civ.P. 12(b)(2); *General Electric Company v. Deutz AG*, 270 F.3d 144, 150 (3d Cir. 2001). As the Third Circuit has explained "[a] federal court may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of the state." *Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n,* 819 F.2d 434, 436 (3d Cir. 1987). Further, "[t]he New Jersey long-arm rule extends to the limits of the Fourteenth Amendment Due Process protection." *Carteret Sav. Bank, FA v. Shushan*, 954 F.2d 141, 144 (3d Cir. 1992), *citing* New Jersey Court Rule 4:4-4(c), *and Charles Gendler & Co., Inc. v. Telecom Equip. Corp.*, 102 N.J. 460, 469, 508 A.2d 1127, 1131 (1986); *Avdel Corp. v. Mecure,* 58 N.J. 264, 268, 277 A.2d 207, 209 (1971); *DeJames v. Magnificence Carriers, Inc.,* 654 F.2d 280, 284 (3d Cir. 1981).

Once a defendant has challenged personal jurisdiction, "the plaintiff bears the burden of establishing either that the cause of action arose from the defendant's forum-related activities (specific jurisdiction) or that the defendant has

'continuous and systematic' contacts with the forum state (general jurisdiction)." *Mellon Bank (East) PSFS, N.A. v. Di Veronica Bros., Inc.*, 983 F.2d 551, 555 (3d Cir. 1993).

Regarding the limits Due Process imposes on personal jurisdiction, the Supreme Court long ago established the basic rule that "due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co., v. State of Washington, Office of Unemployment Compensation and Placement, et. al.*, 326 U.S. 310, 316 (1945).

When the defendant is a corporation, the Court in *International Shoe* required that the requisite "presence" in the forum is established only if the "activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on." *Id*., at 317. Further refining the requirements for personal jurisdiction, the Court in *International Shoe* also pointed out that "the casual presence of the corporate agent or even his conduct of a single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to a suit on causes of action unconnected with the activities there." *Id.*

Accordingly, in order to pass muster, a Complaint must allege facts sufficient to demonstrate that the defendant's conduct in connection with the forum state reach such a level that the defendant would "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

B. ***The Complaint Fails to Establish "General Jurisdiction"***

In order to establish personal jurisdiction under a theory of "general jurisdiction" a Complaint must establish that "the defendant has 'continuous and systematic' contacts with the forum state." *Mellon Bank*, 983 F.2d at 555. Examination of the Complaint demonstrates that it has not satisfied that standard.

1. ***TRO-USA Does Not Have Sufficient Connection to New Jersey***

For example, the Complaint acknowledges that, "[t]he TRO branch in the United States, sometimes referred to as the TRO-USA, is located in Cumberland, Maryland." Complaint at ¶ 69.[3] However, absent any supporting evidence, the Complaint also asserts that "TRO maintains a branch office in Princeton Junction, New Jersey." That contention is inaccurate, and the Complaint does not provide any substantiation for that claim. Nor does the Complaint make any further

[3] As noted **ante**, at 2, TRO-USA is *not* a branch of TRO-Sri Lanka, but is a separate entity.

allegations that would establish TRO-USA's "continuous and systematic" contacts with New Jersey (that would be required to confer personal jurisdiction).

As explained **ante**, at 2, 4, TRO-USA was incorporated in 1994 under the laws of the State of Maryland. *See* Articles of Incorporation attached as Exhibit 1 to the accompanying White Declaration.[4] TRO-USA's Articles of Incorporation state that it was formed "exclusively for charitable, religious, education, and scientific purposes[.]" *Id.* The Articles also list TRO-USA's address as 517 Old Town Rd., Cumberland, Maryland 21502. *Id.* The address of TRO-USA's "resident agent" is listed as 17521 Shenandoah Ct., Ashton, Maryland 20861. *Id.* The Articles list TRO-USA's sole director as Dr. Arul Ranjitham. *Id.* Dr. Ranjitham resides in LaVale, Maryland. *See* Personal Property Return Form, attached as Exhibit 5 to Plaintiffs' Response in Opposition to Rajaratnam's Motion.

TRO-USA does not have any connection to New Jersey, and the Complaint fails to allege any that would establish personal jurisdiction. TRO-USA is not

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[4] In determining jurisdiction, the "allegations of the complaint are not accepted as true, and the court may consider evidence outside the pleadings." *In re: Franklin Mut. Funds Fee Litig.*, 388 F. Supp. 2d 451, 459-60 (D.N.J. 2005). The Court also may take judicial notice of governmental documents and matters of public record. *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

incorporated in New Jersey, and it does not have any regulatory relationship with New Jersey. Nor does TRO-USA pay any taxes in New Jersey. TRO-USA does not have an office at the Princeton Junction address listed in the Complaint. Nor does TRO-USA conduct any business or business-related activities from New Jersey. Indeed, it is not alleged that TRO-USA even solicited donations in New Jersey, or that it received any money in New Jersey. Nor is it alleged that any money that may have been donated by people living in New Jersey was sent to Sri Lanka from New Jersey.

2. *TRO-USA Is An Entity Distinct from TRO-Sri Lanka*

Moreover, the Complaint bases its claims on the incorrect assumption that TRO-USA is part of TRO-Sri Lanka, and that TRO-Sri Lanka is a front organization for LTTE. Yet the Complaint must do more than merely allege that TRO-USA is liable for the actions of TRO-Sri Lanka because TRO-USA and TRO-Sri Lanka are separate corporate entities. TRO-USA's distinct legal identity, distinguishing it from TRO-Sri Lanka, is set forth in the documents related to the U.S. Treasury Department's November 19, 1997, grant, pursuant to Section 501(c)(3) of the Internal Revenue Code, of tax exempt status to TRO-USA. *See* Determination Letter, attached as Exhibit 2 to the accompanying White Declaration.

As TRO-USA's application for section 501(c)(3) tax exempt status states, the purpose of TRO-USA is to assist the projects of a "*similar* organization" in Sri Lanka. *See* Application for Recognition of Exemption Under Section 501(c)(3) (emphasis added) (hereinafter "Application"), attached as Exhibit 3 to the accompanying White Declaration. Also, as set forth in the Application, TRO-USA is not "controlled by any other organization." Nor is it "the outgrowth of (or successor to) another organization[.]" *Id.*, at 3, question 5. Indeed, the Complaint quotes the U.S. Department of State, which describes TRO-USA as a "contributor" to TRO-Sri Lanka. Complaint at ¶ 69.

TRO-USA's independence from TRO-Sri Lanka is also demonstrated by the destination(s) of TRO-USA's donations. TRO-USA donated funds to a number of organizations in Sri Lanka, not just to TRO-Sri Lanka. For instance, TRO-USA donated $10,000 to Economic Consultancy House[5] on January 8, 2005. *See* Transfer Payment, dated January 8, 2005, attached as Exhibit 5 to the accompanying White Declaration. TRO-USA made an additional May 2, 2005, donation of $25,000 to Economic Consultancy House. *See* Transfer Payment, dated May 2, 2005, attached as Exhibit 6 to the accompanying White Declaration.

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[5] The Economic Consultancy House is a non-profit aid organization registered with the Government of Sri Lanka. *See* "Info" section of www.techonnet.org, attached as Exhibit 4 to the accompanying White Declaration.

Similarly, TRO-USA donated $10,000 to the Human Development Centre of Sri Lanka. *See* Human Development Centre Receipt, and "About HUDEC" from www.hudecjaffna.org, attached as Exhibit 7 to the accompanying White Declaration. These donations to multiple charities in Sri Lanka other than TRO-Sri Lanka, and consistent with TRO-USA's purpose as enumerated in its Articles of Incorporation, establish that, contrary to the Complaint's naked claim that TRO-USA is the U.S. branch of TRO-Sri Lanka, TRO-USA is an entity separate from TRO-Sri Lanka.[6]

3. *The Complaint's Allegation That TRO-USA Is Connected to LTTE Misstates the Documentary Record Upon Which That Claim Is Based*

In addition, the only allegation in the Complaint that ostensibly connects TRO-USA to LTTE and the bombings at issue here is also inaccurate. At ¶ 79, the Complaint alleges that a letter sent by LTTE to Karunakaran Kandasamy, a defendant in a criminal prosecution in the Eastern District of New York [*United States v. Thavarajah Pratheepan, et. al.*, 06 Cr. 616 (RJD)], confirms that Mr. Kandasamy and TRO-USA were acting as LTTE's "American Branch." *Id.*

[6] These payments represent merely a few examples of a larger number of donations to Sri Lankan organizations other than TRO-Sri Lanka.

However, examination of that assertion reveals that it materially mischaraterizes the source document upon which it claims to be based. The Complaint herein, again at ¶ 79, purports to have obtained the information that "Mr. Karanukaran Kandasamy, also known as 'Karuna,' and the TRO were acting as the American Branch of the LTTE," from the Criminal Complaint against Mr. Kandasamy. *See United States v. Kandasamy*, Complaint 07 MJ 507 (MDG) (E.D.N.Y.) (hereinafter "Kandasamy Criminal Complaint"), attached at Exhibit 8 to the accompanying White Declaration.

Yet that is simply not an accurate description of the Kandasamy Criminal Complaint, which alleges that evidence obtained through a search of the Queens, New York offices of the World Tamil Coordinating Committee (hereinafter "WTCC"), in particular a letter seized in that search, "confirms that the *WTCC* is in fact the American branch of the LTTE, that [Mr. Kandasamy] is the head of the branch, and that [Mr. Kandasamy] and the *WTCC* are directly controlled by LTTE leadership in Sri Lanka." Kandasamy Criminal Complaint at 7, ¶ 11 (emphasis added). Mr. Kandasamy was at the time Director of WTTC, and the letter cited in the Kandasamy Criminal Complaint was addressed to him in that capacity. *Id*., at 7, ¶ 10.

Thus, the Kandasamy Criminal Complaint alleges that *WTCC*, and *not* TRO-USA, was the vehicle through which Mr. Kandasamy operated in the U.S., and which served as LTTE's "American branch." Indeed, the only mention of TRO-USA in the Kandasamy Criminal Complaint is in connection with Vijayshantar Patpanathan (another defendant in the criminal case), and "Individual B," who was subsequently revealed to be Rajakumar Rajaratnam, a co-defendant herein. *Id*., at 11, ¶ 17. Nothing in the Kandasamy Criminal Complaint ties TRO-USA to either Mr. Kandasamy or to the LTTE. Nor does Mr. Kandasamy, who does not (and never did) have any position, formal or informal, with TRO-USA, have any connection to TRO-USA.

Accordingly, the Complaint fails to establish "general" jurisdiction over TRO-USA, and therefore must be dismissed.

C. *The Complaint Fails to Establish "Specific Jurisdiction"*

Personal jurisdiction under a theory of "specific jurisdiction" requires that a Complaint establish that "the cause of action arose from the defendant's forum-related activities." *Mellon Bank*, 983 F.2d at 555. In order to satisfy that requirement, the Complaint must demonstrate that the defendant "purposefully directed" its actions toward the forum. *Burger King Corp., v. Rudzwicz*, 471 U.S. 462, 472-73 (1985).

Here, indisputably, the causes of action alleged in the Complaint arose in Sri Lanka. The Complaint does not allege that TRO-USA participated in or directed the bombings, or commanded LTTE to perform the bombings. Indeed, the Complaint does not allege any acts committed by TRO-USA after November 15, 2007 – which is *before* any of the bombings listed in the Complaint occurred.[7] The only activity alleged to have occurred in New Jersey were the alleged donations by the Rajaratnam defendants. It is not alleged that TRO-USA received the money in New Jersey, solicited money in New Jersey, or that any money was sent from New Jersey to Sri Lanka. As the case law makes clear, these alleged actions are simply too attenuated to render TRO-USA subject to personal jurisdiction in New Jersey.

For example, in *In re: Terrorist Attacks on September 11, 2001*, 538 F.3d 71 (2008) (hereinafter "*In re: 9/11 Attacks*"), the Second Circuit addressed similar issues in a similar context. In *In re: 9/11 Attacks*, the plaintiffs included the families of 9/11 victims, as well as others who had suffered losses due to the September 11, 2001, attacks. *Id*., at 75. The plaintiffs sought compensation from, among other defendants, four Saudi princes. *Id.* The Complaint against the Saudi

[7] The earliest bombing listed in the Complaint occurred November 28, 2007. *See* Complaint, at ¶ 16.

princes rested on the allegation that the princes had funded Muslim charities, which in turn had allegedly funded *al Qaeda*. *Id*., at 76. The plaintiffs claimed personal jurisdiction over the Saudi princes in the Southern District of New York on the ground that, by donating to Muslim charities, the princes had purposefully directed their actions toward the United States. *Id*., at 93.

Rejecting that argument, the Second Circuit held that the alleged actions by the four princes were too attenuated to the torts committed in the Southern District to establish personal jurisdiction. *Id*., at 95. As the Court explained:

> [i]t may be the case that acts of violence committed against residents of the United States were a foreseeable consequence of the princes' alleged indirect funding of al Qaeda, but foreseeability is not the standard for recognizing personal jurisdiction. Rather the plaintiffs must establish that the Four Princes "expressly aimed" intentional tortious acts at residents of the United States.

Id., *quoting Calder v. Jones*, 465 U.S. 783, 789 (1984).

Here, the alleged tortious conduct is even more attenuated from the jurisdiction, as it occurred entirely in Sri Lanka. The only allegations tying these events to the District of New Jersey are donations by the Rajaratnam defendants to TRO-USA, a Maryland corporation. If, as in *In re: 9/11 Attacks*, donations to a charity that provided funds to al Qaeda, which then committed a tortious act in the Southern District of New York, fails to establish personal jurisdiction in SDNY,

surely donations by a Maryland charity that were allegedly provided to an organization in Sri Lanka, which then assisted a Sri Lankan terrorist organization in the commission of tortious activity in Sri Lanka, cannot be sufficient to establish personal jurisdiction in New Jersey. Nothing in the Complaint provides a basis for concluding that TRO-USA "expressly aimed intentional tortious acts" at New Jersey, or residents thereof. Accordingly, the Complaint against TRO-USA should be dismissed for lack of personal jurisdiction.

Moreover, the Supreme Court's recent holding in *The Hertz Corporation v. Friend, et. al.*, 559 U.S. __, 2010 WL 605601 (February 23, 2010), further supports the conclusion that the Court lacks personal jurisdiction over TRO-USA in New Jersey. The federal diversity jurisdiction statute states that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the state where it has its principal place of business." 28 U.S.C. §1332(c)(1). In *Hertz*, the Court settled the debate in the lower courts regarding the definition of a corporation's "principal place of business." 2010 WL 605601, at *4, concluding that

> "principal place of business" is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's "nerve center." And in practice it should normally be the

> place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, *i.e.,* the "nerve center," and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).

Id., at *11.

In *Hertz*, the corporate defendant maintained in California, "273 of [its] 1,606 car rental locations; about 2,300 of its 11,230 full-time employees; about $811 million of its $4.371 billion in annual revenue; and about 3.8 million of its approximately 21 million annual transactions, *i.e.,* rentals." *Id*., at *4. Yet despite that sizable potion of Hertz's business in California, the Court held that the corporation's principal place of business was New Jersey because that was the location of its headquarters. *Id*., at *14.

Here, the Complaint alleges merely that TRO maintained an "office" in New Jersey. Even if that assertion were true (which it is not for the reasons set forth **ante**, at 8-10), maintenance of a single office in New Jersey would still not be sufficient to establish jurisdiction in New Jersey. It is indisputable that TRO-USA is incorporated in Maryland, and that its headquarters are located at 517 Old Town Road, Cumberland, Maryland. Therefore, TRO's "principal place of business" is Maryland.

D. *TRO-USA Is a Domestic Corporation and Therefore Not Subject to the Alien Tort Statute*

Personal jurisdiction is also lacking because TRO-USA is a domestic corporation. Recently, in *Lopez v. Richardson*, 647 F. Supp.2d 1356 (N.D.Ga. 2009), the Court held that a cause of action under the Alien Tort Statute (hereinafter "ATS") cannot be instituted against a domestic actor. *Id*., at 1364. Here, TRO-USA is a domestic corporation, incorporated in Maryland, and as such is not subject to suit pursuant to the Alien Tort Statute.

The District Court in *Lopez* recognized that there is very little authority on this subject matter, including whether the ATS applied to domestic actors, *id*., at 1363, but reasoned that "[w]hile there is nothing in the language of the Alien Tort Statute that precludes its use against domestic U.S. actors, there are obvious reasons why allowing domestic actors to be held liable under the Alien Tort Statute would result in a significant change to the legal landscape." 647 F. Supp.2d at 1364.

Taking direction from the Supreme Court's holding in *Sosa v. Alvarez*, 542 U.S. 692 (2004), the District Court in *Lopez* heeded the Court's warning in *Sosa* that courts should guard against overreaching under ATS, 542 U.S. at 736-37, and held that a cause of action under 28 U.S.C. §1350 may not be brought against a

domestic actor. 647 F. Supp.2d at 1365. Thus, because TRO-USA is a domestic actor and corporation, and is therefore not an appropriate defendant under the Alien Tort Statute, the Complaint against it should be dismissed.

Accordingly, for all the reasons set forth above, the Complaint should be dismissed because it fails to establish personal jurisdiction over TRO-USA.

POINT II

THE COMPLAINT AGAINST TRO-USA SHOULD BE DISMISSED BECAUSE IT FAILS TO ESTABLISH SUBJECT MATTER JURISDICTION

Defendant TRO-USA incorporates by reference and joins the Rajaratnam Motion to dismiss for lack of subject matter jurisdiction. *See* Rajaratnam Motion, at 8-26. Like the other defendants, TRO-USA donated money to legitimate charities within Sri Lanka. Such conduct is not barred by the "law of nations," and therefore does not fall within the purview of the Alien Tort Statute.

The Complaint also asserts jurisdiction pursuant to 28 U.S.C. §1331, claiming this action arises "under the law of the United States." Complaint, at ¶ 54. Yet, the Complaint does not assert any federal claim other than those pursuant to the Alien Tort Statute. Since 28 U.S.C. §1331 does not create any other federal jurisdiction outside of the parameters set forth by the ATS, it does not provide an independent jurisdictional basis, and this Court lacks subject matter jursidiction

for the same reasons as set forth above and in the Rajaratnam Motion, at 8-26.

POINT III

THE COMPLAINT AGAINST TRO-USA SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM UNDER RULE 8(a)(2) FED.R.CIV.P.

In order to survive a motion to dismiss, a Complaint must set forth an adequate statement of the claim and the grounds for relief. Rule 8(a)(2), Fed.R.Civ.P. Here, the Complaint has failed to do so on a variety of grounds. Accordingly, pursuant to Rule 12(b)(6), Fed.R.Civ.P., the Complaint against TRO-USA should be dismissed for failure to state a claim.

A. *The Standards Governing Rule 8(a)(2), Fed.R.Civ.P.*

As the Supreme Court held three years ago in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), a Complaint must contain more than legal conclusions or a "formulaic recitation of the elements of a cause of action" in order to comply with the requirements of Rule 8(a)(2). 550 U.S. at 555. Elaborating, the Court in *Twombly* added that a Complaint must state facts which set forth a plausible claim for relief. *Id*., at 570.

Even more recently, in *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct. 1937 (2009), the Court reinforced that requirement, explaining that "[a] claim has facial plausibility when the plaintiff pleads factual content that allow the court to draw

the reasonable inference that the defendant is liable for the misconduct alleged." *Id*., at 1949. The Court in *Iqbal* added that a Complaint's legal conclusions not supported by facts are *not* entitled to a presumption of truth. *Id*., at 1950.

B. *The ATS Counts Must Be Dismissed Because the Complaint Fails to Demonstrate That TRO-USA Violated the Law Of Nations*

A claim under the ATS must set forth a violation of the "law of nations." 28 U.S.C. §1350. In *Sosa v. Alvarez*, the Supreme Court confined actions available under the ATS to "a very limited set of claims," cautioning that "federal court[s] should not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when §1350 was enacted in [1789]." 542 U.S. at 732.

Donations to charities do not fit within that constricted paradigm, and, consequently, the Complaint's ATS causes of action must be dismissed for failure to state a claim.[8] Pursuant to *Iqbal*, the Complaint's entirely conclusory allegation, at ¶ 145, that TRO-USA "knowingly, intentionally, and purposefully, directly and indirectly, aided and abetted, intentionally facilitated, and/or

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[8] Defendant TRO-USA incorporates and joins the Rajaratnam Motion, Section I(A)(1) Donations to Lawful Charities Do Not Violate the Law of Nations. Defendant's Motion at 9-13.

recklessly disregarded crimes against humanity in violation of the law of nations," need not be assumed true by this Court. 129 S. Ct at 1950.

Rather than accept this "formulaic recitation of the elements of a cause of action" this Court should examine the Complaint's claims to determine if they are factually plausible. *Id.*, at 1949; *Twombly*, 550 U.S. at 570. Such evaluation reveals they are not. The Complaint alleges that TRO-USA provided to TRO-Sri Lanka funds collected within the United States. Yet it is indisputable that during the time period(s) relevant to the Complaint, TRO-Sri Lanka was a registered charity in Sri Lanka, with humanitarian aims.

Indeed, in 2005, the Government of Sri Lanka bestowed upon TRO-Sri Lanka an award for its assistance in the construction of over 10,000 homes. *See* Exhibit A to the December 15, 2009, Declaration of Mohamed Shibly Aziz, submitted in Support of the Rajaratnam Motion. Also, in 2008, TRO-Sri Lanka's donees included the government of Norway, the Danish Refugee Counsel, Operation USA, UNICEF, and CARE International. *See* TRO-Sri Lanka Press Release dated November 19, 2008, Re: Forfeited Funds, attached as Exhibit 9 to the accompanying White Declaration.

If the Complaint's conclusory assertions state a violation of the "law of nations" against TRO-USA, all those other donees, including the government of

Norway and UNICEF, also have committed the same violation of the law of nations. Surely the Supreme Court's admonition in *Sosa* precludes such an anomalous and expansive application of the ATS. Certainly, plaintiffs' effectively limitless construction of the ATS does not fit within the constricted paradigm that has "acceptance among civilized nations." 542 U.S. at 732. Nor would such a ruling be an exercise of the "great caution" and "vigilant doorkeeping" that *Sosa* requires. *Id*., at 728.

Tacitly recognizing that the acts of TRO-USA do not fall within the limited class of actions that are prohibited by the law of nations, the Complaint instead styles the bombings in Sri Lanka as "crimes against humanity," and asserts that TRO-USA aided and abetted those actions. However, for the reasons set forth in the Rajaratnam Motion, at 13-15, aiding and abetting liability does not exist under the ATS. Even if this Court finds that aiding and abetting liability is sufficient to state a claim pursuant to the ATS, TRO-USA incorporates by reference and joins the Rajaratnam Motion, at 15-22, and addresses **post**, at 25-26, the Complaint's failure to allege facts sufficient to establish aiding and abetting liability for TRO-USA.

The Complaint also fails to set forth *any* facts demonstrating that the funds raised by TRO-USA and donated to TRO-Sri Lanka had any substantial effect on

the commission of five specific bombings at issue here. Rajaratnam Motion at 15-17. For example, glaringly absent from the Complaint are (a) any identification of itemization of funds donated from TRO-USA to TRO-Sri Lanka (certainly relevant in light of TRO-USA's donations to multiple institutions in Sri Lanka); (b) any proof that any such funds were subsequently provided to LTTE; (c) any proof that TRO-USA knew that any such funds were diverted to LTTE; and/or (d) any proof that any such funds were related in any way to the bombings at issue herein. Likewise, the Complaint fails to set forth any facts establishing that TRO-USA had the requisite specific intent. *See* Rajaratnam Motion, at 17-22.

Accordingly for the reasons stated herein, and those set forth in the Rajaratnam Motion, at 9-22, it is respectfully submitted that causes of action One and Two against TRO-USA should be dismissed for failure to state a claim.

C. *The ATS Causes of Action Should Be Dismissed Because the Complaint Fails to Set Forth Facts Sufficient to Establish TRO-USA's Liability for Aiding and Abetting*

The two ATS causes of action fail to establish the elements of aiding and abetting, and therefore must be dismissed. As the Second Circuit instructed in *Khulumani v. Daimler Chrysler Corporation, et. al.*, 504 F.3d 254 (2d Cir. 2007), "a defendant may be held liable under international law for aiding and abetting the violation of that law by another when the defendant (1) provides practical

assistance to the principal which has a substantial effect on the perpetration of the crime, and (2) does so with the purpose of facilitating the commission of that crime." *Id*., at 277.

Here, the Complaint fails to establish either element. The Complaint lacks any facts that would establish that the donations collected in the United States by TRO-USA and then transferred to TRO-Sri Lanka had a "substantial effect" on the perpetration of the five bombings, all of which occurred *after* TRO-USA ceased all operations. *See also* Rajaratnam Motion, at 15-18.

The Complaint also fails to establish that the donations made by TRO-USA were for the "purpose of facilitating" the five specific bombings at issue here. *See also* Rajaratnam Motion, at 18-24. The Complaint does not even allege that TRO-USA donated funds with the purpose of facilitating bombings. Instead, the Complaint asserts merely that TRO-USA "knew, or should have known" that its donations would be used for such purposes. However, for the reasons set forth in the Rajaratnam Motion, at 15-24, that form of pleading is insufficient. Accordingly the ATS causes of action against TRO-USA should be dismissed.

D. *The Common Law Tort Causes of Action Fail to State the Requisite Element of Causation and Therefore Must Be Dismissed*

The Complaint's remaining causes of action (Three through Seven) set forth allegations against TRO-USA under common law tort principles. However, notably lacking from the Complaint are any facts to support the notion that TRO-USA caused Plaintiffs' injuries.

As set forth in the Rajaratnam Motion, at 37-38, "[p]roximate cause is a necessary element of negligence, reckless disregard, and both intentional and negligent infliction of emotional distress claims." Similarly, in order to hold TRO-USA liable for wrongful death, or to obtain benefits in a survival action, Plaintiffs must demonstrate that TRO-USA's donations to TRO-Sri Lanka constituted the cause of death. *See* New Jersey Statutes §2A:31-1.

The Complaint's allegations are all based on the repeated assertion that the defendants "knew or should have known, that the private contributions and charitable funds, . . . , were used to support, encourage, entice, and make possible the suicide bombings and other murderous attacks" at issue here. *See e.g.* Complaint at ¶ 57 (each count of the Complaint contains similar but not identical language). However, this conclusory allegation, no matter how often repeated, is insufficient to demonstrate proximate cause.

As the Second Circuit pointed out in *In re: 9/11 Attacks* in the context of personal jurisdiction, foreseeability is *not* the standard for liability. Rather, the Complaint must demonstrate that TRO-USA acted *purposefully*. 538 F.3d at 95. Here, the Complaint's assertion that TRO-USA "should have known" that contributions to TRO-Sri Lanka would result in injury to Plaintiffs is nothing more than a statement that the injuries were foreseeable, and insufficient to sustain a claim.

Moreover, the actions attributed to TRO-USA – collections of funds and donation to TRO-Sri Lanka – are too removed from the cause of the injury to establish liability. As set forth in the Rajaratnam Motion, at 34-35, the facts herein are similar to those in *Linde v. Arab Bank, PLC.*, 384 F.Supp.2d 571 (E.D.N.Y. 2005), in which plaintiffs sought to hold a bank liable for intentional infliction of emotional distress for deaths caused by terrorist attacks in Israel. *Id.*, at 577-578.

In *Linde*, it was established that the terrorist group responsible for the attacks had accounts at the bank, and that the bank paid out funds collected for the families of martyrs. *Id.* Yet the *Linde* court held that even those actions on the part of the bank were "too removed to support common law claims for intentional infliction of emotional distress." *Id.*, at 591.

Here, the alleged actions of TRO-USA are much further removed. TRO-USA allegedly donated funds to TRO-Sri Lanka, which may have then donated the funds to LTTE. Such actions are simply insufficient to demonstrate proximate cause for the injuries suffered by the Plaintiffs. In *In re: Terrorist Attacks on September 11, 2001*, 349 F.Supp.2d 765, 825 (S.D.N.Y. 2005), *aff'd on other grounds*, 538 F.3d 71 (2d Cir. 2008), the District Court addressed the necessary showing for causality when claims are based on the transfer of funds to a bank, which in turn transfers money to a terrorist group.

In an effort to establish the "necessary causal connection" between the donations and the attacks, the plaintiffs therein relied "on the Alien Tort Claims Act [now known as the ATS], RICO [Racketeering Influenced and Corrupt Organizations] statute, the TVPA [Torture Victim Protection Act, the ATA [Antiterrorism Act], and various state laws, including wrongful death, survival, intentional infliction of emotional distress, trespass, assault and battery, negligence, and negligent infliction of emotional distress." *Id*. Yet the District Court dismissed for failure to state a claim all causes of action pertaining to the banks because the complaint in that case did not establish that the transfer of money through the banks was a proximate cause of plaintiffs' injuries. *Id.*

The same is true here. According to the Complaint, TRO-USA allegedly collected money in the United States and then transferred that money to TRO-Sri Lanka. Like the banks in *In re: Terrorist Attacks on September 11, 2001*, TRO-USA cannot be held liable for the subsequent injuries suffered by Plaintiffs. The Complaint herein fails to establish that TRO-USA's collection and transfer of charitable donations from the United Stated to various organizations in Sri Lanka was the proximate cause of Plaintiffs' injuries.

Similarly unavailing is the Complaint's mantra that TRO-USA "knew or should have known" that the donated funds would "make possible" the "murderous attacks" at issue, Complaint at ¶ 57. That conclusory allegation is but one of many possible scenarios that could be drawn from the facts set forth in the Complaint. It is also possible that TRO-USA thought or intended that its donations would be used by TRO-Sri Lanka to assist Tamil people; or that the funds would be dispersed to other charities to assist their operations; or that TRO-Sri Lanka would provide the funds to the LTTE, who would use them to maintain schools, hospitals, and food supplies for Tamil people in the areas it controlled. Any of these possibilities is consistent with the Plaintiffs allegations, but would not incur liability for TRO-USA.

In that context, that actionable as well as non-actionable conclusions can be drawn from the facts set forth in a complaint compels the conclusion that the complaint alleges merely "possibilities" and not the requisite "plausibility," and must be dismissed. *See Chowdhury v. Worldtel Bangladesh Holding, LTD*, 588 F.Supp.2d 375, 386 (E.D.N.Y. 2008) ("[a]ny of these possibilities, as well as others, is consistent with the plaintiff's vague allegations, but some are actionable under the ATCA and others not. What this means to me is that plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'"), *quoting Twombly*, 550 U.S at 570.

Again, the same is true here. The Complaint fails to state a claim under any common law tort theories. The allegations are conclusory, and insufficient to nudge any of the claims "across the line from conceivable to plausible." *Twombly*, 550 U.S at 570. Accordingly the claims against TRO-USA should be dismissed.

POINT IV

THE COMPLAINT AGAINST TRO-USA SHOULD BE DISMISSED FOR FAILURE TO EXHAUST REMEDIES IN SRI LANKA AND ON *FORUM NON CONVENIENS* GROUNDS

TRO-USA incorporates and joins the Rajaratnam Motion to Dismiss for failure to exhaust the local remedies in Sri Lanka, and on grounds of *forum non*

conveniens. *See* Rajaratnam Motion at 26-34.

CONCLUSION

For all of these reasons, and for all of the reasons set forth in the Rajaratnam Motion, Defendant TRO-USA respectfully requests that the Court dismiss the Complaint against TRO-USA.

Dated: March 12, 2010

New York, New York

Respectfully submitted,

JOSHUA L. DRATEL, P.C.

s/Stuart A. White

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KARUNAMUNIGE CHAMILA KRISHANTHI, et al.,	:	Civil Action No. 2:09-cv-05395 (DMC)(MF)
Plaintiffs,	:	[PROPOSED] ORDER GRANTING MOTION TO DISMISS THE COMPLAINT AGAINST DEFENDANT TAMIL REHABILITATION ORGANIZATION
v.	:	
RAJAKUMARA RAJARATNAM, JESUTHASAN RAJARATNAM, and TAMIL REHABILITATION ORGANIZATION,	:	Motion Date: May 3, 2010
Defendants.	:	

WHEREAS, this matter having been opened to the Court by counsel for Defendant Tamil Rehabilitation Organization (hereinafter "TRO-USA") by way of a motion to dismiss Plaintiffs' complaint against TRO-USA dated March 12, 2010, on notice to Jason E. Macias, Esq., Lite DePalma Greenberg & Rivas, Two

Gateway Center, 12th Floor, Newark, New Jersey 07102, and Ronald L. Motley, Esq., Motley Rice LLC, 28 Bridgeside Boulevard, P.O. Box 1792, Mount Pleasant, South Carolina 29465, counsel for plaintiffs, and Heather J. Pellegrino, Esq., Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Ave., NW, Washington, D.C. 20036-1564, counsel for the Defendants Rajakumara Rajaratnam and Jesuthasan Rajaratnam:

WHEREAS, the Court having considered all briefs and supporting papers submitted on behalf of the parties, having heard oral argument of the parties, in consideration of the written and oral submissions of the parties, and for good cause shown:

IT IS on this _____ day of _____, 2010, hereby:

ORDERED that the Defendant's Motion to Dismiss the Complaint as to TRO-USA is GRANTED and

IT IS FURTHER ORDERED THAT the complaint and claims of Plaintiffs against TRO-USA are hereby DISMISSED WITH PREJUDICE.

_____
Dennis M. Cavanaugh
United States District Court Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KARUNAMUNIGE CHAMILA KRISHANTHI, et al.,	:	Civil Action No. 2:09-cv-05395 (DMC)(MF)
Plaintiffs,	:	CERTIFICATE OF SERVICE
v.	:	
RAJAKUMARA RAJARATNAM, JESUTHASAN RAJARATNAM, and TAMIL REHABILITATION ORGANIZATION,	:	
Defendants.	:	

I, Stuart A. White, Esq., hereby certify that on March 12, 2010, I served true and correct copies of the (1) *Notice of Motion and Motion to Dismiss the Complaint Against Defendant Tamil Rehabilitation Organization*; (2) *Memorandum of Law in Support of Motion to Dismiss the Complaint Against*

Defendant Tamil Rehabilitation Organization; (3) *Declaration in Support of Motion to Dismiss the Complaint Against Defendant Tamil Rehabilitation Organization and the Exhibits Attached Thereto*; and (4) *[Proposed] Order Granting Motion to Dismiss the Complaint Against Defendant Tamil Rehabilitation Organization* electronically by means of electronic court filing on the persons at the following addresses:

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Dated: March 12, 2010
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