

Nos. 24-856

In the Supreme Court of the United States

CISCO SYSTEMS, INC., ET AL.,

Petitioners

v.

DOE I, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF INTERNATIONAL HUMAN RIGHTS
ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT
OF RESPONDENTS AND AFFIRMANCE**

KATHERINE GALLAGHER

Counsel of Record

CENTER FOR

CONSTITUTIONAL RIGHTS

666 Broadway, 7th Floor

New York, NY 10012



(212) 614-6464

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CITED AUTHORITIES	ii
INTEREST OF <i>AMICI</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT.	5
I. 'GENERAL PRINCIPLES OF LAW' IS A WELL-RECOGNIZED SOURCE OF INTERNATIONAL LAW	5
II. AIDING AND ABETTING LIABILITY IS A GENERAL PRINCIPLE OF LAW RECOGNIZED BY LEGAL SYSTEMS AROUND THE WORLD.	11
CONCLUSION	20
APPENDIX A	
List of <i>Amici Curiae</i>	1a

TABLE OF AUTHORITIES

	Page(s)
FEDERAL CASES	
<i>Doe I v. Cisco Sys., Inc.</i> , 73 F.4th 700 (9th Cir. 2023), <i>reh’g</i> <i>denied</i> , 113 F.4th 1230 (9th Cir. 2024), <i>cert. granted</i> , No. 24-856, 2026 WL 73088 (Jan. 9, 2026).....	3, 4
<i>Doe v. Exxon Mobil Corp.</i> , 654 F.3d 11 (D.C. Cir. 2011), <i>vacated on other grounds</i> , 527 F. App’x 7 (D.C. Cir. 2013).....	8
<i>First Nat’l City Bank v. Banco Para El Comercio Exterior De Cuba</i> , 462 U.S. 611 (1983).....	8
<i>Flomo v. Firestone Natural Rubber Co.</i> , 643 F.3d 1013 (7th Cir. 2011).....	8
<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	8
<i>Jean v. Dorelien</i> , 431 F.3d 776 (11th Cir. 2005).....	8
<i>Jesner v. Arab Bank, PLC</i> , 584 U.S. 241 (2018).....	2, 4
<i>Kiobel v. Royal Dutch Petroleum Co.</i> , 621 F.3d 111 (2d Cir. 2010)	8

<i>Kiobel v. Royal Dutch Petroleum Co.</i> , 569 U.S. 108 (2013).....	2
<i>Morrison v. Nat’l Australia Bank, Ltd.</i> , 561 U.S. 247 (2010).....	20
<i>The Paquete Habana</i> , 175 U.S. 677 (1900).....	7
<i>Pearcy v. Stranahan</i> , 205 U.S. 257 (1907).....	8
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	8
<i>Sosa v. Alvarez-Machain</i> , 542 U.S. 692 (2004).....	2, 16
<i>United States v. Smith</i> , 18 U.S. 153 (1820).....	8
STATUTES	
Alien Tort Statute, 28 U.S.C. § 1350.....	1
Torture Victim Protection Act, 28 U.S.C. § 1350, note	1, 2
INTERNATIONAL AND FOREIGN CASES	
<i>Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicar. v. Ger.)</i> , Order, 2024 I.C.J. 560 (Apr. 30)	12

<i>Alstom-Veolia case</i> , Regional Court of Appeal, Versailles, 3d ch., Mar. 22, 2013 (Fr.)	18
<i>Case Concerning the Factory at Chorzow</i> , (Ger. v. Pol.) (Claim for Indemnity) (Merits), 1928 P.C.I.J. A/17 (Sept. 13)	6
<i>Corfu Channel Case</i> , (Merits), Judgment, 1949 I.C.J. 4 (Apr. 9).....	6
<i>FIDH/LDH/Gurman and others v X</i> , Regional Court of Appeal, Paris, Jan. 15, 2013, 2012/05160 (Fr.).....	18
<i>The Flick Case</i> , 9 Law Reports of Trials of War Criminals (1949) (U.S. Mil. Trib., Nuremberg Apr.1947)	12
<i>Garcia v. Tahoe Resources Inc.</i> , [2017] BCCA 39 (Can.)	19
<i>Gonzalez. v. United States</i> , Case 1490-05, Inter-Am. Comm’n H.R., Rep. No. 52/07, OEA/Ser.L/V/II.130 (2007)	6,7
<i>Guerrero v. Monterrico Metals</i> , [2009] EWHC (Ch) 2475 (Eng.).....	18
<i>Internationale Handelsgesellschaft</i> , Case 11/70, 1970 E.C.R. 1125	7
<i>Jabir etal. v. KiK Textilien und Non-Food GmbH</i> , Dortmund Regional Court, 7 O 95/15. Jan. 10, 2019 (Ger.)	19

<i>LaFarge SA</i> , Supreme Court for Judicial Matters, Jan. 16, 2024, 22-83.681 (Fr.)	20
<i>Lemire v Ukraine</i> , ICSID No ARB/06/18, Award, Mar. 28 2011	7
<i>Meareg & 2 others v. Meta Platforms, Inc.</i> , [2025] KEHC 4362 (KLR) (Kenya).....	19
<i>Nevsun Resources Ltd. v. Araya</i> , SCC 5 [2020] 1 S.C.R. 166 (Can.).....	19
<i>Oil Platforms (Iran v .U.S.)</i> , 2003 I.C.J. Rep. 161 (Nov. 6).....	7
<i>Prosecutor v. Anraat</i> , District Court of the Hague, 09/751003-04, Dec. 23, 2005 (Neth.)	16
<i>Prosecutor v. Brđanin</i> , Case No. IT-99-36-T, Trial Judgment, Sept. 1, 2004.....	14
<i>Prosecutor v. Eyad Al-Gharib</i> , Koblenz Higher Regional Court, Feb. 21, 2021, 1StE3/21, 3BJs9/19-4 (Ger.).....	16
<i>Prosecutor v. Furundžija</i> , Case No. IT-95-17/1-T, Trial Judgment, Dec. 10, 1998	14, 15
<i>Prosecutor v. Riveros, Müller, y Sibilla</i> , Federal Criminal Court 1 of San Martín, Dec. 11, 2018, Nos. 2855 & 2358 (Arg.)	16

<i>Prosecutor v. Šainović</i> , Case No. IT-05-87-A, Appeals Judgment, Jan. 23, 2014	6
<i>Prosecutor v Tadić</i> , Case No. IT-94-A, Appeal Judgment, July 15, 1999.....	13
<i>Prosecutor v. Vasiljević</i> , Case No. IT-98-32-T, Trial Judgment, Nov. 29, 2002.....	13
<i>Prosecutor v. Taylor</i> , SCSCL-03-1-A, Appeal Judgment, Sept. 26, 2013	13, 14
<i>The Renco Group, Inc v Peru</i> , ICSID Case No UNCT/13/1, Partial Award on Jurisdiction, July 15, 2016	7
<i>Temple of Preah Vihear (Camb. v Thailand)</i> , Merits 1962 ICJ 6 (Judgment of 15 June).....	9
<i>The Zyklon B Case</i> (Trial of Bruno Tesch and Two Others), 1 Law Reports of Trials of War CRIMINALS 93 (1947) (Brit. Mil. Ct., 1946)	12

INTERNATIONAL AND FOREIGN SOURCES

- Articles on Responsibility of States for
Internationally Wrongful Acts, with
commentaries, Rep. of the Int'l Law
Comm'n on the Work of its 53rd Session,
U.N. GAOR, 53rd Sess., Supp. No. 10, at
65, U.N. Doc. A/56/10 (2001) 12
- Business Leaders Initiative on Human
Rights, United Nations Global Compact
and the Office of the High Commissioner
for Human Rights, "A Guide for
Integrating Human Rights into Business
Management" (2006) 14
- Charter Agreement for the Prosecution and
Punishment of the Major War Criminals of
the European Axis, Aug. 8, 1945,
82 U.N.T.S. 279..... 11
- Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or
Punishment, *adopted* Dec. 10, 1984,
1465 U.N.T.S. 85..... 3, 12
- Convention on the Prevention and
Punishment of the Crime of Genocide,
adopted Dec. 9, 1948, 78 U.N.T.S. 277 12

Draft Code of Crimes Against the Peace and Security of Mankind adopted by the International Law Commission, [1996] 2 Y.B. Int'l L. Comm'n 15, U.N. Doc. A/CN.4/SER.A/1996/Add.1 (Part 2).....	14
French Penal Code of 31 December 2005, Act 2004-204 of 9 March 2004.....	18
International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967).....	6
International Crimes Act 2003 (Wet Internationale Misdaden), (Neth.)	18
International Criminal Tribunal for the former Yugoslavia, Rules of Procedure and Evidence, IT/32/Rev. 50 (2015).	6
International Military Tribunal for the Far East art. 5, Jan 19, 1946, T.I.A.S. No. 1589, 4 Bevens 20.....	11
Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, 1060, 33 U.N.T.S. 993.....	5
U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, G.A. Res. 60/147, U.N. Doc. A/Res/60/147 (Dec. 16, 2005).....	4

U.N. Special Representative of the Secretary- General, <i>Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework</i> , U.N. Doc. A/HRC/17/31 (Mar. 21, 2011)	17
--	----

OTHER AUTHORITIES

Antonio Cassese, <i>International Law</i> (2001) ...	5, 9
Bin Cheng, <i>General Principles of Law as Applied by International Courts</i> (1953).....	5, 10
Wolfgang Friedmann, <i>The Uses of ‘General Principles’ in the Development of International Law</i> , 57 Am. J. Int’l L. 279 (1963).....	11
International Commission of Jurists, <i>Report of Legal Expert Panel on Corporate Complicity in International Crimes</i> , Vols. 1-3 (2008).....	17
International Federation of Human Rights, <i>Guide on Corporate Accountability for Human Rights Abuses</i> (2021).....	18
Frances T. Freeman Jalet, <i>The Quest for the General Principles of Law Recognized by Civilized Nations – A Study</i> , 10 U.C.L.A. L.Rev. 1041 (1963).....	11

Charles T. Kotuby, Jr. & Luke A. Sobota, <i>General Principles of Law and International Due Process</i> (2017)	5
Lord McNair, Q.C., <i>The General Principles of Law Recognized by Civilized Nations</i> , 33 Brit. Y.B. Int'l L. 1 (1957)	11
Anita Ramasastry & Robert C. Thompson, FAFO, <i>Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law: A Survey of Sixteen Countries</i> (2006).....	17
Restatement (Third) of U.S. Foreign Relations Law (Am. Law Inst. 1987)	7
Charles S. Rhyne, <i>International Law: The Substance, Processes, Procedures and Institutions for World Peace with Justice</i> (1971).....	10
Rudolf Schlesinger, <i>Research on the General Principles of Law Recognized by Civilized Nations</i> , 51 Am. J. Int'l L. 734 (1957).....	10

INTEREST OF *AMICI*

Amici curiae (listed in the Appendix) are international human rights organizations with an interest in the proper understanding and assessment of aiding and abetting liability.¹ As part of their work in countries around the world, *Amici* regularly examine through practice, advocacy and scholarship, the various ways that perpetrators, including corporate actors, are held liable for conduct constituting violations of international norms, including conduct that aids and abets or otherwise substantially furthers the commission of serious harms.

The issue presented in this case is whether those who aid and abet torture, extrajudicial killing and other specific, obligatory and universal violations of international law are exempt from liability under the Alien Tort Statute, 28 U.S.C. § 1350 (“ATS”) and the Torture Victim Protection Act, 28 U.S.C. § 1350, note (“TVPA”). *Amici* submit that such conduct violates a general principle of law – one of the sources of international law – namely, that those who aid, abet or are otherwise complicit in a violation bear legal liability, and as such, falls squarely within the ambit or focus of the ATS.

Amici join this brief to assist the Court in determining the content of international law through an examination of general principles of law, on the

¹ Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made any monetary contribution for the preparation or submission of this brief.

issue of aiding and abetting liability. Because they are based in different countries and through their networks represent all regions of the world, with varying legal backgrounds, *Amici* are able to provide a unique consensus position on the norms accepted as general principles in major legal systems and the appropriate use of general principles of law in relation to corporate liability and secondary liability. Drawing on their collective and comparative expertise, *amici* demonstrate the overwhelming support in law and practice for holding perpetrators accountable, particularly in their home jurisdiction, when they knowingly assist, further, facilitate or otherwise aid and abet the commission of serious violations including torture and extrajudicial killing.

SUMMARY OF ARGUMENT

In *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004), this Court held that the ATS provides jurisdiction over a limited class of violations of international law, namely those that are specific, universal and obligatory. See *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 117 (2013) (same); *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 257-58 (2018) (same).

This case asks whether a U.S. corporation can be liable under the ATS for domestic conduct that aids or abets the commission of violations of well-recognized international norms prohibiting torture and extrajudicial killing.² Because aiding and

² Although this brief is focused on the ATS, because the TVPA was enacted to comply with the United States' international obligations to prevent, punish and redress torture and extrajudicial killing, and thus looks to international law to determine the scope and contours of liability, the analysis herein can also assist the Court in addressing the Second

abetting liability is not only recognized as part of customary international law, *see* Respondents’ Br. 18-21,³ but is also recognized as a general principle of law, and as explained herein thus satisfies the *Sosa* test, *amici* respectfully submit that the court below was correct when it found that aiding and abetting was actionable under the ATS. *Doe I v. Cisco Sys., Inc.*, 73 F.4th 700, 717-18 (9th Cir. 2023), *reh’g denied*, 113 F.4th 1230 (9th Cir. 2024), *cert. granted*, No. 24-856, 2026 WL 73088 (Jan. 9, 2026).

General principles of law are recognized as an authoritative source of international law, codified in the Statute of the International Court of Justice and are applied by international tribunals and domestic courts alike, including this Court. As such, a general principle of law analysis can resolve the question of whether aiding and abetting liability is part of international law cognizable under the ATS.

Aiding and abetting as a form of accomplice liability is a fundamental feature of all major legal systems and indeed, individuals and corporations continue to be subject to suit and sanction in courts

Question, which *amici* submit should be answered in the affirmative. *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4(1) & 14 (States are obligated to criminalize and provide a remedy for “all acts of torture” including “an act by any person which constitutes complicity”), *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (“Torture Convention”).

³ *Amici* have been informed that additional *amicus curiae* briefs on other sources of international law are being submitted in support of Respondents, and therefore focus specifically on general principles as an independent source of international law.

throughout the world for conduct that violates national and international norms. While the form of accountability for egregious acts may vary, liability for such conduct is a recognized general principle of law, and therefore, a part of international law.

The Ninth Circuit was correct to apply the two-step *Sosa* test to aiding and abetting liability, and then conclude, with regard to the first step, that “aiding and abetting liability is sufficiently definite and universal to be a viable form of liability under the ATS.” *Doe I*, 73 F.4th at 718. To so conclude, the court below correctly looked to treaties and practice by international courts and tribunals to determine the content of customary international law.

These same sources, alongside a survey of national laws and practice as detailed herein, also confirm the existence of aiding and abetting liability as a general principle of international law. Looking to this source of international law has the additional benefit of assuring the Court that recognizing such liability under the ATS – rather than exempting the unlawful complicity of a U.S. corporation – is in accord with other States’ practice and as such, “promote[s] harmony in international relations.” *Jesner*, 584 U.S. at 270.⁴

⁴ *Amici* observe that their conclusion that aiding and abetting liability constitutes a general principle of law is in accord with international human rights law, including the right to a remedy, that also informs claims brought under the ATS. See U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/Res/60/147 (Dec. 16, 2005).

ARGUMENT

I. ‘General Principles of Law’ Is a Well-Recognized Source of International Law.

General principles of law are legal norms that are “accepted by all nations in *foro domestic*” and are discerned by reference to the common domestic legal doctrines in representative jurisdictions worldwide.⁵ General principles “constitute both the backbone of the body of law governing international dealings and the potent cement that binds together the various and often disparate cogs and wheels of the normative framework of the community.”⁶

Such “general principles of law recognized by civilized nations” is one of the three primary sources of international law, having been codified as such, alongside international conventions and international customary law, in the Statute of the International Court of Justice (“ICJ”), of which the United States is a party. Statute of the International Court of Justice, art. 38(1)(c), June 26, 1945, 59 Stat. 1055, 1060, 33 U.N.T.S. 993. Other major international treaties, including the International

⁵ Charles T. Kotuby, Jr. & Luke A. Sobota, GENERAL PRINCIPLES OF LAW AND INTERNATIONAL DUE PROCESS 12 (2017) (citing debate on drafting sources of international law and inclusion of general principles). See Antonio Cassese, INTERNATIONAL LAW 151 (2001) (general principles are drawn from the rules of the most significant “common points” of law); Bin Cheng, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS 390 (1953) (noting that general principles encompass “the fundamental principles of every legal system” and that they “belong to no particular system of law but are common to them all”).

⁶ Cassese, *supra* note 5 at 151.

Covenant on Civil and Political Rights (“ICCPR”), recognize general principles as a source of international law. ICCPR, art. 41(1)(c) (invoking general principles in relation to domestic exhaustion) & art. 15(2) (looking to “general principles of law recognized by the community of nations” as the basis for identifying acts and omissions as crimes), Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967). *See also* Int’l Crim. Trib. for the former Yugoslavia, Rules of Procedure and Evidence, IT/32/Rev. 50 (2015), Rule 89 (B) (“In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.”).

International institutions routinely establish the content of international law through an exercise in comparative law to determine general principles, as demonstrated by a review of jurisprudence of the ICJ, *see, e.g.*, Case Concerning the Factory at Chorzow (*Ger. v. Pol.*) (Claim for Indemnity) (Merits), 1928 P.C.I.J. (ser. A) No. 17, at 29 (Sept. 13) (“[I]t is a general conception of law that every violation of an engagement involves an obligation to make reparation.”); Corfu Channel Case (Merits), Judgment, 1949 I.C.J. 4, 84 (Apr. 9) (relying on general principles of law after concluding that no treaty applied to the conduct at issue), and specialized international tribunals,⁷ including

⁷ *See, e.g.*, *Prosecutor v. Šainović*, Case No. IT-05-87-A, Appeals Judgment, ¶ 1643, (Int’l Crim. Trib. for the former Yugoslavia Jan. 23, 2014) (looking to national laws to define elements of aiding and abetting liability pursuant to “doctrine of general principles of law recognized by nations”); *Gonzalez v. United States*, Case 1490-05, Inter-Am. Comm’n H.R., Report No.

investor-State arbitration tribunals.⁸ *See also* Oil Platforms (*Iran v. U.S.*), Separate Opinion of Judge Simma, 2003 I.C.J. Rep. 161, 354-58 (Nov. 6) (relying on general principles of law to find joint and several liability an available theory of liability under international law for multiple tortfeasors).

The law of the United States, and the decisions of this Court, recognize that international norms can be derived from general principles of law. The Restatement provides that “[a] rule of international law is one that has been accepted as such by the international community of states . . . by derivation from *general principles common to the major legal systems of the world.*” RESTATEMENT (THIRD) OF U.S. FOREIGN RELATIONS LAW § 102(1)(c) (Am. Law Inst. 1987) (emphasis added). As this Court affirmed in *The Paquete Habana*, “[i]nternational law is part of our law” and “resort must be [made] to the customs and usages of civilized nations” to ascertain and apply it. 175 U.S. 677, 700 (1900). Accordingly, this

52/07, OEA/Ser.L/V/II.130, doc. 22, rev. 1 ¶ 42 (2007) (relying on “generally recognized principles of international law” to hold that remedies for domestic violence “must be both adequate . . . [and] effective.”). *See also Internationale Handelsgesellschaft*, Case 11/70, 1970 E.C.R. 1125, ¶ 2 (finding “respect for fundamental rights forms an integral part of the general principles of law” and that the protection of those rights in international law is “inspired by the constitutional traditions common to the Member States”).

⁸ *See, e.g., Lemire v Ukraine*, ICSID Case No ARB/06/18, Award, ¶ 155 (Mar. 28 2011) (looking to general principles on matters related to burden of proof); *The Renco Group, Inc. v Peru*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction, ¶ 175 (July 15, 2016) (“The abuse of rights doctrine is an aspect of the principle of good faith and is a well-established general principle of international law”).

Court has repeatedly turned to general principles to determine the content of international law. *See United States v. Smith*, 18 U.S. 153, 160-61 (1820); *Pearcy v. Stranahan*, 205 U.S. 257, 270 (1907); *First Nat'l City Bank v. Banco Para El Comercio Exterior De Cuba*, 462 U.S. 611, 623, 633 (1983).⁹

This use of general principles would have been entirely familiar to the founding generation and the drafters of the ATS, *see, e.g., Smith*, 18 U.S. at 160-61 (determining that piracy is a crime under the law of nations), and contemporary litigation under the ATS also turns to general principles as a source of *Sosa*-qualified norms. *See e.g., Flomo v. Firestone Natural Rubber Co., LLC*, 643 F.3d 1013, 1019 (7th Cir. 2011) (finding corporate liability under the ATS because “corporate tort liability is common around the world”); *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011), *vacated on other grounds*, 527 F. App'x 7 (D.C. Cir. 2013) (establishing corporate liability in principle under the ATS and admonishing the majority in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) for overlooking general principles); *Jean v. Dorelien*, 431 F.3d 776 (11th Cir. 2005) (consulting general principles to determine exhaustion of domestic remedies requirements in the context of the TVPA).

The three distinct, but interrelated, primary

⁹ *See also Graham v. Florida*, 560 U.S. 48, 79-82 (2010) (continuing “longstanding practice in noting the global consensus” and noting United States was only nation to impose life without parole sentences on juvenile nonhomicide offenders); *Roper v. Simmons*, 543 U.S. 551, 575-78 (2005) (finding reference to the laws of other countries “instructive” for interpretation of Eighth Amendment).

sources of international law – treaties, custom or customary international law, and general principles – serve to ensure that appropriate and sufficient guidance exists for determining the content of international law across a continuum of formation and practice. Each source, by definition, manifests a form of international consensus.

Treaties and customary international law do not, and were not intended to, address every question regarding the content of international law, as evinced by the inclusion of general principles in the Statute of the ICJ. To the extent that these two sources leave questions unaddressed, general principles of law are intended to fill any “gaps that are bound to exist in the normative network of any community.”¹⁰

Both customary international law and general principles look to municipal or national systems in defining their content. The relationship between customary international law and general principles can be a close one, but each concept remains distinct: the former can be said to be concerned with usage and practice, while the latter turns on the recognition of an underlying principle, including by reference to

¹⁰ Cassese, *supra* note 5 at 151; *See also* Separate Opinion of Vice-President Alfaro, *Temple of Preah Vihear (Camb. v Thailand)*, Merits, Judgment, 1962 I.C.J. 6, at 42-43 (June 15), (“While refraining from discussing the question whether the principle of the binding effect of a State’s own acts with regard to rights in dispute with another State is or is not part of customary international law, I have no hesitation in asserting that this principle, known to the world since the days of the Romans, is one of the ‘general principles of law recognized by civilized nations’ applicable and in fact frequently applied by the International Court of Justice in conformity with Art 38, para. I (c) of its Statute”).

national laws and enforcement. Unlike customary international law—which is proved through the universal practice of states *inter se* combined with *opinio juris*, *i.e.*, the conviction that a state’s conformity to some general practice of States is a matter of legal obligation—general principles are proved by seeking the common denominator among domestic legal systems.

A general principles analysis does not look for “one law” for the entire world but should be understood as “crystallizing a core of legal principles.” Rudolf B. Schlesinger, *Research on the General Principles of Law Recognized by Civilized Nations*, 51 AM. J. INT’L L. 734, 741 (1957). Thus, “outside of that common core the detailed legal rules followed by the various nations necessarily differ, and perhaps should differ.” *Id.* It is not required that a legal principle exists in the legal systems of all nations in order for it to be considered a “general principle of law recognized by civilized nations.” See Charles S. Rhyne, INTERNATIONAL LAW: THE SUBSTANCE, PROCESSES, PROCEDURES AND INSTITUTIONS FOR WORLD PEACE WITH JUSTICE 62 (1971).

Notably, a “general principles” analysis has aided the development of a number of areas of law related to corporate operations with international dimensions, including contract, anti-trust and trademark law.¹¹ See Wolfgang Friedmann, *The Uses*

¹¹ Legal “responsibility” has been recognized as a general principle: “[i]t is a logical consequence flowing from the very conception of law and is an integral part of every legal order.” Cheng, *supra* note 5, at 389.

of 'General Principles' in the Development of International Law, 57 AM. J. INT'L L. 279 (1963). See also Lord McNair, Q.C., *The General Principles of Law Recognized by Civilized Nations*, 33 BRIT. Y.B. INT'L L. 1 (1957) (discussing use of general principles in contract law in the context of international development or natural resource concessions involving multinational corporations); Frances T. Freeman Jalet, *The Quest for the General Principles of Law Recognized by Civilized Nations – A Study*, 10 U.C.L.A. L. Rev. 1041, 1043 (1963) (submitting that use of general principles has occurred primarily in the area of private international law to “enlighten the international business world”). It is therefore especially appropriate to look to general principles in this case involving alleged corporate complicity.

II. Aiding and Abetting Liability is a General Principle of Law Recognized by Legal Systems around the World.

Accomplice liability is inherent to all legal systems, and has long been recognized under international law. Drawing from both civil and common law systems' law and practice, post-World War II treaties codified accomplice liability in the first tribunals established to punish international crimes. Article 6 of the Nuremberg Charter provided for criminal liability of “leaders, organisers, instigators and accomplices” alleged to have committed the crimes outlined in the Charter. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 6, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279; see also International Military Tribunal for the Far East art. 5, Jan. 19, 1946, T.I.A.S. No. 1589, 4 Bevans 20

(same). The trials that followed included prosecutions for aiding and abetting, including as applied to or for the conduct of corporate actors. *See, e.g., The Zyklon B Case* (Trial of Bruno Tesch and Two Others), 1 Law Reports of Trials of War CRIMINALS 93 (1947) (Brit. Mil. Ct., Mar. 1-8, 1946) (recognizing liability for supplying Zyklon B to Nazi gas chambers); *The Flick Case*, 9 Law Reports of Trials of War Criminals 1 (1949) (U.S. Mil. Tribunal, Nuremberg Apr. 20–22, 1947) (recognizing aiding and abetting through financial contributions).

International treaties that define international law offenses routinely oblige state parties to recognize and incorporate an array of forms of complicity or accessory liability, including aiding and abetting, into their domestic legal frameworks. *See, e.g.,* Convention on the Prevention and Punishment of the Crime of Genocide, art. 3(e), *adopted* Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951);¹² Torture Convention, art. 4(1) (States are obligated to criminalize and provide a remedy for “all acts of torture” including “an act by any person which constitutes complicity”). *See also* Int’l Law Comm’n, Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, art. 16, Rep. of the Int’l Law Comm’n on the Work of its Fifty-Third Session, U.N. GAOR, 53rd Sess., Supp. No. 10, at 65, U.N. Doc. A/56/10 (2001),

¹² The International Court of Justice is currently considering a case alleging breaches of the Genocide Convention for aiding and abetting or otherwise being complicit in genocide. *See* Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (*Nicar. v. Ger.*), Order, 2024 I.C.J. 560 (Apr. 30).

(recognizing that a state that “aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if ... that State does so with knowledge of the circumstances of the internationally wrongful act.”). The statutes of all modern international tribunals and courts include aiding and abetting. *See, e.g.*, ICTY Statute, art. 7(1); ICTR Statute, art. 6(1); *Prosecutor v Tadić*, Case No. IT-94-1-A, Judgment (Int’l Crim. Trib. for the former Yugoslavia July 15, 1999).

In assessing individual criminal responsibility in such cases, each of these courts assesses whether the *actus reus* and *mens rea* of the charged mode of liability as well as of the substantive violation are satisfied for each claim; the satisfaction of the elements of both the mode of liability *and* substantive violation is necessary to arrive at a conviction, and then assessment of each informs a given sentence. In other words, the mode of liability is an integral part of a claim. *See, e.g.*, *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgment, ¶¶ 117-18, 214-15 (Int’l Crim. Trib. for the former Yugoslavia Nov. 29, 2002); *Prosecutor v. Taylor*, Case No. SCSL-03-1-A, Judgment, ¶¶ 362-85 (Special Court for Sierra Leone Sept. 26, 2013) (“*Taylor* Appeal Judgment”). Accordingly, the international tribunals and courts regard aiding and abetting *as part of* the international law violation; fulfilment of the elements of a mode of liability is as central and indeed necessary to establish an international law violation as fulfilment of the elements of the substantive crime (e.g., torture) itself. *See, e.g.*, *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Judgment, ¶¶ 367-69, 466-76, 1110 (Int’l Crim. Trib.

for the former Yugoslavia Sept. 1, 2004); *Taylor* Appeal Judgment, ¶¶ 651-52, 661-70.

The International Criminal Tribunal for the former Yugoslavia conducted a comprehensive review of laws and practice regarding aiding and abetting liability in the seminal case, *Prosecutor v. Furundžija*, notably examining precedents drawing from both common law and civil law systems. Case No. IT-95-17/1-T, Judgment, ¶¶ 199-226 (Int'l Crim. Trib. for the former Yugoslavia Dec. 10, 1998). The Chamber concluded that aiding and abetting is a well-established theory of liability under international law that consists of knowingly providing practical assistance or encouragement that has a substantial effect on the commission of the offense.¹³ *Id.* at ¶¶ 235, 249.

Numerous non-binding international instruments also include aiding and abetting liability. *See, e.g.*, Draft Code of Crimes Against the Peace and Security of Mankind adopted by the International Law Commission, art. 2(3)(d), [1996] 2 Y.B. Int'l L. Comm'n 15, 18, U.N. Doc. A/CN.4/SER.A/1996/Add.1 (Part 2) (imposing liability on an individual who “knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission”); Bus. Leaders Initiative on Hum. Rts., U.N. Glob. Compact & Off. of U.N. High Comm'r for Hum. Rts., A Guide for Integrating Human Rights into Business

¹³ It is notable that the Trial Chamber was careful to “distinguish aiding and abetting from the case of co-perpetration involving a group of persons pursuing a common design to commit crimes” akin to conspiracy. *Furundžija* Judgment, ¶ 210.

Management 9 (2006) (stating “[a] company is complicit in human rights abuses if it authorizes, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse”) (citing Off. of U.N. High Comm’r for Hum. Rts., *Briefing Paper: The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity*, in U.N. Glob. Compact & Off. of U.N. High Comm’r for Hum. Rts., *Embedding Human Rights into Business Practice* 19 (2004)).

Domestic jurisdictions around the world have long relied upon various forms of accomplice liability to reach parties – natural person or juridical entities – that knowingly and substantially assist other actors in breaching international or domestic law, and have regularly applied the standard for aiding and abetting set forth in *Furundžija*.¹⁴ While the mechanisms and laws under which such accountability is rendered may vary across legal systems—including civil, criminal and administrative penalties, the common core remains constant: those who aid, abet or otherwise knowingly or purposefully further unlawful conduct can be held responsible.

In recent years, there has been an increase in the number of cases brought globally against individuals who have aided and abetted or otherwise been

¹⁴ *Amici* understand that there will be a separate amicus brief that surveys civil liability in continental legal systems. See Br. of The Guernica 37 Centre for International Justice as Amicus Curiae Supporting Respondents.

complicit in serious international law and human rights violations, under criminal and civil laws.¹⁵ For example, in December 2025, Congolese warlord Roger Lumbala Tshitenga was found guilty in French criminal proceedings for complicity in crimes against humanity committed in the Democratic Republic of the Congo in 2002-2003; in 2021, Eyad Al-Gharib, a former Syrian intelligence member, was convicted in Germany for aiding and abetting crimes against humanity in Syria; and Switzerland indicted former Algerian Defense Minister Khaled Nezzar for complicity in war crimes and crimes against humanity before Nezzar died in 2023. *See* Cases, TRIAL Int'l, <https://trialinternational.org/cases/>; *Prosecutor v. Eyad Al-Gharib*, Oberlandesgericht [OLG] Koblenz [Higher Regional Court of Koblenz] Feb. 21, 2021, 1StE 3/21, 3 BJs 9/19-4 (Ger.); *see also* Rechtbank 's-Gravenhage, Dec. 23, 2005, 09/751003-04, LJN: AX6406 (Prosecutor/van Anraat) (Neth.) (conviction for complicity in war crimes for supplying chemical weapons to Iraq for Anfal campaign); Juzgado Federal Criminal N° 1 de San Martín [Federal Criminal Court No. 1 of San Martín], Dec. 11, 2018, “Estado c. Riveros, Müller, y Sibilla/tribunal oral,” Nos. 2855 (FSM 27004012/2003/TO4) & 2358 (FSM 1294/2011/TO1) (Arg.) (convicting two corporate officers of complicity in crimes against humanity).

¹⁵ It important to recall that the distinction between criminal prosecutions and damages actions is largely inapt in countries that follow the civil law system, as proceedings in those countries often allow for victims to seek damages from a defendant as part of a criminal case, a practice highlighted by Justice Breyer in his discussion of international comity in *Sosa*. 542 U.S. at 762-63 (Breyer, J., concurring).

Furthermore, comparative studies have affirmed that corporations can be held legally liable for their role in aiding and abetting egregious violations, and most regularly are held to account in their home jurisdictions as States enact specific legislation or bring enforcement actions to meet their duty to protect human rights in the context of business activities. See REP. OF INT'L COMM'N OF JURISTS EXPERT LEGAL PANEL ON CORPORATE COMPLICITY IN INT'L CRIMES, 1-3 CORPORATE COMPLICITY & LEGAL ACCOUNTABILITY (2008); Anita Ramasastry & Robert C. Thompson, FAFO, *Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law: A Survey of Sixteen Countries* (2006). See also John Ruggie (Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Rep. on the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, ¶¶ 13, 17, 25, U.N. Doc. A/HRC/17/31, (Mar. 21, 2011) (noting that corporations can be complicit when contributing to adverse human rights impacts committed by primary perpetrators and explains that civil actions can be based on a corporation's alleged contribution to human rights harms).

Corporate complicity in international human rights abuses often involves supplying individual perpetrators with the necessary equipment or support to carry out the atrocity. To that end, countries have enacted or strengthened domestic laws to hold corporations and corporate actors accountable through complicity theories, including aiding and abetting. See, e.g., International Crimes

Act of 19 June 2003, § 2(2) Wet Internationale Misdaden (Neth.) (prohibits the commission of war crimes and crimes against humanity by Dutch nationals and companies including acts that amount to complicity in crimes, such as the facilitation or the aiding and abetting of crimes). Recent developments in France are particularly notable. The French Penal Code imposes corporate liability in cases where legal persons contributed some form of assistance in the commencement of international crimes.¹⁶ Investigations against French companies have been initiated under this law, including, including against Qosmos, a French company, alleged to be complicit in acts of torture in Syria. *See also* Alstom-Veolia case, Cour d'appel [CA] [regional court of appeal] Versailles, 3e ch., Mar. 22, 2013, 11/05331 (Fr.).

Accordingly, there has been a rise in the number of cases brought in national courts around the world against corporations that have aided and abetted or otherwise been complicit in international law violations under criminal and civil laws. *See generally* FIDH *Guide on Corporate Accountability for Human Rights Abuses*, Int'l Fed'n for Hum. Rts. (FIDH) (2021), <https://corporateaccountability.fidh.org/the-guide/>. Corporations are being held to account for their role in aiding and abetting or otherwise being complicit in human rights violations in their home state through civil actions and criminal investigations and proceedings. *See, e.g., Guerrero v. Monterrico Metals plc*, [2009] EWHC (Ch) 2475

¹⁶ Code de procédure pénale [C. pr. pén] [Criminal Procedure Code] art. 121-2 du 31 decembre 2005, Loi 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité [Law 2004-204 of March 9, 2004 Adapting the Justice System to Changes in Crime] (Fr.).

(Eng.) (tort action against U.K. based mining business Monterrico Metals and its Peruvian subsidiary, Rio Blanco Copper, alleging complicity in violence against protesters of their mining project); *Garcia v. Tahoe Resources Inc.*, [2017] BCCA 39 (Can.) (suit by Guatemalan protestors against Tahoe for *inter alia* aiding and abetting battery resulting from a shooting by security personnel at Tahoe’s mine); *Jabir et al. v. KiK Textilien und Non-Food GmbH*, Landgericht [LG] Dortmund [Dortmund Regional Court], Jan. 10, 2019, 7 O 95/15 (Ger.) (case on behalf of Pakistani textile factory laborers addressing supply chain liability of German retailing company for death of relatives and physical injury). *See also Nevsun Resources Ltd. v. Araya*, SCC 5 [2020] 1 S.C.R. 166, para. 113 (Can.) (corporations do not “enjoy a blanket exclusion under customary international law from direct liability for violations of “obligatory, definable, and universal norms of international law”, or indirect liability for their involvement in [...] “complicity offenses”).

Legal actions also have arisen out of business operations in a variety of sectors including technology and surveillance or in the context of war. *See Meareg & 2 others v. Meta Platforms, Inc.*, [2025] KEHC 4362 (KLR), Apr. 3, 2025, (Kenya) (claims that Meta *inter alia* failed to take down content that incited violence and hatred leading to deaths allowed to proceed); *FIDH/LDH/Gurman and others v. X*, Cour d’appel [CA] [regional court of appeal] Paris, Pôle 7, 6ème ch., Jan. 15, 2013, 2012/05160 (Fr.). (case against French surveillance technology company Amesys for complicity to torture in respect of material supplied to Libyan regime used in repression of civilian population); *LaFarge SA*, Cour

de cassation [Cass. Crim.] [Supreme Court for Judicial Matters] Jan. 16, 2024, 22-83.681 (Fr.) (confirming charge against French company for complicity in crimes against humanity in Syria).

As this survey of practice demonstrates, because conduct that constitutes aiding and abetting is redressable conduct that violates international law – precisely that which ATS “seeks to regulate” in giving federal courts jurisdiction over international law violations – it meets the *Sosa* test. *See Morrison v. Nat’l Austl. Bank, Ltd.*, 561 U.S. 247, 266-68 (2010) (citation omitted). Accordingly, this Court should answer the question of whether aiding and abetting liability can be recognized under the ATS in the affirmative.

CONCLUSION

For the foregoing reasons, the decision of the court below should be affirmed.

Respectfully submitted,

KATHERINE GALLAGHER
Counsel of Record
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th floor
New York, NY 10012
(212) 614-6464

Dated: March 27, 2026

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX	
List of <i>Amici Curiae</i>1a

Appendix

ALTSEAN-Burma

Asociacion Pro derechos Humanos – APRODEH
(Peru)

Canadian Lawyers for International Human Rights (Canada)

Center for Constitutional Rights (United States)

Centre for Applied Legal Studies (South Africa)

EarthRights International (United States)

European Center for Constitutional and Human Rights (Germany)

Global Legal Action Network (Ireland & The United Kingdom)

International Association of Democratic Lawyers (Secretariat in Belgium, with members in more than 90 countries)

International Federation for Human Rights (Secretariat in France, comprised of 196 human rights organizations from 116 countries, representing all regions of the world)

2a

Open Society Justice Initiative (Global)

**ProDESC - Proyecto de Derechos Económicos,
Sociales y Culturales** (Mexico)