
Asset-Stripping: Responses to the Financing of Terrorism and Crime

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Holding Banks Liable Under the Anti-Terrorism Act for Providing Financial Services to Terrorists:

An Ineffective Legal Remedy in Need of Reform



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Anti-Terrorism Act, 18 U.S.C. section 2333(a)



- Provides a private right of action for any United States national injured “by reason of” and act of “international terrorism.”

Legislative Intent



- To deter acts of international terrorism by punishing terrorists and their financial supporters “where it hurts them most: at their lifeline, their funds.”

Estates of Ungar ex rel. Strachman v. Palestinian Authority, 304 F. Supp.2d, 232, 238 (D.R.I. 2004) (quoting 136 Cong. Rec. S14279-01 (1990) (statement of Sen. Grassley)).

The ATA Has Been Largely an Ineffective Legal Remedy



- Only one bank has been held liable under the ATA.

See Jury Verdict, Linde v. Arab Bank, No. 04-CV-02799 (E.D.N.Y. Sept. 22, 2014).

Pending ATA Cases Against Banks



- Freeman v. HSBC Holdings PLC
- Wultz v. Bank of China
- Strauss v. Credit Lyonnais, S.A.
- Weiss v National Westminster Bank PLC

International Terrorism



Means activities that ---

- A. Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States

B. Appear to be intended--

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping;
and

International Terrorism



C. Occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries.

Scope of Liability

- Does the ATA Authorize Liability for Aiding and Abetting Acts of International Terrorism?

Scope of Liability - continued

- What is the mental state required to be proven to support a violation of section 2333(a)?

Proposed Statutory Amendments to Section 2333(a)



- a) Explicitly authorize liability for aiding and abetting
- b) The mens rea for the material support statute 18 U.S.C. section 2339B, should be incorporated into section 2333(a)