

REPRESENTING SOVEREIGNS AND HEADS OF STATE IN JUDICIAL FORUMS

WORLD DOMINATION

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Any survey of 20th- and 21st-Century legal actions involving heads of state will reveal one salient fact: the vast majority of them have needed a lawyer to try to fend off charges of corruption, war crimes, crimes against humanity, genocide and other similar criminal actions.

From the war crimes tribunals organized in the aftermath of World War II to the various UN tribunals and domestic proceedings held to pursue dictators and tyrants from South America, Africa, and Eastern Europe, it is as defendants in the dock that heads of state seem to need lawyering up the most. On the civil action side of representing sovereigns, both the DOJ and private practitioners are at the ready to ensure every litigant has their day in court.

A Lot of Bad Actors

Aside from the infamous Nuremberg Trials (November, 1945-October, 1946) in which several Nazi leaders were convicted, the other most well-known prosecution proceeding to come out of WWII was that of Japanese Prime Minister Tojo Hideki before the International Military Tribunal of the Far East organized by U.S. General Douglas MacArthur. But beyond WWII atrocities, other crimes and corruptions have been prosecuted by both UN tribunals and the domestic courts of numerous nations.

Take, for example, Argentina's prosecution of its former President, General Jorge Videla, who was charged with mass kidnappings and killings of left-wing activists, political opponents, and sympathizers during what was dubbed the 'Dirty War' (1976-1983). The 'Trial of the Juntas' was the first in Latin America to bring former dictators to justice by a civilian, democratic government. In 2002, the UN Security Council established the 'International Criminal Tribunal for the Former Yugoslavia' to try those responsible for mass killings of Bosnian Muslims, Croats, and Kosovo Albanians, as well as for abuses against ethnic Serbs. The most famous defendant in those proceedings was former President Slobodan Milosevic, who was the first former head of state to be

tried for war crimes, crimes against humanity, and genocide before a UN tribunal.

Sympathy for the Devil

So, who represents heads of state charged as alleged war criminals and with massive corruption? One such advocate was Jacques Verges, also known as 'The Devil's Advocate' for his unabashed and unapologetic defense of such tyrants as Cambodian dictator Pol Pot and Ilich Ramirez Sánchez (better known as Carlos the Jackal). He planned on defending Saddam Hussein; however, purported 'logistical glitches' prevented his representing that client. Saddam's deputy prime minister, Tariq Aziz, however, was represented by Verges. He did not deny that he would have represented Hitler himself, and indeed, his client list has largely consisted of modern history's most reviled persons.

Representing the Sovereign U.S.

When the U.S. needs to be represented in foreign litigation, it calls upon the Commercial Litigation Branch, Office of Foreign Litigation (OFL) of the DOJ, which protects U.S. interests in all litigation pending in foreign courts, whether civil or criminal, affirmative or defensive. The OFL not only maintains offices in Washington, DC, but also in overseas field offices such as in Panama, London, and Rome. OFL attorneys are not licensed to

Executive Summary

> The Issue

What are some of the issues surrounding the representation of heads of state and sovereign states in judicial forums?

> The Gravamen

While the most common issue facing heads of state before judicial proceedings is that of war crimes and corruption, sovereign states need representation for a variety of trade, treaty enforcement, and other foreign-party litigation matters.

> The Path Forward

The interests of sovereign states in the outcomes of commercial litigation are becoming more commonplace, with either full party representation or the filing of amicus briefs by sovereign states occurring at an increasing rate.

practice law in foreign jurisdictions, so they retain local counsel to whom they give direction in the representation of U.S. interests in foreign courts. The OFL serves to ensure that U.S. policies, programs, and activities are fully protected when facing a challenge via foreign court litigation.

Among the specific topics of litigation that arise overseas are employment disputes brought by foreign workers employed by the U.S. at its embassies, consulates, and military bases and lawsuits challenging U.S. regulatory agencies or military activities. The OFL also initiates litigation aimed at fighting cross-border fraud—including telemarketing fraud—that targets U.S. citizens. The U.S. may also seek to be represented in cases involving criminal prosecution overseas. At any given time, the OFL is representing the U.S. in an average of 1,800 lawsuits pending around the world.

Private Law Firm Representation

Among the foremost international law firms representing sovereigns and state-owned entities is New York-based Curtis law firm, which has 19 offices around the world ranging from New York, Houston, and Washington, DC in the U.S. to such far-flung locations as Kazakhstan, Columbia, and Oman. One of the firm's niches is in defending sovereign states in investment treaty arbitration, as well as in disputes before the World Trade Organization, and in going after anti-dumping violators. They also represent sovereign states in such matters as oil and gas-related disputes and in the negotiating and drafting of hydrocarbon-related legislation.

Some noteworthy representations of foreign state-owned companies before the U.S. Supreme Court have included securing the dismissal of certain expropriation and commercial claims in the D.C. Circuit under the Foreign Sovereign Immunities Act and achieving a historic equal-protection victory vindicating the right of Puerto Rico residents to receive supplemental security income on equal terms with the residents of States under the Fifth Amendment of the U.S. Constitution. The firm also successfully appealed in the D.C. Circuit establishing the right of foreign states to assert sovereign immunity as a threshold defense in actions to enforce foreign arbitral awards under the FSIA.

Sometimes, A Risky Business

It is to be assumed that when a lawyer decides to take on a particularly malevolent head of state as a client, death threats are sure to follow. That risk was pointedly driven home in 2015 when Francisco Palomo, the lawyer representing Guatemala's former dictator Efraim Rios Montt against genocide charges, was shot to death in the capital, Guatemala City. Palomo, a former judge on the Constitutional Court and a longtime friend of Rios Montt had been shot 12 times in the course of defending his client against charges of genocide and crimes against humanity for the death of 1,771 indigenous Guatemalans at the hands of security forces. Palomo had previously represented Guatemala's

Action

1 Familiarity with Tribunals:

A lawyer looking to represent a sovereign state or head of state before a tribunal of any sort must first obtain a keen working knowledge of how UN, military, and domestic judiciaries function in such cases.

2 Sovereign Immunity:

As a threshold issue before U.S. courts, the application of the Foreign Sovereign Immunity Act (FSIA) must always be examined as to whether that U.S. statute renders the foreign sovereign immune from the jurisdiction of U.S. courts.

3 OFL Career:

The lawyer who is serious about representing U.S. interests abroad would do well to check out the career opportunities that exist at the Office of Foreign Litigation.

4 Commercial Activity Exception:

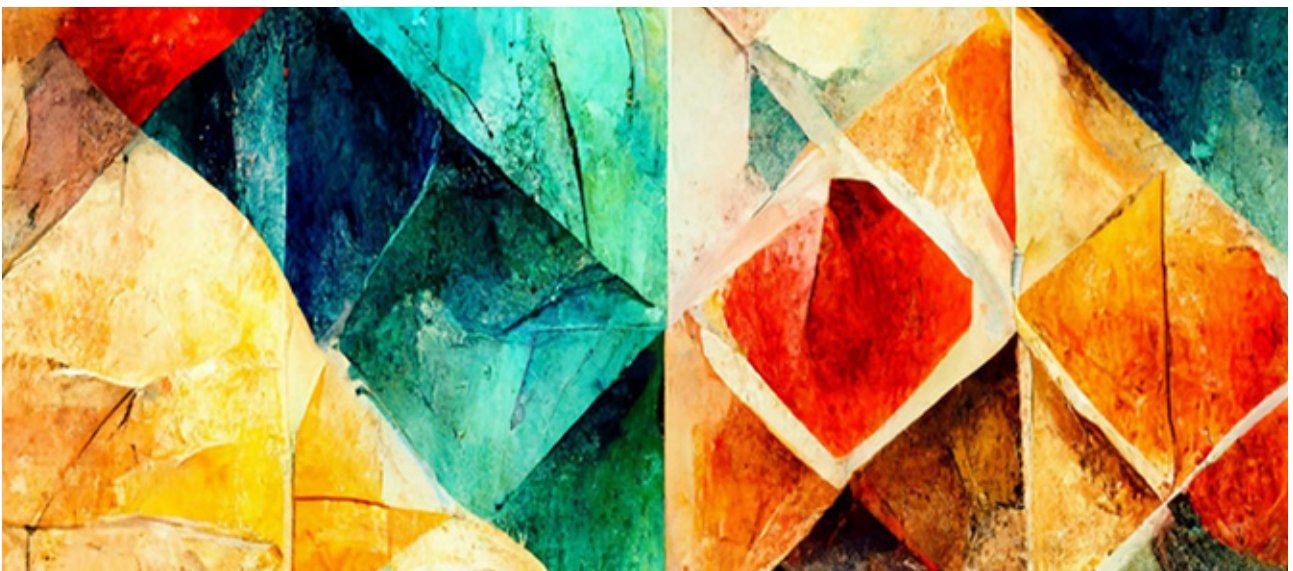
Although your sovereign state client may generally enjoy immunity from U.S. jurisdiction, such immunity is denied where the sovereign state has engaged in commercial activity within the U.S., and the circumstances of whether the activity was a sovereign action or agency action must first be determined.

former interior minister Carlos Vielmann, who faced charges in Spain accusing him of extrajudicial killings.

Having a voice in promoting justice around the world is not just in the interests of individual citizens but also in the best interests of their governments as well. It is for this reason that sovereign states must be provided with competent legal representation if they are to promote and enforce the rule of law worldwide. Advocating on behalf of a sovereign or head of state will instantly propel a lawyer into the public eye, but the counselor should always weigh that notoriety against the risks that accompany such high-profile representations.

“FOREIGN GOVERNMENTS ARE SOMETIMES PARTIES TO LITIGATION IN U.S. COURTS; IN ADDITION, THEY OFTEN PARTICIPATE AS AMICI CURIAE IN LITIGATION INVOLVING THEIR CITIZENS (INCLUDING CORPORATIONS FORMED UNDER THEIR LAWS). THESE INTERACTIONS CREATE A RANGE OF IMPLICATIONS FOR U.S. FOREIGN RELATIONS.”

—HANNAH L. BUXBAUM,
PROFESSOR OF LAW, INDIANA
UNIVERSITY MAURER SCHOOL OF
LAW



Further Reading

1. <https://www.justice.gov/civil/office-foreign-litigation>
2. <https://www.cfr.org/timeline/leaders-facing-justice>
3. <https://www.curtis.com/experience/practice-areas/appellate-lawyers/overview>
4. <https://clinics.law.harvard.edu/advocates/2022/04/26/lawyering-under-dictatorship-an-interview-with-yauheni-pylchanka-and-vladislava-chalei/>
5. <https://www.repository.law.indiana.edu/facpub/2562>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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MANAGING DIRECTOR

William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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- Founded in 2001, GreenPoint Global offers a blend of proprietary technology and US-trained lawyers to provide advanced legal solutions to our clients. As part of GreenPoint Global, the GPESR team draws upon a deep knowledge base across multiple disciplines including Legal, Publishing, IT, Finance, and numerous other industries.
- By virtue of our unique methods and a proven history of providing top-tier legal services to our clients, the GPESR team is capable of supporting a diverse client base both in the US and globally. From solo practitioners to AmLaw 100 firms, legal publishers, Fortune 1000 companies, and in-house law departments, our team offers legal staffing solutions to suit any business needs. GPESR provides skilled attorneys in either permanent placements or temporary contracts through a selective recruiting process. Adherence to quality, value, and flexibility are hallmarks of our offerings.
- Ensuring privacy and security of client data is a critical component of our business. GreenPoint has instituted rigorous physical, administrative, and technical safeguards to protect the integrity, security, and privacy of client data, all of which comply with the most stringent US and global standards and regulations.

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About GreenPoint Law & Compliance

- GreenPoint Global was founded in 2001 and since that time has faithfully served an expanding roster of clients. GreenPoint leverages a unique combination of US-trained attorneys and proprietary technology to deliver a unique offering of skill and flexibility to meet client needs.
- Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

