IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

R. DAVID WEISSKOPF,

Plaintiff,

v.

YAAKOV NEEMAN, *et al.*,

Defendants.

OPINION AND ORDER

11-cv-665-wmc

Plaintiff R. David Weisskopf has filed this lawsuit under the Alien Tort Statute and the Torture Victim Protection Act,[1] alleging that his human rights were violated by a family law court located in Israel, where the plaintiff and all but one of the defendants are located. Pending before this court are the defendants' motions to dismiss for (1) lack of personal jurisdiction; (2) lack of subject matter jurisdiction; and (3) failure to state a claim upon which relief can be granted. Plaintiff has filed a reply, along with a motion to transfer venue to New York or, alternatively, Israel.

In reviewing any *pro se* litigant's pleadings, the court must construe the claims generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under the most lenient interpretation, however, plaintiff's pleadings present a smorgasbord of manifest, incurable jurisdictional defects, failing further to state even a facially-plausible claim upon which relief can be granted. Accordingly, the case will be dismissed.

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[1] *See* 28 U.S.C. § 1350 & note.

ALLEGATIONS OF FACT

Weisskopf is a United States citizen who lives in Israel, although he lists a mailing address in Stoughton, Wisconsin. Weisskopf's complaint concerns a child-custody dispute that took place in Israel, where Weisskopf's ex-wife and three minor children also reside. In general, Weisskopf alleges that he was denied physical custody and granted only supervised visitation with his children as the result of "egregious" gender discrimination. Weisskopf further claims that his situation is not unique, but is the result of a social welfare and family court system in Israel, which intentionally undermines the rights of fathers, while giving preferential treatment to mothers, by imposing "unconscionable child support awards," among other hardships. In his case, Weisskopf contends that he was mistreated by social workers, denied custody due to false allegations of domestic violence, and forced to endure supervised visits with his children under degrading conditions at a state-run "contact center" in Israel.

Weisskopf further alleges that the family court's orders have caused him to suffer severe emotional distress and that the following named defendants are responsible: Yaakov Neeman, Moshe Kahlon, Simona Shteinmetz, Orli Ostermann, Ruth Eisenmann, Edna Brownshtein, Dr. Silvio Gutkovsky, and PEF Israel Endowment Funds ("PEF"). Neeman is Israel's Minister of Justice and Kahlon is the Minister of Social Affairs and Social Services. Shteinmetz serves as Israel's Chief Welfare Officer for Family Affairs at the Ministry of Social Affairs and Social Services. Ostermann also works for the Ministry as a manager for family services in Jerusalem. At the time Weisskopf's child-custody

dispute took place is Israel, Eisenmann worked as a clinical social worker for the Municipality of Jerusalem, where Brownshtein was also employed as Director of the Center for Family Therapy. Dr. Gutkovsky worked as a psychiatrist for Israel's Ministry of Health, serving as an advisor to the Ministry of Social Affairs and Social Services. The only defendant located in the United States, PEF is a privately-run, non-profit corporation located in New York City.

As Israeli officials in the area of social welfare, Weisskopf alleges that defendants Kahlon and Shteinmetz have perpetuated an unwritten policy that automatically refers a father for investigation by social workers whenever a mother complains. Weisskopf further contends that Shteinmetz has trained social welfare workers such as Ostermann, Eisenmann and Brownshtein to "obstruct fathers' contact with their own children" by encouraging women to make false claims of domestic abuse. Weisskopf maintains that Ostermann, Eisenmann and Brownshtein have implemented these discriminatory policies, which are designed to humiliate fathers in front of their children during the divorce process. In particular, Weisskopf alleges that Eisenmann conspired with Brownshtein to bribe Dr. Gutkovsky, who filed a "false or exaggerated" report with the family court, including a diagnosis of "Active Psychosis," which caused him to lose custody of his children and to have his visitation rights severely curtailed. Weisskopf asserts further that, as a former child welfare advocate in the United States and Israel, he

is no longer able to work in that field due to the false information found in Dr. Gutkovsky's report.[2]

Weisskopf accuses all of the defendants of engaging in or aiding and abetting these "crimes against humanity in violation of international law." Weisskopf also accuses PEF of engaging in "gender-hate financing" by sending donations from New York to Israel to subsidize family counseling centers such as the one where Eisenmann and Brownshtein were employed. Weisskopf alleges further that child-custody proceedings in Israel are an instrument of gender discrimination and a form of "institutionalized torture" authorized by defendants Neeman, Kahlon and Shteinmetz with reckless disregard for fathers' parental rights. Weisskopf seeks $8,000,000 in damages for violations of international law under the Alien Tort Statute ("ATS"), also known as the Alien Tort Claims Act, 28 U.S.C. § 1350, and the Torture Victim Protection Act ("TVPA") of 1991, 106 Stat. 73, 28 U.S.C. § 1350, note.

OPINION

The individual foreign officials "vigorously deny" plaintiff's allegations as "inaccurate and inappropriately hostile." These defendants note that Israel's child-custody and social welfare policies are based on the "best interests of the child," a

[2] Weisskopf explains that he "formerly consulted with the director of the Illinois Department of Children & Family Services (IDCFS) to reform their child welfare continuum, worked as a child welfare professional at Maryville Academy, served as an advisor to the chairman of the Knesset Social Welfare Lobby, founded a charity to advocate for Israeli orphans and at-risk kids and was licensed as a foster parent." *Amended Complaint*, Dkt. # 5, at 11, ¶ 56.

standard applied in many other countries, including the United States. Arguing that this lawsuit is entirely frivolous, all of the defendants move to dismiss for a variety of reasons, including a lack of both personal and subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1)-(2). The defendants also move to dismiss the complaint under Fed. R. Civ. P. 12(b)(6), because plaintiff fails to state a justiciable claim for relief under the ATS or the TVPA.

Although "jurisdictional questions ordinarily must precede merits determinations in dispositional order," *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (citing *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998), the Supreme Court has emphasized that "there is no mandatory 'sequencing of jurisdictional issues.'" *Sinochem*, 549 U.S. at 431 (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999)); *see also In re Limitnone, LLC*, 551 F.3d 572, 576 (7th Cir. 2008). Accordingly, this court has "leeway 'to choose among threshold grounds for denying audience to a case on the merits.'" *Sinochem*, 549 U.S. at 431 (quoting *Ruhrgas*, 526 U.S. at 585). In this case, the court briefly addresses the jurisdictional arguments, which are not only dispositive, but indicative of the complaint's overall lack of merit.

A. Personal Jurisdiction

Weisskopf fails to meet his burden of demonstrating a *prima* facie case of personal jurisdiction where each defendant is concerned. *See Purdue Research Found. v. Sanofi–Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003) (citations omitted). Weisskopf relies

primarily on the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602-11, which provides the sole basis for asserting jurisdiction over foreign nations in United States courts. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989). Weisskopf does not, however, demonstrate that the FSIA applies to his benefit where the individual foreign officials are concerned. This is fatal because, although the FSIA may vest federal courts with jurisdiction over a foreign state in limited instances, it does not apply to foreign officials acting on behalf of a foreign state. *See Samantar v. Yousuf*, — U.S. —, 130 S. Ct. 2278, 2289 (2010). Likewise, Weisskopf does not allege facts showing that PEF was controlled by a foreign state or any of the individual foreign defendants for purposes personal jurisdiction under the FSIA. [3]

Weisskopf fails to demonstrate personal jurisdiction under any other theory. Neither the ATS nor TVPA provide for nationwide service of process. *See* 28 U.S.C. § 1350 & note. As a result, personal jurisdiction must arise under the state long-arm statute, Wis. Stat. § 801.05, and the due process requirements of the United States Constitution. *Mid-America Tablewares, Inc. v. Mogi Trading Co.*, 100 F.3d 1353, 1358-59 (7th Cir. 1999). To the extent that Weisskopf claims to have suffered a local injury as the result of an act or omission outside of Wisconsin, the relevant long-arm statute authorizes personal jurisdiction only where the defendant "solicited" or carried on

[3] To the extent Weisskopf intends to claim that the foreign state of Israel and its policies are "the real culprit" in this case, he does not allege facts that fit within one of the FSIA's listed exceptions to sovereign immunity. For example, Weisskopf appears to invoke exceptions for commercial activity carried on by a foreign state, 28 U.S.C. § 1605(a)(2), and noncommercial torts, *id.* at § 1605(a)(5), but neither applies here for reasons articulated by the foreign defendants. Dkt. # 39, *Brief in Reply*, 4-5.

"service activities" in Wisconsin. Wis. Stat. § 801.05(4)(a). Despite scouring the amended complaint, the court could find no mention of any solicitation or service activity carried on by any of the defendants within this state.

Even if jurisdiction were available under Wisconsin's long-arm statute, this court's exercise of personal jurisdiction over any of the defendants would not comport with the Due Process Clause, which requires sufficient "minimum contacts" with the forum state that "the maintenance of the suit 'does not offend traditional notions of fair play and substantial justice.'" *Tamburo v. Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Here, Weisskopf fails to identify a single contact that would justify exercise of general or specific personal jurisdiction. *See, e.g., Felland v. Clifton*, 682 F.3d 665, 672-79 (7th Cir. 2012) (discussing the due-process predicates for specific and general personal jurisdiction). Accordingly, the defendants are entitled to dismissal under Fed. R. Civ. P. 12(b)(2).

B. Plaintiff's Motion to Transfer Venue

Essentially acknowledging that personal jurisdiction is lacking here, Weisskopf alternatively asks the court to transfer this case to Israel or to the United States District Court for the Southern District of New York for consolidation with another case. Weisskopf explains that he has already filed a similar action against PEF, the individual foreign officials, and other defendants in that district. *See R. David Weisskopf, et al. v. Jewish Agency for Israel, Inc., et al.*, No. 12-cv-6844 (S.D.N.Y.). Understandably, the

defendants oppose a transfer and this court declines to grant one because Weisskopf also fails to articulate a valid basis for subject matter jurisdiction for reasons detailed briefly below.

C. Subject Matter Jurisdiction

"[S]ubject-matter jurisdiction is a synonym for adjudicatory competence." *Morrison v. YTB Int'l, Inc.*, 649 F.3d 533, 536 (7th Cir. 2011) (citing *Morrison v. National Australia Bank Ltd.*, — U.S. —, 130 S. Ct. 2869, 2876–77 (2010)). Federal district courts are courts of limited jurisdiction, possessing only as much adjudicatory power as authorized by the Constitution or by Congress. *See Smart v. Local 702 Int'l Bhd. of Elec. Workers*, 562 F.3d 798, 802 (7th Cir. 2009) (citations and quotations omitted); *see also Morrison*, 649 F.3d at 536 ("Federal court is the wrong forum when there is no case or controversy, or when Congress has not authorized it to resolve a particular kind of dispute"). Congress conferred subject matter jurisdiction on federal district courts only in cases that raise a federal question and cases in which there is diversity of citizenship among the parties. *See* 28 U.S.C. §§ 1331-32. Weisskopf -- whose burden it is to establish that his case is properly filed in federal court -- meets neither criteria.

Weisskopf references "diversity" as a basis for subject matter jurisdiction under 28 U.S.C. § 1332(a)(2), alleging that the dispute involves "citizens of a State and citizens or subjects of a foreign state." Weisskopf acknowledges, however, that he currently resides in Israel. *Amended Complaint*, Dkt. # 5, ¶¶ 1, 57. For purposes of diversity, "an expatriate is deemed neither an alien nor a citizen of any State." *Kamel v. Hill-Rom Co.*, 108 F.3d 799,

805 (7th Cir. 1997) (citing *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989)); *see also Minerals Dev. & Supply Co. v. Hunton & Williams LLP*, No. 11-3460, slip op. at 1-2 (7th Cir. April 23, 2012) (unpublished). In other words, "[a] United States citizen who has a foreign domicile is considered 'stateless' for purposes of [28 U.S.C. 1332(a)], and may not invoke diversity jurisdiction." *Newell v. O&K Steel Corp.*, 42 F. App'x 830, 832 (7th Cir. 2002) (citing *Newman-Green*, 490 U.S. at 828-29); *see also Minerals Dev. & Supply Co.*, No. 11-3460, slip op. at 2 (observing that "citizens of the United States domiciled abroad" are "stateless" for purposes of the diversity statute). Because Weisskopf resides abroad, he cannot establish jurisdiction based on diversity.

Weisskopf also attempts to invoke federal-question jurisdiction under the ATS and TVPA. *See* 28 U.S.C. § 1331. When a complaint is based on a federal statute, a federal cause of action must exist as well. *See Int'l Union of Operating Engineers, Local 150, AFL-CIO v. Ward*, 563 F.3d 276, 281-82 (7th Cir. 2009). The defendants argue that jurisdiction is lacking under the federal-question statute because Weisskopf fails to state a plausible claim under either the ATS or TVPA. "Jurisdiction under the federal question statute is not defeated by the possibility that the [plaintiff's] averments, upon close examination, might be determined not to state a cause of action." *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312, 1316-17 (7th Cir. 1997) (citing *Bell v. Hood*, 327 U.S. 678, 682 (1946)). Nevertheless, dismissal is appropriate where the proposed federal claim "appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." *Turner/Ozanne*, 111 F.3d at 1137 (quoting *Bell*, 327 U.S. at 682-83); *see also Apple v. Glenn*, 183 F.3d 477, 479 (6th

Cir. 1999) (stating that dismissal is proper where it appears the allegations are "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion") (citing *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974)).

For reasons set forth below, the court agrees that Weisskopf fails to demonstrate a viable federal question in this instance, having pled facts which show that neither the ATS nor the TVPA apply.

1. Weisskopf May Not Sue under the ATS

The Alien Tort Statute states, in its entirety, that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. By its express terms, the ATS confers subject matter jurisdiction only where "(1) an alien sues (2) for a tort (3) committed in violation of the law of nations (*i.ee*, international law)." *Kadic v. Karadzic*, 70 F.3d 232, 238 (2d Cir. 1995) (citations omitted); *Beanal v. Freeport–McMoran, Inc.*, 197 F.3d 161, 164-65 (5th Cir. 1999). Weisskopf emphasizes in his complaint that he is a United States citizen.[4]

Because Weisskopf is not an alien, he may not bring suit under the ATS. *See Presbyterian Church of Sudan v. Talisman Energy Inc.*, 453 F. Supp. 2d 633, 661 (S.D.N.Y.

[4] *See Amended Complaint*, Dkt. # 5, at 5 (arguing that plaintiff was denied treaty rights as a United States citizen by the family court in Israel); *see also Weisskopf v. Weisskopf, et al.*, No. 11-cv-638-slc (W.D. Wis.) (*Complaint*, Dkt. # 1, at 2) (alleging that plaintiff and his minor children were United States citizens at the time divorce and custody proceedings occurred in Israel).

2006) (citing *Kadic*, 70 F.3d at 238); *see also Jerez v. Republic of Cuba*, 777 F. Supp. 2d 6, 19 n.23 (D.D.C. 2011) (observing that, if plaintiff is not an alien, the Alien Tort Statute, also known as the Alien Tort Claims Act, "would not apply"); *Chavez v. Carranza*, 407 F. Supp. 2d 925, 930 (W.D. Tenn. 2004) (explaining that the Alien Tort Claims Act "creates jurisdiction in the United States courts only for non-citizen plaintiffs who sue a defendant in tort for a violation of international law"); *Miner v. Begum*, 8 F. Supp. 2d 643, 643-44 (S.D. Tex. 1998) (holding that the court lacked subject matter jurisdiction where "[p]laintiffs are clearly not aliens"). Accordingly, plaintiff's ATS claim provides no colorable basis for this court's exercise of subject matter jurisdiction.

2. Weisskopf Does Not Allege Torture as Defined by the TVPA

The defendants also argue persuasively that Weisskopf cannot base subject matter jurisdiction on the Torture Victim Protection Act because he does not allege facts showing that he was tortured within the meaning of that Act. The TVPA provides a civil tort remedy on behalf of victims or their representatives against any "individual who, under actual or apparent authority, or color of law, of any foreign nation" subjects a person to "torture." 28 U.S.C. § 1350 note, § 2(a); *see also Hurst v. Socialist People's Libyan Arab Jamahiriya*, 474 F. Supp. 2d 19, 29-30 (D.D.C. 2007) (observing that causes of action under the TVPA are limited to cases of torture or "extrajudicial killing").

The TVPA defines "torture" as follows:

> [T]he term 'torture' means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering

> (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind.

28 U.S.C. § 1350 note, § 3(b)(1). Consistent with this statutory definition, courts have recognized that torture refers only to "extreme, deliberate and unusually cruel practices, for example, sustained systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain." *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 326 F.3d 230, 234 (D.C. Cir. 2003) (internal quotations omitted); *see also, e.g., Auguste v. Ridge*, 395 F.3d 123, 134 & 154 n.28 (3rd Cir. 2005) (noting that the term "torture," as used internationally and in the United States, is reserved for extreme, deliberately and unusually cruel practices); *Chowdhury v. WorldTel Bangladesh Holding, Ltd.*, 588 F. Supp. 2d 375, 381-82 (E.D.N.Y 2008) (finding that "the use of gratuitous, punitive, or coercive electric shock against a pretrial detainee constitutes torture" under the TVPA).

Weisskopf does not come close to satisfying the statutory definition of torture here. As outlined above, Weisskopf primarily alleges that: (1) Israel's family court system unfairly discriminates against fathers in child-custody disputes; (2) he was subjected to false reports of domestic violence by social workers; and (3) he was required to participate in supervised visitations with his children under "prison-like" conditions. Even accepting these allegations as true, and without discounting any mental or physical

pain defendants' alleged actions may have caused him, Weisskopf does not allege that he was in custody or physical control of the defendants and his claim does not rise to the level of "torture" as contemplated by the TVPA. *See, e.g., Simpson*, 326 F.3d at 234 (holding that plaintiff failed to allege torture where he was subjected to months-long detention, interrogation, and death threats). In that respect, the harm alleged by Weisskopf stems mainly from mental or emotional distress suffered as a result of the child-custody proceeding.

Finally, while liability for mental pain and suffering is authorized under the TVPA, liability will only attach in severe cases of "prolonged mental harm caused by or resulting from" one of the following circumstances:

> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
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> (B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
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> (C) the threat of imminent death; or
>
> (D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

28 U.S.C. § 1350 note, § 3(b)(2). The psychological and emotional trauma that Weisskopf endured during his divorce and child-custody proceeding, while clearly painful, again falls far short of meeting any of these circumstances. Because Weisskopf's

allegations are clearly implausible, the complaint fails to establish a valid basis for subject matter jurisdiction under the TVPA. It follows that Weisskopf's TVPA claims must be dismissed under Fed. R. Civ. P. 12(b)(1). [5]

D. Failure to State Claim

In view of the wildly implausible nature of Weisskopf's allegations, the defendants urge that the complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. When reviewing a motion under Rule 12(b)(6), a court looks to see if the complaint contains sufficient factual matter to state a claim for relief that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (quoting *Twombly*, 550 U.S. at 570). Under this standard, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, U.S. at 556); *McCauley v. City of Chicago*, 651 F.3d 611, 615 (7th Cir. 2011) (following the plausibility standard articulated in *Iqbal* and *Twombly*).

[5] The defendants note further that, even assuming a claim were available, the TVPA requires a plaintiff to seek compensation abroad before suing in the United States. *See* 28 U.S.C. § 1350 note, § 2(b) ("A court shall decline to hear a claim under [the TVPA] if the claimant has not exhausted adequate and available in the place where the conduct giving rise to the claim occurred."). It has been recognized that "Israeli tort law provides adequate remedies for plaintiffs injured as a result of tortious conduct." *Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019, 1026 (W.D. Wash. 2005). Likewise, "Israel's courts are generally considered to provide an adequate alternative forum for civil matters." *Id.* (citing *Diatronics, Inc. v. Elbit Computers*, 649 F. Supp. 122, 127-29 (S.D.N.Y. 1986); *Postol v. El-Al Israel Airlines, Ltd.*, 690 F. Supp. 1361 (S.D.N.Y.1988)). Weisskopf appears to concede that he has not pursued a tort action in Israel and he offers no persuasive reason that doing so would be futile. Even if jurisdiction were proper in a United States Court, Weisskopf has yet to exhaust available remedies as required before filing suit here.

Normally, having found a lack of subject matter jurisdiction, a ruling that touches on the merits would not be appropriate. In the case of federal claims dismissed for lack of subject matter jurisdiction, however, courts may go on to enter a dismissal with prejudice if jurisdiction is predicated on a frivolous federal claim, "for such a suit will go nowhere in any court." *Baba-Dainja El v. AmeriCredit Fin. Svcs., Inc.*, — F.3d —, No. 12-3310, slip op. at 4 (7th Cir. March 20, 2013) (observing that a baseless federal claim not only fails to engage federal jurisdiction, it forms a separate basis for dismissal with prejudice); *see also Beauchamp v. Sullivan*, 21 F.3d 789, 790 (7th Cir. 1994) (citing *Bell*, 327 U.S. at 682-83 and *Crowley Cutlery Co. v. United States*, 849 F.3d 273 (7th Cir. 1988)) (noting that frivolousness is an alternative ground for dismissal even where the plaintiff lacks standing for jurisdictional purposes). As discussed previously in the section on subject matter jurisdiction, such is certainly the case here.

1. Weisskopf's Claim under the ATS

Weisskopf claim under the Alien Tort Statute is frivolous because he is not an alien and, therefore, he is not eligible to pursue relief under this statute. *See* 28 U.S.C. § 1350; *Kadic*, 70 F.3d at 238; *Beanal*, 197 F.3d at 164-65. There are several other reasons that highlight the unavailability of an ATS claim based on the facts alleged in the complaint.

To state an ATS claim, a plaintiff must plead a violation of a United States treaty or the law of nations known as customary international law.[6] *See Filartiga v. Pena–Irala*, 630 F.2d 876, 880 (2d Cir. 1980). Weisskopf alleges that, by requiring him to satisfy "the whims of a hostile and biased social worker," he was denied equal treatment in Israeli family court. Weisskopf argues, therefore, that the defendants violated Article V of the Treaty of Friendship, Commerce and Navigation between the United States and Israel (the "FCN Treaty"), which states that:

> Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights.

Aug. 23, 1951, 5 U.S.T. 550, T.I.A.S. No. 2948. Even assuming that this treaty affords a private right of action, however, Weisskopf does not claim that he was denied access to the courts in Israel.[7] Instead, he plainly disagrees with the *result* of the divorce and child-custody proceedings in Israeli courts, which he maintains were tainted by impermissible gender bias.[8]

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[6] Customary international law is a slippery term, which refers to the general "customs and usages of civilized nations." *Flomo v. Firestone Nat'l Rubber Co.*, 643 F.3d 1013, 1015 (7th Cir. 2011) (quoting *The Paquete Habana*, 175 U.S. 677, 700 (1900) (citations omitted)). Used interchangeably with the "law of nations," customary international law applies "where there is no treaty, and no controlling executive or legislative act or judicial decision[.]" *Id.*

[7] Another district court addressing similar claims by Weisskopf has already concluded that the FCN Treaty between the United States and Israel does not create a private right of action on his behalf. *Weisskopf v. United Jewish Appeal-Fed'n of Jewish Philanthropies of N.Y., Inc.*, — F. Supp. 2d —, 2012 WL 3686692, at *6, n.31 (S.D. Tex. [No. H-12-cv-130] Aug. 22, 2012).

[8] Weisskopf also makes general reference to the following international human rights agreements in connection with his claims: (1) the International Covenant on Economic,

To the extent that Weisskopf complains primarily of gender discrimination in child-custody proceedings in Israel, he does not allege that the Israeli courts -- through application of Israel's divorce and custody laws -- violated customary international law in a manner that is actionable for purposes of an ATS claim. In that respect, the United States Supreme Court has held that the ATS authorizes a cause of action for violations of customary international law only for norms that are "specific, universal, and obligatory" in character. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004) (citation omitted). The Supreme Court has expressly cautioned against recognizing private claims "for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when [the ATS] was enacted" in the 18th Century, such as those outlawing piracy, mistreatment of ambassadors, and violation of safe conducts.[9] *Id*. at 725, 729.

Weisskopf certainly does not allege gender discrimination even approaching this

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Social and Cultural Rights (the "ICESCR"), Dec. 19, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360; (2) the International Covenant on Civil and Political Rights (the "ICCPR"), Dec. 19, 1966, 999 U.N.T.S. 171; and (3) the United Nations Convention on the Rights of the Child (the "CRC"), Nov. 20, 1989, 1577 U.N.T.S. 3. None of these treaties support a private right of action. *See Guaylupo–Moya v. Gonzales*, 423 F.3d 121, 137 (2d Cir. 2005) (observing that "provisions of the ICCPR do not create a private right of action or separate form of relief enforceable in United States courts"); *Flores v. Southern Peru Copper Corp*., 414 F.3d 233, 258-59 (2d Cir. 2003) (concluding that neither the ICESCR nor the CRC afford a cause of action). Therefore, Weisskopf cannot base his ATS claims on these instruments.

[9] "The term 'safe conducts' refers to both [the] privilege granted to an alien providing for safe travel within and through a nation and the document imparting that privilege." *Taveras v. Tavarez*, 477 F.3d 767, 773 (6th Cir. 2007); *see also* BLACK'S LAW DICTIONARY 1453 (9th ed. 2009) (defining "safe conduct" as: "1. A privilege granted by a belligerent allowing an enemy, a neutral, or some other person to travel within or through a designated area for a specified purpose. 2. A document conveying this privilege[,]" *i.e.,* a passport.).

standard.[10] *See Sarei v. Rio Tinto, PLC*, 671 F.3d 736, 769-70 (9th Cir. 2011) (en banc) (although there is a universally recognized prohibition against systematic racial discrimination as a matter of state policy, *e.g.*, apartheid, the plaintiff's proposed claim failed articulate a norm that met the Supreme Court's requirements in *Sosa*), *petition for cert. filed*, 80 U.S.L.W. 3335 (U.S. Nov. 23, 2011) (No. 11-649). Another district court reviewing allegations similar to those made by Weisskopf has reached the same conclusion, finding that claims of gender discrimination in Israeli child-custody proceedings do not fall within the ambit of "specific, universal, and obligatory" international norms that are cognizable under the ATS. *See Haim, et al. v. Neeman, et al.*, No. 12-cv-351, Opinion at 6 (D. N.J. Jan. 23, 2013) (referencing *Sosa*). As it appears that no other court has sanctioned a claim of gender discrimination for purposes of stating a claim under the ATS, this court likewise declines the invitation to create a new cause of action.[11] *See Sosa*, 542 U.S. at 728 (emphasizing that the federal courts "have

[10] Weisskopf's sweeping characterizations of Israel's social welfare system and child-custody laws as perpetrating "crimes against humanity" are mere hyperbole, not proof of a norm of requisite definition or wide-spread acceptance for purposes of stating a claim under the ATS. *See, e.g., Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 453 F. Supp. 2d 633, 670 (S.D.N.Y. 2006) (observing that "crimes against humanity include murder, enslavement, deportation or forcible transfer, torture, rape or other inhumane acts committed as part of a widespread or systematic attack against a civilian population").

[11] PEF argues further Weisskopf makes no connection between its charitable activities and the child-custody case that forms the basis for his complaint. Weisskopf cannot state a claim for liability under the ATS on the theory that a defendant aided and abetted the human rights violations perpetrated by another. Unsupported, conclusory allegations that a defendant knew or should have known of the primary actor's violation will not support a claim of secondary liability under customary international law the ATS or the TVPA. *See Aziz v. Alcolac, Inc.*, 658 F.3d 388, 401 (4th Cir. 2011); *see also Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 259 (2d Cir. 2009) (holding that "the *mens rea* standard

no congressional mandate to seek out and define new and debatable violations of the law of nations"). Accordingly, the court finds Weisskopf's ATS claims to be frivolous and will dismiss them with prejudice.

2. Weisskopf's Claim under the TVPA

The defendants argue further that dismissal with prejudice is appropriate under Fed. R. Civ. P. 12(b)(6), because Weisskopf does not articulate facts showing that he was tortured within the definition found in the TVPA. *See* 28 U.S.C. § 1350 note, § 3(b)(1); *see also Simpson*, 326 F.3d at 234 (noting that torture in the TVPA context is reserved for "extreme, deliberate and unusually cruel practices").

For all of the reasons set forth previously, the court agrees that Weisskopf not only fails to state a claim upon which relief can be granted under the TVPA, but that his claim is frivolous.[12] *See Weisskopf v. United Jewish Appeal-Fed'n of Jewish Philanthropies of N.Y., Inc.*, — F. Supp. 2d —, 2012 WL 3686692, at *8, n.31 (S.D. Tex. [No. H-12-cv-130] Aug. 22, 2012) (dismissing with prejudice a nearly identical complaint brought by

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for aiding and abetting liability in ATS actions is purpose rather than knowledge alone"). For this additional reason, Weisskopf fails to state a legally non-frivolous claim against PEF.

[12] PEF raises additional arguments, two of which are worth mentioning. PEF notes that Weisskopf fails to identify any action taken by PEF "under actual or apparent authority, or color of law, of any foreign nation," for purposes of establishing liability under the TVPA. 28 U.S.C. § 1350 note, § 2(a). As a non-profit corporation organized under New York state law, PEF cannot be sued under the TVPA, which authorizes liability only against natural persons. *See Mohamad v. Palestinian Auth.*, — U.S. —, 132 S. Ct. 1702, 1705 (2012); *Aziz v. Alcolac, Inc.*, 658 F.3d 388, 392 (4th Cir. 2011) (observing that a plain-text reading of the TVPA unambiguously excludes corporations from liability). For these additional reasons, Weisskopf has no actionable claim against PEF under the TVPA.

Weisskopf as "com[ing] nowhere close to raising allegations of torture sufficient to state a claim under the TVPA"). Therefore, Weisskopf's TVPA claim will be dismissed with prejudice.

E. Additional Reasons for Dismissal

The individual foreign officials also identify a series of other valid defenses that would support dismissal.[13] Among those defenses is the contention that Weisskopf's suit is barred by the act-of-state doctrine. In that respect, the individual foreign officials note that Weisskopf sues each of them for acts taken in the exercise of their governmental authority.[14] The court comments briefly on these arguments only because they underscore the spurious, abusive nature of Weisskopf's repeated, failed efforts to invoke federal court jurisdiction in the United States over what is essentially an Israeli family-

[13] The other defenses include: (1) the political question doctrine; (2) constraints imposed by notions of international comity; and (3) *forum non conveniens*. *See* Dkt. # 35, *Memorandum of Law*, at 15-21. Although Weisskopf offers no good reason why any of these should not apply in this case, the court will comment only on the first two.

[14] The individual foreign officials argue separately they are entitled to immunity from suit because all of the allegations described by Weisskopf relate to official acts taken within Israel, in the exercise of their governmental authority. *See* RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 66(f) (stating that "[t]he immunity of a foreign state . . . extends to . . . any . . . public minister, official, or agent of the state with respect to acts performed in his official capacity if the effect of exercising jurisdiction would be to enforce a rule of law against the state"). Weisskopf does not show otherwise and, therefore, it would appear that these officials are immune from suit. *See Matar v. Dichter*, 563 F.3d 9, 14 (2d Cir. 2009) ("At the time the FSIA was enacted, the common law of foreign sovereign immunity recognized an individual official's entitlement to immunity for acts performed in his official capacity."); *see also Samantar*, 130 S. Ct. at 2290-91 ("[W]e do not doubt that in some circumstances the immunity of the foreign state extends to an individual for acts taken in his official capacity.").

law dispute. Doing so is facially unauthorized and would offend fundamental principles of sovereign immunity and comity were it otherwise.[15]

1. Immunity for Acts of State

"The act-of-state doctrine is a judicial rule that 'generally forbids an American court to question the act of a foreign sovereign that is lawful under that sovereign's laws.'" *Nocula v. UGS Corp.*, 520 F.3d 719, 727-28 (7th Cir. 2008) (quoting *F.&H.R. Farman–Farmaian Consulting Eng'rs Firm v. Harza Eng'g Co.*, 882 F.2d 281, 283 (7th Cir. 1989); *First Nat'l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 769 (1972) ("The act of state doctrine . . . is a judicially accepted limitation on the normal adjudicative processes of the courts, springing from the thoroughly sound principle that on occasion individual litigants may have to forgo decision on the merits of their claims because the involvement of the courts in such a decision might frustrate the conduct of the Nation's foreign policy."). The doctrine applies in any case where "the relief sought or the defense interposed would [require] a court in the United States to declare invalid the official act of a foreign sovereign performed within its boundaries." *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1164 (D.C. Cir. 2002) (quoting *W.S. Kirkpatrick*

[15] In addition to this lawsuit, Weisskopf has filed several others, including: *Weisskopf v. United Jewish Fed'n of Pittsburgh, Inc.*, No. 11-cv-1575 (W.D. Penn.) (dism'd on Jan. 27, 2012, for failure to comply with court orders); *Weisskopf v. United Jewish Appeal – Fed'n of Jewish Philanthropies of N.Y., Inc.*, — F. Supp. 2d —, 2012 WL 3686692 (S.D. Tex. [No. H-12-cv-130 August 22, 2012) (dism'd with prejudice). *Weisskopf et al. v. Jewish Agency for Israel, Inc., et al.*, 12-cv-6844 (S.D.N.Y.) (pending). Weisskopf further appears to have inspired at least one other complaint, which is nearly identical to the one filed here: *Haim et al. v. Yaakov Neeman, et al.*, No. 12-cv-351 (D. N.J.) (dism'd with prejudice Jan. 23, 2013).

& *Co. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400, 405 (1990)).

The issue underlying all of Weisskopf's allegations turns on the validity of a judgment entered by the family court in Israel, awarding primary custody to Weisskopf's ex-wife and requiring him to participate in supervised visitations with his children. Decisions made by foreign officials through the enforcement of state family law plainly qualify as an act of state. *See Nocula*, 520 F.3d at 728 (citing *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897) (citation omitted)).

2. International Comity

To the extent that Weisskopf alleges that he was mistreated by the Israeli family court system and the ensuing investigation by police and social workers of domestic violence claims made against him, review of these issues in a United States district court is precluded by international comity.[16] *See, e.g., Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522, 544 n. 27 (1987) (explaining that "comity," which is rooted in the law of international relations, "refers to the spirit of cooperation in which a

[16] Even in the United States, controversies involving family law and custody disputes are decided in the state courts and those decisions are accorded great deference. *See Rose v. Rose*, 481 U.S. 619, 625 (1987) (quoting *In re Burrus*, 136 U.S. 586, 593–94 (1890)) ("[T]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States."); *see also Mansell v. Mansell*, 490 U.S. 581, 587 (1989) ("[D]omestic relations are preeminently matters of state law"); *Moore v. Sims*, 442 U.S. 415, 435 (1979) ("Family relations are a traditional area of state concern"); *De Sylva v. Ballentine*, 351 U.S. 570, 580 (1956) ("[T]here is no federal law of domestic relations, which is primarily a matter of state concern."). As a result, unless a substantial federal question "transcends or exists apart from" a dispute involving "elements of the domestic relationship," federal courts typically must decline jurisdiction even when divorce, alimony or child custody is not strictly at issue. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 13 (2004).

domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states"); *Finova Capital Corp. v. Ryan Helicopters U.S.A., Inc.*, 180 F.3d 896, 898 (7th Cir. 1999) (noting that where the interests of international comity are present, federal courts apply the same general principles of abstention that pretermit review of parallel proceedings in state court).

ORDER

IT IS ORDERED that:

1. the motions to dismiss filed by Yaakov Neeman, Moshe Kahlon, Simona Shteinmetz, Ruth Eisenmann, Edna Brownshtein, Orli Ostermann, Dr. Sivao Gutkovsky, and P.E.F. Israel Endowment Fund, Inc. (dkts. # 30, # 34) are GRANTED;
2. plaintiff R. David Weisskopf's motion to transfer venue (dkt. # 36) is DENIED as moot; and
3. the complaint is DISMISSED with prejudice as legally frivolous.

Entered this 20th day of March, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge