UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENTESAR OSMAN KASHEF, *et al.*, Plaintiffs, -against- BNP PARIBAS S.A., BNP PARIBAS S.A. NEW YORK BRANCH, BNP PARIBAS NORTH AMERICA, INC., and DOES 2-10, Defendants.	Civil No. 1:16-Civ-03228-AJN Hon. Alison J. Nathan

SUPPLEMENTAL REPLY DECLARATION OF VITO ROBERTO

I, Vito Roberto, declare the following pursuant to 28 U.S.C. § 1746:

I. Introduction, Scope And Structure Of This Reply

This declaration makes several non-substantive corrections to my Supplemental Reply Declaration of June 5, 2020.

1. I submit this Declaration as a Reply to the Supplemental Declaration of Professor Franz Werro, dated May 22, 2020 ("Suppl. Werro Decl."), which responds to my Supplemental Declaration, dated April 30, 2020 ("Suppl. Roberto Decl.").[1]

2. The two Supplemental Declarations use different approaches for establishing the requirements of art. 50 section 1 CO. My Supplemental Declaration focuses exclusively on the decisions of the Swiss Supreme Court. The reason is twofold: *First*, once Parliament

[1] Unless otherwise specified, defined terms have the meanings set forth in my Supplemental Declaration, dated April 30, 2020.

has passed a code or an act, the Swiss Supreme Court has the final say over what it means and how it has to be applied. To know what the law is, one must know how the Supreme Court applies the legal provisions. The Supreme Court will take scholarly writings into account, but in the end, it is the Supreme Court's opinion that matters. *Second*, Swiss scholarly writing on art. 50 section 1 CO is sometimes vague and the descriptions of the requirements remain occasionally unclear. For these reasons, I believe a U.S. court is best served if it can trace the requirements and the scope of the application of art. 50 section 1 CO by obtaining an overview of the decisions of the Swiss Supreme Court over the last century.

3. Professor Werro's Supplemental Declaration focuses more on scholarly writings than on case law. This was also the approach in Professor Werro's first Declaration, dated May 22, 2017, which, based on a misunderstanding of certain (German-speaking) authors and without any citation to a Swiss Supreme Court case, erroneously asserted that art. 50 section 1 CO was "an independent basis for imposing liability on joint tortfeasors." Werro Declaration ¶ 16; *see also id.* ¶ 20. My Reply Declaration, dated July 6, 2017, pointed out the misunderstanding, including that one of the authors cited in Professor Werro's May 22, 2017 Declaration states the opposite of what Professor Werro's Declaration asserted, and that "the common opinion of Swiss legal doctrine and the Swiss Supreme Court is the opposite of what is stated in the Werro Declaration." Roberto Reply Declaration ¶¶ 12-19. Professor Werro's Supplemental Declaration does not repeat this incorrect description of the law from his first Declaration. The proposition in Professor Werro's first Declaration that art. 50 section 1 CO is an independent basis for liability thus need not be further analyzed.

4. Professor Werro's Supplemental Declaration is in agreement with my Supplemental Declaration on several main aspects. The two Supplemental Declarations both demonstrate (i) that there is a distinction between injurious acts and cooperation, and (ii) that

injurious acts can be unintentional whereas cooperation must be conscious. The main differences between the two Supplemental Declarations concern (i) the meaning of the term "conscious," *infra* section II(A), (ii) the requirement of willfulness or immediacy, *infra* section III, and (iii) the definition and meaning of adequate causation and of the causes that must be adequate, *infra* section IV.

5. The first three sections of Professor Werro's Supplemental Declaration, containing an introduction, a summary of the qualifications of Professor Werro, and the general legal principles in section III/A and III/B, do not concern the requirements of art. 50 section 1 CO. The following analysis will focus on the agreements and the main errors concerning the legal requirements of art. 50 section 1 CO in sections IV through VI of Professor Werro's Supplemental Declaration.

II. Conscious Cooperation

A. Analysis Of The Main Areas Of Agreement And Disagreement Between The Two Supplemental Declarations

6. The following statements in Professor Werro's Supplemental Declaration describing the requirements of art. 50 section 1 CO are *accurate* and *in consensus* with my Supplemental Declaration:

- Suppl. Werro Decl. ¶ 28 (emphasis added): "To hold an accomplice liable under Article 50 CO, a plaintiff must prove that: (1) a main perpetrator committed an illicit act, (2) the accomplice *consciously assisted the perpetrator* and knew or should have known that he was contributing to an illicit act, and (3) their culpable cooperation was the natural and adequate cause of the plaintiff's harm or loss."

- Suppl. Werro Decl. ¶ 33 (emphasis added): "In short, under Article 50 CO, 'each person can be held liable for the collective fault, because each acted intentionally or negligently, *and in conscious cooperation with the others*.'"

- Suppl. Werro Decl. ¶ 78 (emphasis added): "Indeed, what triggers liability for an accomplice under Article 50 CO is to provide *conscious assistance* to the illicit act of the main perpetrator."

7. Professor Werro's Supplemental Declaration distinguishes in these statements between the harmful *act*, which can be intentional or negligent, and the *cooperation*, which has to be conscious.

8. My Supplemental Declaration is thus *in consensus* with Professor Werro's Supplemental Declaration regarding the differentiation between the act and the cooperation: whereas the specific act of the main perpetrator that injured plaintiff can be intentional or unintentional, the cooperation, *i.e.*, the assistance by the accomplice to the course of injurious conduct, has to be conscious.

9. While, as described above, Professor Werro's Supplemental Declaration repeatedly and correctly mentions that the cooperation must be "conscious," it elsewhere often states that the cooperation can be "unintentional[]" or "negligent" or that "[i]t is sufficient that the accomplice should have known that the main perpetrator was engaging in illicit conduct." Suppl. Werro Decl. ¶ 79.

10. One reason for the different positions of the two Declarations concerning the requirement of a cooperation under Swiss law seems to be the understanding of the term "consciously."

11. Synonyms of the French word "consciemment" or "consciously" are, *e.g.*, "intentionally," "willfully," "deliberately." German language authors use the combined expressions "with knowledge and willful" ("bewusst und gewollt") or "common intention" ("willentliches Zusammenwirken"). My Supplemental Declaration understands conscious as a synonym of willful, intentional, and deliberate based on the original French and German.

12. In part, Professor Werro's Supplemental Declaration observes the distinction and the differing requirements for the injurious act (where negligence is sufficient) and for cooperation (where consciousness is required); however, Professor Werro's Supplemental Declaration confuses the two elements in various instances.

13. By not adhering to the distinction between the requirements for the injurious act and the requirements for cooperation, one could come to the conclusion that if a party knows or should have known that the main perpetrator was engaging in injurious conduct, that alone sufficiently establishes a joint tort. Mere knowledge does not, however, establish joint liability, neither according to Swiss case law, *see* Suppl. Roberto Decl. ¶¶ 27, 41, nor according to legal scholars.[2]

B. The Scholarly Writing

14. Legal authors are not entirely in agreement on the requirements for a joint tort. The three leading publications on Swiss tort law contain similar, but not identical, views on joint torts. The other authors mainly reflect the views expressed in these three leading publications.

---

[2] The concept that a joint tort is established when a party knows or should have known of another person's (possible) future tortious act is too broad. Producers of arms, knives, cars and other potentially dangerous goods would otherwise be liable if such goods are used in tortious acts.

i. Publications Of The Leading Academic Authorities On Torts

15. The leading academic publications in Switzerland on tort law are the four volumes on tort law by Karl Oftinger and Emil E. Stark (a comprehensive treatment on torts);[3] the three volumes on tort law by Walter Fellmann (a newer comprehensive treatment of tort law);[4] and the "Bern Commentary" written by Roland Brehm on the tort provisions in the Code of Obligations (art. 41–61 CO), which is the largest commentary on these provisions.[5]

16. Oftinger & Stark state that art. 50 section 1 CO only applies to cases where several persons are independently liable.[6] These authors hold that there must be conscious cooperation between the participants.[7]

17. Fellmann & Kottmann agree with Oftinger & Stark that all participants must fulfill the requirements of liability of art. 41 CO.[8] As far as the requirement of cooperation is concerned, they state that the cooperation must be "with knowledge and willful."[9]

18. Brehm combines both the requirement of collective conduct and the requirement of collective fault under the heading of collective fault. On the one hand, Brehm states that a tortfeasor participates if he knew or should have known of the other's illicit

---

[3] Karl Oftinger, Emil E. Stark, Schweizerisches Haftpflichtrecht, volume I, 5th ed., 1995; volume II/1, 4th ed. 1987; volume II/2, 4th ed. 1989; volume II/3, 4th ed. 1991.

[4] Walter Fellmann, Schweizerisches Haftpflichtrecht, volume I, 2012 (together with Andrea Kottmann); volume II, 2013; volume III, 2015.

[5] Roland Brehm, Berner Kommentar, Obligationenrecht, Die Entstehung durch unerlaubte Handlung, Art. 41-61 OR, 4th ed. 2013.

[6] Ex. 35, Volume II/1, § 16, para. 318.

[7] Ex. 35, Volume II/1, § 16, para. 325.

[8] Ex. 36, Volume I, para. 2760 (already cited in my Reply Declaration dated July 6, 2017, ¶ 14).

[9] Ex. 36, Volume I, para. 2774 ("bewusste und gewollte Teilnahme"). They cite various other legal authors in the paras. 2774-2780 which adhere to the same opinion.

conduct. On the other hand, he notes that participation must be "with knowledge *and willful*."[10] If a tortfeasor does not know of the other person's contribution (but should have known), he cannot participate consciously and willfully. Brehm confirms this by reiterating that the decisive requirement is the "common intention, the conscious, culpable cooperation"; "in order to be an accomplice, a common intention to act together with the main perpetrator is needed."[11] In addition, Brehm states that there is no joint liability without (external) individual liability and that the conduct of the accomplice himself (and not the collective cooperation) must be an adequate cause for the loss or damage.[12]

ii. Other Legal Publications

19. Besides these authorities there are numerous other textbooks on Swiss tort law in German and French and some other commentaries on Swiss private law. Most of these textbooks (including the ones of Professor Werro and myself) dedicate only a few paragraphs to the requirements of art. 50 section 1 CO. In general, they summarize the statements of the extensive handbooks on torts and reference some decisions of the Swiss Supreme Court.

20. This is true also for Professor Werro's commentary and textbook, which state the following:

---

[10] Werro Ex. 39, Commentary on art. 50, para. 7c ("bewusste und gewollte Teilnahme") and 7d (emphasis added).

[11] Werro Ex. 39, Commentary on art. 50, para. 19 ("Entscheidend sind nicht die getrennten Handlungen, sondern der gemeinsame Wille, das bewusste, schuldhafte Zusammenwirken") and para. 27 ("Um Gehilfe zu sein, braucht es allerdings einen gemeinsamen Handlungswillen mit dem Haupttäter").

[12] Werro Ex. 39, Commentary on art. 50, para. 33 ("Denn grundsätzlich besteht keine Solidarität ohne (externe) Haftung") and para. 27 ("Allerdings muss auch hier ein adäquater Kausalzusammenhang zwischen der Gehilfenschaft und dem Schaden bestehen").

- Commentary: "Common fault presupposes an association in the harmful activity, i.e., the consciousness of collaborating in the result. There may be intention or negligence. Recklessness is sufficient."[13]

- Textbook: "Art. 50 CO deals with the case where several persons collectively cause harm through a common fault. The common fault presupposes 'an association in the harmful activity, the consciousness of collaborating in the result.' There may be intention or negligence, without any prior agreement being necessary."[14]

21. The distinction made in Professor Werro's Supplemental Declaration between the cooperation and the act is thus more accurate than the formulations in the commentary or textbook. The formulations in Professor Werro's textbook and commentary are, however, more accurate than Professor Werro's Supplemental Declaration with regard to the scope of the liability, which in Swiss law is often dealt with under the requirement of adequacy. The wording in Professor Werro's textbook and commentary of "consciousness of collaborating in the result" ("la conscience de collaborer au résultat") correctly describes that liability extends only to the results of the type intended by the cooperation.[15] Joint tortfeasors, respectively accomplices, act in pursuit of a common end; their liability encompasses the results of this common end.

---

[13] Werro Ex. 35, Werro, Commentaire Romand, 2d ed. 2012, commentary on art. 50 CO para. 3 ("La faute commune suppose une association dans l'activité préjudiciable, soit la conscience de collaborer au résultat. Il peut s'agir d'une faute intentionnelle ou d'une négligence. Un dol éventuel suffit").

[14] Ex. 37, Werro, La responsabilité civile, 3rd ed. 2017 ("textbook"), para. 1701 ("L'art. 50 CO vise l'hypothèse où plusieurs personnes causent ensemble un préjudice par une faute commune. Cette faute suppose 'une association dans l'activité dommageable, la conscience de collaborer au résultat'. Il peut s'agir d'une faute intentionnelle ou d'une négligence, sans qu'une véritable concertation préalable soit nécessaire"; his own direct citation refers to the authors Deschenaux and Tercier).

[15] Ex. 37, Werro, textbook, para. 1701 with references to other legal authors and a decision of the Swiss Supreme Court. This limitation of liability is undisputed in Swiss law.

iii. Conclusion On Swiss Scholarly Publications

22. The emphasis in Professor Werro's Supplemental Declaration on Swiss scholarly publications for establishing the requirements for a liability under art. 50 section 1 CO does not strengthen Plaintiffs' claim.

23. The majority of the leading legal authors is in agreement with regard to the requirement of a conscious cooperation, *i.e.*, the cooperation must be with knowledge and willful. The relevant cooperation has to be directed to a common end, *i.e.*, there must be conscious collaboration in the result. The leading publications on torts require additionally that each participant independently fulfills the requirements of liability under art. 41 CO.

III. Willfulness And Immediacy

24. Professor Werro's Supplemental Declaration is in disagreement with the case law analysis in my Supplemental Declaration, and states that my findings that liability under art. 50 section 1 CO requires that the participation was either "willful and substantial" or "immediate and substantial" are not official "requirements" of art. 50 section 1 CO.

25. My Supplemental Declaration presents the willfulness and substantiality or immediateness and substantiality requirements as *descriptions* of the elements present in cases where the Swiss Supreme Court has affirmed liability under art. 50 section 1 CO. As my Declaration explains, in all cases where the applicability of art. 50 section 1 CO has been affirmed by the Swiss Supreme Court, the secondary tortfeasor has participated either willfully and substantially or immediately and substantially. Accordingly, these elements demonstrate how art. 50 section 1 CO should be applied, based on how the Swiss Supreme Court has applied art. 50 section 1 CO in its case law.

26. Although Professor Werro's Supplemental Declaration disputes that art. 50 section 1 CO requires participation that is willful and substantial or immediate and substantial, the Declaration references three cases of the Swiss Supreme Court that differ from the case at hand precisely because of willfulness and/or immediacy: the Locksmith Case (Ex. 5, Supreme Court 4A_185/2007), the Carpenters' Strike Case (Ex. 28, SCD 57 [1931] II 417) and the Shooting Contest Case (Ex. 25, SCD 71 [1951] II 107). Werro Suppl. Decl. ¶¶ 38-43.

- In the Locksmith Case, the participation of Y. Inc. was willful, immediate and substantial. Y. Inc. infringed the tradename "SOS" itself, and knowingly so. Furthermore, Y. Inc. exercised control over the main perpetrator's business and basically ran that business.

- The Carpenters' Strike Case dealt with the liability of the labor organizer "Herzog" and confirmed his liability. Herzog was also criminally convicted for the victims' injuries, which is only possible if the cooperation was intentional. *See* Suppl. Roberto Decl. ¶ 53. There was conscious cooperation because Herzog's participation was willful and substantial—he himself "incite[d]" the strike workers "to physical violence."

- In the Shooting Contest Case, the landlord made a willful and substantial contribution to the victim's injuries by selling alcohol to soldiers and letting the drunken soldiers conduct a shooting competition at the landlord's establishment while other patrons were sitting nearby at other tables of the restaurant. The landlord's contribution was also immediate, because the landlord was physically present at the restaurant and had control over the activities on his premises.

27. In all three cases the cooperation had been willful and substantial, in two cases (Locksmith Case and Shooting Contest Case) the contribution was also immediate. In the third case (Carpenters' Strike Case) the lack of immediacy was more than compensated by the

participator's (criminal) intention of cooperation and intention to cause harm.[16] Therefore, in all three cases, the requirements of collective conduct were met.

28. The tortious conduct in these cases is very different from the allegations in the Complaint against BNPP. Based on these cases, it is not sufficient for BNPP to provide financial services to Sudanese banks, even less so since under Swiss law such financial services were not illegal, and the Swiss leading authorities require that all participants must fulfill the requirements of liability of art. 41 CO. *See supra* section II(B). The human rights violations are the GOS's own doing. Accordingly, liability under art. 50 section 1 CO would require BNPP to have knowingly and willingly cooperated with the GOS with the aim to commit human rights violations.

IV. Adequate Causation

29. Another important aspect of our Supplemental Declarations concerns the requirement of adequate causation. Professor Werro's Supplemental Declaration states that for there to be liability, the collective fault must be a natural and adequate cause of the injury. Suppl. Werro Decl. ¶¶ 46–48. This is accurate. The two Supplemental Declarations are also in agreement that adequate causation corresponds to "'proximate' causation" in U.S. law. *See* Suppl. Werro Decl. ¶ 27. However, the two Supplemental Declarations differ with regard to the understanding of the adequate causation as a legal limitation of a cause-in-fact; they also differ with regard to the question of whether each individual contribution must be an adequate cause of the injury.

[16] The same is true with regard to the Boycott Case. In a boycott a party is not by itself directly committing the tortious act. According to the Swiss Supreme Court, liability under art. 50 CO thus requires a collective conduct which has to be intentional. Ex. 32, SCD 90 [1964] II 501; *see* Suppl. Roberto Decl. ¶ 54.

30. According to Professor Werro's Supplemental Declaration, the causal link need only exist between the collective fault and the harm, not between each individual's contribution and the harm. In the Swisscom Copyright Case, the Swiss Supreme Court recently confirmed the opposite, namely that each participator's conduct must be a natural and adequate cause of the harm. Suppl. Roberto Decl. ¶ 35.

31. In addition, Professor Werro's Supplemental Declaration states that adequacy is fulfilled if the result "was objectively foreseeable." Suppl. Werro Decl. ¶ 80. But as the Swiss Supreme Court explained at length in the recent Swisscom Copyright Case, adequacy as a prerequisite of civil liability requires more than just foreseeability.

32. In support of these conclusions, Professor Werro's Supplemental Declaration cites a Swiss Supreme Court decision regarding the content and understanding of adequacy. *See* Suppl. Werro Decl. ¶ 48. However, as Professor Werro's Supplemental Declaration notes, the cited decision is a criminal case citing exclusively other criminal cases and legal authorities in the area of criminal law. More apposite is the Swisscom Copyright Case, a civil case that extensively explains how the Swiss Supreme Court interprets adequacy and which cites exclusively civil liability cases and legal authorities in civil law. *See* Suppl. Werro Decl. ¶¶ 52, 53 and 58.

33. Swisscom is, *inter alia*, an internet provider with the largest market share in Switzerland. Swisscom provided users internet access to webpages hosting copyright infringing content, thereby allowing its clients access to such content. The copyright holder had requested that Swisscom block access to the homepages which infringed copyrights, but

Swisscom refused to comply with the request.[17] Without internet access to the portals, Swisscom's clients could not have accessed the copyright-infringing content. However, as Professor Werro's Supplemental Declaration rightly states, the Swiss Supreme Court denied liability due to the missing adequate causation. Suppl. Werro Decl. ¶ 52.

34. As explained in the Swisscom Copyright Case, adequacy has to be specified in accordance with "*law and equity*," is "*based on a value judgment*," and answers the question whether "*the result of an infringement can reasonably be attributed to the liable party*," whereby "*it is not enough to just take any participatory action that is only 'somehow' a supportive influence, but is not sufficiently closely related to the act* [of the main perpetrator] *itself*." Swisscom Copyright Case, Ex. 15, SCD 145 [2019] III 72, 81 f. cons. 2.3.1 (emphasis added).

35. The concept of adequacy is usually phrased in the language of causation, but in fact it "serves as a corrective factor to the concept of causes in science, which may need to be restricted in order to be acceptable for legal responsibility." Ex. 15, SCD 145 [2019] III 72, 81 cons. 2.3.1. In joint torts the scope of the cooperation has also to be considered, *i.e.*, the common end of the cooperation. The contributors are liable for the results aimed at by the cooperation, not for other results that might occur as secondary consequences. This is in a similar way explained in Professor Werro's textbook: "The common fault presupposes an association in the harmful activity, the consciousness of collaborating in the result."[18]

36. The Supreme Court explains in the Swisscom case the function and scope of adequacy and refers extensively to former decisions of the Court:

---

[17] Ex. 15, SCD 145 [2019] III 72, 73 cons. A.b.: "Sie hat deshalb die Beklagte aufgefordert, den Zugang zu diesen Portalen zu sperren, was die Beklagte jedoch verweigerte."

[18] Ex. 37, Werro, textbook, La responsabilité civile, 3rd ed. 2017, para. 1701 (citation omitted).

"The legal purpose of the adequacy requirement is to limit liability. It serves as a corrective factor to the concept of causes in science, which may need to be restricted in order to be acceptable for legal responsibility. The adequate causal connection in the sense of the above-mentioned description is a general standard, which in individual cases must be specified by the court according to art. 4 CC according to law and equity. The answer to the question of adequacy is therefore based on a value judgment. It has to be decided whether the result of an infringement can reasonably be attributed to the liable party. Participation behavior in the present context can therefore justify an injunctive relief claim only on the condition that it is generally suitable to favor the copyright infringement of the direct infringer. Thereby it is not enough to just take any participatory action that is only 'somehow' a supportive influence, but is not sufficiently closely related to the act itself, as the lower court correctly recognized" (internal citations omitted).[19]

37. The Swiss Supreme Court's articulation of adequate causation in the Swisscom Copyright Case is contrary to the opinions expressed in Professor Werro's Supplemental Declaration.[20] In the case at hand, the causal link is even more remote: allegations that a

---

[19] Ex. 15, SCD 145 [2019] III 72, 81 f. cons. 2.3.1 (including the references to former court decisions): "Rechtspolitischer Zweck der Adäquanz ist eine Begrenzung der Haftung (SCD 142 III 433 E. 4.5 S. 438 f.; SCD 123 III 110 E. 3a S. 112; SCD 117 V 369 E. 4a S. 382; SCD 115 V 133 E. 7 S. 142; SCD 96 II 392 E. 2 S. 397). Sie dient als Korrektiv zum naturwissenschaftlichen Ursachenbegriff, der unter Umständen der Einschränkung bedarf, um für die rechtliche Verantwortung tragbar zu sein (SCD 142 III 433 E. 4.5 S. 439; SCD 123 III 110 E. 3a S. 112; SCD 107 II 269 E. 3 S. 276; SCD 122 V 415 E. 2c). Beim adäquaten Kausalzusammenhang im Sinne der genannten Umschreibung handelt es sich um eine Generalklausel, die im Einzelfall durch das Gericht gemäss Art. 4 ZGB nach Recht und Billigkeit konkretisiert werden muss. Die Beantwortung der Adäquanzfrage beruht somit auf einem Werturteil. Es muss entschieden werden, ob ein Verletzungserfolg billigerweise noch dem Haftpflichtigen zugerechnet werden darf (SCD 142 III 433 E. 4.5 S. 439; SCD 123 III 110 E. 3a S. 112; SCD 109 II 4 E. 3 S. 7; SCD 96 II 392 E. 2 S. 397). Ein Teilnahmeverhalten kann im vorliegenden Kontext demnach nur unter der Voraussetzung einen Unterlassungsanspruch begründen, dass es allgemein geeignet ist, die Urheberrechtsverletzung des Direktverletzers zu begünstigen. Dabei genügt nicht jede beliebige Teilnahmehandlung, die lediglich "irgendwie" von förderndem Einfluss ist, jedoch nicht in hinreichend engem Zusammenhang mit der Tat selbst steht, wie die Vorinstanz zutreffend erkannt hat (HESS-BLUMER, a.a.O., S. 103)."

[20] Ex. 15, SCD 145 [2019] III 72, 82 f. cons. 2.3.2.

foreign bank aided a government's human rights violations by providing financial services to banks in the territory of that government are insufficient to establish adequate causation since a government can commit human rights violations regardless of the existence of those financial services. The financial assistance to banks in the territory of Sudan is thus "not sufficiently closely connected to the act" of the Sudanese government.

V. Concluding Remarks

38. The Supplemental Declarations are in agreement that liability of an accomplice of a perpetrator requires a conscious cooperation in the result. The Swiss Supreme Court ruled in a recent decision that each participator's conduct must be an adequate cause of the harm and that it is not sufficient if the participator's conduct merely has a supporting influence of some sort, but is not sufficiently closely connected to the tortious act of the perpetrator.

39. Plaintiffs must thus according to Swiss law prove that BNPP consciously cooperated with Sudanese banks with the aim to commit human rights violations, that BNPP's conduct was an adequate cause of the harm and that the conduct had not only a supporting influence of some sort but was closely connected to the acts of the Sudanese government. Swiss law denies a claim if not all of these requirements are fulfilled, and accordingly a Swiss court would reject the theory of liability proffered by plaintiffs against BNPP in the Second Amended Complaint.

VI. Declaration

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 13th day of August, 2020

VITO ROBERTO