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COURT LIMITS USE OF ALIEN TORT STATUTE TO BRING INTERNATIONAL LAW CLAIMS (*Presbyterian Church of Sudan v. Talisman Energy Inc.*)

The U.S. Court of Appeals for the Second Circuit this week took significant strides toward reining in activists' use of the Alien Tort Statute (ATS) as a means of attempting to enforce international human rights law in federal courts. The court ruled that a defendant may not be found liable for assisting others' alleged violations of the ATS in the absence of evidence it intended that those violations be committed. It is not enough to show that the defendant was aware of the alleged violations, the court ruled in dismissing ATS claims against an international oil company. The decision could derail many other ATS suits against multinational corporations, including one highly publicized ATS suit against numerous companies that did business with apartheid South Africa.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief urging dismissal of all claims in *Presbyterian Church of Sudan v. Talisman Energy Inc.* WLF argued that when it adopted the ATS in 1789, Congress never intended to assign federal courts the role of policing alleged human rights violations throughout the world.

The plaintiffs, a group of Sudanese citizens, complain that their human rights have been violated by the government of Sudan. From 1998 to 2003, a corporate affiliate of Talisman (a major Canadian oil company) conducted oil production operations in the southern Sudan and provided logistical support to the Sudanese government in that region. The plaintiffs allege, based on that support, that Talisman unlawfully "aided and abetted" the government's violation of their rights under international law. They filed suit against Talisman under the ATS, which provides jurisdiction to federal courts over tort suits brought by aliens for violations of "the law of nations."

"The ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors," said WLF Chief Counsel Richard Samp after the Second Circuit's decision. "It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for challenging overseas conduct of which they do not approve. This week's decision could go a long way toward bringing this perversion of the ATS to a halt," Samp said.

The plaintiffs filed suit in 2001 in federal district court. Talisman attempted repeatedly to win dismissal of the case; Talisman claimed both that it was improper for

U.S. courts to exercise jurisdiction over Canadian companies based on activities with no connection to the U.S., and that the ATS does not recognize a cause of action for “aiding and abetting” others’ violations of international human rights laws. The district court denied Talisman’s motions and instead allowed the plaintiffs to engage in massive pre-trial discovery. Finally, in late 2006, the district court granted summary judgment to Talisman after determining that the plaintiffs had failed to produce *any* evidence that Talisman was complicit in human rights violations committed by the Sudanese government. The defendants appealed from that dismissal.

In affirming the district court decision, the appeals court agreed with WLF that Talisman could not be said to have “aided and abetted” the misconduct of the Sudanese government in the absence of evidence that Talisman intended the misconduct. It is not enough, the court ruled, for the plaintiffs to demonstrate that Talisman knew of the alleged misconduct and that its support of the government provided Sudan with the resources necessary to carry out its human rights violations.

WLF also argued that the courts should have dismissed the case based on international comity doctrine, an issue not reached by the appeals court. WLF argued that where, as here, the issues raised in a suit could also be raised in the courts of a country (here, Canada) with far greater interests in the case, comity requires U.S. courts to abstain from hearing those issues. WLF argued that comity-based dismissal is particularly appropriate where, as here, a foreign government has protested exercise of jurisdiction over its citizens and the plaintiffs would be treated fairly in the other nation’s courts.

WLF is a public interest law and policy center with supporters nationwide. WLF devotes a substantial portion of its resources to opposing expansive private rights of action under the ATS because such litigation generally seeks (inappropriately, in WLF’s view) to incorporate large swaths of international law into the domestic law of the U.S.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is posted on its website, www.wlf.org.