

The Honorable Franklin D. Burgess

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CYNTHIA CORRIE AND CRAIG CORRIE,)
ON THEIR OWN BEHALF AND AS)
PERSONAL REPRESENTATIVES OF THE)
ESTATE OF RACHEL CORRIE AND HER)
NEXT OF KIN, INCLUDING HER)
SIBLINGS, MAHMOUD OMAR AL)
SHO'BI, ON HIS OWN BEHALF, ON)
BEHALF OF HIS SURVIVING SIBLINGS)
MUHAMMAD AL SHO'BI AND SAMIRA)
AL SHO'BI, AND ON BEHALF OF HIS)
DECEASED FAMILY MEMBERS, UMAR)
AL SHO'BI, FATIMA AL SHO'BI, ABIR AL)
SHO'BI, SAMIR AL SHO'BI, ANAS AL)
SHO'BI, AZZAM AL SHO'BI AND)
ABDALLAH AL SHO'BI; FATHIYA)
MUHAMMAD SULAYMAN FAYED, ON)
HER OWN BEHALF AND ON BEHALF OF)
HER DECEASED SON, JAMAL FAYED)
AND HIS NEXT OF KIN; FAYEZ ALI)
MOHAMMED ABU HUSSEIN ON HIS)
OWN BEHALF AND ON BEHALF OF HIS)
SONS, BAHJAT FAYEZ ABU HUSSEIN,)
AHMED FAYEZ ABU HUSSEIN, NOUR)
FAYEZ ABU HUSSEIN AND SABAH)
FAYEZ ABU HUSSEIN; MAJEDA)
RADWAN ABU HUSSEIN ON HER OWN)
BEHALF AND ON BEHALF OF HER)
DAUGHTERS, HANAN FAYEZ ABU)
HUSSEIN, MANAL FAYEZ ABU)
HUSSEIN, INSHERAH FAYEZ ABU)
HUSSEIN, AND FADWA FAYEZ ABU)
HUSSEIN; EIDA IBRAHIM SULEIMAN)
KHALAFALLAH ON HER OWN BEHALF)

No. C05-5192-FDB

DECLARATION OF RICHARD J. BURDGE, JR. IN SUPPORT OF DEFENDANT'S MOTION REQUESTING THAT THE COURT SOLICIT THE VIEWS OF THE UNITED STATES DEPARTMENT OF STATE REGARDING POTENTIAL FOREIGN POLICY IMPLICATIONS RAISED BY THIS ACTION

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR: OCTOBER 21, 2005

DECL. OF RICHARD J. BURDGE, JR. IN SUPPORT OF MOTION TO REQUEST STATEMENT OF INTEREST--1
Case No. C05-5192-FDB – Corrie v. Caterpillar, Inc.

Howrey LLP
550 South Hope Street, Suite 1100
Los Angeles, California 90071
Telephone: (213) 892-1800
Facsimile: (213) 892-2300

1 AND ON BEHALF OF HER DECEASED)
 2 HUSBAND, IBRAHIM MAHMOUD)
 3 MOHAMMED KHALAFALLAH AND)
 4 NEXT OF KIN,)
 5 Plaintiffs,)
 6 vs.)
 7 CATERPILLAR, INC., a foreign corporation,)
 8 Defendant.)

DECLARATION OF RICHARD J. BURDGE, JR.

I, Richard J. Burdge, Jr., state:

1. I am member of the Bar of the State of California and of the firm of Howrey LLP, counsel for Defendant in this action. I am admitted *pro hac vice* in this action. I have personal knowledge of the facts stated herein, if called as a witness, I would testify to those facts.

2. Attached hereto as Exhibit A, for the convenience of the Court, is a draft of a form of a letter to William Taft, Legal Advisor, at the United States Department of State that could be used for requesting that the State Department issue a Statement of Interest with respect to this case.

3. Attached hereto as Exhibits B - F, are true and correct copies of documents from the court file in *Mujica v. Occidental Petroleum Corp.*, No. CV 03-2860-WJR (JWJx) (C. D. Cal. 2004). I understand that Howrey personnel obtained these copies from the court files. The attached exhibits are described more fully as follows:

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Exhibit

Description

- B Letter from Hon. Margaret M. Morrow of the Central District of California to the State Department in connection with *Sarei v. Rio Tinto PLC*, 221 F. Supp. 2d 1116 (C.D. Cal. 2002), and response letter from Mr. William H. Taft, IV, The Legal Adviser, U.S. Department of State.
- C Letter from Hon. Richard A. Paez of the Central District of California to the State Department in connection with *Nat'l Coalition Gov't of the Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329 (C.D. Cal. 1997), and a Statement of Interest filed by the United States attaching a letter from the U.S. Department of State.
- D Letter from Hon. John E. Sprizzo of the Southern District of New York to the Department of State in connection with *In re South African Apartheid Litigation*, MDL No. 1499 (S.D. N.Y 2003).
- E Letter from Hon. Louis F. Oberdorfer of the District of the District of Columbia to the Department of State in connection with *Doe v. Exxon Mobil Corp.*, D.D.C. Civil Action No. 1:01CV1357 (LFO) (D.D.C. 2001), and response letter from Mr. William H. Taft, IV, The Legal Adviser, U.S. Department of State.

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2 F Draft letter from Hon. William J. Rea of the Central District of
3 California to the Department of State in connection with *Mujica v.*
4 *Occidental Petroleum Corp.*, No. CV 03-2860-WJR (JWJx) (C. D.
5 Cal. 2004), a Statement of Interest filed by the United States
6 attaching a letter from the U.S. Department of State, and a
7 Supplemental Statement of Interest filed by the United States
8 attaching a letter from the U.S. Department of State..
9

10 I declare under penalty of perjury that the foregoing is true and correct.
11 Executed on October 5, 2005, at Los Angeles, California.
12

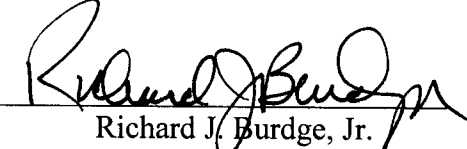
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14 
15 Richard J. Burdge, Jr.
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EXHIBIT A

[date]

Honorable William H. Taft, IV
Office of the Legal Adviser
United States Department of State
2201 C Street, N.W. Room 6423
Washington, D.C. 20520

Re: Corrie, et al. v. Caterpillar Inc.,
W.D. Wash. Case No. CO5-5192-FDB

Dear Mr. Taft:

I am writing to solicit the views of the State Department regarding the above-captioned civil action pending in this Court. The Complaint seeks remedies for alleged deaths, personal injuries and damage to residences resulting from military operations conducted by members of the Israeli Defense Forces (“IDF”) in the “Occupied Territories.” The plaintiffs allege that the IDF’s conduct violated customary international law. Neither the government of Israel nor the IDF is a party to the litigation. The only defendant is Caterpillar Inc. (“Caterpillar”).

The plaintiffs allege that Caterpillar sold bulldozers to the Israeli government after receiving actual or constructive notice that the IDF might use bulldozers in violation of international law. On that basis they allege that Caterpillar be liable to the plaintiffs. Plaintiffs seek damages under a number of legal theories, including alleged violations of international humanitarian law under the Alien Tort Statute, violations of the Torture Victims Protection Act, violations of RICO and various state law torts. Plaintiffs have also asked the Court to enjoin Caterpillar from selling more bulldozers or replacement parts to Israel until the IDF stops using the bulldozers to demolish Palestinian residences.

Plaintiffs are Americans or Palestinians who are suing on their own behalves, on behalf of deceased relatives, on behalf of the next of kin of deceased relatives and on behalf of injured minor children and incapacitated relatives. Plaintiffs allege that IDF soldiers operating a Caterpillar bulldozer ran over and killed Rachel Corrie, a college-aged American peace activist, while she was protesting the demolition of a Palestinian house in Gaza. Plaintiffs also allege that IDF soldiers operating Caterpillar bulldozers demolished Palestinian occupied residences in several incidents in different parts of the Occupied Territories. During the demolitions Palestinians died or were injured. Plaintiffs have not alleged that Caterpillar was involved other than as a seller of the bulldozers to Israel.

Defendant moved to dismiss the case under a number of theories, including on the grounds that this is a non-justiciable controversy under the act of state and political question doctrines. Briefing on the motion to dismiss is completed, but a hearing date for oral argument

has not been scheduled.¹ The purpose of this letter is to request the State Department's views on whether the adjudication of this action would affect United States foreign relations – and if so, the nature and extent of that impact.

A number of issues raised by the Plaintiffs' claims appear to bear on important foreign affairs interests of the United States. Plaintiffs' complaint challenges the legality of the demolition of buildings by the IDF in operations in the territories under the direction and control of the Israeli military government of the territories and of the State of Israel. The plaintiffs also allege that the IDF is guilty of war crimes in demolishing civil residences causing deaths and injuries to civilians. Therefore, the adjudication of this action may require this court to pass judgment on the discretionary decisions and policies of the State of Israel within its own boundaries and the boundaries of adjacent territories over which it has military control. The Court has been made aware of a number of lawsuits – including matters decided by the Israeli High Court of Justice – that raised similar questions concerning such demolitions and that have been decided by Israeli courts. Thus, this Court may be called upon to pass judgment on the Israeli courts' statements of the law relating to similar incidents. Finally, an alleged goal of the lawsuit is to stop sales by Caterpillar of bulldozers to Israel, either by an injunction issued by the court or through damages, until the IDF modifies its behavior.

Caterpillar has presented evidence that the Caterpillar sales since at least 1990 were approved by Defense Security Cooperation Agency and financed with funds provided by the U.S. under the Foreign Military Financing program as part of military aid to Israel. Further, export licenses were granted for the export of the bulldozers under the Arms Export Control Act. Because the complaint prays for relief stopping such sales, this litigation attempts to stop military aid provided by the U.S. government to one of this country's allies.

After considering the parties' papers [and conducting a hearing on the matter], this Court determined that it would be appropriate to solicit the Department of State's opinion as to the effect, if any, adjudication of this suit may have on the foreign policy of the United States. The Court would appreciate your consideration of this matter and your communication of the State Department's position regarding these issues. The Court leaves to your discretion whether your response is best submitted in the form of a letter or a Statement of Interest filed pursuant to 28 U.S.C. §517. For case management purposes, the court would appreciate it if you could submit a response by [date], or indicate the day by which you intend to respond.

Very Truly Yours,

The Honorable Franklin D. Burgess
United States District Judge

¹ The court has attached copies of the operative complaint, Defendant's Motion to Dismiss, Plaintiffs' Opposition and Defendant's Reply Brief.

EXHIBIT B

United States District Court
Central District of California
255 East Temple Street
Los Angeles, California 90012

Margaret M. Morrison
United States District Judge

Telephone
(213) 824-2949

August 30, 2001

The Honorable William Howard Taft IV
Office of the Legal Adviser
United States Department of State
2201 C Street N.W.
Washington, D.C. 20520

Re: *Alexis Holyweek Sarei, et al. v. Rio Tinto plc, et al.*
CV 00-11695 MMM (AJJ)

Dear Mr. Taft:

On November 2, 2000, current and former residents of the island of Bougainville Island in Papua New Guinea ("PNG"), filed an action in this court under the Alien Tort Claims Act, 28 U.S.C. § 1350. Plaintiffs allege that defendants Rio Tinto plc and Rio Tinto Limited (collectively "Rio Tinto") committed various human rights violations in connection with their operation of a mine on the island. Specifically, plaintiffs contend that Rio Tinto's mining operations on Bougainville destroyed the island's environment, harmed the health of its people, and instigated a ten-year civil war that resulted in thousands of civilian casualties. While Rio Tinto plc and Rio Tinto Limited are the only named defendants, many of plaintiffs' allegations concern actions purportedly taken by the PNG government and members of the PNG defense force. Plaintiffs allege that the PNG government acted at the direction or request of Rio Tinto, and that the company and the government were joint venture partners in operating the mine. The court has enclosed a copy of the first amended complaint for your reference, but summarizes the pertinent allegations below:

Environmental Claims

Plaintiffs allege that the mine was created and operated pursuant to a joint venture between Rio Tinto and the PNG government, and that it was an important source of income for PNG. Moreover, they allege that mining operations were governed

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The Honorable William Howard Taft IV
August 30, 2001
Page 2

by PNG law, namely the "Mining (Bougainville Copper Agreement) Act of 1974 ("Copper Agreement")," which regulated the disposal of mining waste and vested in PNG's Department of Minerals and Energy the power to control and monitor pollution generated by the mine. Plaintiffs contend that Rio Tinto's mining operations destroyed the environment of the Bougainville by, *inter alia*, depositing more than one billion tons of waste into the island's river system, destroying the supply of fish, and polluting the atmosphere with emissions from the mine. Plaintiffs maintain that these actions constitute a violation of international law.

Claims Regarding War Crimes

Plaintiffs additionally allege that the operation of the mine and destruction of the environment led to an uprising on Bougainville, which ultimately forced the mine to close. Plaintiffs contend that Rio Tinto responded by threatening to withdraw all investment in PNG if the PNG government did not take military action to suppress the uprising and reopen the mine. Thus, plaintiffs allege that at the behest of Rio Tinto, the PNG government imposed a military blockade, which prevented medical supplies from reaching the people of Bougainville and caused thousands of civilian deaths. Additionally, plaintiffs allege that the PNG government acted at the direction of Rio Tinto when it sent a defense force to Bougainville to suppress the uprising. According to plaintiffs, members of the defense force committed acts of torture, killing, bombing, rape, and pillage in violation of international law.¹

On January 26, 2001, defendants filed a motion to dismiss, asserting, *inter alia*, that plaintiffs' suit is barred by the act of state and political question doctrines. Defendants contend that these doctrines apply because, in order to hold Rio Tinto liable, the court will have to determine that the actions of the PNG government violated international law. They assert, for example, that deciding the merits of plaintiffs' environmental claims will require that the court pass judgment on official acts of the PNG government, since operation of the mine was governed by the Copper Agreement, and the Department of Minerals and Energy was responsible for monitoring pollution. Similarly, the parties dispute whether the decision to impose the blockade

¹The complaint also contains allegations that the Australian and PNG governments assisted Rio Tinto in forcibly displacing Bougainvilleans from their land so that the mine might be constructed and operated. It is not clear the extent, if any, to which plaintiffs rely on such allegations to state claims against Rio Tinto for violation of international law. (See, e.g., Complaint, ¶¶ 101-106, 111, 125, 159-62, 230, 239, 244-45.)

The Honorable William Howard Taft IV
August 30, 2001
Page 3

was a legitimate act of warfare, such that it would be deemed an official act of the PNG government, or whether it constituted torture, war crimes, crimes against humanity, or genocide in violation of international law. Finally, there is a question as to whether the acts undertaken by the PNG defense force to suppress the uprising in Bougainville constitute the official acts of a sovereign state or violations of international law.

After considering the parties' papers and conducting a hearing on the matter, the court determined that it would be appropriate to solicit the Department of State's opinion as to the effect, if any, that adjudication of this suit may have on the foreign policy of the United States. The court would appreciate your consideration of this matter and your communication of the State Department's position regarding these issues. The court leaves to your discretion whether your response is best submitted in the form of a letter or a Statement of Interest filed pursuant to 28 U.S.C. § 517. For case management purposes, the court would appreciate it if you could submit a response by October 5, 2000, or indicate the date by which you intend to respond.

Very truly yours,



Margaret M. Morrow
United States District Judge

cc: Counsel for plaintiffs:
Steve W. Berman, Esq.
Kevin P. Roddy, Esq.
Paul Luvera, Esq.
Joel D. Cunningham, Esq.

Counsel for defendants:
James J. Brosnahan, Esq.
✓ Jack W. Londen, Esq.

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

October 31, 2001

Honorable Robert D. McCallum, Jr.
Assistant Attorney General
Civil Division
United States Department of Justice
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20520

Re: Alexis Holyweek Sarei, et al.; v. Rio Tinto plc,
et al., No. CV 00-11695 MMM (AIJx) (C.D. Ca)

Dear Mr. McCallum:

By letter dated August 30, United States District Court Judge Margaret M. Morrow solicited the opinion of the Department of State "as to the effect, if any, that adjudication of [the above-captioned] suit may have on the foreign policy of the United States." Encl. 1. Although Judge Morrow advises that defendants have raised the act of state and political question doctrines in a motion to dismiss, she has not expressly invited the Department to comment on these legal doctrines.

The gravamen of plaintiffs' claims is their assertion that defendants -- in concert with the government of Papua New Guinea (PNG) and PNG officials -- were responsible for despoliation of the environment of Bougainville Island, PNG, as well as for the commission of various atrocities in the suppression of an uprising on the island. As described in Judge Morrow's letter, under the environmental claims, plaintiffs contend that defendants' mining operations as a joint venture partner with the PNG under the PNG's oversight destroyed the island's river system and fish supply, and polluted the atmosphere; under the "war crimes" claims, plaintiffs contend that defendant induced the PNG to impose a military blockade preventing medical supplies from reaching the island resulting in many civilian deaths, and also that PNG defense forces committed acts of torture, killing, bombing, rape and pillage. Plaintiffs assert that these actions violated international law, and that their claims against Rio Tinto are cognizable under the Alien Tort Statute, 28 U.S.C. § 1350.

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The Department of State has previously expressed its concern over human rights abuses in Bougainville during the protracted civil war with PNG authorities there, in particular in the annual publication *Country Reports on Human Rights Practices*. It would not wish any statement made today to be taken to detract from those concerns. However, the court's inquiry focuses on the foreign policy consequences today of the pending litigation. In that regard, the Department has been encouraged by progress in the multilateral, United Nations-sponsored Bougainville peace process, which is seeking a comprehensive settlement to the Bougainville conflict. On August 30, the same date as Judge Morrow's letter soliciting our opinion on potential foreign policy effects of the suit, the PNG Government and representatives of the people of Bougainville concluded the Bougainville Peace Agreement. Encl. 2. Full implementation of that agreement -- which provides, *inter alia*, for withdrawal of remaining PNG forces in Bougainville, for eventual establishment of an autonomous Bougainville Government, and for establishment of a commission to address human rights issues in Bougainville -- will require sustained effort and maintaining a delicate political balance in the years ahead.

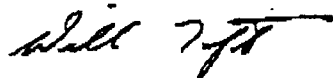
The success of the Bougainville peace process represents an important United States foreign policy objective as part of our effort at promoting regional peace and security. In our judgment, continued adjudication of the claims identified by Judge Morrow in her August 30 letter would risk a potentially serious adverse impact on the peace process, and hence on the conduct of our foreign relations. According to local custom, the concept of "reconciliation" is at the heart of the peace process. We understand that acts of reconciliation have already occurred as a foundation to the August 30 agreement, and that adjudication in a foreign court of the issues alleged in this case could invalidate these steps and sweep away the basis of the peace agreement. Countries participating in the multilateral peace process have raised this concern with us as well.

The Government of Papua New Guinea, in particular, has stated its objection to these proceedings in the strongest terms, as set forth in the attached letter of October 17 from PNG Chief Secretary Robert Igara to U.S. Ambassador

Susan Jacobs. Encl. 3. Clearly, the PNG perceives the potential impact of this litigation on U.S.-PNG relations, and wider regional interests, to be "very grave." We cannot lightly dismiss such expressions of concern from a friendly foreign state.

I would be grateful if you could transmit the foregoing views of the Department of State to Judge Morrow in the appropriate form.

Sincerely,



William H. Taft, IV
Legal Adviser

Enclosures:

As stated.

EXHIBIT C

UNITED STATES DISTRICT COURT
ROYBAL FEDERAL BUILDING
255 E. TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
RICHARD A. PAEZ
UNITED STATES DISTRICT JUDGE

TELEPHONE
(213) 894-0754

April 24, 1997

Michael J. Matheson
Acting Legal Advisor
Legal Office, Rm. 6423
United States Department of State
2201 C Street NW
Washington, D.C. 20520

Re: National Coalition Government of the Union of Burma, et al.
v. Unocal, et al., CV 96-6112 RAP (BQRx)
John Doe I, et al. v. Unocal, et al., CV 96-6959 RAP (BQRx)

Dear Mr. Matheson:

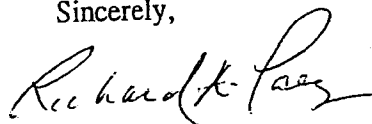
In light of defendant Unocal Corporation's invocation of the act of state doctrine in each of the above-referenced matters, and before these actions proceed much further, the Court wishes to invite the Department of State to express its views concerning the ramifications this litigation may have on the foreign policy of the United States as established by Congress and the Executive. Specifically, the parties dispute whether consideration of claims asserted in the foregoing actions will require this Court "to declare invalid the official act of a foreign sovereign performed within its own territory." See W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp. International, 493 U.S. 400, 405 (1990).

The Court recently heard the Motion of Defendant Unocal Corporation to Dismiss for Lack of Standing, Failure to Join a Party under Rule 19, and Failure to State a Claim upon which Relief Can Be Granted in National Coalition Government of the Union of Burma. In the course of those proceedings, Unocal noted that the Court might wish to solicit the views of the Department, and the plaintiffs agreed that to do so might be prudent. Although the Court has already issued and clarified initial ruling on the applicability of the act of state doctrine in the John Doe I action, upon further reflection, the Court deems it appropriate to solicit the Department's position regarding the sensitivity of these matters to forestall potential uncertainty that may arise should the Court find it necessary to revisit the issue. Accordingly, the Court has attached copies of the operative complaints in each action; a copy of the Court's Order Granting in Part and Denying in Part Defendant Unocal's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Failure to Join a Party under Rule 19, and Failure to State a Claim upon which Relief Can Be Granted (Order); and a copy of the Court's Order clarifying the Court's March 26, 1997 Order.

Michael J. Matheson
April 24, 1997
Page two

Based on the Court's intention to extend this invitation to the Department, the Court continued the scheduled hearing of plaintiffs' motion for a preliminary injunction in the John Doe I action for forty-five days. Plaintiffs' preliminary injunction motion is now scheduled to be heard during the Court's civil motion calendar on June 9, 1997. The Court is somewhat constrained with respect to the amount of time it may extend the preliminary injunction hearing by virtue of the plaintiffs' allegations that they, and the class they purport to represent, currently face the threat of irreparable harm. Nonetheless, should the Department be inclined to accept the Court's invitation to express its views and desire additional time in which to do so, the Court would, of course, make every effort to reschedule pending motions accordingly.

Sincerely,

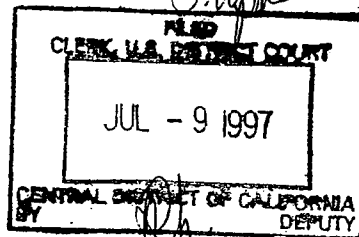


Richard A. Paez

Enclosures

cc: All counsel

1 FRANK W. HUNGER
 Assistant Attorney General
 2 NORA M. MANELLA
 United States Attorney
 3 VINCENT M. GARVEY
 Deputy Director,
 4 Federal Programs Branch
 JACQUELINE BECERRA
 5 Trial Attorney, Civil Division
 Federal Programs Branch
 6 U.S. Department of Justice
 Post Office Box 883
 7 Room 953
 Washington, D.C. 20044
 8 Telephone: (202) 616-8298
 Facsimile: (202) 616-8202
 9 Attorneys for the United States



10 UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

12 NATIONAL COALITION)
 GOVERNMENT OF THE UNION OF)
 13 BURMA, THE FEDERATION OF TRADE)
 UNIONS OF BURMA)
 14 JOHN DOE I, JOHN DOE II, JOHN)
 DOE III, and JOHN DOE IV)
 15 Plaintiffs,)
)
 16 v.)
)
 17 UNOCAL INC., and the)
 YADANA NATURAL GAS PROJECT)
 18 Defendants.)

Case No.:
 CIV. NO. 96-6112-RAP(BQRx)

STATEMENT OF INTEREST
 OF THE UNITED STATES

19 On April 24, 1997, this Court invited the Department of State
 20 "to express its views concerning the ramifications this litigation
 21 may have on the foreign policy of the United States as established
 22 by Congress and the Executive." See Letter from the Honorable
 23 Richard A. Paez to Michael J. Matheson of April 24, 1997. Pursuant
 24 to 28 U.S.C. §§ 516-17, the Attorney General, on behalf of the
 25 Department of State, hereby submits the following.

26 Attached hereto as Exhibit A is a letter, dated July 8, 1997,
 27 from Michael J. Matheson, Acting Legal Adviser, U.S. Department of
 28

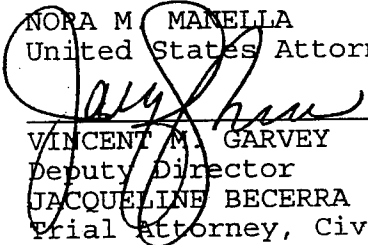
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 Hinkley A

1 State, to Frank W. Hunger, Assistant Attorney General, which, while
2 noting the limited nature of the Department of State's reply,
3 advises that "at this time adjudication of the claims based on
4 allegations of torture and slavery would not prejudice or impede
5 the conduct of U.S. foreign relations with the current government
6 of Burma." See Exhibit A, at 2.

7
8 Respectfully submitted,

9 FRANK W. HUNGER
Assistant Attorney General

10 NORA M. MANELLA
United States Attorney

11 
12 VINCENT M. GARVEY
Deputy Director
13 JACQUELINE BECERRA
Trial Attorney, Civil Division
14 Federal Programs Branch
U.S. Department of Justice
15 Post Office Box 883, Room 953
Washington, D.C. 20044
16 Telephone: (202) 616-8298
17 Facsimile: (202) 616-8202
Attorneys for the United States

18 Dated: July 8, 1997
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Washington, D.C. 20520

JUL - 8 1997

The Honorable
Frank W. Hunger
Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Hunger:

By letter dated April 24, 1997, District Judge Richard Paez of the Central District of California invited the Department of State to express its views in *National Coalition Government of the Union of Burma v. Unocal* (CV 96-6112 RAP) and *John Doe I v. Unocal* (CV 96-6959 RAP). In these cases, various plaintiffs have filed suit against U.S. and foreign participants in the Yadana gas pipeline project in Burma.

The Court issued its invitation following its March 25, 1997 and April 24, 1997 rulings on defendant Unocal's motion to dismiss in the *John Doe* case. In these rulings, the Court concluded that, with the exception of plaintiffs' expropriation claims, the act of state doctrine was not a bar to adjudication. The Court specifically concluded that the act of state doctrine would not preclude consideration of claims based on alleged acts of torture and slavery.

The Court has yet to rule on a pending motion to dismiss filed by Unocal in the *National Coalition Government of the Union of Burma* case, which also presents an act of state objection to the litigation of plaintiffs' claims. In its letter to the State Department, the Court indicated that "before these actions proceed much further," it wished to invite our views "concerning the ramifications this litigation may have on the foreign policy of the United States as established by Congress and the Executive."

It is our understanding that both cases are at a very preliminary procedural stage. Thus, the record upon which the Court has asked for the Department's views is undeveloped, and the Department's ability to provide the Court with meaningful comment is limited. In particular, the Department is not in a

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EXHIBIT A

position at this time to express a view as to whether the act of state doctrine is necessarily implicated in the cases before the Court, nor would we want this letter to imply that we have reviewed or taken a position on any other legal issues in the litigation.

Nevertheless, in response to Judge Paez's request, the Department can state that at this time adjudication of the claims based on allegations of torture and slavery would not prejudice or impede the conduct of U.S. foreign relations with the current government of Burma. I would appreciate if you would transmit this foreign policy view to the court in the appropriate form.

Sincerely,

Michael J. Matheson

Michael J. Matheson
Acting Legal Adviser

PROOF OF SERVICE BY MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On July 9, 1997, I served STATEMENT OF INTEREST OF THE UNITED STATES on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practice. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of mailing: July 9, 1997. Place of mailing:
Los Angeles, California.

SEE ATTACHED SERVICE LIST

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

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: July 9, 1997 at Los Angeles, California


IRENE D. VEJAR

SERVICE LIST

Terry Collingsworth
David Grunwald
International Labor Rights & Education Fund
100 Maryland Avenue, NE
Washington, DC 20002

Cristobal Bonifaz
John C. Bonifaz
Law Offices of Cristobal Bonifaz
P.O. Box 2488
Amherst, MA 01004-2488

Peter A. Schey
Carlos R. Holguin
Harry Salzberg
National Center for Human Rights
and Constitutional Law
256 South Occidental Blvd.
Los Angeles, CA 90057

Professor Arthur Berney
Professor H. Kent Greenfield
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Kristin A. Linsley
Munger, Tolles & Olson
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071-1560

5

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
NEW YORK, NEW YORK 10007

CHAMBERS OF
JOHN E. SPRIZZO
DISTRICT JUDGE

August 7, 2003

Honorable William H. Taft, IV
Office of the Legal Adviser
United States Department of State
2201 C Street, N.W., Room 6423
Washington, DC 20520

Re: In re South African Apartheid Litigation, MDL No. 1499 (JES)

Dear Mr. Taft:

Although not entirely identical in their allegations, the complaints in the ten actions comprising the above-captioned multidistrict litigation currently pending before me generally charge dozens of multinational corporations with human rights violations stemming from their alleged business dealings in South Africa during the apartheid era.

On November 6, 2003, I will hear oral argument on defendants' joint motion to dismiss the actions due to lack of subject matter jurisdiction. It is the defendants' position that the cases should be dismissed because, among other reasons, plaintiffs' claims are not justiciable insofar as adjudication would require a court to resolve questions entrusted to the political branches of our government. Defendants also contend that plaintiffs' allegations fail to plead a violation of international law or a United States treaty as required by the Alien Tort Statute, 28 U.S.C. § 1350. Plaintiffs' response to defendants' motion is scheduled to be submitted on or before September 8, 2003.

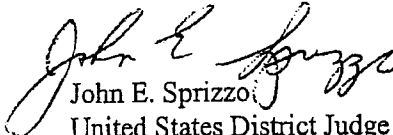
I recently received a declaration from Penuell Mpapa Maduna, the Minister of Justice and Constitutional Development of the Republic of South Africa, in which Dr. Maduna conveyed to me the official position of his government that the proceedings currently before me impermissibly interfere with South Africa's efforts to address political matters in which it, as a foreign sovereign, has a predominant interest.

In light of Dr. Maduna's declaration, I thought it prudent to inquire whether the Department of State has an opinion as to whether adjudication of these cases would have an adverse impact on the interests of the United States and, if so, the nature and significance of any such impact. Since,

as mentioned above, the cases are scheduled for oral argument on November 6, 2003, your response prior to that date would be appreciated.

I enclose for your convenience copies of the complaints in two of the actions, as well as copies of defendants' joint motion to dismiss and Dr. Maduna's declaration.

Very truly yours,


John E. Sprizzo
United States District Judge

Enclosures

cc: Joseph H. Hunt
Counsel to the Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 3137
Washington, DC 20530

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EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA
WASHINGTON 20001

CHAMBERS OF
LOUIS F. OBERDORFER
UNITED STATES DISTRICT JUDGE

May 10, 2002

The Honorable William H. Taft, IV
Office of the Legal Adviser
United States Department of State
2201 C Street, N.W.
Washington, DC 20520

RE: Doe, et al. v. Exxon Mobil Corporation, et al. 01-CV-1357 (LFO)

Dear Mr. Taft:

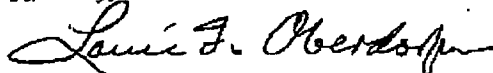
The complaint (copy attached) filed in the above-entitled matter on behalf of a group of Indonesian citizens alleges that Exxon Mobil Corporation and various of its subsidiaries and affiliates ("Exxon") are legally responsible for human rights violations suffered by plaintiffs at the hands of an Indonesian Army unit engaged by Exxon to provide security for its Arun Project in Aceh, Indonesia.

The matter is before me on Exxon's motion to dismiss (copy attached), on the theory that the action is barred by the act of state and political question doctrines. Plaintiffs' opposition, defendants' reply, and a transcript of the hearing are also enclosed.

Out of an abundance of caution, in the tense times in which we are living, I inquire whether the Department of State has an opinion (non-binding) as to whether adjudication of this case at this time would impact adversely on interests of the United States, and, if so, the nature and significance of that impact.

Justice delayed being justice denied, I and the parties would appreciate it if you could let us have your opinion before July 1, 2002.

Sincerely,



Encl.

cc (w/o encl):

Terrence Collingsworth, Esq.
Michael D. Hausfeld, Esq.
Martin J. Weinstein, Esq.
Paul W. Wright, Esq.

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

July 29, 2002

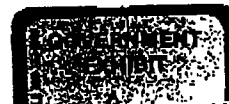
Honorable Louis P. Oberdorfer
United States District Court for
The District of Columbia
333 Constitution Ave., NW
Washington, D.C. 20001

Re: *Doe, et al. v. ExxonMobil, et al.*
No. 01-CV-1357 (DDC)

Dear Judge Oberdorfer:

This is in response to your letter of May 10, in which you invite the views of the Department of State in connection with the above-captioned proceedings. Specifically, you inquire "whether the Department of State has an opinion (non-binding) as to whether adjudication of this case at this time would impact adversely on interests of the United States, and, if so, the nature and significance of that impact." As you requested, this letter specifically addresses the potential adverse impacts of the litigation on U.S. interests. It does not address the legal issues before the court.

For the reasons detailed below, the Department of State believes that adjudication of this lawsuit at this time would in fact risk a potentially serious adverse impact on significant interests of the United States, including interests related directly to the on-going struggle against international terrorism. It may also diminish our ability to work with the Government of Indonesia ("GOI") on a variety of important programs, including efforts to promote human rights in Indonesia.



However, before describing those concerns, the Department would like to reaffirm its condemnation of human rights abuses by elements of the Indonesian armed forces in locations such as Aceh. Without expressing a view on the allegations in this specific lawsuit, we would like to reiterate that a lasting, peaceful solution to the Aceh conflict that maintains Indonesian sovereignty can only be achieved if the military and police end human rights abuses. The Department will continue to work vigorously to bring such abuses to an end through diplomatic and other means.

With respect to this litigation, it is the Department's considered opinion that adjudication at this time could adversely affect United States interests in two ways, recognizing that such effects cannot be determined with certainty.¹ First, the GOI may respond to the litigation by curtailing cooperation with the United States on issues of substantial importance to the United States. Second, the litigation's potential effects on Indonesia's economy could in turn adversely affect important United States interests.

Potential Bilateral Effects

In our experience, the government and people of Indonesia react most negatively to any perceived intrusion into areas of Indonesian sovereignty. We anticipate that adjudication of this case will be perceived in Indonesia as a U.S. court trying the GOI for its conduct of a civil war in Aceh. All of the human rights abuses and injuries alleged in the complaint refer to conduct claimed to have been committed by the military and police forces of the GOI. This issue presents special sensitivities for Indonesia because it is deeply concerned about maintaining national cohesion in the face of strong anti-government secessionist movements in Aceh and elsewhere. The

¹ Much of this assessment is necessarily predictive and contingent on how the case might unfold in the course of litigation. E.g., the nature, extent, and intrusiveness of discovery; the degree to which the case might directly implicate matters of great sensitivity to the Government of Indonesia and call for judicial pronouncements on the official actions of the GOI with respect to the conduct of its military activities in Aceh; the effect that a decision in favor of plaintiffs might encourage secessionist activities in Aceh and elsewhere in Indonesia; whether the case were to go to a jury and, if so, whether a substantial monetary award were to be imposed on Exxon Mobil; how other large commercial interests might interpret such a judgment when making investment decisions in Indonesia.

Indonesian response to such perceived U.S. "interference" in its internal affairs could impair cooperation with the U.S. across the full spectrum of diplomatic initiatives, including counterterrorism, military and police reform, and economic and judicial reform.

This lawsuit could potentially disrupt the on-going and extensive United States efforts to secure Indonesia's cooperation in the fight against international terrorist activity. Indonesia is the fourth largest state in the world, with a population of some 210 million. It is also the largest Muslim nation, and serves as a focal point for U.S. initiatives in the ongoing war against Al Qaida and other dangerous terrorist organizations. U.S. counterterrorism initiatives could be imperiled in numerous ways if Indonesia and its officials curtailed cooperation in response to perceived disrespect for its sovereign interests.

The United States also is actively seeking to assist Indonesia in reform efforts aimed at ending the kinds of abuses alleged in this litigation. Through improved training and support of security personnel, as well as judicial reform, these programs are designed to establish a higher degree of professionalism and respect for individual rights. Should the GOI withdraw from these programs in reaction to the litigation, it will impact adversely on our goal of improving Indonesia's treatment of all members of its population, including the people of Aceh. An adverse effect on our human rights objectives is also possible if the GOI were to turn down U.S. companies bidding for new contracts in response to the suit. Working side-by-side with U.S. firms, Indonesian companies and government agencies see the advantages of modern business practices including transparency, respect for contracts, fair labor practices, anti-corruption, efficiency, and competitiveness. We would expect that foreign companies, such as from the People's Republic of China (CNOOC and PetroChina both acquired multi-million dollar rights to Indonesian oil and gas fields this year), would be far less concerned about human right abuses, or about upholding best business practices.

Potential Effects on Indonesia's Stability

Economic and political stability in Indonesia is important to U.S. interests in the region. Given Indonesia's large population, resources, key geographic

location, and proximity to key U.S. allies, instability there could create problems ranging from interruption in vital shipping lanes, to refugee outflows, to a new home for terrorists. To the extent this litigation contributes to a worsening of the economic conditions in Indonesia that breed instability it would adversely affect U.S. interests.

Here, timing is an important consideration, because there is already substantial evidence that Indonesia's foreign investment climate is deteriorating. The GOI's Investment Coordinating Board (BKPM), for example, reported that foreign direct investment approvals dropped 88 percent in the first quarter of 2002 (US\$ 291.5 million) compared to the first quarter of 2001 (US\$ 2.44 billion). Total BKPM foreign direct investment approvals for 2001 also dropped 41.5 percent from the previous year. While the dollar value of investment proposals may be inflated and many proposals do not necessarily result in actual projects, the magnitude of the change confirms that the underlying trend is worsening.

This litigation appears likely to further discourage foreign investment, particularly in extractive industries in remote or unstable areas that require security protection. This, in turn, could have decidedly negative consequences for the Indonesian economy. Revenues from the oil and gas sector, for example, are one of the core contributors to GOI budget revenues, comprising 35 percent of the Indonesian Government's total revenues in 2001. In the last few years, oil and gas revenues (including taxes on the sector) have become an increasingly important source of government funds, comprising 19, 23, and 31 percent of total government revenue respectively in 1998, 1999, and 2000. In addition, oil and gas revenues, which are received in U.S. dollars, offer important protection for the GOI from foreign exchange risk. However, in order to maintain its current level of revenues from the sector, Indonesia must develop new fields, or invest further to maintain production at existing oil and gas fields. More generally, Indonesia must maintain a growing economy to deal with the effects of the 1997-98 financial crisis, which left the GOI with the costs of a Rp 660 trillion (US\$ 75 billion) bank bailout. Efforts by the U.S. and other donors to enhance Indonesia's fiscal sustainability through debt rescheduling and international lending programs will be undermined if Indonesia cannot sustain its own commitments.

A viable, well-funded central government is also important to U.S. interests in domestic Indonesian policies. Providing more and higher quality public services, especially education and health services, is a key factor in reducing poverty and maintaining political stability. Given its size and large population, any threat to Indonesia's political stability could impact on the security of U.S. treaty allies Australia and Thailand, as well as other countries in the region. Adequate government resources are also necessary to maintain properly trained and equipped security forces that do not need to rely on unregulated and often corrupt business dealings, practices which contribute to actions outside of a central chain of command. Professional personnel are also crucial for making progress on a host of U.S. priorities, including promoting regional stability, countering ethnic and sectarian violence, combating piracy, trafficking of persons, smuggling, narcotics trafficking, and environmentally unsustainable levels of fishing and logging. Litigation in the U.S. that discourages further investment in Indonesia poses a risk of weakening the Indonesian economy in conflict with these U.S. goals.

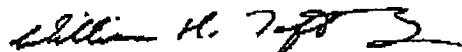
In this respect, we note that increasing opportunities for U.S. business abroad is an important aspect of U.S. foreign policy. Under the circumstances presented here, the adjudication of these claims could prejudice the Government of Indonesia and Indonesian businesses against U.S. firms bidding on contracts in extractive and other industries.

For the information of the Court, I am enclosing a copy of a letter received on July 15, 2002, from Indonesia's Ambassador to the United States Soemadi Djoko M. Brotodiningrat to Deputy Secretary of State Richard Armitage. In the letter Ambassador Soemadi expresses his government's objections to the continued adjudication of this case. He states that Indonesia views this litigation as an unacceptable extraterritorial act that will complicate efforts to safeguard foreign investors and will

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negatively impact Indonesia's struggle to secure economic recovery. He also states that the case will have an adverse impact on effort towards peace in Aceh, which is at an extremely sensitive stage.

Sincerely,



William H. Taft, IV
The Legal Adviser

Enclosure:

Letter from Indonesian Ambassador

EXHIBIT F

The Honorable William Howard Taft
Office of the Legal Adviser
United States Department of State
2201 C Street N.W.
Washington, DC 20520

Re: *Luis Alberto Galvis Mujica, et al. v. Occidental Petroleum Corp., et al.*,
CV03-2860 WJR(JWJx)

Dear Mr. Taft:

I am writing in connection with the above-captioned civil action pending in this Court. The plaintiffs are three citizens of Colombia, South America, who allege that several of their relatives were killed in the course of a December 1998 Colombian Air Force operation near the village of Santo Domingo, Colombia, in violation of international human rights principles. Plaintiffs have sued defendants Occidental Petroleum Corporation and AirScan, Inc., claiming that they are liable for the actions of the Colombian military. The purpose of this letter is to request the State Department's views on whether the adjudication of this action would affect United States foreign relations – and if so, the nature and extent of that impact – in light of defendants' stated intention to bring a motion to dismiss based upon the act of state, political question, and foreign affairs doctrines. Set out at the end of this letter are several more specific questions raised by the factual allegations in this case.

Allegations of the Complaint: Plaintiffs allege that on December 13, 1998, one or more cluster bombs were dropped by the Colombian Air Force on the village of Santo Domingo, killing and wounding numerous civilians. FAC ¶ 2. Plaintiffs allege that the hostilities on that day also included the landing of Colombian Air Force troops in the area, the strafing of the village of Santo Domingo with machine-gun fire by the Colombian military, and the firing of air-to-surface rockets by the Colombian Air Force. *Id.* ¶ 19. Plaintiffs also allege that in the two days following the incident, Colombian troops entered the village, blocked all exits, and ransacked the homes of villagers. *Id.* ¶ 24.

Plaintiffs' complaint asserts that the purpose of the Santo Domingo operation was to protect the Caño Limón petroleum pipeline. FAC ¶ 25. Plaintiffs allege that this pipeline has been operated by Occidental Petroleum and co-owned by Occidental and the Colombian government since 1986. *Id.* ¶ 15. Plaintiffs do not name the Colombian government or the Colombian Air Force as defendants but instead assert that Occidental and AirScan should be liable – Occidental because it provided financial and other support to the Colombian military in the region, including on the day of the Santo Domingo operation, and AirScan because it provided aerial surveillance services during the operation and chose targets for the disembarkment of Colombian troops and for the bombing. *Id.* ¶¶ 2-4, 18-19.

Plaintiffs also assert that defendants were aware that for many years preceding the events

of December 13, 2003 the Colombian government had engaged in a pattern of human rights violations in the Arauca Department of Colombia, where Santo Domingo is located. FAC ¶ 16. Plaintiffs assert that the Colombian military “directly and indirectly participated in numerous massacres of civilians; the disappearances, extra-judicial killings, arbitrary detentions and beatings of local members of peasant, labor and indigenous groups – including members of the U’wa tribe whose land Occidental was attempting to seize for oil-drilling purposes; and the forced displacement of hundreds of people from their homes and land.” *Id.* Plaintiffs allege that, notwithstanding this knowledge, Occidental and AirScan “continued to work with these same Colombian military forces, providing them with financial and other material assistance and planning joint actions with them relating to Defendant Occidental’s commercial activities.” *Id.*

Issues Presented: In a Stipulation filed by the parties in this court on October 23, 2003, defendants have stated their intention to file a motion under Federal Rule of Civil Procedure 12(b), asserting, *inter alia*, that this action should be dismissed under the act of state, foreign affairs, and political question doctrines, among other theories. Upon considering the issues raised by the action, the Court has concluded that it is appropriate to solicit the views of the State Department as to the effect, if any, that adjudication of this suit may have on the foreign policy of the United States. More specifically, the Court would benefit from the Department’s views on whether the action would negatively affect (1) United States foreign relations with Colombia or other countries in the Andean region; (2) United States efforts, including efforts conducted jointly with the Colombian government, to fight terrorism and/or drug trafficking; (3) the ability of the United States to promote human rights in Colombia and elsewhere; and (4) relevant economic factors, including the willingness of United States companies to invest in Colombia or elsewhere. The Court also would benefit from any information that the Department may have on other proceedings pending in Colombia that bear upon the Santo Domingo events. Lastly, the Court would be interested in the Department’s views, if any, on the relevant legal issues, including the applicability of the above-mentioned doctrines in the context of this action.

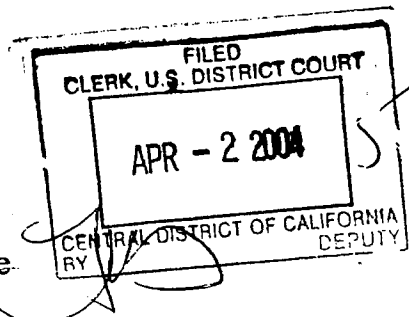
The Court would appreciate your consideration of this request and your communication of the State Department’s position regarding these issues in the form of a Statement of Interest or under 28 U.S.C. § 517 or in any other form that the United States deems proper. The Court would appreciate a response by January 16, 2004, or an indication by that date as to when a response could be expected.

Very truly yours,

William J. Rea
United States District Judge

cc: All counsel

1 DANIEL MERON
Acting Assistant Attorney General, Civil Division
2 DEBRA W. YANG
United States Attorney
3 JOSEPH H. HUNT
Director, Federal Programs Branch
4 RUPA BHATTACHARYYA (VA#38877)
Trial Attorney, Federal Programs Branch
5 Civil Division, United States Department of Justice
P.O. Box 883, 20 Massachusetts Ave., N.W.
6 Washington, D.C. 20044
Tel: (202) 514-3146; Fax: (202) 616-8202



7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION

10 LUIS ALBERTO GALVIS MUJICA,
on behalf of himself and as
11 representative of the Estates of
TEREZA MUJICA HERNANDEZ and
12 EDILMA LEAL PACHECO and
JOHANNY HERNANDEZ
13 BECERRA,

No. CV 03-2860-WJR(JWJx)

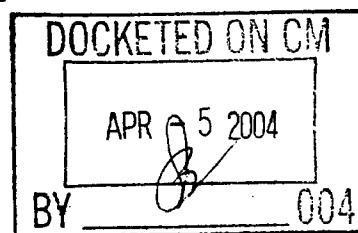
14 Plaintiff,

15 **STATEMENT OF INTEREST OF
16 THE UNITED STATES**

17 vs.

18 OCCIDENTAL PETROLEUM
CORPORATION, and AIRSCAN,
19 INC.,

20 Defendants.



21 In response to the Court's letter of February 3, 2004, and pursuant to 28 U.S.C.
22 § 517, the United States hereby submits as a statement of interest in this litigation a
23 letter from U.S. Department of State Legal Adviser William H. Taft, IV, to the
24 Honorable Peter D. Keisler, Assistant Attorney General, Civil Division, U.S.
25 Department of Justice, dated March 30, 2004. The letter is attached hereto as Exhibit
26 A. Also attached hereto as Exhibits B and C, for the Court's information, are the
United States' recent briefs in the United States Supreme Court in the case of Jose

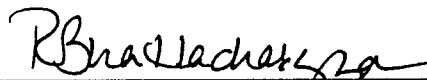
1 Fransisco Sosa v. Humberto Alvarez-Machain, No. 03-339 (oral argument held
2 March 30, 2004), addressing the interpretation and reach of the Alien Tort Statute,
3 28 U.S.C. § 1350.

4 Respectfully submitted,

5 DANIEL MERON
6 Acting Assistant Attorney General
7 Civil Division

8 DEBRA W. YANG
9 United States Attorney

10 JOSEPH H. HUNT
11 Director, Federal Programs Branch

12 

13 RUPA BHATTACHARYYA (VA#38877)
14 Trial Attorney, Federal Programs Branch
15 Civil Division, U.S. Department of Justice
16 P.O. Box 883, 20 Massachusetts Ave., N.W.
17 Washington, D.C. 20044
18 Tel: (202) 514-3146; Fax: (202) 616-8202
19 Email: rupa.bhattacharyya@usdoj.gov

20 Dated: April 1, 2004
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2004, copies of the foregoing Statement of Interest of the United States, along with its Exhibits, were served by first-class U.S. Mail, addressed as follows:

Bridget Arimond
Douglass W. Cassel
Center for International Human Rights
Northwestern University Law School
357 E Chicago Ave.
Chicago, IL 60611


Daniel M. Kovalik
United Steelworkers of America
5 Gateway Center
Pittsburgh, PA 15222

Jeffrey Vogt
Terry Collingsworth
International Labor Rights Fund
733 15th Street NW, Suite 920
Washington, DC 20005

Paul L. Hoffman
Schonbrun DeSimone Seplow Harris & Hoffman
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Venice, CA 90291-3270

Kenneth J. Berke
Berke & Kent
1925 Century Park E, Suite 2050

Sara M. Fotopulos
Thomas E. Fotopulos
Fotopulos & Fotopulos
707 N Franklin Street, Suite 725
Tampa, FL 33602



RUPA BHATTACHARYYA
Trial Attorney, Federal Programs Branch
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Email: rupa.bhattacharyya@usdoj.gov



United States Department of State

Washington, D.C. 20520

March 30, 2004

The Honorable Peter D. Keisler
Assistant Attorney General
Civil Division
United States Department of Justice
10th Street and Constitution Avenue, NW
Washington, DC 20530

Re: *Luis Alberto Galvis Mujica, et al. v. Occidental Petroleum Corp., et al.*,
CV 03-2860-R(JWJx)

Dear Mr. Keisler:

By letter of February 3, 2004, United States District Judge Rea asked for the views of the Department of State in regard to the above-captioned lawsuit. A copy of Judge Rea's letter to the Legal Adviser is enclosed. Specifically, Judge Rea asked "whether the adjudication of this action would affect United States foreign relations; and if so, the nature and extent of that impact—in light of defendants' stated intention to bring a motion to dismiss based upon the act of state, political question, and foreign affairs doctrines."

This litigation is in its earliest stages and, to my knowledge, no motion of the sort described above has yet been filed. Although we have studied the copy of the complaint that was enclosed with the February 3 letter, we do not believe that we have a sufficient factual basis upon which to make a reasoned assessment of the likely impact of the litigation upon our foreign relations. In response to Judge Rea's inquiry, I therefore request that you file a copy of this letter with the court in whatever manner you deem most appropriate.

In addition, from a purely legal standpoint, we note that the action is based, in part, on the Alien Tort Statute (ATS), 28 U.S.C. § 1350. As the court may be aware, the proper interpretation and reach of that statute are currently before the United States Supreme Court in *Jose Francisco Sosa v. Humberto Alvarez-Machain*, No. 03-339, on a writ of *certiorari* to the Ninth Circuit. The United States has taken a position in that case that the ATS is simply a jurisdictional grant and does not itself provide an independent cause of action. Oral argument in *Sosa* was held today. We suggest that you provide the court with a copy of the briefs filed by the United States in *Sosa* for the court's information.

For these reasons, I regret that we will be unable to respond to the court's questions within the specified two-month period. We may, however, be able to do so later, when the facts and legal arguments are clearer and more focused.

Respectfully,

A handwritten signature in black ink that reads "James H. Thessin". The signature is written in a cursive style with a large initial "J".

James H. Thessin
Legal Adviser, Acting

B

DANIEL MERON
Principal Deputy Assistant Attorney General, Civil Division
DEBRA W. YANG
United States Attorney
JOSEPH H. HUNT
Director, Federal Programs Branch
RUPA BHATTACHARYYA (VA#38877)
ANDREW H. TANNENBAUM (NY Bar)
Attorneys, Federal Programs Branch
Civil Division, United States Department of Justice
P.O. Box 883, 20 Massachusetts Ave., N.W.
Washington, D.C. 20044
Tel: (202) 514-3146; Fax: (202) 318-7593

Handwritten signature and stamp: JAN 30 PM 2:17

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LUIS ALBERTO GALVIS MUJICA,
on behalf of himself and as
representative of the Estates of
TEREZA MUJICA HERNANDEZ and
EDILMA LEAL PACHECO and
JOHANNY HERNANDEZ
BECERRA,

Plaintiff,

vs.

OCCIDENTAL PETROLEUM
CORPORATION, and AIRSCAN,
INC.,

Defendants.

No. CV 03-2860-WJR(JWJx)

**SUPPLEMENTAL STATEMENT
OF INTEREST OF THE UNITED
STATES**

DOCUMENT FILED
JAN - 5
[Signature]

On February 3, 2004, this Court sought the views of the United States relating to "whether the adjudication of this action would affect United States foreign relations; and if so, the nature and extent of that impact." Specifically, the Court sought the United States' views concerning whether the action would negatively affect "(1) United States foreign relations with Columbia or other countries in the Andean region; (2) United States efforts, including efforts conducted jointly with the Columbian government, to fight terrorism and/or drug trafficking; (3) the ability of

1 the United States to promote human rights in Columbia and elsewhere; and (4)
2 relevant economic factors, including the willingness of U.S. companies to invest in
3 Columbia and elsewhere.” Additionally, the Court expressed its interest in “any
4 information that the [United States] may have on other proceedings pending in
5 Columbia that bear upon” the events at issue in plaintiffs’ complaint.

6 On April 2, 2004, the United States submitted a Statement of Interest in the
7 form of a letter from U.S. Department of State Acting Legal Adviser James H.
8 Thessin, to the Honorable Peter D. Keisler, Assistant Attorney General, Civil
9 Division, U.S. Department of Justice, dated March 30, 2004. In that letter, the United
10 States advised that it did not have a sufficient factual basis upon which to make a
11 reasoned assessment of the likely impact of the litigation upon U.S. foreign relations,
12 but that it might be able to do so later, when the factual arguments were clearer and
13 more focused.

14 Attached for the Court’s information is a letter from U.S. Department of State
15 Legal Adviser William H. Taft, to Daniel Merón, Principal Deputy Assistant Attorney
16 General, Civil Division, U.S. Department of Justice, dated December 23, 2004, which
17 sets forth the current views of the United States concerning the impact of this
18 litigation on its foreign policy. As the Supreme Court has directed, it is appropriate
19 for this Court to give these concerns great weight “as the considered judgment of the
20 Executive on a particular question of foreign policy.” Republic v. Austria v. Altman,
21 124 S. Ct. 2240, 2255 (2004).¹

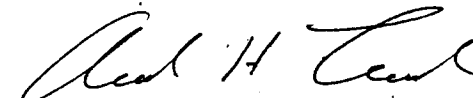
22
23 ¹ Moreover, as the Supreme Court has noted, in cases, like this one, arising under the Alien
24 Tort Statute (“ATS”), 28 U.S.C. § 1350, a court must act cautiously and “with a restrained
25 conception of its discretion” in both recognizing ATS claims and in extending liability. Sosa v.
26 Alvarez-Machain, 124 S. Ct. 2739, 2761 (2004); id. at 2764, 2766 n.20. Thus, the Supreme Court
27 has instructed federal courts to refrain from taking an “aggressive role in exercising a jurisdiction

Respectfully submitted,

DANIEL MERON
Principal Deputy Assistant Attorney General
Civil Division

DEBRA W. YANG
United States Attorney

JOSEPH H. HUNT
Director, Federal Programs Branch



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Dated: December 29, 2004

that remained largely in shadow for much of the prior two centuries,” *id.* at 2762, and, in particular, has noted that “the potential implications for the foreign relations of the United States of recognizing such causes should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs,” *id.* at 2763. The Supreme Court’s strongest cautionary note pertains to claims relating to a foreign government’s treatment of its own citizens in its own territory: “It is one thing for American courts to enforce constitutional limits on our own State and Federal Governments’ power, but quite another to consider suits under rules that would go so far as to claim a limit on the power of foreign governments over their own citizens, and to hold that a foreign government or its agent has transgressed those limits.” *Id.* at 2763. The Court concluded that recognition of such claims “should be undertaken, *if at all*, with great caution.” *Id.* at 1263 (emphasis added). The Court also directed that federal courts consider the “practical consequences” of recognizing causes of action under the ATS, such as consideration of whether a claimant should be required to exhaust available domestic remedies before seeking relief in a United States federal district court. *Id.* at 2766 & n.21.

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2004, copies of the foregoing Statement of Interest of the United States, along with its Exhibits, were served by first-class U.S. Mail, addressed as follows:

Bridget Arimond
Douglass W. Cassel
Center for International Human Rights
Northwestern University Law School
357 E Chicago Ave.
Chicago, IL 60611

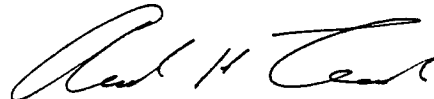
Daniel M. Kovalik
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THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

December 23, 2004

Mr. Daniel Meron
Principal Deputy Assistant Attorney General
Civil Division
United States Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

**Re: *Luis Alberto Galvis Mújica, et al. v. Occidental Petroleum Corp., et al.*
CV 03-2860-WJR(JWJx)**

Dear Mr. Meron:

By letter of February 3, 2004, United States District Judge William Rea asked for the views of the Department of State in connection with the above-captioned lawsuit. Specifically, Judge Rea requested the Department's views on "whether the adjudication of this action would affect United States foreign relations; and, if so, the nature and extent of that impact – in light of defendants' stated intention to bring a motion to dismiss based upon the act of state, political question, and foreign affairs doctrines."

On March 30, Acting Legal Adviser James H. Thessin wrote to Assistant Attorney General Peter D. Keisler, asking him to advise Judge Rea that the Department of State would be unable to respond to the court's questions by the requested deadline but might be able to do so later, when the facts and legal arguments became clearer and more focused. The Department of Justice responded to Judge Rea on April 2 by submitting a Statement of Interest enclosing Mr. Thessin's letter.

I am writing now to request that you bring the following views to Judge Rea's attention. We want to affirm at the outset, of course, that the State Department neither takes any position with respect to the merits of the litigation, nor do we condone or excuse any violations of human rights or humanitarian law which may have occurred in connection with the incidents on which the suit is based. Our views are confined to responding to the question posed to us by the court. For reasons stated below, and in light of the views communicated to us by the Colombian government, the State Department believes that the adjudication of this case will have an adverse impact on the foreign policy interests of the United States.

Allegations related to those involved in the suit before the court are currently being handled in the Colombian legal system. In May 2004, an administrative court in the Arauca Department of Colombia ruled that the Colombian government must pay approximately \$700,000 in damages to the plaintiffs in this case. This decision is currently under appeal in the Colombian judicial system. While that action was brought against the Colombian government, Defendant Occidental has, in its motion to dismiss on grounds of *forum non conveniens*, stipulated to service of process and consented to jurisdiction in Colombia. In addition, certain Colombian military personnel who were allegedly involved in the incident in question have been dismissed from their positions and face criminal investigation. On January 3, 2003, the U.S. Embassy in Bogotá

informed the Colombian government of the U.S. decision to suspend assistance to CACOM-1, the Colombian Air Force unit involved in the Santo Domingo incident.

The Department believes that foreign courts generally should resolve disputes arising in foreign countries, where such courts reasonably have jurisdiction and are capable of resolving them fairly. An important part of our foreign policy is to encourage other countries to establish responsible legal mechanisms for addressing and resolving alleged human rights abuses. Duplicative proceedings in U.S. courts second-guessing the actions of the Colombian government and its military officials and the findings of Colombian courts, and which have at least the potential for reaching disparate conclusions, may be seen as unwarranted and intrusive to the Colombian government. Moreover, it may also be perceived that the U.S. Government does not recognize the legitimacy of Colombian judicial institutions. These perceptions could potentially have negative consequences for our bilateral relationship with the Colombian government.

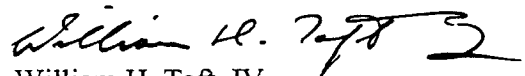
Colombia is one of the United States' closest allies in this hemisphere, and our partner in the vital struggles against terrorism and narcotics trafficking. President Bush recently reaffirmed the importance of our relationship with Colombia when he visited the country in November. Colombia's role in helping to maintain Andean regional security, our trade relationship, and our national interests in the security of U.S. persons and U.S. investments in Colombia, rank high on our foreign policy agenda. Important U.S. foreign policy objectives also include support for the rule of law and human rights in Colombia.

Lawsuits such as the one before Judge Rea have the potential for deterring present and future U.S. investment in Colombia. Reduced U.S. investment, particularly in the oil and other extractive industries, could harm Colombia's economy in several ways, including by increasing unemployment and reducing the Colombian government's revenues from taxes and royalties. Downturns in Colombia's economy could have harmful consequences for the United States and our interests in Colombia and the Andean region. Specifically, such downturns could damage the stability of Colombia, the Colombian government's U.S.-supported campaigns against terrorists and narcotics traffickers, regional security, our efforts to reduce the amount of drugs that reach the streets of the United States, promotion of the rule of law and human rights in Colombia, and protection of U.S. persons, government facilities, and investments. Finally, reduced U.S. investment in Colombia's oil industry may detract from the vital U.S. policy goal of expanding and diversifying our sources of imported oil.

I have attached two letters from the Colombian Ministry of Foreign Relations to the U.S. Ambassador in Colombia. The first letter (Attachment 1), dated February 25, 2004, informs the embassy that the Colombian judiciary is investigating the responsibility of Colombian officials in this case. The second letter (Attachment 2), dated March 12, 2004, states that "any decision in this case may affect the relations between Colombia and the [United States]."

We hope the Court will find the foregoing responsive to its request.

Sincerely,


William H. Taft, IV

Attachments:
As stated.



REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

A

VRE- CEC No.3886

El Ministerio de Relaciones Exteriores, saluda muy atentamente a la Honorable Embajada de los Estados Unidos de América con ocasión de referirse al juicio entablado ante la Corte del Distrito Central de California el 24 de abril de 2003, en contra de las compañías Occidental Petroleum Corporation y Alrscan, Inc., por hechos ocurridos en la población de Santo Domingo, Arauca, en diciembre de 1988 - Caso No. 03-CV-2860-WJR (JWJX).

El Ministerio de Relaciones Exteriores considera conveniente hacer del conocimiento de la Embajada de los Estados Unidos que la responsabilidad de los agentes del gobierno colombiano por los hechos ocurridos en la población de Santo Domingo, Arauca, en diciembre de 1988 está siendo investigada por la justicia colombiana en virtud del principio de territorialidad de la ley.

Al agradecer de antemano por la atención que la Embajada de los Estados Unidos de América brinde a las consideraciones precedentes, el Ministerio de Relaciones Exteriores se vale de esta oportunidad para reiterarle las seguridades de su más alta consideración.

Bogotá, D. C., 25 de febrero de 2004

R.

A la Honorable
Embajada de los Estados Unidos de América
Ciudad.

VRE-CEC No.3866

The Ministry of Foreign Affairs presents its compliments to the Honorable Embassy of the U.S. and has the honor to refer to the legal suit filed before the United States District Court for the Central District of California on April 24, 2003 against Occidental Petroleum Corporation and Airscan, Inc., in relation to facts that took place in the village of Santo Domingo, in the Colombian region of Arauca, in December 1998 - Case No. 03-CV-2860-WJR (JWJx).

The Ministry of Foreign Affairs wishes to inform the Embassy of the United States that the responsibility of agents of the Colombian Government arising out of the facts that took place in the village of Santo Domingo, Arauca, in December 1998, is being investigated by the Colombian judiciary in accordance with the principle of territoriality.

The Ministry of Foreign Affairs avails itself of this opportunity to reiterate to the Honorable Embassy of the US the assurances of its highest consideration.

Bogota, D.C., February 25, 2004

To the Honorable
Embassy of the United States of America
Bogotá



REPÚBLICA DE COLOMBIA
MINISTERIO DE RELACIONES EXTERIORES

CONFIDENCIAL

VRE-CEC No. 12785

El Ministerio de Relaciones Exteriores saluda muy atentamente a la Honorable Embajada de los Estados Unidos de América con ocasión de dar alcance a la nota verbal VRE-CEC. No.3866 de 25 de febrero de 2004, en la que se hace referencia al juicio entablado ante la Corte del Distrito Judicial de California el 24 de abril de 2003 en contra de las compañías Occidental Petroleum Corporation y Airscan, INC., por hecho ocurridos en la población de Santo Domingo, Arauca, Colombia, en diciembre de 1998 – caso No.03-CV-2860-WJR (JWIX).

El Ministerio de Relaciones Exteriores desea agregar que el Gobierno de Colombia es de la opinión de que una eventual decisión en el caso mencionado podría tener repercusiones frente a las relaciones con los Estados Unidos.

El Ministerio de Relaciones Exteriores se vale de la oportunidad para reiterarle a la Honorable Embajada de los Estados Unidos de América las seguridades de su más alta consideración.

Bogotá, D. C., 12 de marzo de 2004

CR.

A la Honorable
EMBAJADA DE LOS ESTADO UNIDOS DE AMERICA
Ciudad

VRE-CEC No.12785

The Ministry of Foreign Affairs presents its compliments to the Honorable Embassy of the U.S. and has the honor to refer to its note verbale VRE-CEC No.3866 of February 25, 2004, regarding the legal suit filed before the United States District Court for the Central District of California on April 24, 2003 against Occidental Petroleum Corporation and Airscan, Inc., in relation to facts that took place in the village of Santo Domingo, in the Colombian region of Arauca, in December 1998 - Case No. 03-CV-2860-WJR (JWJx).

The Ministry of Foreign Affairs wishes to add that the Government of Colombia is of the opinion that any decision in this case may affect the relations between Colombia and the US.

The Ministry of Foreign Affairs avails itself of this opportunity to reiterate to the Honorable Embassy of the US the assurances of its highest consideration.

Bogota, D.C., March 12, 2004

To the Honorable
Embassy of the United States of America
Bogotá