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**COURT URGED TO LIMIT USE OF ATS
TO BRING INTERNATIONAL LAW CLAIMS
(Presbyterian Church of Sudan v. Talisman Energy Inc.)**

The Washington Legal Foundation (WLF) yesterday urged the U.S. Court of Appeals for the Second Circuit to rein in activists' use of the Alien Tort Statute (ATS) as a means of attempting to enforce international human rights law in federal courts. 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.

In a brief filed in *Presbyterian Church of Sudan v. Talisman Energy Inc.*, WLF argued that federal court intervention in overseas activities is particularly inappropriate when, as here, neither the parties nor the controversy have any connection to the United States. Noting that the defendant (Talisman) is a major Canadian oil company and that the government of Canada has strenuously objected to continuation of this lawsuit, WLF argued that the plaintiffs ought to be required to file their claims in Canada.

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 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 filing WLF's brief. "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. The federal courts need to step in to bring a halt to this perversion of the ATS," 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 its brief, WLF argued that the case should never have been permitted to proceed as far as it did. It argued that the courts should have dismissed the case based on international comity doctrine. 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 argued that if federal courts insist on hearing disputes such as this one with no connection to the U.S., then the U.S. will have difficulty maintaining its opposition to efforts in Germany and elsewhere to investigate potential charges against U.S. officials based on their conduct of U.S. foreign policy.

WLF also argued that the case should be dismissed because the ATS does not recognize a cause of action based on "aiding and abetting" others' violations of "the law of nations." WLF noted that the U.S. Supreme Court's 2002 *Sosa* decision directed federal courts to use "great caution" in recognizing *any* ATS causes of action and that ATS liability should be limited to those situations involving violations of the clearest and most universally accepted international norms -- such as the prohibition against genocide. WLF argued that "aiding and abetting" liability is not a standard of liability universally accepted throughout the world.

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.