

Everest - Display

Page 1 of 1

RELEASED IN FULL



Everest

UNCLASSIFIED

Standard Priority

Red
Border
Tasker :

**4/11 Letter to Secretary from U.S. Chamber of
Commerce President and CEO Thomas J. Donohue
Requesting a Meeting with Appropriate Senior
Department Officials Re: Alien Tort Statute (ATS)**

S/ES ID 201206635

Classification U - Unclassified

Action Requested Direct Reply on Behalf of X. Provide S/ES-CR copy of the signed/dated Direct Reply

For S

Organization L

Co-Drafter Bureau

Due Date 4/27/2012 3:00 PM

Event Date

Subject 4/11 Letter to Secretary from U.S. Chamber of Commerce President and CEO Thomas J. Donohue Requesting a Meeting with Appropriate Senior Department Officials Re: Alien Tort Statute (ATS)

Description Direct Reply on Behalf of X. Provide S/ES-CR copy of the signed/dated Direct Reply

Notes/Special Instructions

S/ES Internal Notes

Clearances

Copy To S; D(B); D(N); P; S/P; S/ES; DRL; IPS

S/ES-CR Contact Phone #: Ext. 7-0140
Date Created: 4/13/2012 11:47 AM

U.S. Department of State

REVIEW AUTHORITY: Robert Homme, Senior Reviewer

<http://everest.ses.state.class/Lists/Packages/TaskerDispForm.aspx?ID=11416&EverestID=...> 4/13/2012

201206635

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RELEASED IN FULL

THOMAS J. DONOHUE
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000

April 11, 2012

The Honorable Hillary Rodham Clinton
Secretary of State
United States Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

As you may know, the U.S. Supreme Court recently agreed to consider whether American courts have the authority under the Alien Tort Statute (ATS) to hear claims by foreign plaintiffs seeking damages for conduct within the territory of another country that is alleged to violate the "law of nations." Although the United States is not a party, the case—*Kiobel v. Royal Dutch Petroleum*—presents a question of significant importance to the executive branch and to the Department of State, namely whether U.S. courts should entertain private lawsuits requiring them to judge the legality of actions occurring in other countries—including actions taken by those countries' governments within their own territory. The solicitor general will soon be deciding whether to file a "friend of the court" brief in this case (in the first round of the same case, the United States filed an amicus brief in favor of the ATS plaintiffs arguing that corporations may be subjected to ATS liability). For the reasons outlined in the attached memorandum, the Department of State should urge the solicitor general to file a "friend of the court" brief arguing that the ATS does not reach conduct that takes place in the territory of another sovereign nation.

The legal question now before the Court is a familiar one to the executive branch. In past years, the solicitor general has repeatedly taken the position in previous lawsuits that the ATS does not apply to conduct in other countries, in part ~~because of the potential for disruption of the ATS mechanism with the executive branch's~~ ability to conduct foreign relations and disrupts our relationships with key allies. If the administration were now to reverse these past positions and support

REVIEW AUTHORITY: Robert Homme, Senior Reviewer

The Honorable Hillary Rodham Clinton

April 11, 2012

Page Two

extraterritorial application of the ATS, it would seriously undermine the ability of the U.S. government to object if other countries bring criminal prosecutions against U.S. officials or enact similar laws allowing lawsuits against U.S. officials or U.S. corporations for their actions in third countries.

ATS lawsuits also inflict tremendous damage on the global economy. Foreign plaintiffs have filed more than 150 ATS suits against corporations in the last two decades. Many, if not most, of these lawsuits argue little more than that a company did business, in full compliance with U.S. trade law, in a country whose own government has a poor human rights record. ATS lawsuits impose significant financial and reputational costs on businesses, which compel companies to settle even the most frivolous claims. The mere threat of being dragged into such litigation deters foreign direct investment in the United States. Moreover, these lawsuits deter U.S. companies from doing business abroad, which can undermine the U.S. government's strategy of constructive economic engagement.

The U.S. Chamber of Commerce unequivocally condemns human rights abuses and strongly advocates measures to strengthen corporate responsibility. However, extraterritorial liability under the ATS will not solve these shared human rights concerns, but it will exact a significant cost on our economy and on our foreign relations.

We respectfully request an opportunity to meet with the appropriate senior department officials to discuss this important matter. Lily Fu Claffee, the Chamber's general counsel, will follow up regarding this request, or your staff can contact Ms. Claffee directly at 202-463-5921.

Sincerely,



Thomas J. Donohue

Enclosure

cc: The Honorable Robert D. Hormats
The Honorable Harold H. Koh