

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

July 29, 2002

Honorable Louis F. 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

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



THE AMBASSADOR

Washington, D.C. 15 July 2002

Excellency,

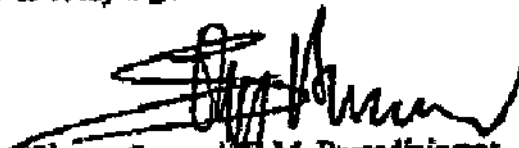
I have the honour to draw your attention to the lawsuit filed in the United States District Court for the District of Columbia on June 19, 2001 against Exxon Mobil Corporation, Civ. No. 01-1357 (LFO).

While fully respecting the United States sovereignty over its judiciary, I feel nevertheless obliged to express my concern should the above-mentioned lawsuit be adjudicated, for the following reasons:

1. As a matter of principle, we cannot accept the extra-territorial jurisdiction of a United States Court over an allegation against an Indonesian government institution, *or* the Indonesian military, for operations taking place in Indonesia.
2. While allegation of abuses of human rights by the Indonesian military against the separatist Free Aceh movement is at best questionable, its adjudication in the United States court will definitely compromise the serious efforts of the Indonesian government to guarantee the safety of foreign investments, including in particular those from the United States, and thus will adversely affect Indonesia's struggle to secure economic recovery, a struggle which is supported by the United States.
3. The adjudication of the above-mentioned lawsuit will also have an adverse impact on the process to find a peaceful and satisfactory solution on the problem of Aceh, which is currently at an extremely sensitive and delicate stage, a process which is also of interest to the United States.

I would highly appreciate your kind consideration on the points I raised should you be seized with the matter.

Please accept, Excellency, the assurances of my highest consideration.


Soemadi M. Brododiningrat
Ambassador

The Honorable
Richard L. Armitage
Deputy Secretary of State
The Department of State
Washington, D.C.