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**Balintulo et. al. v. Daimler AG et. al., No. 09-2778-cv (L)**

Washington, D.C., October 8, 2009

Dear Ms. Wolfe:

As per the United States Court of Appeals invitation of September 10, 2009, please find enclosed the German Government view on the Balintulo et. al. v. Daimler AG et. al. litigation.

Sincerely,

Klaus Botzet  
Legal Adviser and Consul General



Enclosure:

As stated.

## German Government View on the Balintulo et. al. v. Daimler AG et. al. Litigation

On September 10, 2009, the United States Court of Appeals for the Second Circuit invited the Federal Republic of Germany to express its view on the Balintulo et. al. v. Daimler AG et. al. litigation.

The Federal Republic of Germany hereby responds to this invitation of the court. It already submitted a note verbale to the U.S. Department of State together with the United Kingdom on December 13, 2007, commenting on the October 12, 2007, decision of the Supreme Court and expressing its concern over the application of the Alien Tort Claims Act to German companies in this case. The German Government continues to have these concerns also over the amended complaints. In particular, the amended complaints do not take into account German state sovereignty or respect the primary jurisdiction of German courts in respect to the respondent German companies.

The plaintiffs are claiming damages for an alleged participation by international companies, including companies headquartered in Germany, in human rights violations committed by the apartheid regime in South Africa from 1960 to 1993. Neither the German companies named as defendant-appellants nor the alleged actions have any relationship to the United States. The plaintiffs are attempting to hold these German companies liable for alleged actions that occurred entirely outside the United States and that in no way affected U.S. citizens or U.S. companies.

It may be true that in some decisions U.S. courts have assumed their jurisdiction over international damage-claim suits under the Alien Tort Claims Act even when the substance of the case had no relationship to the U.S. (*Filártiga v. Pena-Irala* 630 F. 2d 876 (2d Cir. 1980); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004)). International jurisdiction over lawsuits for civil damages can and should, however, be asserted first and foremost by the courts of the states in which the plaintiffs or respondents are domiciled or in which the action causing damages was committed. This principle is broadly recognized under the law of international civil procedure and is also guaranteed as a principle of international law. In the current case, it therefore would

have been and still is possible for the plaintiffs to bring lawsuits before South African or German courts. The German Government explicitly points out that so far the plaintiffs, nevertheless, have not resorted to the German courts for lawsuits against the respondent companies, which are headquartered in Germany.

Furthermore, there is a risk that civil lawsuits in cases of alleged human rights violations could be misused as an instrument against multinational companies, thereby harming international trade. The U.S. Attorney General already expressed similar concerns in the *Doe v. Unocal* case before the Ninth Circuit in an amicus curiae brief.

The German Government is particularly concerned that legal uncertainty continues to grow among companies outside the United States due to a trend in some court rulings to develop a new claim basis by using the Alien Tort Claims Act.

In the past, U.S. courts have viewed violations of international law, such as torture or war crimes, as violations constituting claims under international law (e.g. *Kadic v. Karadzic*, 70 F. 3d 232 (2d Cir. 1995)). The claims were founded on criminal actions internationally recognized as human rights violations. This is also consistent with the principles developed by the Supreme Court for application of the Alien Tort Claims Act in the *Sosa v. Alvarez-Machain* case.

The complaints in the current case, however, go far beyond these principles. The plaintiffs do not claim that the respondent German companies themselves committed or participated in human rights violations; rather, they view, among other things, the delivery of goods produced by the respondent companies to South Africa as aiding and abetting the human rights violations of the South African apartheid regime and therefore punishable under U.S. law.

Thus, through the evolution of case law, principles of U.S. law would be transferred to the application of international law and in this way establish new bases for claims. Should the court permit these claims, then further development of the law would become unpredictable, in particular, to companies outside the United States.

A substantive decision by a U.S. court would therefore unacceptably infringe on German state sovereignty and interfere in the jurisdiction of German courts, as well as in international trade.

I hereby certify that the above statement is the view of the German Government on the Balintulo et. al. v. Daimler et. al. litigation which is hereby respectfully submitted to the U.S. Court of Appeals for the Second Circuit.

*October 8, 2009*



A handwritten signature in black ink, appearing to read "Klaus Botzet".

Klaus Botzet, 202- 2984-361 (360)

Legal Adviser and Consul General  
German Embassy in Washington D.C.