



Responsibility of MNEs: Alien Tort Claims Act cases and other cases against MNEs

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Overview

- Cases in civil procedures: Alien Torts Claim Act
 - Development and requirements
 - Legal Issues
 - Prominent cases
- Cases in (international) criminal procedures
 - After WW II
 - Netherlands



Cases in civil procedures: Alien Tort Claims Act



Alien Tort Claims Act (ATCA)

(1/2)

➤ Concept

- "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." (US Code § 1350 (28))
- Alien = any person not a citizen or national of the United States (US Code § 1101 (a) (1))
- Tort = wrong that involves a breach of a civil duty owed to someone else
- Law of nations = customary international law (*Sosa v. Alvarez-Machain*)



Alien Tort Claims Act (ATCA)

(2/2)

➤ Development

- Part of the Judiciary Act of 1789
- Main purpose: protection of foreign diplomats in the US
- From 1789 until 1980 only two cases
- Leading judgement 1980: *Filartiga v. Pena-Irala*
 - Jurisdiction in the US courts over a suit between two aliens
 - Violations of international human rights are actionable under the ATCA
- Leading judgement 1995: *Kadic v. Karadzic*
 - Non-state actors can be held liable for certain international law violations



Doe v. Unocal

➤ Landmark case for corporate accountability

- 15 Burmese plaintiffs launched lawsuit against *Unocal* in 1996
- *Unocal* accused of knowingly using forced labour to construct its Yadana gas pipeline

➤ Liability on basis of aiding and abetting

- *Unocal* could be held liable on the basis of aiding and abetting under the ATCA for abuses that it knew about and substantially assisted through practical encouragement or support

➤ Settlement in December 2004

- One day before decision
- As a result, it remains unclear where the law exactly stands



Requirements for ATCA

(1/2)

- Who can sue?
 - “Aliens” respectively foreigners, not US citizens
- Who can be sued?
 - State actors (e.g. foreign government representatives)
 - Private actors (e.g. MNEs)
- Which courts?
 - Civil courts, not criminal court
- Which rules?
 - US Federal Rules of Civil Procedure
- Exhaustion of local remedies



Requirements for ATCA

(2/2)

- Violation of customary international law
 - Human rights
 - E.g. *Wiwa v. Royal Dutch Petroleum/Shell*
<http://www.youtube.com/watch?v=htF5XEIIMyGI&feature=related>
 - War crimes
 - E.g. *Corrie v. Caterpillar*
 - Labour rights
 - *Sosa* Decision of June 29, 2004
 - Most serious human rights abuses
 - “specific, universal, and obligatory” international norms



Prominent Cases

- Wang Xiaoning v. Yahoo!
- Bowoto v. Chevron Corp.
- Sinaltrainal v. Coca-Cola Company
- Vietnam Association for Victims of Agent Orange v. Dow Chemical Co.



Outlook

- Until now approximately 80 Alien Tort Claims Act cases against state and private actors
 - Mostly dismissed or settled outside the courtroom
- Ruling of September 17, 2010



Cases in (international) criminal procedures



Cases after WW II

- IG Farben Trial
 - Production of Zyklon B, the poison gas used at the extermination camps
 - Production of synthetic gasoline and rubber vital to mechanized and aerial warfare
- Flick Trial
 - Slave labour and plundering
- Krupp Trial
 - Enabling the armament of the German military forces
- *Zyklon B* Case
 - Production of Zyklon B, the poison gas used at the extermination camps



Cases on the national level – The Netherlands

- Van Anraat Case
 - Dutch businessman
 - Provided Saddam Hussein's regime with chemical supplies
 - Convicted with aiding and abetting war crimes
- Van Kouwenhoven Case
 - Dutch timber trader
 - Allegedly facilitated the import of arms for Liberian President Charles Taylor
 - Case is still pending