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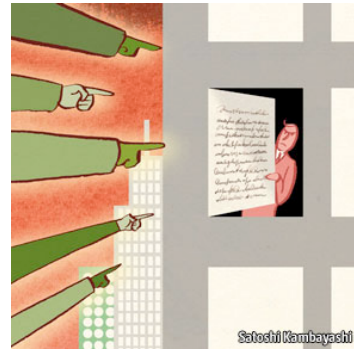
Alien torts

## Trial trails

### An American court blocks human-rights suits against businesses

Oct 7th 2010

WHEN lawyers for a group of Burmese villagers used an obscure American law in 1996 to sue Unocal, an oil company, for using forced labour and other abuses while constructing a pipeline in Myanmar, human-rights campaigners saw a new way of attacking companies (as opposed to their executives in person) for misdeeds abroad. A flurry of headline-grabbing suits followed. Nine Nigerians, including relatives of Ken Saro-Wiwa, a playwright, accused Shell of complicity in human-rights abuses. Vietnamese villagers sued Dow Chemical and others for injuries caused by the Agent Orange herbicide.



This avenue was abruptly closed recently when the second circuit Court of Appeals in New York ruled on September 17th that corporations could not be held liable under the Alien Tort Claims Act for breaches of international law abroad. Businesses had long argued this, but no American court had ruled clearly on the issue before. Both companies and their accusers reckoned that the courts treated the principle of liability as a given.

The decision, if upheld, will bring new clarity and an end to such lawsuits. But until all avenues of appeal are exhausted, the precedent will not be firmly set. The Supreme Court declined on October 4th to rule immediately on the specific question of whether corporations could be held liable under international law. It had been asked to do so by Talisman Energy of Canada, which won a case brought by Sudanese plaintiffs who accused it of conspiring with their government to commit genocide.

The Alien Tort statute was always a thin lever for those who want to get national courts to use international human-rights law against multinational companies. In some 60 cases so far, the plaintiffs have gained plenty of publicity, but won no outright victories. (Shell settled out of court, as did Unocal.) Adopted in 1789, possibly to target pirates, the statute allows for civil actions by aliens for wrongful acts "committed in violation of the law of nations or a treaty of the United States". Its cloudy origins make room for creative interpretation by human-rights campaigners and companies alike and have caused much confusion in the courts.

That can be seen in the strongly worded dissent written by Judge Pierre Leval in the New York case on the central question of whether corporations are covered by international laws that explicitly mention only states and natural persons. He decried the absurdity of allowing individuals to escape civil liability for slave-trading or piracy as long as they are incorporated.

Businesses will welcome an end to these cases. But the respite may be short-lived. Courts in other countries, such as the Netherlands and Britain, have recently become more active in punishing firms for misdeeds abroad and human-rights campaigners have taken note. John Ruggie, the special representative for the United Nations secretary-general on business and human rights, will wind up his six-year study with a report next year that could also lead to new restraints on corporations. Even if America drops the baton, another country may well pick it up.

International

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