

PLAIN RESPONSES TO ATTACKS ON THE ALIEN TORT CLAIMS ACT (ATCA)

I. INTRODUCTION

Victims of the most serious human rights abuses often have no way to seek justice in their home countries. This may be because the government and courts at home are corrupt, or controlled by the same people responsible for the violations. Or it may be because the people or groups responsible for the abuses have left their country. When the perpetrators of egregious human rights abuses are found in a foreign country, many nations have laws that enable victims to file criminal charges or civil lawsuits against them. In the United States, several U.S. laws make it possible for victims to sue human rights abusers for compensation and punitive damages. In this way, our laws prevent the United States from becoming a safe haven for those responsible for genocide, slavery, and torture.

One such law, the ***Alien Tort Claims Act (ATCA)***, provides a way to hold human rights abusers accountable when they are found in the United States. The ATCA is a civil remedy enacted in 1789 that authorizes a “civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”

Some groups, including the International Chamber of Commerce, have raised questions to advance the argument that this remedy should be eliminated. First, we provide plain answers to the most repeated challenges to show that most of them are mistaken or misleading. Then, we give real examples of how the ATCA has served to protect and advance cherished human rights throughout the world.

II. QUESTIONS AND ANSWERS

- 1. The international legal order is based on state sovereignty, the idea that each state controls what happens within its own borders. Since the ATCA allows people to sue extra-territorially, doesn't that undermine sovereignty?¹**

Answer:

The United States has a strong interest in bringing human rights abusers to justice, even if the violations occurred in another country.

ATCA allows plaintiffs only to sue individuals or companies who are in the United States and over whom the courts have personal jurisdiction. When persons who are in our country or corporations doing significant business

¹ Commentary by the ICC Chairmanship, *Extra-territorial Application of National Laws*, Department of Policy and Business Practices, International Chamber of Commerce, Dec. 2002, available at <http://www.iccwbo.org/>.

here have committed gross human rights violations, the United States *does* have an interest in holding them accountable, and furthermore it has a responsibility to do so. We don't want our own citizens to get away with egregious abuses, and we don't want the United States to become a safe haven for the most reprehensible corporations and for individuals who are fleeing from justice in their own countries.

Secondly, ATCA allows suits only for torts that violate treaties and the "law of nations", now called international law. That means that ATCA cases can only be brought for violations of treaties the United States has ratified or norms that have been so widely condemned they are considered universally wrong. These include piracy, forced labor, genocide, forced disappearance, summary execution, rape, sexual violence, or other torture. The first time ATCA was used successfully to hold a human rights abuser accountable was the *Filartiga*² case in 1980. In that case a Paraguayan police officer had tortured a young man to death for the political beliefs of his father and then moved to the United States. When the young man's family found the officer here, they brought suit. This is the sort of case that falls under ATCA's domain. Other examples are listed at the end of this document.

When ATCA was enacted in 1789, the Congress was motivated by the desire of the young Republic to honor its obligations to the law of nations. "Given the passage of time and the limited historical records, it is difficult to resolve th[e] question [of how and why the statute was crafted]. . . However, evidence is available to reconstruct 'the general context in which the Statute was passed: the Framers' understanding of the law of nations and their general attitude toward compliance with the obligations it imposed.'"³

As the Supreme Court stated in *Paquete Habana* in 1900, "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations . . ."⁴ As used today, ATCA cases support compliance with international law.

² *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

³ Beth Stephens & Michael Ratner, LITIGATING HUMAN RIGHTS ABUSES IN U.S. COURTS 14 (1996)(quoting Anne-Marie Burley, *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am. J. Int'l L. 461, 463 (1989)).

⁴ *The Paquete Habana*, 175 U.S. 677, 700 (1900).

2. **Isn't the application of our law onto others unfair, since they did not know the law would apply to them when they acted in another nation?**⁵

Answer:

Since the trials of the Nazis in Nuremberg, Germany, after World War II, international law has been clear that some actions are universally illegal. These are very clear standards created over hundreds of years that are universally accepted, and there is a reasonable assumption that all people know that acts such as enslavement and torture are prosecutable offenses.

3. **Under ATCA, can't a company be sued for just doing business in a country where human rights abuses are being committed?**⁶

Answer:

ATCA does not hold corporations liable for the activities of foreign governments. ATCA holds corporations liable only for their own activities and abuses in which they *participate as principals or accomplices*. In *Presbyterian Church of Sudan v. Talisman Energy*, the court, using precedent from international criminal tribunals, found that to be liable, corporations need to proffer "direct and substantial" assistance.⁷ "Substantial" in this context means that if the accused did not participate, the act most probably would not have occurred in the same way. In another case, *Doe v. Unocal*, the standard the court used to determine if Unocal could be liable for human rights abuses, including forced labor and rape of the indigenous people commanded to build a pipeline, was "knowing practical assistance or encouragement that has a substantial effect on the perpetration of the crime" which "requires actual or constructive knowledge."⁸ Corporations should be held liable for using or knowingly encouraging the use of slavery or forced labor, as well as for their participation in torture or genocide.

⁵ Anita Ramasastry, *Banks and Human Rights: Should Swiss Banks Be Liable For Lending To South Africa's Apartheid Government?*, FindLaw, July 3, 2002 (discussion of aiding and abetting).

⁶ John E. Howard, *Litigation Run Amok Going Global*, US Chamber of Commerce, October 2002.

⁷ *Presbyterian Church of Sudan v. Talisman Energy*, 244 F. Supp. 2d 289, 323-24 (2003).

⁸ *John Doe I v. Unocal*, Nos. 00-56603, 00-57197, Nos. 00-56628, 00-57195, 2002 U.S. App. LEXIS 19263, at *35-*36 (9th Cir. Cal. Sept. 18, 2002). This case is currently on *en banc* review, to be heard June 17, 2003.

4. But, if our courts sanction other countries, don't we cut off the U.S.'s ability to work with the offending state to improve human rights?⁹

Answer:

Foreign policy is multi-faceted and is conducted on many levels, and use of a certain strategy on one level does not preclude other strategies on other levels. For example, the State Department publishes human rights reports about the countries of the world every year, and those documents, which often describe acts of torture or injustice, do not preclude constructive interstate relations.

The beauty of our system of separation of powers and the correlative principle of the independence of the judiciary means that the actions of the courts should neither be controlled by the executive nor should they interfere with executive foreign affairs powers. A case brought in the United States by a private party does not limit the ability of the executive branch to engage with a foreign government as it chooses. These cases are not U.S. government actions, and foreign nations know that. The United States is a democracy, which means that people can use the court system to vindicate their rights and that this process operates independently of executive policy.

In addition, the claim that addressing the human rights violations of other countries should be exclusively in the hands of the executive branch is both naïve and hypocritical. The notion of an independent remedy is designed both to provide an outlet for individuals to seek reparation and bring the society's and government's attention to the need for strengthened executive commitment to challenge human rights abuses. The argument against this judicial remedy falls apart if the United States government is not actively trying to improve the human rights situation in the country in question.

⁹ Letter from the Legal Adviser of the Department of State to Hon. Louis F. Oberdorfer, Re: *Doe, et al. v. ExxonMobil, et al.*, July 29, 2002 [hereinafter Letter Re: *Doe v. ExxonMobil*]; *Should I Stay or Should I Go? When Should Companies Just Pull Out?*, Corporate Social Responsibility News and Resources, Mallenbaker.net, available at <http://www.mallenbaker.net/csr/CSRfiles/badlands.html>.

5. What about reciprocal treatment? Won't these cases lead to U.S. officials getting sued overseas?¹⁰

Answer:

Twenty-four years ago, the Court in *Filartiga*¹¹ was warned that recognizing ATCA jurisdiction would open the floodgates to such retaliatory actions in the Soviet Union, for example. Yet, not one ATCA-type suit has been brought against an American in any foreign country. There is little evidence, moreover, that any other country has the legal means or the political will to prosecute U.S. officials for either real or imagined abuses.

Secondly, this concern was dismissed by the first President Bush, who commented on the Torture Victim's Protection Act (TVPA), "In this new era, in which countries throughout the world are turning to democratic institutions and the rule of law, we must maintain and strengthen our commitment to ensuring that human rights are respected everywhere."

Finally, these laws apply to a very narrow range of abuses. If U.S. officials are responsible for genocide or slavery, they should be held accountable. But suits in other countries are possible under this law only if the home country is unwilling or unable to take action. The judiciary in the United States should assure that such abuses are handled in this country, so that no such lawsuits could be filed abroad.

6. Don't these types of suits detract from the International Criminal Court (ICC)?

Answer:

No. The ICC is a criminal court whose jurisdiction is limited to a narrow list of international crimes. Individual victims can only refer cases to the ICC; the decision as to whether to proceed is, in the first instance, in the hands of the ICC Prosecutor. By contrast, ATCA cases are civil, not criminal, proceedings that can be brought by individual victims. If the court determines that the claim is valid it is not subject to the discretion of a prosecutor. In addition, many countries are not parties to the ICC and corporate entities cannot be tried by the ICC.

¹⁰ Press release, *U.S. Urged to Halt Abuse of Multinationals Under Controversial Statute*, USCIB, Dec. 5, 2002, available at <http://www.uscib.org> [hereinafter USCIB]; Thomas Niles, *The Very Long Arm of American Law*, FINANCIAL TIMES, Nov. 6, 2002; Elizabeth Amon, *Coming to America: Alien Tort Claims Act Provides a Legal Forum for the World*, NATIONAL LAW JOURNAL, Oct. 23, 2000, at A1.

¹¹ *Filartiga*, supra note 2.

7. Isn't the "United States being turned into the world's catchall civil claims court to the detriment of the U.S. economy and U.S. interests abroad"?¹²

Answer:

Actually, it is not just the United States. The principle of universal jurisdiction for international crimes is taking hold in country after country, to differing degrees, e.g. Belgium, Spain, France, Senegal, and the United Kingdom. "Exact duplicates of *Filartiga* human rights litigation are unlikely in most legal systems because of differences in legal procedure and legal culture. But criminal and administrative proceedings and civil suits based on domestic tort claims respond to the same international law concerns as *Filartiga* lawsuits."¹³

Furthermore, the ancient Roman principle *aut dedere aut judicare* (try them here or extradite them) is being written into an increasing number of human rights treaties.¹⁴ If countries can criminally prosecute individuals for human rights crimes committed abroad, why should United States courts be closed to the lesser remedy of civil suits? "Victims of human rights abuses around the world seek comparable results through varied procedural models, tailored to the requirements of their local legal systems."¹⁵

8. Shouldn't the home country be able to best decide what the response should be to the abuser's actions?

Answer:

A country may be unable to hold the accused accountable, for a variety of reasons, including a corrupt judicial system, a government still dominated by those responsible for the abuse, inadequate resources -- or the fact that the perpetrators have left the country. When victims cannot obtain justice at home, they have a right to seek it in other countries where those responsible for the abuse have sought refuge.

¹² Daniel T. Griswold, *Abuse of 18th Century Law Threatens U.S. Economic and Security Interests*, USA Engage, January 25, 2003.

¹³ Beth Stephens, *Translating Filartiga: A Comparative and International Law Analysis of Domestic Remedies For International Human Rights Violations*, 27 Yale J. Int'l L. 1, 3 (2002).

¹⁴ See, e.g., Convention on the Prevention and Punishment of the Crime of Genocide, *proposed for signature* Dec. 9, 1948, arts. VI, VII; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted and opened for signature*, Dec. 10, 1984, art. 7; Convention for the Suppression of Unlawful Seizure of Aircraft [Hijacking Convention], 860 UNTS 105, *entered into force* Oct. 14, 1971, art. 7; International Convention Against the Taking of Hostages, *signed at New York*, Dec. 18, 1979, art. 8.

¹⁵ Stephens, *supra* note 9, at 5.

9. Some ATCA defendants have been served when coming to the U.S. on United Nations business. Won't these cases stop the UN from functioning?

Answer:

This is unfounded. The United Nations has the ability to shield those who come to its headquarters from liability. In practice, this litigation has not interfered with the functioning of the United Nations. But more important, one of the stated purposes of the United Nations is to protect human rights. The ATCA and TVPA further this purpose.

10. Our courts are already overburdened. If we start litigating the world's problems, won't there be a huge outpouring of lawsuits?

Answer:

This argument has been used against every advance in the law, particularly involving civil and human rights. Here, as elsewhere, it is a fearmongering tactic: there is no factual evidence to suggest that ATCA will cause a flood of new litigation in U.S. courts. Indeed, lawyers began using ATCA as a human rights tool twenty-four years ago. About eighty cases have been filed in those twenty-four years, and about one-third of them have been dismissed in preliminary motions. This number is hardly enough to warrant fears of a judicial system too burdened to function efficiently. Most have resulted in default judgments because defendants do not actively contest the complaints. Only 20 have involved corporate defendants, and roughly half of those have been dismissed, an indication that the judicial system remains effective at ensuring that only credible allegations make it to court.

The same judicial safeguards to protect against a flood of cases that exist for any other law exist here including: *forum non conveniens* and failure to state a claim.¹⁶ In addition, these plaintiffs face the additional barrier of distance.

Indeed, the floodgates argument has been used again and again. The question is not whether more ATCA cases will be brought, but whether justice requires that they can be brought. Those that are patently groundless will be swiftly dismissed and, under Federal Rule of Civil Procedure 11, courts have the power to sanction lawyers who bring frivolous or harassing claims.

¹⁶ *Forum non conveniens* is a doctrine that prohibits lawsuits from being litigated in distant courts if that would be legally unjust. In addition, under American jurisprudence, every lawsuit must include basic allegations outlining the facts relied upon and the legal grounds for relief.

11. What will prevent foreign terrorists from using the U.S. court system to sue American companies?¹⁷

Answer:

Terrorists could use almost any law to sue American companies, including contract, tort, and product liability claims. That does not mean we should get rid of our court system, nor does this claim mean we should eliminate the ATCA. And in fact, there are effective mechanisms built into our legal system to allay this worry, whether it applies to ATCA or any other law. First, the law protects against frivolous suits, based on political or other motivations rather than the law, and lawyers may be sanctioned for bringing such suits. Beyond this, the system has set high standards for non-frivolous cases that make it difficult to proceed. Without a valid legal claim or genuine disputes of material fact, a lawsuit faces swift dismissal, and there are many opportunities for defendants to get the case against them dismissed. Any case that survives these hurdles has a strong legal and factual basis, and should be heard.

12. Won't this give aggressive trial lawyers effective veto over legislation to protect American companies, which will lead to weakening of the U.S. economy.¹⁸

Answer:

Personal injury lawyers did not write this legislation nor did they establish that human rights victims can sue in U.S. courts. And rather than weakening the U.S. economy, personal injury lawyers in America have played a significant role in helping to ensure that the products we buy are safe for our use by representing those who have been harmed by them. Their actions hold companies accountable and have contributed to making products safer for the future. Such redress is an essential component of a democratic society. Likewise, the lawyers in the ATCA cases are ensuring that our economy is not based on egregious human rights abuses, but instead on good business practices.

¹⁷ *Tort Reform Anyone?*, WASH. TIMES, July 13, 2002, at A11.

¹⁸ *Id.*

13. Aren't these cases undemocratic, since the law applied is "customary international law," not laws passed by Congress?¹⁹

Answer:

The essential democratic contribution of the courts is to interpret the law to protect the weak equally with the strong. ATCA furthers this goal.

Customary law is the culmination of centuries of state practice and formulation of universal norms and represents only those norms that have garnered the consensus of nations. In the international arena, the U.S. government, including the U.S. Congress, contributes in significant ways to the formation of customary international law. Moreover, given the power of the U.S. in the international arena, the disagreement of the United States with particular norms can actually prevent the crystallization of customary international law. From the beginning of this Republic, when we were weak as opposed to strong, the framers of the Constitution (who also enacted the ATCA) and our Supreme Court understood that customary international law is an essential part of U.S. federal law and is equally binding upon the Courts. Respect for international customary law was and remains an integral part of the exercise of national sovereignty.

Moreover, there is no dispute about the binding nature of the rules that have been enforced through the ATCA: the prohibitions against egregious abuses such as genocide, slavery, crimes against humanity, and torture.

14. What's the point of litigating these cases, since the monetary judgments rarely get paid and all that is achieved is a symbolic victory? Besides, wouldn't getting a judgment in the victims' home country be better?

Answer:

ATCA litigation serves a variety of ends that are more than merely symbolic. First, they provide victims with few other options the chance to bring their abusers to justice and force them to answer for their crimes. For many victims of human rights violations, the case may not be about money, but rather about ending human rights abuses by bringing the abusers to justice and improving state and corporate standards of conduct. They seek their "day in court" and the judgment of responsibility as their reparation, to contribute to their healing. When local jurisdictions are not available, the United States can offer victims access to justice. It is essential that our society make clear that violations of human rights or the manufacture of dangerous products carry the risk of significant liability.

¹⁹ Curtis Bradley, *The Costs of International Human Rights Litigation*, Chi. J.Int'l L. 457,464-70 (2001).

Second, while enforcing judgment in ATCA cases has proven immensely difficult to date, the rapid pace of global economic integration means that it will likely become easier to collect damages in the future. And this means that ATCA provides an increasingly effective deterrent to practices that violate human rights and international law. ATCA also means that abusers cannot flee their own countries for refuge in the United States, an important step in ensuring that national borders do not impede justice against the worst criminals. Finally, CCR's ATCA litigation serves as a means to further the development of strong international mechanisms for protecting human rights. One of the most notable examples is the way in which ATCA was used in the ruling of a British Court holding that Augusto Pinochet should be extradited to Spain to stand trial for his crimes.

15. Corporations should not be held responsible for the acts of foreign governments where they do business. United States law does not require people or corporations to be “good Samaritans” and stop abuses committed by other people in this country. How can you justify a law that requires U.S. corporations to do so in foreign countries?

Answer:

ATCA does not hold corporations liable for the activities of foreign governments, but only for actions that they knowingly participated in, as described above. The application of the law to corporations is not an attempt to force corporations to police other governments—it is a response to the fact that a few companies choose to exploit human rights abuses for their own profit.

16. Don't these cases just cause economic conditions to deteriorate, lessen foreign investment, and breed instability?²⁰

Answer:

ATCA cases hold people liable for violations of the most basic human rights. Everyone is entitled to equal and humane treatment and thus whether slavery benefits the economy, or as is often the case, harms it, is irrelevant. Offsetting the harms of torture with economic growth is a false and thoroughly immoral equation. It can be demonstrated that countries that regularly use torture and forced labor do not have high economic growth rates, nor are they particularly stable, which make them less than ideal sites for foreign investment. And the rights covered by ATCA are so basic that even

²⁰ Letter Re: *Doe v. ExxonMobil*, *supra* note 4; USCIB, *supra* note 5.

economic betterment cannot justify their violation: no developed society would accept the reinstatement of slavery or the torture of its citizens for a better standard of living, and the citizens of developing countries should not be expected to accept them, either.

17. Won't U.S. corporations be targets for opportunistic lawsuits seeking to collect large monetary damage awards, because they are perceived as having "deep pockets" by the entire world?²¹

Answer:

Corporations have the same due process protections in an ATCA case as in any other case, and the legal system is set up to ensure that meritless cases are weeded out. Judges monitor discovery and summary judgment motions to ensure that the allegations are credible and substantial. Unless a company engages in or facilitates human rights abuses, ATCA poses no threat.

18. Doesn't that fact that ATCA cases permit the judicial system to judge the acts of foreign governments interfere with foreign relations?²²

Answer:

ATCA cases seek to enforce the most fundamental principles of international law. In President George H. Bush's statement upon signing the Torture Victim's Protection Act in 1992, he said,

Today I am signing into law H.R. 2092 because of my strong and continuing commitment to advancing respect for and protection of human rights throughout the world. . . The . . . potential dangers [including giving rise to international friction] do not concern the fundamental goals that this legislation seeks to advance. In this new era, in which countries throughout the world are turning to democratic institutions and the rule of law, we must maintain and strengthen our commitment to ensuring that human rights are respected everywhere.

No government can claim that egregious human rights abuses are legitimate public acts. For this reason, no ATCA case has been dismissed on Act of

²¹ Robert Vosper, *Conduct Unbecoming*, CORPORATE LEGAL TIMES, Oct. 2002; *USA Engage* (working group created to provide support for companies that have been sued).

²² Letter Re: *Doe v. ExxonMobil*, *supra* note 4; Letter from the Legal Adviser of the Department of State to Hon. Robert D. McCallum, Re: *Doe, et al. v. Liu Qi, et al.* and *Plaintiff A, et al. v. Xia Deren*, Civil Nos. C 02-0672 CW (EMC) and C 02-0695 CW (EMC)(N.D. Cal.), Sept. 25, 2002.

State grounds: crimes against humanity or other gross human rights violations are not recognized by the courts as “public acts”²³ nor should they be.

III. REAL LIFE STORIES FROM ATCA CASES

1. Helen Todd v. Sintong Panjaitan

Helen Todd lost her only son, 20-year-old Kamal Bamadhaj, on November 12, 1991, when he and approximately 200 East Timorese were killed in a massacre committed by troops under the direction and control of Indonesian General Sintong Panjaitan. In 1994, she was able to sue him in the United States under the Alien Tort Claims Act.

Kamal Ahmed Bamadhaj was a second-year university student in Australia who traveled to East Timor in October 1991 to contribute to the struggle of the Timorese people against their repression under the Indonesian government. While there, Bamadhaj and other foreigners attended the funeral procession of a member of the Timorese resistance, hoping to deter military violence. Their action was to no avail; the military committed a systematic and cold-blooded massacre that continued for days afterwards, even at the military hospital.

Bamadhaj was seen shortly after the massacre walking about a half a kilometer from the site. A military vehicle approached him, an argument ensued about his camera, and they shot him twice. He was found by an International Red Cross representative, but was delayed en route to the hospital, and died.

The Santa Cruz massacre was a premeditated attack, and part of a lengthy pattern of violent repression in East Timor. Panjaitan was commander of the region and the massacre of November 12 was the result of his continuous policy of torture and execution.

The victim’s mother wrote:

My son is dead. There is nothing, certainly no sum of money, that will compensate for his loss--or for the loss to him of the life he could have led. But those who killed him and those in power who set the policies that killed him, have not even acknowledged that a crime has been committed. They lead privileged lives; the policy of repression continues; the military culture which systematically tramples on human rights flourishes.

²³ Stephens & Ratner, *supra* note 2, at 140.

General Panjaitan represents that system. I am bringing him to book not just as Kamal's mother, but in the place of hundreds of East Timor mothers who are forced to grieve in silence for their dead children. Our grief and anger is the same, but, unlike them, I can bring a case against a military officer without putting the rest of my family in danger.

There must be some accounting for the as many as 200 unarmed young people shot and stabbed to death by the military in Dili that morning, simply because they dared to raise their voices against 16 years of organised military brutality against the people of East Timor. At the very least the Indonesian Government, of which General Panjaitan is an honoured and well-rewarded servant, must recognise that their colonial occupation of East Timor is a mistake. It will never be accepted; it can only be kept in place by systematic violence. Their regime there not only violates every norm of civilised government, it is an affront to the ideals on which the Indonesian state was founded.

Whatever compensation is awarded by the court in this case will belong to the mothers of all the victims of the Dili massacre and I will find a way to get it into their hands.

Signed: Helen Todd

* * * * *

Helen Todd is currently living in Malaysia.

2. *Filartiga v. Pena-Irala*²⁴

Joelito Filartiga was kidnapped, tortured, and killed on March 29, 1976 by Americo Pena-Irala, a police commissioner in Paraguay, because of the political activities of his father, Dr. Joel Filartiga. Four hours later, his sister Dolly was awakened and taken to Pena-Irala's home to witness Joelito's tortured and beaten body. As she ran from the house in horror, Inspector Pena-Irala said, "Here you have what you have been looking for for so long and what you deserve. Now shut up."

Dr. Filartiga tried to bring Pena-Irala to justice in Paraguay, but his lawyer was arrested and threatened with death then disbarred without cause. The Filartigas were terrorized and thwarted at every turn, their house surrounded and threatened nightly by armed police, Joelito's mother and sister jailed. When the

²⁴ *Filartiga*, supra note 2.

family learned that Pena-Irala was in the United States, Dolly traveled here and attempted to achieve justice. CCR filed a lawsuit under the ATCA on behalf of Dolly and her father; Pena-Irala was found liable for the abuses he had committed, and the Filartigas were awarded \$10.4 million. He had been deported before the judgment and, having been abandoned by the state, had no resources to pay it. Justice is what had motivated the family. Reports on the case in domestic and international media helped to alert world public opinion to the pervasive use of torture at that time, not only in Paraguay but also in other Latin American countries, and helped to save Dr. Filartiga's life during the height of the Stroessner dictatorship. As Dolly Filartiga said at the time of the trial, "We are not going to get my brother back and we don't expect to collect the \$10 million but by exposing the tactics of the Paraguayan government, we can prevent others from suffering the cruelty of torture."²⁵

For Ms. Filartiga, who obtained asylum in the United States, the power to do something in the face of this atrocity and the ability to obtain justice against Pena-Irala was a crucial part of what enabled her to find some peace from relentless nightmares and to reconstruct her life.

"Because the defendant, Pena will never be brought to justice in Paraguay, this lawsuit presents... the only means by which I seek justice for my brother's death and my injuries."²⁶

3. Doe v. Unocal²⁷

The plaintiffs in this case were twelve Burmese peasants who sued Unocal for complicity in crimes against humanity, including forced labor, forced relocation, torture, beatings, and rape.

In 1988, the ruling military elite declared a new regime in Burma and imposed martial law. That regime, the State Law and Order Restoration Council (SLORC), has been repeatedly condemned for its brutal human rights abuses, both internationally and domestically.

Unocal, a California energy company, has invested heavily in Burma, developing an oil field and building the Yadana gas pipeline into Thailand despite knowing about the human rights record of the Burmese government. Around 1991, Unocal and its partner Total began negotiating their oil and gas contracts with the Burmese government. Many decisions about the joint venture were made in

²⁵ Miguel Perez, *Tortuous Road to Justice Leads Here*, N.Y. DAILY NEWS, Feb. 20, 1982.

²⁶ Press Release, CCR, April 11, 1979

²⁷ *John Doe I v. Unocal*, Nos. 00-56603, 00-57197, Nos. 00-56628, 00-57195, 2002 U.S. App. LEXIS 19263 (9th Cir. Cal. Sept. 18, 2002). This case is currently on *en banc* review, to be heard June 17, 2003.

California, including certain decisions relating to the assignment of personnel and employer/labor relations.

The agreements assigned SLORC the responsibility to clear the path for the Yadana pipeline and provide security for the project. SLORC engaged in violence and intimidation in the course of the project.

“Since the pipeline work started in 1994, villages have been relocated. I saw people suffering. The pipeline caused increase in all kinds of forced labor. I experienced that.”²⁸

“They brought porters from the south to the pipeline area, where they were assigned to different military units—some to carry supplies, some for other work. I have seen old men struggle with heavy loads. I have seen them beaten and kicked into the valley because they couldn’t carry any more.”²⁹

Women in the region were the targets of rape and other abuse by the SLORC officials.

“They just punch and kick me and ask me where my husband was. I lied and told them he was away. So they punch me again and I lost a tooth. I was breast-feeding my baby at the time. So both the baby and I fell into the fire. Then I passed out. . . I was badly burned. Right on the baby’s stomach, there was a sore and she wouldn’t let you touch it. Every time she went to the bathroom, there was blood and when she coughed, there was more blood.” The baby died before she got to a doctor.³⁰

SLORC forced relocation of villages.

“They took all our rice, they took our chickens, then they burned down the houses and arrested people.”³¹

SLORC also used forced labor to clear the forest, level the land, build pipeline headquarters, and carry supplies.

“I had to carry their ammunition. They put thousands of bullets in a basket and they threw in their sandals and rice and everything else. The load was so heavy; I couldn’t even stand up without a friend’s help. I was so thirsty, but I had no water. So I sucked in the sweat that was pouring down my face.”³²

²⁸ *Nightline* (ABC News television broadcast, Mar. 28, 2000) quoting Unidentified Man #3.

²⁹ *Id* quoting Man #5.

³⁰ *Id* quoting Jane Doe #1.

³¹ *Id* quoting Jane Doe #1.

³² *Id* quoting Unidentified Man #2.

Unocal and Total paid SLORC for the costs of the pipeline, were aware that they benefited from forced labor, and knew that SLORC committed human rights abuses in connection with the pipeline project.

“The company works with the Burmese army. The army uses people’s labor to build roads to get to the pipeline. The army brought us to the pipeline area to work. We had to build the helipad. We had to carry the rations.”³³

The federal case is now on *en banc* review in the Ninth Circuit. The state case is set for trial in October of 2003.

4. **Kadic v. Karadzic**³⁴

CCR filed this lawsuit in 1993 for genocide, war crimes and crimes against humanity on behalf of 22 people who suffered under the Karadzic regime in the former Yugoslavia. The case specifically charged Karadzic with rape and forced impregnation of thousands of women.³⁵

After an initial appearance, contesting jurisdiction, Karadzic did not establish a defense and did not come to the United States. Karadzic was also indicted for genocide by the International Criminal Tribunal for the former Yugoslavia, but had not been apprehended by that tribunal either.

One Bosnian-Muslim woman testified to being dragged from her home by soldiers wearing photographs of Karadzic. They told her she was being singled out because she was Muslim. She was taken to a shack with her two children, locked inside and raped repeatedly. “I could not resist, I could not fight them. I could not resist because the others were holding me while my children were watching.”³⁶

Another plaintiff, Mirza Hirkic, described the last time she saw her husband, as he was led away by Bosnian Serb soldiers.³⁷

³³ *Id* quoting Unidentified Man #4.

³⁴ *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995).

³⁵ James Ledbetter, *Waiting for Radovan*, VILLAGE VOICE, Mar. 11, 1997.

³⁶ John Sullivan, *Bosnian Woman, Describing War Ordeal, Faints in U.S. Court*, N.Y. TIMES, Aug. 2, 2000.

³⁷ David Rohde, *Jury in New York Orders Bosnian Serb to Pay Billions*, N.Y. TIMES, Sept. 26, 2000.

In June of 2000, a federal district court judge entered a default judgment in favor of the plaintiffs.³⁸ Later that year, a jury trial was held to establish damages. The jury took less than five hours to render its verdict, and Dr. Karadzic was ordered to pay \$4.5 billion dollars to the plaintiffs.³⁹

Mirza Hirkic, after the jury's decision, said that the verdict was not only about receiving financial damages, but also about recognizing the violations committed by the Bosnian Serb nationalists.⁴⁰

³⁸ *Id.*

³⁹ Pete Bowles & Patricia Hurtado, *Karadzic Ordered To Pay \$4.5 Billion*, *NEWSDAY* (NASSAU ED.), Sept. 26, 2000.

⁴⁰ Rohde, *supra* note 35.