

NATIONAL EDITION

# Los Angeles Times

MONDAY, JUNE 16, 2003

## Unocal Case Arises From 1789 Statute

Alien Tort Claims Act is being used to fight human rights abuses in Myanmar.

*Second of two parts.*

By LISA GIRION  
*Times Staff Writer*

In 1789, George Washington signed the nation's first Judiciary Act, which in a single sentence opened U.S. courts to foreigners. For the next 190 years, the provision would be used but a handful of times,

effectively becoming relegated to the recesses of history.

And there it might well have remained, had it not been for a New York attorney named Peter Weiss.

An intellectual property lawyer and human rights advocate, Weiss was sitting at his desk in 1979 when he took an urgent phone call from Amnesty International.

"There is a notorious Paraguayan torturer sitting in Brooklyn about to be deported," Weiss recalls being told. "You've got to stop him."

"How are we going to do that?" asked Weiss, nonplused.

"That's your problem."

The novel answer Weiss came up with would spawn a series of human rights lawsuits that, over the years, have won multimillion-dollar judgments for thousands of victims against deposed dictators and rogue thugs. Among them: late Philippine President Ferdinand Marcos and the fugitive former Bosnian Serb leader Radovan Karadzic.

Now, Weiss' solution has taken a new twist: It could change the way multinational corporations do business in foreign countries notorious for human rights vio-

*[See Statute, Page A8]*

# Alien Tort Claims Act Focus of Unocal Case

[Statute, from Page A1]

More than two dozen suits have been filed in U.S. courts over the last decade against U.S. corporations — including ChevronTexaco, Fresh Del Monte Produce Inc. and Bank of America Corp. — in connection with alleged human rights abuses around the globe. None of these cases has made it to trial.

But one, involving Unocal Corp., is close. The El Segundo oil company is accused of complicity in human rights abuses allegedly committed by soldiers in Myanmar who were guarding a pipeline partly owned by Unocal. Last year, a three-judge panel of the U.S. 9th Circuit Court of Appeals found that there was sufficient evidence for Unocal to stand trial. Tuesday, at a hearing

## ON THE WEB

Part 1, "Pipeline to Justice?" is available at [www.latimes.com/pipeline](http://www.latimes.com/pipeline).

before an 11-judge panel of the appeals court, Unocal will argue against last year's ruling.

If the case does wind up before a jury, it will be a sweet moment not only for the plaintiffs directly involved — 15 Myanmar refugees now living in hiding — but for Peter Weiss as well.

As soon as Weiss got off the telephone with Amnesty International 24 years ago, he called together lawyers for the Center for Constitutional Rights, where he serves as vice president, and explained the situation: A former Paraguayan police inspector suspected of torturing and killing the teenage son of a political dissident had been discovered in Brooklyn and was about to be deported.

The dissident, Dr. Joel Filartiga, and daughter Dolly wanted to hold Amerigo Pena-Irala accountable for Joelto Filartiga's slaying and keep him in the United States to face trial.

The brainstorming began. How could the lawyers convince a U.S. court to accept jurisdiction over a suit in which all of the parties were foreign nationals and the scene of the crime was beyond U.S. borders?

The lawyers needed a plan and had little time. The deportation was just three days away, and Filartiga would lose his chance at justice if Pena-Irala went back to Paraguay.

That's when Weiss remembered some research he had done when contemplating a suit against U.S. military commanders on behalf of a survivor of the 1968 My Lai massacre in Vietnam. That suit never was filed, but Weiss had stumbled upon the all-but-forgotten provision of the Judiciary Act of 1789.

"It just hadn't been used very much," Weiss said.

Yet Weiss was struck by the

potential of the provision. Known by itself as the Alien Tort Claims Act, it appeared to give foreigners the right to sue in federal court over violations of international law. Because international law encompasses universally recognized human rights, Weiss reasoned, a violation such as torture ought to be actionable.

The theory was drafted into a suit. But by the time the documents were ready, it was late on a Friday afternoon, the day before Pena-Irala's scheduled deportation. Manhattan traffic was horrible, and Weiss feared the courthouse doors would close before he got there. "We kept saying we should have taken the subway."

Weiss made it to the courthouse in time, and Filartiga eventually won a \$10.4-million verdict. More significant, however, was the U.S. 2nd Circuit Court of Appeals' decision that the law Weiss had rediscovered allowed the Filartigas to take Pena-Irala to trial.

"Everyone thought we were crazy," Weiss said, "but we went ahead and did it anyway."

After a few victories against individuals, lawyers began to aim the Alien Tort Claims Act at a new target: corporations.

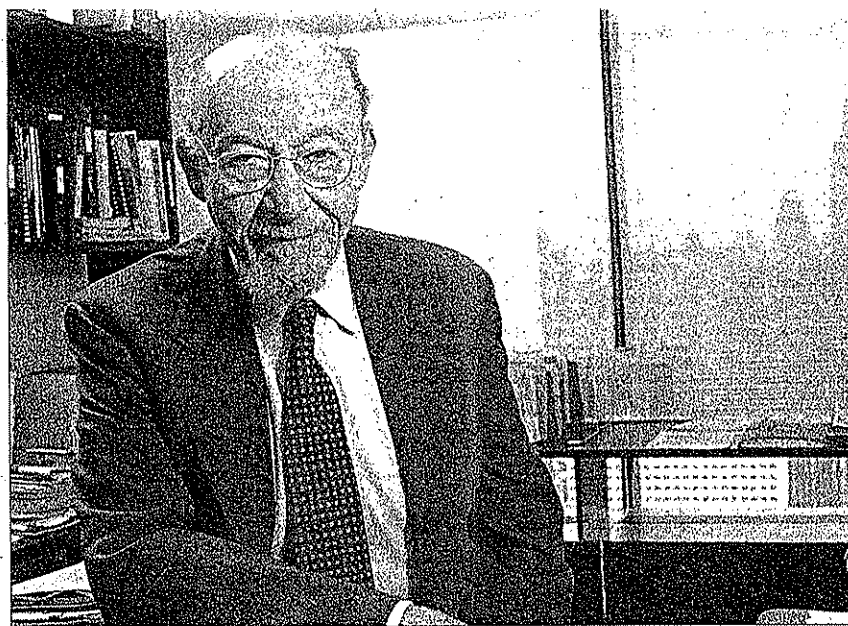
In 1993, a Massachusetts attorney named Cristobal Bonifaz sued Texaco Inc., accusing the oil company of poisoning the Amazon rain forest in his native Ecuador and endangering the health of its inhabitants by dumping oil wastes. (The company, now ChevronTexaco Corp., recently won a ruling sending the suit to an Ecuadorian village — as opposed to a U.S. courtroom — for trial.)

The next major suit to come along — the one against Unocal — began as a student research paper. Katie Redford had spent summers during law school at the University of Virginia in the early 1990s documenting rain forest logging abuses and working for refugee aid agencies in Southeast Asia. She was troubled by reports alleging that forced labor and other violations were occurring along a natural gas pipeline under construction in Myanmar.

Redford knew there was no chance at obtaining justice in the country, formerly known as Burma, because the government was a partner in the pipeline project and forced labor was both widespread and legal. But an international law class gave Redford reason to believe there could be grounds for a suit in the U.S. She spent much of her third year at law school researching how the Alien Tort Claims Act might apply.

She can't recall today if she got an A or an A-minus on the paper. But Redford does remember that "my professor said it would never happen. He told me gently to stop being an idealist."

Paying no heed, Redford went



**TESTING THE ACT:** Peter Weiss, a human rights advocate, used the Alien Tort Claims Act, a provision of the Judiciary Act, to hold a former Paraguayan police inspector accountable for the torture and killing of his son.

to Thailand after she passed the bar exam and pursued the matter. It became one of two suits filed in 1996 in Los Angeles seeking to hold Unocal liable for the abuses allegedly committed by soldiers providing security for the pipeline, which transports natural gas.

The company maintains that no forced labor was used on the pipeline and denies responsibility for any alleged abuses by

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office suites in the United States collecting money," Collingsworth asserted. "But their hands are dirty."

When members of the first Congress crafted the blueprints for the federal court system, they left no record on the alien tort provision, leaving scholars to speculate about their intent. In its original form, the law says that federal courts shall have "cognizance ... of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States."

Scholars believe that two violent attacks on foreign ambassadors may have prompted the drafters of the Judiciary Act to insert language that would give diplomats the option of filing claims for damages in U.S. courts rather than those of the 13 states.

Because piracy was the other significant source of international disputes at the time, the law also may have been aimed at discouraging seafaring plunderers from seeking safe harbor along the U.S. coast by allowing victims to bring suits against them in U.S. courts.

Indeed, a French sea captain was one of the first foreigners to use the law, invoking it in 1795 to bring suit in South Carolina in a dispute over the rightful ownership of slaves seized on the high seas. The law comes up again that year in the attorney general's opinion in support of a lawsuit on behalf of victims of an attack on a settlement on the coast of Africa in which Americans participated.

About 100 years later, in a dispute over the movement of the Rio Grande River, the attorney general said Mexican nationals affected by the diversion of water could have a claim under the law.

For its part, Unocal has argued that the suit against it stretches the alien tort law beyond anything its authors would

have recognized. "The department echoed friend-of-the-court briefs, not the function of Branches, not that spond (as the U. actively is) to change," the 11 ment brief said. "c, be tempting to c to fight every wr world, that functi assigned to the fe

But Harold J. Yale law professor to insert language that would give diplomats the option of filing claims for damages in U.S. courts rather than those of the 13 states.

Now, sudden ment would elur ability of relief i Tort Claims Act fendant whethe: Hussein or Fidel bollab," he said. back the law."

Paul Hoffma yer who represe Unocal plaintiff pected previous 9th Circuit and courts to carry r the government the Unocal case.

"This is no di original cases th against human t: tors like Marcos, we're saying is involved in tl human rights vic tors, they should too."



Associated Press

*'My professor said it would never happen. He told me gently to stop being an idealist.'*

Katie Redford, about her law school student research paper into reports alleging forced labor and other violations in Myanmar

troops guarding the project, saying it had no control over the military.

If the suit succeeds, the implications are enormous.

"It has the potential of establishing a real cost for companies that do business with repressive regimes," said Kenneth Rodman, a professor at Colby College in Maine who studies economic sanctions. "If a credible threat of lawsuits poses the potential of multimillion-dollar damages and also gives cold feet to investors, it will change human rights from a matter of corporate conscience, or a matter of social responsibility, to a matter of the bottom line."

Business groups have organ-

izational Business.

But others say that without access to U.S. courts, human rights in some countries are rendered meaningless.

"One of the most outrageous consequences of the so-called global economy is you have companies that are doing business with the most brutal regimes you can imagine and they are making money at it," said Terry Collingsworth, executive director of the Washington-based International Labor Rights Fund, which is involved in 10 Alien Tort Claims Act cases, including the one against Unocal.

"They'd been hoping they could not be held liable because they've been sitting back in their