

Sept. 14, 2003

Corporations facing abuse suits

Rights groups use 200-year-old U.S. law to press suits Burma pipeline case first fierce battle in legal war

KAREN KLEISS
TORONTO STAR

The deep southern region of Burma is a dangling sliver of rainforest, a lush pendant bordered by Thailand on the east and the Andaman Sea to the west. The wet earth yields up rice, rubber and teak, and the waters off the narrow strip of coast hold vast reserves of natural gas.

The story of that gas, of what happened on this fertile crescent and to the indigenous Tavoyan, Mon and Karen communities that live here, is now at the centre of a fierce U.S. legal battle that has multinational corporations in the dock and human-rights advocates storming the courtroom doors.

Walking through those doors was unthinkable 10 years ago, when American oil giant Unocal purchased a 28 per cent interest in the planned Yadana pipeline project, slated to draw 4 trillion cubic feet of gas up from its bed and pipe it to the burgeoning city of Bangkok, Thailand.

A little-known, 200-year-old U.S. law — never before used to sue a multinational corporation — eventually would become the basis for suing Unocal over its alleged links to rights abuses committed during the pipeline's construction.

Today, the company stands accused of aiding and abetting the Burmese military in forcing entire communities from their homes, using slave labour and committing rape, torture and murder.

Unocal, one of the world's largest oil and gas companies, steadfastly denies the charges.

"The charges are not against Unocal, they're against the Burmese government and the Burmese military," says spokesperson Barry Lane.

Unocal is unfairly caught up in the suit, he adds, simply because the company had a contract with the government.

Nevertheless, the case against the California-based company has become ground zero in an explosive courtroom contest that pits those who think enforceable laws should hold business accountable for human-rights violations against those who think business is doing just fine regulating itself.

And when, after seven years of legal wrangling, the U.S. 9th Circuit Court of Appeals files its second ruling — expected in October — big business will be watching intently.

Since the Unocal case was filed in 1996, more than two dozen suits have been brought against multinational corporations using the same U.S. law, called the Alien Tort Claims Act (ATCA).

If the court's second decision echoes the first, which found sufficient evidence for Unocal to stand trial, the case will move forward and set a precedent that could see scores of corporations defending their human-rights records before federal judges.

Del Monte Foods, Exxon Mobil and Coca-Cola are among corporations facing litigation.

"It's only a matter of time before some company becomes the Enron of human-rights abuse," says Elliot Schrage, adjunct senior fellow at the Council on Foreign Relations and former senior vice-president for global affairs at the Gap.

"The ATCA cases are the first wave in a tide of lawsuits that will seek to hold multinational corporations accountable for their global operations."

Accountability is what rights advocates seek. They say prosecuting abuses is simply not feasible in countries like Burma, which is ruled by a military junta universally condemned for its flagrant abuse of human rights.

As it stands, moreover, there are no international laws that outline corporate human-rights responsibilities.

Consequently, rights advocates charge, big business is not held to account, and victims go without justice.

To their credit, some corporations profess allegiance to company codes of human-rights conduct and many have signed voluntary initiatives like the U.N. Global Compact, spearheaded by Secretary-General Kofi Annan.

But "voluntary initiatives don't promote the kind of accountability that human-rights organizations are looking for," says Eric Biel, acting director of the Washington-based Lawyer's Committee for Human Rights.

"They threaten to be more of a PR exercise than a meaningful way to advance corporate accountability."

Lane of Unocal insists the oil giant has always embraced good business practices, but "now you have to do these PR puff pieces to tell people you're doing them I don't know that we're more socially responsible than we were before, we just talk about it more."

Lane maintains that "all the fundamental ethics were there" in the mid-1990s, when the company was accused of the abuses in Burma. But the fact remains that Unocal had no actual laws to answer to, and advocates insist that's a problem.

In one particularly brutal instance, a farmer's wife has charged that Burmese soldiers hired by Unocal entered her home, kicked her down the stairs, knocked her unconscious and shoved her and an infant daughter into a burning fireplace. The little girl later died from infected head wounds, after the soldiers refused the family access to medical care.

The soldiers allegedly wanted the woman and her family to relocate to make way for the \$1 billion (all figures U.S.) pipeline — the single largest foreign investment in a country where the average citizen earns little more than \$1,660 per year.

Other rural Burmese women, whose identities have not been revealed for fear of reprisal, say they were raped at knifepoint. Witnesses also claim that villagers who refused to participate in the forced labour program, or who grew too weak to work, were summarily executed.

Rights advocates say abuses, especially in countries ruled by dictatorships, can be addressed if corporations are accountable through enforceable laws.

'What we want is all these companies to stop violating human rights'

Terry Collingsworth, labour lawyer

"The ATCA remains the only tool we currently have that will require corporations to go beyond empty promises and actually comply with fundamental human rights norms," says Terry Collingsworth, executive director of the U.S.-based International Labor Rights Fund and lead attorney in the case against Unocal.

But as with earlier attempts, corporations have sternly resisted efforts to make business legally responsible for upholding human rights.

"We will oppose (enforceable regulations) because we don't think they're necessary," says Thomas Niles, president of the United States Council for International Business, one of the groups leading industry opposition to the ATCA.

"To say that the company is responsible for enforcing (global human rights) standards is wrong," he says. "Companies don't have that role."

Niles, who was U.S. ambassador to Canada in the 1980s, argues that governments alone are responsible for enforcing rights laws and international obligations, and that companies are simply responsible for obeying the laws of the countries where they do business.

"No matter how large or powerful or rich a company may happen to be, it is ultimately subject to the actions of government," he says. "And the actions of government, by and large, are beyond control of the company."

Schrage of the Council on Foreign Relations disagrees, insisting that companies routinely influence government policies wherever they do business.

"It is both appropriate and inevitable," he says, "that businesses will be called upon to play a role in these new areas."

In the end, though, it might not matter whether business wants to play a role.

Collingsworth says investors are calling already, wanting to know if rights abuses are leaving the corporations they're investing in open to U.S.-style damage awards. Big payouts would affect stock prices, which would cause the bottom line to quiver.

"This is what's really at the bottom of the corporate community's displeasure," says Collingsworth.

Fund managers may well start policing corporations' rights policies and that, he says, will do more to hold business accountable than he and his colleagues could ever hope to do.

And possible court awards won't be the only factor to contend with if the ATCA continues to be used against multinationals, says Gary Hufbauer, senior fellow at the Institute for International Economics.

Hufbauer predicts that, in the wake of ATCA litigation, the United States could lose more than \$23 billion in exports and more than 300,000 export jobs.

With such high stakes on the table, even the Bush administration has seen fit to intervene, submitting a brief in the Unocal case. And in a controversial letter to the court in support of Exxon Mobil in that company's case, state department legal adviser William Taft IV insisted that ATCA cases will obstruct the war on terror.

But Collingsworth is adamant that Washington's claims are groundless and that Hufbauer's numbers are simply bogus.

"The Bush administration has suddenly gotten all hot and bothered about the Alien Tort Claims Act because five or six oil companies have been sued," he says.

"And the Bush administration is notoriously close to the oil industry, gets substantial support from the oil industry, and many of these people — including Bush himself, Cheney and Rumsfeld — have either been employed by or were on the boards of international oil companies."

Collingsworth says plainly that "the only companies that have to fear the ATCA are those that are knowingly participating in slavery, genocide, war crimes, extrajudicial killing, torture and crimes against humanity.

"Hopefully, that's a pretty small number of companies."

And those companies simply need to trust the U.S. courts, says Harold Hongju Koh, professor of international law at Yale University and former U.S. assistant secretary of state for democracy, human rights and labour.

"If someone can establish that a corporation actively aided and abetted genocide and torture, then that corporation should be held liable," he says. "Corporations have lawyers. Corporations have money."

"If the claims are insubstantial, they move to dismiss, they litigate, and they win."

Ultimately, Collingsworth insists corporations know they're implicated in human-rights violations and simply don't want to be held accountable.

He's confident he'll prevail over Unocal, and that the win will give him leverage to hold other corporations accountable.

"But we don't want to take all these cases to trial," he says.

"What we want is all these companies to stop violating human rights."