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Betsy Apple

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Blood on Their Hands: Corporations, Militarization, and the Alien Tort Claims Act

Betsy Apple

FOREWORD

My Name is Ka Hsaw Wa. I am an ethnic Karen, one of Burma's ethnic nationalities. I was born in Burma and lived there until I had to flee in 1988. Burma is one of the world's worst human rights violators. I experienced that fact first-hand when I was tortured by the military because they wanted information from me. I fled the country shortly afterwards because I helped to organize demonstrations seeking to replace military rule with democracy and human rights. I look forward to the time when I can return to my country.

Burma is a land blessed with a wealth of natural resources. We have rich and beautiful teak and hardwood forests, gems, minerals, natural gas, and oil. Tigers, rhinos, tapirs, great hornbills, and elephants are only some of the rare and important species that live in Burma. My country is also one of vast ethnic diversity, with dozens of different minority and indigenous groups, each with its own language, costumes, and culture. Many of these groups rely on the natural environment to maintain their livelihood and culture. By pillaging our forests, our wild animals, and our rivers, Burma's dictatorship, and its corporate partners-in-crime, destroy who we are.

When I first left Burma, all I wanted was revenge. I saw the army kill so many of my friends and other demonstrators, and I wanted to kill the soldiers in return. But then I realized revenge was useless, that the revenge would satisfy my anger but would not change my people's suffering or help us to achieve freedom. Violence was the problem in my country, so it couldn't be the solution. People needed no more violence—we needed peace and justice. In order to get justice, we first needed the world to know what was happening to our country and our people. So I made the decision to choose

nonviolence, document those atrocities, and tell the world what the military dictatorship tried so hard to hide.

In 1988, I started to document human rights violations against the people of Burma by the military dictatorship. I interviewed thousands of witnesses and victims and heard many stories of killings, rape, torture, forced labor and forced relocation of villagers. After five years, I began to realize that these atrocities were directly connected to the exploitation of natural resources. The army was using human rights abuses to exploit Burma's resources. They militarized the areas of indigenous peoples that contained teak and other valuable hardwoods. Villagers were forced to move from their homes to make way for the loggers. Those who refused to move, or did not move fast enough, were beaten, tortured, and even killed. After the army forced them to move, it forced the villagers to work to build the very same logging roads that displaced them.

It now seems so obvious that these are not only human rights violations or environment degradations: they are both. Human rights and the environment are being destroyed at the same time.

The Yadana natural gas pipeline project in the Tenessarim region of Burma, one of the largest intact rainforests in Southeast Asia, is the most notorious example of these "earth rights" abuses. This project has three main partners: Unocal, a U.S. oil company, Total, a French company, and the Burmese military dictatorship. The companies contracted with the Burmese army to provide security for their pipeline. The people of Burma don't want this pipeline. But Unocal wants it. And it has sent the brutal Burmese military to protect its investment there. These same soldiers who were hired by Unocal and who are oppressing the people in the pipeline region are also destroying the environment. They are logging and hunting the wild animals. They are cutting down the forest to sell trees, to grow food, to make roads and other infrastructure. They are hunting elephants, rhinos, and tigers. They are looking for rare plant and flower species to trade with China and India.

EarthRights International helped eleven villagers in the pipeline region to sue Unocal. A U.S. court¹ agreed with what my people have known for a

long time—that corporations can commit human rights abuses too. This case is so important because these kinds of atrocities are not only happening in Burma. They are happening all over the world. In many countries, transnational corporations are involved in earth rights violations.

People in Burma, and even I, used to think that the United States is a paradise for democracy. But most people in Burma don't know that U.S. companies are molding the world. In many senses, corporations are controlling the governments. They have so much power to lobby against human rights and environmental protection. With so much power, corporations *could* have a positive impact on the people and the environments in which they live. Unfortunately, not enough companies choose to do the right thing. In Burma, for example, the right thing is to refuse to participate in the kinds of abuses of the pipeline region. Unocal refused to make that choice. So *we* have no choice but to try to make them behave, using every nonviolent tool at our disposal.

We will not let them defeat us. We know the companies and their military partners have lots of money, guns, power, and influence. But they do not have what we have. We have truth, we have justice, we have courage, and most importantly, we have each other to protect human rights and the environment. We will win.

Ka Hsaw Wa
2002



INTRODUCTION

Globalization. Transnational corporations. Power.

What do these words conjure up for you? For the indigenous farmers of Burma whose livelihoods have been destroyed by a natural gas pipeline? For the CEO of oil and gas giant Unocal?

This article defines globalization as the opening of markets internationally with minimal, if any, legal restrictions limiting investors' ability to move capital in and out of countries. One of the less frequently discussed dark

sides of this globalization is the military build-up that often accompanies foreign investment. Commentators have recognized that, “as globalization extends the reach of corporate interests around the world, a matching military capacity must be deployed to protect those interests.”²² There has been little discussion, however, about the increasing prevalence of armed forces used to protect foreign investments, especially those related to infrastructure or exploitation of natural resources.

It is commonplace to talk about globalization in the same breath as social injustice if one is an activist. It is also widely accepted that globalization affects people and nations differently. In particular, globalization magnifies North-South inequities and inequalities. What is less thoroughly understood is that globalized trade in its current incarnation can, and often does, produce violence. This violence is often perpetrated against local peoples and arises out of an investor’s perceived need to protect its investment from sabotage. Adding insult to injury—or in these cases, injury to injury—indigenous communities gain no profit from investment projects such as pipelines, dams, and mines, which destroy their environments, displace their ancestral homes, and obliterate their livelihoods. Members of indigenous communities also are frequently assaulted, tortured, raped, and murdered by the security forces assigned to protect such projects.

So, for many people, especially people living in the Global South on land rich in natural resources, these words—globalization, corporatization, power—conjure up images of guns, soldiers, and blood.

Another set of words—accountability, human rights, justice, corporations—gives rise to an entirely different image, especially for some lawyers, activists, plaintiffs, and corporate officers. This mental picture is considerably less emotional than that evoked previously. It is a picture of five bloodless words: the Alien Tort Claims Act. This old law, dusted off after nearly two centuries of neglect, is proving to be a powerful tool for ordinary people seeking to resist one of globalization’s deadliest outcomes: the myriad human rights abuses associated with the bigger, stronger militaries and security forces sent in to *protect* foreign investment projects.

GLOBALIZATION 101

That there are multiple definitions indicates that globalization clearly means different things to different parties.³ To many corporations, it means breaking down national barriers to obtain totally free access to markets. It means being able to do business anywhere, unfettered by restrictive labor or environmental standards. Some in the corporate sector are astute enough to realize that globalization's definition must include mention of its potential to aid poor people.⁴ To politicians and policymakers in developing countries, globalization may mean an opportunity to participate in the wealth that has disproportionately aggregated in developed nations, with the United States as the flag-bearer.⁵ To ordinary people in developing countries—agricultural and aquatic workers, subsistence farmers, manual laborers—globalization often means loss: loss of traditional livelihoods, loss of ancestral homelands, loss of human security.

To be sure, while globalization can create new jobs, often these jobs do not pay a living wage and are fraught with health and safety risks.⁶ This is one of the impacts activists in Seattle protested against at the 1999 World Trade Organization (WTO) ministerial meeting. One of the most frequent critiques of the protests in Seattle was that activists protesting globalization lacked focus. Some commentators looked at the crowd and saw tens of thousands of union members, greens, grannies against the WTO, people dressed as turtles, those in favor of a free Tibet, friends of the rain forests, French farmers, and anarchists.⁷ Ultimately, these commentators failed to understand the significance of what they were seeing: the definition of globalization is multifaceted, and the problems of globalization *are*, in fact, interconnected. Even what may seem like far-flung issues, such as prostitution, fall within globalization's complex and messy meaning.⁸

Globalization's champions often hold out this phenomenon as our best hope for eradicating poverty and redistributing resources from North to South.⁹ In doing so, they fail to acknowledge that, as globalization is currently proceeding—with transnational corporations focused on the

bottom line as their primary engine—those in greatest need of those resources are necessarily the last priority.

MILITARIZATION'S DEADLY IMPACT

Democracy and human rights do not always coexist when natural resources are at issue. It is commonly understood that secure foreign investments require a stable host country governed by the rule of law. In the words of one financial commentator, “In short: capitalism without the rule of law is capricious, dangerous, and not conducive to reasonable risk-taking.”¹⁰ The reality of foreign investment, however, particularly in extractive resource industries, is quite different if viewed from the corporate perspective. After all, “geology dictates that the oil industry cannot easily pick and choose where it operates.”¹¹ Even if countries lack strong and democratic political, legal, and economic structures, they possess something much more valuable to the bottom line: oil, gas, gems, minerals, and timber.

Many resource-rich countries are countries in development: development of legal systems, the rule of law, and governmental and bureaucratic infrastructure. Transnational corporations seeking to invest in these countries in order to exploit their resources and make a profit often find willing partners in governments that also need capital to stay afloat. However, these same governments may not be especially stable: they may be young democracies, governments in transition, military regimes, or governments threatened by internal armed conflict.¹² Because they may not command the widespread, popular support of their citizens, they may resort to force to remain in power, as is the case in Burma, the Nigeria of Abacha, Chad, and the Sudan.¹³ In some cases, the existence of armed forces in opposition to the ruling governments provides those in power with justification for militarizing development. In the words of Chadian President Idriss Deby (after he spent \$4.5 million—a portion of Chad’s signing bonus from oil companies for the notorious Chad-Cameroon pipeline—on weapons), “Without security there can be no development programs.”¹⁴

To convince investors that their investments are safe, host governments may offer the protection of armed security forces, in the form of government troops, or the assistance of state militaries to private forces. Transnational corporations accept this offer for a variety of reasons; for example, they have no choice but to secure the cooperation of the host government if they wish to reap the rewards of that country, and they believe in the “controversial but necessary relationships with the state security forces.”¹⁵ In a country occupied by a military regime or an unstable government and a weak economy, the government may be willing to do whatever is necessary, even if it is in violation of international treaties and customary international law, to secure the availability of much-needed foreign currency.

Because these so-called development projects are often opposed by the local people—or would be, if the local peoples were consulted, which rarely happens—the projects often become the focus of protest, and in some cases, guerrilla activity. Thus, a vicious cycle is created: an unwanted project, which requires militarization and violence for its creation leads to resistance and, sometimes, violence. In turn, resistance leads to continued armed security for its ongoing protection. As former Unocal President John Imle stated about the build-up around Unocal’s Yadana pipeline, “What I’m saying is that if you threaten the pipeline there’s gonna be more military. If forced labor goes hand and glove with the military yes there will be more forced labor. For every threat to the pipeline there will be a reaction.”¹⁶

BURMA, UNOCAL AND MILITARY “SECURITY”

If you were the head of an oil and gas company and you wanted to build a pipeline in a country well known for its extraordinary and remote natural resources, its guerrilla warfare, its repressive military regime, its widespread human rights abuses, and its brutal military, how would you protect your project being constructed through a jungle inhabited largely by oppressed indigenous peoples? If you were Roger Beach, CEO of Unocal, or John Imle, President, of Unocal, you would hire that brutal military to “secure” the pipeline.¹⁷ The case of Unocal arranging to hire the Burmese army for

security¹⁸ is but one example of a transnational corporation utilizing local military forces to “protect” its investment at the expense of local peoples, who are, in fact, the ones truly in need of protection from their country’s own army.

Before Unocal’s pipeline was constructed across Burma’s southern Tenasserim, fisherfolk and farmers in the region made their livelihoods relatively free from restrictions; they were able to provide for themselves and occasionally earn extra money.¹⁹ Once the pipeline’s construction began in 1991, everything changed. One of the most remarkable transformations in the region was the startling military build-up. Since 1991, at least sixteen military battalions (with each battalion averaging 500 soldiers) have occupied the forty-one miles of pipeline across the Tenasserim.²⁰

The consequences of this militarization have been dire. As EarthRights International, a nongovernmental organizational working on human rights and environmental violations in Burma, has documented, the military build-up has led to myriad abuses including massive forced relocations, rape, forced labor and forced portering, torture, extrajudicial executions, environmental destruction, economic dislocation, and attacks on indigenous cultures.²¹ Each of these particular abuses has created a domino effect leading to other violations of fundamental human rights. For example, the forced relocations have led numerous farmers and fisherfolk to lose their access to their traditional livelihoods, which in turn has led some of their daughters into prostitution to support their families.²² In the same way, restrictions on freedom of movement—people must obtain military permission to go outside the village—have led to increased incidents of disease.²³ And so on.

Unocal claims that it is “improving lives in Myanmar”²⁴ through a program of socio-economic initiatives directed at thirteen villages in the pipeline region.²⁵ Even if Unocal’s statistics about increased access to health care, education, and economic development were true, they are rendered meaningless by the fact that these programs never would have been necessary but for the pipeline. The people of the pipeline region were never

consulted about their wishes regarding this “development;”²⁶ they, in fact, do *not* want the pipeline;²⁷ and they believe their lives were better—even without Unocal’s socio-economic programs—before the pipeline arrived.²⁸ Accordingly, it would seem that the people of Burma were happier before the soldiers arrived.

COLUMBIA, NIGERIA, AND THE GLOBALIZATION OF ABUSE

Unfortunately, Burma is far from being the only country with a history of violent corporate involvement. For example, in Columbia, Los Angeles’ Occidental Petroleum (OXY) hired AirScan, a private U.S. security firm, to protect their oil operations in that country. In collaboration with the Columbian military, AirScan launched an “anti-guerrilla” raid on the village of Santo Domingo in which eighteen civilians, nine of them children, were killed. OXY’s Cano Limon pipeline, completed in 1996, has been attacked by guerrillas more than 500 times, and of 38 assassinations, 18 massacres, 31 incidents of torture, 44 kidnappings, 151 illegal detentions, 2,360 incidents of harassment, and 150 displacements of people in the region, all have been connected to the pipeline.²⁹ Gibraltar 1, another OXY drill site in the U’Wa’s traditional territory, has become another battlefield for the U’Wa people, with military and police forces invading on at least four separate occasions, resulting in the deaths of at least three children and injuries to many more.³⁰

Similarly, Nigeria’s indigenous people have been victimized by both Chevron and Shell, acting in complicity with the Nigerian military forces. In Nigeria’s Delta region, Chevron’s oil production activities have destroyed the fisheries, fresh water supplies, and homes of local residents. After Chevron refused to meet with the affected peoples, a group of them went, unarmed, to Chevron’s offshore Parabe platform and demanded a meeting.³¹ After three days of peaceful and increasingly successful negotiations, during which the protesters agreed to leave the platform the next morning, Chevron sent in a helicopter filled with Chevron representatives and armed soldiers, who opened fire on the protestors from the air.³² Two protestors were killed and more than thirty were wounded, including one who was first shot and

then bayoneted.³³ Soldiers kidnapped and subsequently tortured the protest leader after he refused to confess to piracy. Seven months later, Chevron leased helicopters and flew over fishing villages, opening fire. Subsequently, the company leased boats filled with amphibious soldiers who attacked the villages. As a result of these two assaults, at least seven people died.³⁴

Shell presents yet another case study in brutal corporate engagement. Shell's oil extraction activities in Ogoniland have led to environmental devastation, cultural destruction, and murder. Ken Saro-Wiwa, the Nigerian activist and writer, along with Ogoni community members peacefully protested the massive oil spills and related cultural and environmental destruction. In response, Shell hired the Nigerian army for "protection," resulting in the deaths of Saro-Wiwa and eight other activists.³⁵

These specific examples of what might be characterized as "corporate militarization" are replete with chilling details about human suffering and environments laid waste. Omitted here, in the interests of time and space, is a description of the broader, systemic ills that result from militarization: money gets siphoned from critical social and economic programs and poured into an already bloated military budget; gender roles are stratified and negative gender stereotypes reinscribed and magnified, to the obvious detriment of women;³⁶ sexual and other violence against women—and against everyone, for that matter—becomes the accepted mode of discourse in a society permeated by a militaristic mentality.³⁷ When examining the landscape of corporate militarization in some developing countries, both the forest and the trees look bleak indeed.

A TOOL TO COUNTER CORPORATE POWER: THE ALIEN TORT CLAIMS ACT

In an era of unprecedented globalization, power has shifted away from national governments to corporations. According to one CEO, "Market forces and large corporations in many ways have a bigger impact on people's lives than governments or regional and international institutions."³⁸ Ordinary workers often share that view: "The [WTO] demonstrations are an indica-

tion of people's unease in the face of globalization. There is a fear that governments can't stand up to the power of multinational companies."³⁹

In 2001, ExxonMobil's annual revenues exceeded \$210 billion, and the sixteen largest American petroleum corporations had revenues totaling nearly \$500 billion.⁴⁰ In comparison, the U.S. government's revenues were 2.1 trillion.⁴¹ That the petroleum refining industry alone, excluding other extractive fields like mining, timber, crude oil production, and related energy services, has annual revenues equaling twenty-five percent of the United States government budget, suggests just how much leverage these corporations have over their own government.⁴² This ever-growing concentration of wealth and power in the hands of fundamentally undemocratic global corporations with no accountability to governments or peoples whatsoever (except for their shareholders) forces us to seek new answers to the question: where are the checks on this power? How do we, as citizens of the United States and citizens of countries affected by U.S. corporations, hold those responsible accountable for their activities abroad, especially when those activities lead to human rights abuses?

National governments and international institutions, particularly the United Nations, are supposed to guarantee and make real universal values such as human rights,⁴³ which include human security, health, and economic, social, and cultural protections.⁴⁴ These values and ideals have been enshrined not only in international treaties, but also in national constitutions and laws.⁴⁵ However, even a cursory look at numerous countries, including but not limited to those in the Global South,⁴⁶ makes clear that universal governmental commitment to environmental and human rights principles is, at best, rhetorical. Looking to the U.S. government to stem the rising tide of corporate power and the corresponding impunity with which U.S. corporations operate abroad is a dubious undertaking. In fact, the number of former oil and gas industry executives who are currently serving in the Bush Administration suggests that we can count on exactly the opposite phenomenon: a government that is heavily infiltrated and influenced by those corporate interests.⁴⁷

The United Nations and other international institutions are similarly suspect; recent activities indicate that these purported bastions of freedom and equal opportunity have themselves become willing accomplices to corporate malefactors.⁴⁸ Furthermore, international legal fora either limit themselves to hearing cases brought by one country on behalf of its citizens against another⁴⁹ or lack the ability to deliver enforceable legal decisions.⁵⁰ Where, then, do we go to effect real corporate accountability for the egregious human rights abuses perpetrated by corporations working in countries whose armies expand in order to play host to these international power brokers?

The U.S. courts since 1993 and increasingly over the past decade have offered up an interesting strategy through suits brought under the Alien Tort Claims Act (ATCA). The ATCA's text is as short as it is proving to be powerful, granting federal district courts jurisdiction to hear "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."⁵¹ Although enacted in 1789⁵², the ATCA was largely ignored until 1979, when the Paraguayan *Filartiga* family, whose son had been murdered, used it to sue the offending police officer who had since relocated to Brooklyn.⁵³ Since the landmark *Filartiga* case, numerous plaintiffs have filed claims under the ATCA alleging human rights violations and seeking compensation.⁵⁴

The elements of an ATCA claim at first glance appear simple: the plaintiff must be an alien alleging a tort, and the alleged tort must be a violation of the law of nations.⁵⁵ A tort is in violation of the "law of nations" when it violates a norm of customary international law.⁵⁶ Customary international law, also known as *opinio juris*, "results from a general and consistent practice of states followed by them from a sense of legal obligation;"⁵⁷ however, determining when a practice has become general and consistent is not always so simple. While an extended discussion of which norms rise to the level of customary international law, and therefore become actionable under the ATCA, is beyond the scope of this article, it is clear that war crimes,⁵⁸ crimes against humanity,⁵⁹ genocide,⁶⁰ summary execution,⁶¹ torture,⁶² forced

labor,⁶³ arbitrary detention,⁶⁴ and cruel, inhuman and degrading treatment⁶⁵ meet the standard.

The first wave⁶⁶ of ATCA cases focused on bringing state actors to justice for their human rights abuses given that it was clear that international human rights law applied to governments.⁶⁷ However, two new possibilities emerged for using the ATCA to hold private actors accountable: either a private party could have committed an act so egregious, such as genocide,⁶⁸ slave trading,⁶⁹ or war crimes,⁷⁰ that it nonetheless violates the law of nations; or the private party could be characterized as a state actor.⁷¹ Whether a private party is considered a state actor seems to depend on one of two things: whether the state is “sufficiently involved [in the private party’s questionable conduct] to treat that decisive conduct as state action”;⁷² or, conversely, whether the “private party is sufficiently involved [in the state’s questionable conduct] to consider that party a state actor.”⁷³

The second wave of ATCA cases, those suits against private corporations for abuses of human or environmental rights, speaks directly to the problem of corporate militarization. From Texaco in Ecuador⁷⁴ to Unocal in Burma⁷⁵ to Freeport-McMoRan in Indonesia⁷⁶ to Shell⁷⁷ and Chevron⁷⁸ in Nigeria, these cases are about the relationship between transnational corporations and local militaries. These relationships come about because of the inability or the failure of domestic laws to check corporate power, and they demonstrate the violent consequences of that power run amuck. But perhaps these cases are most important for what they mean to ordinary people. While many indigenous peoples or people in developing countries do not categorically oppose development, international agreements dictate that those who are directly affected should have a voice in when, where, and how it proceeds.⁷⁹ When a country like Burma not only fails to “enable [local peoples’] effective participation in the achievement of sustainable development,”⁸⁰ but also seeks to quash this participation through violent means, the ATCA offers up one of the only meaningful avenues for participation.

Why does this participation matter so much? While it sometimes seems that globalization is about mass movements, worldwide trends, and large

theories, it is actually about individual people's lives. The plaintiffs in *Doe v. Unocal*⁸¹ represent examples of the otherwise unexceptional individuals whose lives, cultures, rights, and environments have been destroyed by corporations. The military forced them to leave their homes; took their property; forced them to clear trees, build barracks, and haul heavy equipment; prohibited them from farming and took their livestock; and, in some cases, raped the women.⁸² The Court noted, "the deposition testimony recounted numerous acts of violence perpetrated by Burmese soldiers in connection with the forced labor and forced relocations."⁸³ The *Doe v. Unocal* case and other ATCA cases⁸⁴ filed by individuals, who were directly affected by corporate investment, seek to concretize the real effects of globalization by giving its victims a forum for recounting and redressing their losses. While the Court granted Unocal's motion for summary judgment⁸⁵ as to the plaintiffs' federal claims,⁸⁶ it also stated:

Here, Plaintiffs present evidence demonstrating that before joining the Project, Unocal knew that the military had a record of committing human rights abuses; that the Project hired the military to provide security for the Project, a military that forced villagers to work and entire villages to relocate for the benefit of the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence; and that Unocal knew or should have known that the military did commit, was committing, and would continue to commit these tortious acts."⁸⁷

By making this statement, regardless of the ultimate legal disposition of the case, the court lent a certain legitimacy to the plaintiffs' experience, and the ATCA gave the plaintiffs a place to detail that experience. Those kinds of details, if related by a sufficiently broad range of affected peoples and repeated often enough, are a critical tool in stemming globalization's negative tide.

CONCLUSION

Lawyers are taught that clear analysis, precise language, and strong evidence are critical to win an argument. The phenomenon of globalization—amorphous, complex, and controversial—presents particular challenges with regard to the traditional legal method. In an argument about globalization, where transnational corporations support its continued, unrestricted path, and ordinary people oppose its destructive impact, how can the ordinary people possibly prevail? To do so, they must describe in concrete terms the real impact of this global condition and link it to the activities of its perpetrators.

While an increasing number of globalization's victims identify the abuses committed by armed forces providing security for foreign investment or development projects as a key source of globalization's woes, how and where are they to complain? The Alien Tort Claims Act offers a forum to those who have been harmed by the specific activities of enormously powerful parties. It gives victims a chance to reify their experience of globalization, and it forces those who perpetrate (and benefit from) its worst abuses to listen.

¹ See *Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997) (holding that corporations and their executive officers can be liable under the Alien Tort Claims Act for violations of international human rights norms in foreign countries and that U.S. courts have the authority to adjudicate such claims).

² Steven Staples, *The Relationship Between Globalization and Militarism*, SOC. JUST. MAGAZINE, Winter 2000, at 18, 21.

³ One article defines it variously as “the spread of markets,” “a form of capitalist exploitation,” and “the dominant driving force in the world economy, reshaping societies and politics as it changes lives.” *Globalization: Lessons Learned*, BUS. WK., Nov. 6, 2000, at 228. The *Christian Science Monitor* calls it the “means [of] providing high-value products and services from around the world that are designed by talent from many countries for markets all over the globe.” Subhash Jain & Piotr Chelminski, *Beyond Buzzwords-Defining ‘Globalization’*, CHRISTIAN SCI. MONITOR, Aug. 25, 1999, at 9. And *Foreign Policy* has this to say: “Advocates and detractors alike bend the definition of “globalization” to fit their arguments. In truth, globalization entails a dense web of cross-border relationships that range from the very evident (the spread of disease) to the very subtle (the spread of ideas).” *Globalization’s Last Hurrah? Globalization at Work*, FOREIGN POL’Y, Jan. 1, 2002, at 38.

⁴ Mortimer B. Zuckerman, *A Bit of Straight Talk*, U.S. NEWS & WORLD REP., July 3, 2000, at 60, 60.

⁵ Egypt's economy minister, Youssef Boutros-Ghali, in talking about the WTO Ministerial Meeting in Seattle in 1999, explained, "[D]eveloping countries, like us, want a fairer share of the pie, not to destroy the pie. I can't grow unless I integrate with the global economy, but the trade rules by the developed countries are unfair We open to you, but you don't open to us." Thomas Friedman, *Foreign Affairs; 1 Davos, 3 Seattles*, N.Y. TIMES, Feb. 1, 2000, at A21.

⁶ See, e.g., National Labor Committee, *Wal-Mart Sweatshops in Honduras*, at <http://www.nlcnet.org/walmart/honwal.htm> (last visited Jan. 13, 2002) (on file with the Seattle Journal for Social Justice).

⁷ See e.g., Michael Elliot, *Lessons from the Battle of Seattle*, NEWSWEEK, Dec. 13, 1999, at 36.

⁸ See INT'L ORG. FOR MIGRATION, *DECEIVED MIGRANTS FROM TAJIKISTAN: A STUDY OF TRAFFICKING IN WOMEN AND CHILDREN 7* (2001). This report notes:

Globalization trends and the radical transformation of local economies and societies over the 20th century have forced people to abandon traditional occupations to try to meet the ever-changing demands of a new and growing labor market [This] tends to foster a more favourable environment for the recruitment of potential victims of trafficking in human beings.

Id.

⁹ See, e.g., Ernesto Zedillo, *Commentary*, FORBES, Mar. 19, 2001, at 49, 49. Mr. Zedillo notes:

It is right to despise the extreme poverty and inequality that prevails in much of the world, but it is wrong to assert that globalization per se is at their root. On the contrary, globalization is an important part of the solution A commitment to globalization, along with sound macroeconomic policies, is the fastest route to economic growth for developing countries.

Id.

¹⁰ See, e.g., James A. Harmon, *Rule and Prosper*, FIN. TIMES (London), Mar. 10, 1999, at 12. See also Madeleine K. Albright, U.S. Efforts to Promote the Rule of Law, Remarks at the Condon-Falknor Distinguished Lecture at the University of Washington School of Law (Oct. 29, 1998), in U.S. DEP'T ST. DISPATCH, Nov. 1998, at 6. According to then-Secretary of State Madeleine Albright, "[O]ne of the great lessons we have learned is that the rule of law and global prosperity go hand in hand." *Id.*

¹¹ David Buchan, *Energy Groups Under Pressure from All Sides*, FIN. TIMES (London), Feb. 20, 2001, at 12.

¹² For example, Nigeria's President Obasanjo took office in May 1999; Burma's un-elected military regime in its current incarnation has violently oppressed its people since it quashed popular uprisings in August 1988; Indonesia's Megawati Sukarnoputri came to power only in July 2001.

¹³ For example, Amnesty International reported that "Chadian security forces have reportedly killed more than 200 unarmed civilians in the Doba oil region . . . and recently, the government of President Idriss Deby diverted \$4.5 million for weapons purchases from a \$25 million "bonus" given to Chad by the consortium of companies." Amnesty Int'l., *Danger Zones: Chad and Cameroon*, at <http://www.amnestyusa.org/justearth/countries/chad-cameroon2.html> (last visited Jan. 12, 2002) (on file with the Seattle Journal for Social Justice).

¹⁴ Curtis Runyan, *Chad Purchases Weapons with Oil Pipeline Money*, WORLD WATCH, Mar./Apr. 2001, at 20, 20.

¹⁵ John Wade, *Violence, Crime Continues to Cast Shadow over Future Oil Investment in Columbia*, OIL & GAS J., Jan. 17, 2000, at 32, 32.

¹⁶ See *Doe v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1300 (C.D. Cal. 2000), *aff'd* 248 F.3d 915 (9th Cir. 2001).

¹⁷ A meeting between U.S. Embassy personnel in Rangoon and Joel Robinson of Unocal was memorialized in an Embassy cable that states, “On the general issue of the close working relationship between Total/Unocal and the Burmese military, Robinson had no apologies. He stated forthrightly that the companies have hired the Burmese to provide security for the project and pay for this . . .” U.S. DEPARTMENT OF STATE UNCLASSIFIED CABLE FOR U.S. EMBASSY IN RANGOON, Cable No. 002067 (1995).

¹⁸ See *Unocal Corp.*, 110 F. Supp.2d at 1301.

[A Unocal briefing document] then states that “[a]ccording to our contract, the government of Myanmar is responsible for protecting the pipeline. There is military protection for the pipeline and, when we have work to do along the pipeline that requires security, then military people will, as a matter of course, be nearby.” (Richardson Decl., Ex. 73 at 13940). Unocal CEO Roger Beach was asked about this briefing document in his deposition. He testified that “[i]t is my understanding that the Union of Myanmar was going to provide general security in the area of the pipeline, in its capacity as the sovereign government of Myanmar. I have no understanding with regard to whether or not Myanmar had a contractual obligation to provide such security, or whether the security provided by Myanmar was provided pursuant to any contract.” (Beach Dep. 129:21).

Id.

¹⁹ EARTHRIGHTS INTERNATIONAL, TOTAL DENIAL CONTINUES 10 (2000).

²⁰ *Id.* at 23.

²¹ EARTHRIGHTS INTERNATIONAL & SOUTHEAST ASIAN INFORMATION NETWORK, TOTAL DENIAL (1996); EARTHRIGHTS INTERNATIONAL, TOTAL DENIAL CONTINUES (2000).

²² BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T OF STATE, BURMA REPORT ON HUMAN RIGHTS PRACTICES FOR 1996 (1997).

²³ EARTHRIGHTS INTERNATIONAL, *supra* note 19, at 130.

²⁴ Myanmar is the historical, Burmese language name that the current military regime, the State Peace and Development Council, imposed upon the country (replacing the name Burma) when it took power. The name Myanmar has negative associations for most opposition groups, including the democratically elected National League for Democracy, headed by Nobel Peace Prize winner Aung San Suu Kyi, who refers to the country as Burma.

²⁵ See Unocal, *The Story You Haven’t Heard About . . . Improving Lives in Myanmar*, at <http://www.unocal.com/myanmar/soecon.htm> (last visited Jan. 15, 2002) (on file with the Seattle Journal for Social Justice).

²⁶ EARTHRIGHTS INTERNATIONAL, *supra* note 19, at 16.

²⁷ *Id.*

²⁸ One pipeline villager said, “All in all, I want to say that if there was not a pipeline, there would not be foreigners. If there were no foreigners, there would not be soldiers, so we could have our own . . . life as we had it before.” *Id.* at 120.

²⁹ Rainforest Action Network, *In Defense of Sacred Lands: The U’Wa People’s Struggle Against Big Oil*, at http://www.ran.org/ran_campaigns/beyond_oil/oxy/uwa_facts.html (last visited Jan. 16, 2002) (on file with the Seattle Journal for Social Justice).

³⁰ *Id.*

³¹ See Third Amended Complaint at paras. 45–54, *Bowoto v. Chevron*, No. C99-2506 CAL (N.D. Cal. July 2000).

³²See Amy Goodman & Jeremy Scahill, *Drilling and Killing*, THE NATION, Nov. 16, 1998, at 6, 6.

³³*Id.*

³⁴*Id.*

³⁵See First Amended Complaint at 33, *Wiwa v. Royal Dutch Petroleum Co.*, 1998 U.S. Dist. LEXIS 23064.

³⁶See WOMEN'S LEAGUE, *WOMEN AND RAPE* (1994) (WILPF Essay No. 1).

³⁷See, e.g., CYNTHIA ENLOE, *MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* 56–58 (1989) (discussing the disastrous consequences of militarization to Palestinian and Afghani women).

³⁸See Lindahl Goran, *A New Role for Global Businesses*, TIME EUROPE, Jan. 31, 2000, at 52, available at <http://www.time.com/time/europe/magazine/2000/131/lindahl.html>.

³⁹See Shada Islam, *World's Workers Deserve Basic Rights*, INTER PRESS SERV., May 18, 1998.

⁴⁰Fortune, *Fortune 500 Petroleum Refining Index*, at <http://www.fortune.com/lists/G500/index.html> (last visited Jan. 15, 2002) (on file with the Seattle Journal for Social Justice).

⁴¹OFFICE OF MGMT. AND BUDGET, *BUDGET SUMMARY* (2002), available at http://www.whitehouse.gov/omb/budget/fy2002/budiv_3.html (last visited Jan. 13, 2002).

⁴²See *id.*

⁴³See U.N. Charter, *opened for signature* June 26, 1945, 59 Stat. 1031, 1035–37. The U.N. Charter Preamble states:

We, the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . and for these ends . . . to employ international machinery for the promotion of the economic and social advancement of all peoples

Id. Article 1 continues:

The Purposes of the United Nations are: To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion

Id.

⁴⁴See *Universal Declaration of Human Rights*, G.A. Res. 217 (III), U.N. Doc. A/810 (1948); International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171; and International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

⁴⁵See U.S. CONST. amend. I; U.S. CONST. amend. V (guaranteeing civil and political rights in the form of freedom of speech and due process); 42 U.S.C. § 1983 (2000) (legislating non-discrimination); 29 U.S.C. § 651(2000) (guaranteeing access to healthy and safe livelihoods).

⁴⁶See *supra* pp. 132–35 (discussing corporate militarization's impacts).

⁴⁷A few examples include: Dick Cheney, Vice President and former CEO of Halliburton; Zalmay Khalilzad, Presidential Envoy to Afghanistan and former lobbyist for Unocal; Don Evans, Commerce Secretary and former CEO of Tom Brown, Inc., a Texas-based oil and gas company; and Condoleeza Rice, National Security Advisor and long-time Chevron Board Member. "The Bush Administration has been dubbed the 'oil and gas cabinet' because of the close financial ties between Cabinet members, including the President and Vice-President, and the energy industry." Katty Kay, *Nervous Bush Defends Links to Failed Firm*, TIMES (London), Jan. 11, 2002, at 15.

⁴⁸ See The Global Compact, *What It Is*, at <http://www.unglobalcompact.org/un/gc/unweb.nsf/content/whatitis.htm> (last visited Jan. 17, 2002) (on file with the Seattle Journal for Social Justice). This initiative brings together large corporations, U.N. agencies, and selected large nongovernmental organizations, enabling corporations such as Unocal, Shell, Nike, and Novartis—some of the worst perpetrators of globalization’s abuses—to “bluewash” their image by “help[ing] build the social and environmental pillars required to sustain the new global economy and make globalization work for all the world’s people.” See also LORI WALLACH & MICHELLE SFORZA, GLOBAL TRADE WATCH, WHOSE TRADE ORGANIZATION: CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY 108 (1999) (discussing the World Trade Organization, comprised of 144 member states and governing over 90% of international trade, as an entity that protects corporate interests over the rights of indigenous peoples).

⁴⁹ See, e.g., Statute of the International Court of Justice, June 26, 1945, art. 34(1), 59 Stat. 1055, 1059.

⁵⁰ See, e.g., Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1996, art. 5(4), 999 U.N.T.S. 302, 303 (allowing victims to complain directly to a treaty body but providing no mechanism to enforce sanctions on the perpetrators).

⁵¹ 28 U.S.C. § 1350 (2000).

⁵² See *Filartiga v. Pena-Irala*, 630 F.2d 876, 878 (2d Cir. 1980).

⁵³ See *id.* at 878–79.

⁵⁴ See *Forti v. Suarez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988) (Argentine plaintiffs sued Argentine general for abuses committed against their relatives by Argentine soldiers); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995) (Guatemalan former Minister of Defense sued for abuses committed by soldiers under his command); *In re Estate of Ferdinand Marcos Human Rights Litig.*, 25 F.3d 1467 (9th Cir. 1994) (class of plaintiffs including everyone who suffered under the Marcos regime sued for abuses by soldiers and government authorities of the Philippines in the 1970’s and 1980’s); *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996) (local Ethiopian leader sued for torture).

⁵⁵ See *Filartiga*, 630 F.2d at 887.

⁵⁶ See *Kadic v. Karadzic*, 70 F.3d 232, 239 (2d Cir. 1995); *Filartiga*, 630 F.2d at 884; *Forti*, 694 F. Supp. at 709.

⁵⁷ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102(2), cmt. c. (1987).

⁵⁸ See *Kadic*, 70 F.3d at 242–43.

⁵⁹ See *Quinn v. Robinson*, 783 F.2d 776, 799 (9th Cir. 1986).

⁶⁰ See *Kadic*, 70 F.3d at 241–42.

⁶¹ See *In re Estate of Ferdinand Marcos Human Rights Litig.*, 25 F.3d 1467, 1475 (9th Cir. 1994).

⁶² See *Filartiga*, 630 F.2d at 884.

⁶³ See *Doe*, 963 F. Supp. at 892.

⁶⁴ See *Xuncax v. Gramajo*, 886 F. Supp. 162, 185 (D. Mass. 1995).

⁶⁵ See *id.* at 187.

⁶⁶ The first wave of ATCA cases includes those cases filed between 1979 and 1992.

⁶⁷ See, e.g., RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, *supra* note 57, § 702.

⁶⁸ See *Kadic*, 70 F.3d at 241.

⁶⁹ See *id.* at 239.

⁷⁰ See *id.* at 236–40.

⁷¹ See *Beanal v. Freepport-McMoRan, Inc.*, 969 F. Supp. 362, 371 (E.D. La. 1997), *aff’d*, 197 F.3d 161 (5th Cir. 1999).

⁷² Some courts hearing ATCA cases have resorted to the same test used to determine state action in 42 U.S.C. § 1983 cases, which is “whether the conduct allegedly causing the deprivation of a right can be fairly attributable to the State.” *See, e.g., NCAA v. Tarkanian*, 488 U.S. 179, 199 (1988).

⁷³ *See Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980).

⁷⁴ *See Aguinda v. Texaco, Inc.*, 945 F. Supp. 625 (S.D.N.Y. 1996), *vacated and remanded*, *Jota v. Texaco, Inc.*, 157 F.3d 153 (2d Cir. 1998).

⁷⁵ *See Doe*, 963 F. Supp. 880.

⁷⁶ *See Beanal*, 969 F. Supp. at 362.

⁷⁷ *See Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000).

⁷⁸ *Bowoto v. Chevron*, No. C99-2506 CAL (N.D. Cal. July 2000).

⁷⁹ The Rio Declaration on Environment and Development states, “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” Rio Declaration on Environment and Development, June 13, 1992, principle 3, U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. 874, 877 (1992). “Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.” Rio Declaration, principle 20, U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. at 879. The declaration further states:

“Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

Rio Declaration, principle 22, U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. at 880.

⁸⁰ Rio Declaration, principle 22, U.N. Doc. A/CONF.151/5/Rev.1, 31 I.L.M. at 880.

⁸¹ *Doe*, 963 F. Supp. 880.

⁸² *Doe v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1298 (C.D. Cal. 2000) (citing deposition testimony filed under seal).

⁸³ *Id.*

⁸⁴ *See Beanal*, 969 F. Supp. at 371; *Wiwa*, 226 F.3d 88.

⁸⁵ *Unocal Corp.*, 110 F. Supp. 2d at 1312. In analyzing Unocal’s liability for the Burmese army’s evident forced labor practices, the court applied a “color of law” test to determine if Unocal’s participation in a “joint venture” with the Burmese army constituted state action. The court reasoned that plaintiffs had to show Unocal participated or cooperated with SLORC (the Burmese military regime’s then-acronym) in enslaving the labor; in other words, Unocal would have had to seek to employ the labor in order to be liable. The court further held that while Unocal and the military had a shared goal of a profitable project, this shared goal was not enough to establish joint action because plaintiffs did not present evidence that Unocal “participated in or influenced the military’s unlawful conduct; nor did Plaintiffs present evidence that Unocal conspired with the military to commit the challenged conduct.” *Id.* at 1306–307. Plaintiffs have appealed this decision to the Ninth Circuit Court of Appeals; oral argument was held in December 2001, and plaintiffs are currently waiting for the court’s decision.

⁸⁶ The court refused to exercise its discretionary jurisdiction over the pendant state law claims and dismissed those claims without prejudice. *Unocal Corp.*, 110 F. Supp. 2d at 1311–12. Upon Unocal’s motion for demurrer in the Superior Court of California, the court declined to dismiss the state claims. *See Ruling on Demurrer of Defendants to Complaint, Doe v. Unocal Corp.*, Case No. BC 237980 (August 20, 2001).

⁸⁷ *Unocal Corp.*, 110 F. Supp. 2d at 1306.