

MARKETPLACE

THE WALL STREET JOURNAL.

MONDAY, MARCH 29, 2004

Drug Case Tests Old Tort Law In High Court

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WHEN CONGRESS set up the federal court system in 1789, it gave aliens the right to sue for "violation of the law of nations or a treaty of the United States."

Tomorrow, 215 years after the law was passed, the U.S. Supreme Court will consider what that sentence means. The ruling could have a major impact on how human-rights cases, and even lawsuits against terrorists, are pursued in the future.

The law, known as the Alien Tort Claims Act, was rarely cited and all but forgotten by the 19th century. But since 1980, human-rights groups and victims of atrocities have filed about 100 lawsuits under the statute, according to lawyer Eric Biel of Human Rights First, an advocacy group. Defendants have included former Philippines President Ferdinand Marcos and Radovan Karadzic, the Bosnian Serb leader and indicted war criminal. Some plaintiffs have targeted overseas operations of U.S. corporations such as Exxon Mobil Corp. and Unocal Corp., which face lawsuits for allegedly colluding with repressive governments in Indonesia and Myanmar to smooth the way for oil projects. Both companies deny the charges. Another current case seeks compensation from companies that supplied the apartheid regime of South Africa.

Business groups argue that the law has been wrongly exploited by activist lawyers and courts that have interpreted it too broadly. The Bush administration agrees. It further warns that the law as generally construed by appellate courts interferes with foreign policy by allowing aliens to file lawsuits that could embarrass foreign governments whom the U.S. seeks to enlist for the war on terrorism and other objectives. Opponents also argue that the original statute provides no authority to file suit, but only paves the way for Congress to do so should it adopt a separate act defining which violations can be addressed in court.

Supporters, including relatives of some victims killed on Sept. 11, 2001, counter that the law's very purpose is to allow private citizens who lack citizenship to vindicate rights that governments might find inconvenient to acknowledge. They note that less than a fifth of the cases brought under the law since 1980 have prevailed.

"Coming to this country and being able to sue somebody that killed your brother in your country...that's fantastic!" says Dolly Filartiga, a Para-

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Dolly Filartiga

Alien Tort-Claims Case Asks Supreme Court To Clarify Archaic Law

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guayan refugee whose lawsuit led to a landmark decision in 1980 that revived the alien tort law. Ms. Filartiga successfully sued a former Paraguayan police official who was living illegally in the U.S. for the torture-murder of her teenage brother, Joelito.

Like many alien tort plaintiffs, Ms. Filartiga has yet to collect a dime of her \$10 million judgment, as the defendant returned to Paraguay and refused to pay. But she says the case was more than a moral vindication: It added to the pressure that led to the 1989 overthrow of strongman Alfredo Stroessner and the election of a democratic government in Paraguay.

A lawyer who represented Ms. Filartiga, Peter Weiss of the Center for Constitutional Rights in New York, says he and his colleagues unearthed the law in the early 1970s while searching for a way to help Vietnamese civilians sue over the 1968 My Lai massacre committed by U.S. soldiers.

Although they weren't able to apply it to My Lai, Mr. Weiss says the activists concluded that torture victims could use the law under international law doctrines.

Eventually, they won backing from the Second U.S. Circuit Court of Appeals in New York. The 18th century "law of nations" had evolved into modern international law, Judge Irving Kaufman wrote, and "the torturer has become, like the pirate and the slave trader before him...an enemy of all mankind."

Mr. Weiss says the court made it clear that the law could be applied only in cases involving "something that's generally recognized as abhorrent, like torture."

The case before the high court tomorrow involves neither corporate liability nor the machinations of a repressive foreign regime. It stems from the 1985 abduction and torture-killing of U.S. narcotics agent Enrique Camarena-Salazar by drug lords in Guadalajara, Mexico.

The crime spurred Mr. Camarena's comrades in the Drug Enforcement Administration to launch a global manhunt for his killers. Among their suspects was Humberto Alvarez-Machain, a physician whom witnesses placed at the house where Mr. Camarena was kept. DEA officials believed he had prolonged the agent's suffering by keeping him alive for additional torture and interrogation.

Unable to secure Mexico's help in arresting Dr. Alvarez, DEA agents, using several Mexican accomplices, kidnapped him at gunpoint in 1990 and spirited him across the border to stand trial in Los Angeles federal court. But the judge directed an acquittal after finding the prosecution case was based purely on speculation. Released in 1992, Dr. Alvarez returned to Mexico and filed suit in U.S. District Court against the U.S. government, several DEA agents and their Mexican accomplices, claiming false arrest and other wrongs and seeking damages.

Most of the claims, including those against the U.S. government and its employees, were dismissed. Since Dr. Alvarez had been indicted by a federal grand jury, the courts found his detention in the U.S. legal. But the court did find that Dr. Alvarez's claim against Jose Francisco Sosa, a Mexican who helped in the abduction, was valid. Using the Alien Tort Claims Act, it ruled that the kidnapping violated international law against arbitrary detention and awarded Dr. Alvarez \$25,000, a decision affirmed by the Ninth U.S. Circuit Court of Appeals in San Francisco.

Critics say upholding the award could jeopardize aspects of the war on terrorism. "A U.S. government employee or contractor working in a high-risk law enforcement, intelligence of military operation could be sued for their participation," says Mark Rosen, a retired U.S. Navy captain and specialist in defense and homeland-security issues. For example, if U.S. forces apprehend a terrorist suspect in Pakistan and fly him to the U.S., the suspect could bring a lawsuit similar to the one Dr. Alvarez brought, Mr. Rosen says.

But Dr. Alvarez's lead lawyer, Paul Hoffman of the Center for Justice and Accountability in San Francisco, says such fears are wildly exaggerated. "Alien torts have been applied to only a very narrow range of human-rights issues," he says. "The only reason corporations could have any unease is if they are engaged in projects [overseas] where fundamental abuses of human rights are going on."

In his brief in the case, Mr. Hoffman scoffed at the notion that the Alvarez case could "inhibit the war on terrorism, or inhibit cooperation between the United States and foreign governments."

Given the bizarre circumstances of the Sosa case, it's possible the Supreme Court will decline the chance to address the broader implications of the alien-tort law. Depending on what happens, says Mr. Biel of Human Rights First, it's likely that either human-rights groups or business lobbyists will ask Congress to revisit the archaic statute later this year.