

GLOBALIZATION AND LABOR STANDARDS (GALS) NEWSLETTER

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Alien Torts Claims Act

Ridenour, Andrew, "Apples and Oranges: Why Courts Should Use International Standards to Determine Liability for Violations of the Law of Nations Under the Alien Tort Claims Act", *Tulane Journal of International and Comparative Law* v. 9 (Spring 2001) p. 581

Abstract:

The author examines the recent *Doe. v. Unocal* summary judgment ruling by the Central District Court of California in favor of the defendant Unocal. After reviewing the factual background of the case, the author looks at the legislative history of the Alien Torts Claims Act (ATCA) as well as the legal standards applied by various federal courts. In light of this history, the author concludes that the Unocal court's analysis failed to properly apply international standards to determine liability for violations of the Law of Nations under ATCA. Specifically, he argues, the court's use of domestic legal standards, such as those embodied in 42 U.S.C. 1983 civil rights jurisprudence, remains an inadequate surrogate for international legal standards in ATCA cases. He compares the court's reasoning to that utilized in other ACTA cases and in other Congressional enactments such as the Torture Victim Protection Act of 1991. He concludes that if the court had correctly applied international standards as set out by previous ATCA cases and international law, the outcome of the case would have been markedly different.

Subjects: [Alien Torts Claims Act](#)

Case Studies

Monte, Marc J., "Corporate Factory/Supplier Monitoring Programs and the Failure of International Law in Regulating Indian Factory Conditions", *Brooklyn Journal of International Law* v. 26 no3 (2001) p. 1125

Abstract:

This Note examines the failure of international law to adequately regulate Indian factory conditions, and proposes instead that market-driven independent monitoring systems be

used to ensure compliance with ILO core labor standards. The author notes that while India retains surprisingly progressive labor laws, lax enforcement allows companies to habitually violate workers' basic rights. Attempts to address violations through enforcement of UN and ILO conventions have been trumped by national sovereignty interests. The author argues that a more effective enforcement model can be found in the recent settlement of a class action suit alleging corporate complicity in labor abuses in the Northern Marianas. The settlement designated an independent factory auditing firm to conduct unannounced visits to ensure compliance with labor codes. This system is now being applied successfully to monitor Indian factories whereby each licensed company is required to permit inspections. The article concludes that the continued success of such programs rests on the creation of competing auditing firms to ensure truly independent inspections.

Subjects: [Case Studies](#), _____

Forced Labor

Wolff, Tobias Barrington, "The Thirteenth Amendment and Slavery in the Global Economy", *Columbia Law Review* v. 102 (2002) p. 973

Abstract:

This Article argues that the knowing use of slave labor by U.S. based corporation in their foreign operations constitutes the presence of "slavery" within the United States, as that term is used in the Thirteenth Amendment, and hence that this practice renders such entities subject to the prohibitory authority of American courts through a private civil action. Part I examines the Court's translation of the Thirteenth Amendment to the changing industrial conditions of the late nineteenth and early twentieth centuries - the peonage cases - and provides an overview of the exploitation of forced labor in the emerging context of today's global economy. Part II employs an historical analysis of key elements of the American institutions of slavery and peonage to identify the principles underlying the Amendment's mandate that slavery "not exist" within the United States. Part II.A examines interjurisdictional slavery disputes - cases where slaves were carried to free jurisdictions - and recovers the conclusion, reached by nineteenth-century jurists, that slavery creates a robust social relation affecting the status of both master and slave. Part II.B traces the history of American efforts to prohibit participation in the foreign slave trade and examines the Supreme Court's application of those prohibitions to certain supporting institutions - shipwrights and provisioners - that permitted slave trading to flourish. Part II.C turns to the relationship between slavery and industrial forces, recounting the recognition by both jurists and scholars that slavery often arises because certain industries have intentionally created markets for forced labor. Part II ends by examining the proposed application of these principles to the foreign slave practices of contemporary American corporations. Finally, Part III considers this foreign slavery doctrine in light of prior treatments of the extraterritorial application of American law.

Subjects: [Forced Labor](#)

Labor Rights in General

Stone, Katherine Van Wezel, "To the Yukon and Beyond: Local Laborers in a Global Labor Market", *Journal of Small and Emerging Business Law* V. 3, No. 1 (Summer 1999) p. 93

Abstract:

This article explores the possibilities for effective protection of labor rights in the emerging global labor market. It explores existing forms of transnational labor regulation, including both hard regulation, i.e., regulation by state-centered institutions, and soft regulation, i.e., regulation through private actors responding to market forces. The author finds that existing regulatory approaches are inadequate to ensure that the global marketplace will offer adequate labor standards to its global workforce. She proposes new approaches to global labor regulation, approaches that blend hard and soft law by reshaping market forces and embedding them in a regulatory framework that is protective of core labor rights.

Subjects: [Codes of Conduct](#), [European Union](#), [International Labour Organization \(ILO\)](#), [Labor Rights in General \(Misc.\)](#), [NAFTA/GATT](#), [Trademark Conditionality](#), [World Trade Organization \(WTO\)](#)

NAFTA/GATT

Mitro, Mathew T., "Outlawing the Trade in Child Labor Products: Why the Gatt Article XX Health Exception Authorizes Unilateral Sanctions", *American University Law Review* no. 51 (2002) p. 1223

Abstract:

This Note argues that the United States could successfully invoke GATT Article XX(b) -- which permits trade restrictions when the disputed measure is "necessary for the protection of human health" -- to overcome challenges to the child labor import ban recently passed as part of the U.S. Trade and Development Act of 2000 ("TDA"). Part I explores the evolution of the trade and labor debate within the GATT/ WTO system. Part II outlines how the WTO and GATT dispute settlement bodies have recently interpreted Article XX exceptions. Part III contends that the policy objective and design of the TDA fall squarely under the Article XX(b) public health exception. Using the import ban on Pakistani bricks as a hypothetical example of how and when the TDA could be implemented, Part IV concludes that the TDA would survive scrutiny by a WTO panel if applied uniformly and rooted in an internationally accepted definition of child labor.

Subjects: [Child Labor](#), [NAFTA/GATT](#), [World Trade Organization \(WTO\)](#)

Links

LabourWeb: <http://www.lex.unict.it/eurolabor/en/default.htm>

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D'Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

Labor and Global Change Database: <http://www.ilir.umich.edu/lagn/>

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

Trade Unions and Labor Relations Database:
<http://www.polwiss.fu-berlin.de/tu/english/index.html>

The database, produced by the Institute of Labor Relations of the Otto-Suhr-Institute of the Freie University of Berlin, contains almost 7,000 citations of books, articles, working papers, brochures, proceedings etc. The bulk of the citations address aspects of labor relations in Germany, but there is a substantial body of literature in the database covering the EU and Eastern Europe.

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