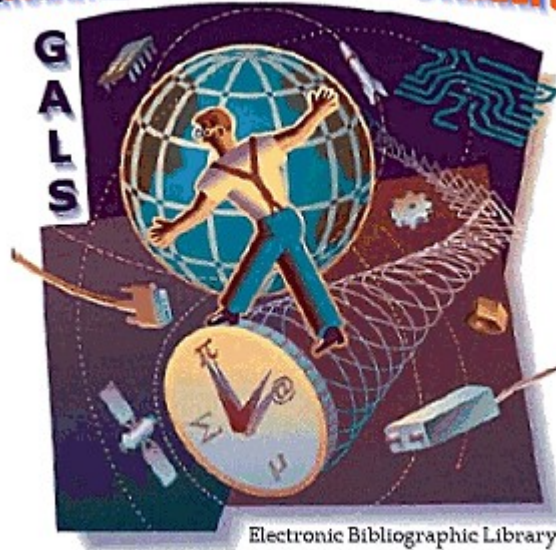


# Globalization and Labor Standards



## GALS Newsletter

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## Alien Torts Claims Act

Baldwin, Jeffrey E., "International Human Rights Plaintiffs and the Doctrine of Forum non Conveniens",  
*Cornell International Law Journal* v. 40 (2007) p. 749-791

### Abstract:

This article argues for a limited application of the traditional doctrine of forum non conveniens in cases involving the Alien Tort Claims Act (ACTA), a law dating from 1789 that grants U.S. federal courts subject matter jurisdiction over certain civil actions filed by aliens against U.S. or foreign defendants. The doctrine of forum non conveniens permits federal courts to dismiss a case that otherwise satisfies jurisdiction and venue requirements if an adequate alternative forum exists and the balance of private and

public interest factors tilts strongly toward adjudication in an alternative forum. In ATCA claims, the private and public interest factors often weigh against U.S. federal courts retaining jurisdiction due to the significant foreign element inherently present in such cases. Thus, while ACTA was intended to open U.S. courts to suits by alien plaintiffs who have suffered human rights or labor rights violations abroad, forum non conveniens doctrine typically operates to bar access to U.S. courts precisely because the plaintiffs are aliens and the alleged human rights violations have occurred overseas. The article generally endorses the approach adopted by the Second Circuit in *Wiwa v. Royal Dutch Petroleum*, in which the plaintiffs alleged that the Nigerian government had imprisoned, tortured and killed their family members at the instigation of the defendant oil company and its subsidiary. In reversing the district court's dismissal of the case, the Appeals Court urged federal courts to give significant weight to the United States' strong public interest in adjudicating international human rights violations. Citing language from the *Wiwa* decision, the article argues that if federal courts fail to adopt this approach, they run the risk of "facilely dismissing" international human rights claims on the mistaken "assumption that the ostensibly foreign controversy is not our business."

**Subjects:** [Alien Torts Claims Act](#), [Company-Specific Case Studies](#), [Conflict of Laws](#), [Corporate Accountability](#), [Labor Rights as Human Rights](#)

**Full-text links:** || [WESTLAW](#) || [LEXIS-NEXIS](#) ||

## Industry-Specific Case Studies

**Gould, William B. IV, "Globalization in Collective Bargaining, Baseball, and Matsuzaka: Labor and Antitrust Law on the Diamond", *Comparative Labor Law & Policy Journal* v. 28 (2007) p. 283-315**

### **Abstract:**

This article discusses the increasing globalization of professional baseball by focusing on the 1999 U.S.-Japan Protocol and some of its likely implications for the development of international labor law. Negotiated between Major League Baseball (MLB) in the United States and its counterpart, Nippon Professional Baseball (NPB) in Japan, the Protocol significantly inhibits the transfer of players from one league to the other by prohibiting teams in one country from making direct contact with a player in the other country for the purpose of negotiating an employment agreement. Instead, during specific time periods, a team may contact the Commissioner of the foreign league, who will then seek approval by the club which employs that player. To obtain approval even to initiate negotiations, the club seeking to acquire the foreign player must make payments to employing club – at times rivaling the amount that is ultimately paid to the player himself – in return for exclusive rights to negotiate with the player. The fees paid to a foreign club dramatically diminishes salary prospects for Japanese players, since it adds considerable "overhead" to the cost of acquiring a foreign player. It also diminishes the overall pool of funds that, in theory, could be devoted to the wages of players in the U.S through collective bargaining. The article points out that, because the Protocol was negotiated without the involvement of the Major League Baseball Players Association, the collective bargaining agent for players in the United States, it is unlikely that it falls under an exemption to the Sherman Antitrust Act for labor unions. Moreover, because it affects the salaries of Major League Baseball players, it is likely that it constitutes either an unlawful refusal to bargain, in violation of the National Labor Relations Act, or a grievance under the MLB/MLBPA collective bargaining agreement. Although prior to signing with a club in the U.S., Japanese players are neither employed by a domestic employer nor working in the United States, decisional law allows the National Labor Relations Board to assert extraterritorial jurisdiction where the labor dispute would have a significant effect on commerce within the United States.

**Subjects:** [Collective Bargaining](#), [Country-Specific Case Studies](#), [Industry-Specific Case Studies](#), [Labor Mobility](#)

**Full-text links:** || [WESTLAW](#) || [LEXIS-NEXIS](#) ||

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## Links to Related Projects

The International Labour Organization's (ILO) Informal Economy Resource Database: <http://www.ilo.org/dyn/infoecon/iebrowse.home>

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

Asian Law Center: <http://www.law.unimelb.edu.au/alc/bibliography/browse.asp?s=45>

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

Centre for Employment and Labour Relations Law: <http://www.law.unimelb.edu.au/celr/>

Centre for Employment and Labour Relations Law is a research and teaching center devoted to the development of an understanding of labor law at the University of Melbourne. The Center's website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center's Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at <http://www.austlii.edu.au/au/special/industrial/>.

ETUI Labourline: <http://www.labourline.org/Etui>

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the European Trade Union Institute for Health and Safety (Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

Globalization Bulletin: <http://www.rci.rutgers.edu/~dbensman/bulletin.html>

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at [dbensman@smlr.rutgers.edu](mailto:dbensman@smlr.rutgers.edu).

**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.

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

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.

**The Marco Biagi Centre for International and Comparative Studies:** <http://www.csmb.unimo.it>

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (<http://www.csmb.unimo.it/journal.html>). Currently only in Italian, the Center's website will soon offer an English version.

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

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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