



You may be interested.

PIRINC has prepared the enclosed report, *Going Where the Oil Is*.

The United States government, other governments, nongovernmental organizations (NGOs) and the general public have had long-standing concerns about conditions of governance abroad. One particular aspect of governance, respect for human rights by those in power, has received considerable attention in recent years. Another aspect, corruption, is already a matter of US law and international Convention. Other things equal, US businesses would be expected to favor countries with high, if not the highest, governance rankings but other things are rarely equal. This is particularly the case for oil where the key criteria have to be the prospects for finding and producing oil in the first place and ability to operate in the country on reasonable terms. This report considers countries where the lion's share of the world's oil production and reserves are located and relates them to their rankings within the certain World Bank governance indicators. As the results suggest, the oil needs of consumers, now and for years to come, can only be met by drawing heavily on supplies from sources with systems and practices of government that can be far from ideal.

Multinational oil companies cannot avoid the challenge of responding to governance concerns, of course as explicitly required by U.S. law, and in a trademark U.S. context, as expressed through the pressure of lawsuits. The issue of corporate liability in such cases, and the response of corporations and governments to deal with it are discussed in the final section of the report.

If you have any questions or comments, please call John Lichtblau, Larry Goldstein or Ron Gold.

July 2003

Petroleum Industry Research Foundation, Inc.

3 Park Avenue • 26th Floor • New York, NY 10016-5989
Tel.: (212) 686-6470 • Fax: (212) 686-6558

Going Where the Oil Is

Summary

The United States government, other governments, nongovernmental organizations (NGOs) and the general public have had long-standing concerns about conditions of governance abroad. One particular aspect of governance, respect for human rights by those in power, has received considerable attention. By law, the US State Department is required to prepare---“a full and complete report regarding the status of internationally recognized human rights---” in countries receiving US assistance and other members of the United Nations. Other organizations such as Amnesty International and Human Rights Watch also prepare reports on this subject. In certain instances, concern has gone beyond reports. In 1991, Congress passed and the President signed the Torture Victim Prevention Act (TVPA), which expanded the possibilities for victims of human rights violations abroad to sue for damages in U.S. courts.¹ Fourteen years earlier, in response to a different governance concern, corruption, the US enacted the Foreign Corrupt Practices Act of 1977, which prohibits the payment of bribes to foreign officials and led an effort to encourage other countries to take similar action.² The World Bank has highlighted the importance of improving governance in developing countries as a critical element in achieving sustainable development. The staff of the World Bank has also developed and published broad indicators of governance and the rankings within each indicator of about 170 countries.

Other things equal, US businesses would be expected to favor countries with high, if not the highest, governance rankings but other things are rarely equal. This is particularly the case for oil where the key criteria have to be the prospects for finding and producing oil in the first place and ability to operate in the country on reasonable terms. This report considers countries where the lion’s share of the world’s oil production and reserves are located and relates them to their rankings within the certain World Bank governance indicators. As the results suggest, the oil needs of consumers, now and for years to come, can only be met by drawing heavily on supplies from sources with systems and practices of government that can be far from ideal.

Multinational oil companies cannot avoid the challenge of responding to governance concerns, of course as explicitly required by U.S. law, and in a trademark U.S. context, as expressed through the pressure of lawsuits. Regarding the latter, the earliest cases brought to the U.S. courts by foreigners seeking damages for human rights abuses named former government

¹ The Alien Tort Claims Act of 1789 (ATCA) gave U.S. Federal courts jurisdiction in civil action torts committed in violation of the “law of nations” or U.S. treaties. Nearly 200 years later, in 1979, the sister of a Paraguayan victim of police torture brought suit in Federal Court against his torturer (and murderer). Eventually, she won a default judgment of just over \$10 million. In 1995, a group of 22 citizens of Bosnia Herzegovina won a \$4.5 million judgment against Radovan Karadic, the accused orchestrator of human rights abuses by military forces under his command. Prospects for collection of these awards remain uncertain. Other lawsuits have been brought against officials such as the ex-dictator of the Philippines, Ferdinand Marcos, and governments such as those of Libya and Iran.

² The efforts of the US and other countries led to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

officials and governments as defendants. However, more recent suits have also involved multinational corporations, with oil companies among the prominent targets.³ Unlike these earlier lawsuits, the companies are not necessarily accused of directly committing human rights abuses, but of “aiding and abetting” government agencies and officials in the commission of human rights violations. The term “aiding and abetting” in these lawsuits includes “actual or constructive (i.e., reasonable) knowledge that the accomplice’s actions will assist the perpetrator in the commission of the crime.”⁴ Knowledge includes not simply what was known but what “should have been known.” The issue of corporate liability in such cases, and the response of corporations and governments to deal with it are discussed in the final section of the report.

Governance Indicators

Most development agencies focus on governance---meaning in broad terms the manner in which public authority is exercised--- in terms of its impact on a country’s economic growth prospects. In considering what constitutes “good governance,” the World Bank has considered four elements: (1) accountability for actions taken, (2) participation by broad elements of civil society in the governing process, (3) predictability of government actions, and (4) transparency, or availability of information regarding government actions and decisions.⁵ Researchers at the World Bank have attempted to produce 6 quantitative indicators of these elements of governance that can show individual country rankings within them. The indicators are based on subjective information from polls and surveys conducted by international agencies, commercial business intelligence services and others.⁶ For purposes of this report country rankings for three quantitative governance indicators are considered:⁷

³Recent defendants in ATCA cases also include the US government, in one regarding the legality of the confinement at Guantanamo Bay of aliens captured in Afghanistan, and in a second regarding the abduction of a Mexican national to the US for trial in the murder of a DEA agent. For a list and summary description of recent and current ATCA cases as of June see <http://usaengage.org/legislative/2002/alientort/alientorttpcases.html>.

⁴ The quotation and discussion are taken from the Ruling by the United States Court of Appeals for the Ninth Circuit in the case of *Doe v. Unocal*, filed on September 18, 2002, Analysis section. The ruling overturned a lower court dismissal of the lawsuit against Unocal on the grounds that the plaintiffs could not show that Unocal had engaged in “state action,” or “controlled” the Myanmar military or “actively participated” in the recruitment of forced labor. The plaintiffs, villagers near the route of a gas pipeline under construction, alleged that Unocal, a partner in the project, directly or indirectly subjected the villagers to abuses committed by the Myanmar military. The case is still unresolved.

⁵ An extensive discussion of these attributes can be found in *Governance: Sound Development Management*, Asian Development Bank, 1999. The publication can be accessed at: www.adb.org/Documents/Policies/Governance/govpolicy.pdf

⁶ For specific details regarding sources and methodology see: Daniel Kauffman, Aart Kraay, and Pablo Zoido-Lobaton, *Governance Matters II* and *Governance Matters*, World Bank Policy Research Working Papers 2772 and 2196 published February 2002 and October 1999 respectively.

⁷ The three other indicators not considered are: Political Stability, Regulatory Quality, and Government Effectiveness. At least at the extremes, rankings for all six indicators are highly correlated. For example, the country at the top of the Rule of Law ranking, Switzerland, stands at or near the top in the other indicators as well.

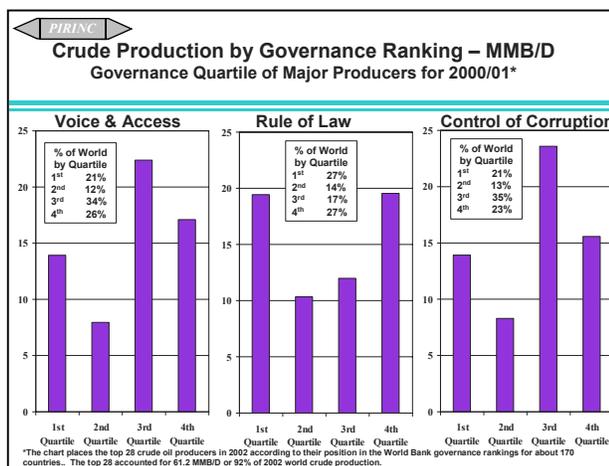
- “Voice and Accountability.” This indicator category is derived from different survey and poll results assessing a country’s citizens participate in the selection of governments. The category also draws on assessments of media independence in view of its role in enhancing government accountability.
- “Rule of Law.” This indicator aggregates perceptions regarding crime, the judiciary, and enforceability of contracts.
- “Control of Corruption.”

Although the focus of such indicators is their impact on economic conditions, they are also relevant for human rights concerns. While they offer no guarantees, high levels of government accountability and adherence to the rule of law are key elements in guarding against abuses and providing for redress for those that may occur. Companies are likely to have the least problems in dealing with corruption in countries ranking highest in control of corruption.

The World Bank researchers provide specific numerical scores for these indicators. However, there is an inevitable degree of error involved in these estimates, especially since they are based on polls and surveys that are not uniform in their coverage across the approximately 170 countries covered. For this reason, indicator rankings here are stated only in terms of country quartiles, with the first or top quartile containing those countries with numerical rankings among the top 25% of the total in each category.

Country Governance Rankings and Oil

The approximately 170 countries in the governance indicators include the world’s major oil producers and holders of reserves. These are of course the countries the world must rely on for its current and future oil supplies and---where multinational oil companies must look to participate in some way if they want to remain in the business. The chart on the right focuses on the top 28 producers of crude oil according to their production in 2002. Together they accounted for 92% of world production. The chart allocates their production in MMB/D according to each country’s standing in the governance quartiles for



Those at the bottom, North Korea, Iraq, and Myanmar, don’t do well in the other categories either---although Iraq’s prospects for future promotion in the rankings may have improved following recent events.

Voice and Access, the left panel, Rule of Law, the middle panel, and Control of Corruption on the right.

Countries in the top quartile for Voice and Access account for about 14 MMB/D of production or 21% of the 28-country total. There are just 5 countries in the top Voice and Access quartile, Australia, Canada, Norway, the UK and the US. The three remaining quartiles for Voice and Access account for about 47 MMB/D of production or 71% of world production. Production by countries in the very lowest quartile is about 17 MMB/D, significantly above production by the first. The first quartile for Rule of Law is more inclusive, with Kuwait, Qatar, Oman, and the UAE joining the 5 countries named above.⁸ Nonetheless, production by this top quartile is still only about 19.5 MMB/D or about 27% of the world’s total. The lowest quartile for Rule of Law produced about the same amount of oil as the top. In the case of Control of Corruption, the top quartile is again reduced to just the five industrial countries that rank at the top for Voice and Access and account for only 21% of world production.

The table below lists, in alphabetical order, the oil-producing countries in the lowest quartile for each of the three governance indicators.

Three countries fall into the 4th quartile for all three indicators, Angola, Iraq and Libya, although in a post-Saddam Hussein regime, Iraq could move up. Among the others, with one exception, the countries in the 4th quartile for one or more indicators are in the third quartile for the remaining indicators. The exception is Saudi Arabia, which is in the 3rd quartile for Control of Corruption but ranks higher, in the 2nd quartile, for Rule of Law. In all, 12 countries fall into the 4th quartile for at least one of the indicators shown. These

Crude Producers in the 4th Quartile for:		
Voice & Access	Rule of Law	Control of Corruption
Algeria	Algeria	Angola
Angola	Angola	Indonesia
China	Colombia	Iraq
Iraq	Indonesia	Libya
Libya	Iraq	Nigeria
Saudi Arabia	Libya	Russia
Syria	Nigeria	Syria
	Russia	
	Venezuela	

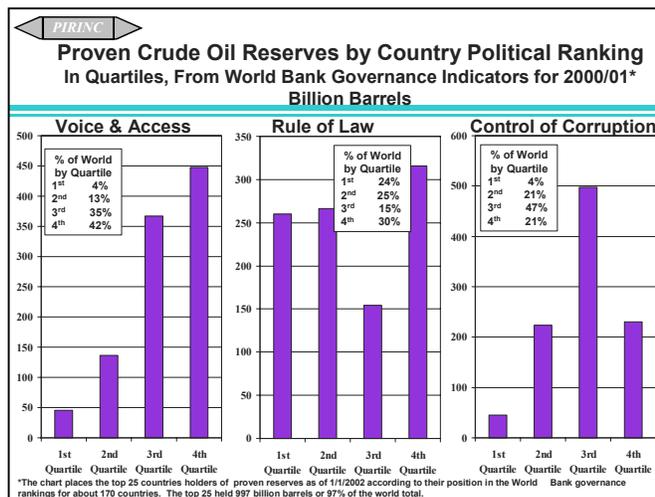
12 collectively produced 31 MMB/D in 2002, or about 46% of worldwide crude production.

Crude production is a guide to the importance of countries in meeting the world’s current oil requirements. Reserves, on the other hand, suggest where tomorrow’s oil will come from. The next chart summarizes by quartile for the same three governance indicators, and in the same format, the distribution of proven reserves of crude oil (as of end-2001) among the 25 top reserve-holding countries. Collectively this group of countries accounted for 97% of the world’s total proven crude reserves.

⁸ Kuwait, Qatar, Oman and the UAE are all in the 2nd quartile for Control of Corruption. Kuwait is in the 2nd quartile for Voice and Access while the others are in the 3rd quartile for this governance indicator.

The same 5 industrial countries that were the exclusive occupants of the first Voice and Access and Control of Corruption quartiles for production are the only countries in the first Voice and Access and Control of Corruption quartiles for reserves. But with only 45 billion barrels, the 5 industrial country share of world reserves is far smaller, only 4%, well below their 21% share of world production.

Reserve volume is much higher for the top Rule of Law quartile, 260 billion barrels, as is their share of the total, thanks to the massive reserves, nearly 100 billion barrels each, held by Kuwait and the UAE, in addition to the 5 industrial country total of 45. The 4th quartiles of each governance category hold far more reserves. The 4th quartile accounts for over 400 billion barrels, or 43% of total reserves in the case of Voice and Access, over 300 billion barrels or 31% of the total in the case of Rule of Law, and 230 billion, or 22% of the total in the case of Control of Corruption.



The table below lists in alphabetical order the reserve-holders falling into one or more of the lowest quartiles for the three governance indicators. As before, there are 12 countries that are in the 4th quartile for at least one of the governance indicators shown, 10 of which appeared in the producers' table.

Two countries listed among the producers, Colombia and Syria, had proven reserve levels too low to qualify among the top 25 reserve-holders. Two other countries, on the other hand, Kazakhstan and Yemen were included in the list of top reserve-holders but not in the top producer group. Kazakhstan is in the 4th quartile for Voice and Access and Control of Corruption---and in the 3rd quartile for Rule of Law.

Proven Reserve-Holders in the 4 th Quartile for		
Voice & Access	Rule of Law	Control of Corruption
Algeria	Algeria	Angola
Angola	Angola	Indonesia
China	Indonesia	Iraq
Iraq	Iraq	Kazakhstan
Kazakhstan	Libya	Libya
Libya	Nigeria	Nigeria
Saudi Arabia	Russia	Russia
	Venezuela	
	Yemen	

Yemen is in the 3rd quartiles for both Voice and Access and Control of Corruption. All-in-all, countries appearing in the 4th quartile for at least one of the three governance indicators account for just over 600 billion barrels of proven reserves, or 58% of the world's total.

Implications for Business and Policy

Clearly, multinational oil companies cannot remain in the business and prosper without involving themselves in at least some of the countries in the lowest governance quartiles. Indeed, consuming countries collectively cannot avoid commercial relationships with these countries if they are to satisfy current and prospective oil needs. Nearly half (46%) of all U.S. imports for the first three months of 2003 came from 11 of the 12 producing countries listed in the lowest quartile for at least one of the three governance categories.⁹ The issue is then how to operate in conformity with U.S. law and accepted human rights norms within such countries while respecting their sovereignty and their own laws.

In some extreme cases, and not just in the case of oil, the issue may not be resolvable. As has been expressed by US State Department Officials:

- “--- there are some circumstances in which a government's policy is so odious or dangerous that governments should tell their companies not to invest. The U.S., for example, currently bans investment in countries such Cuba, Iran, Iraq, and Sudan. In some environments, we do not think there is any way for corporations to behave responsibly except by getting out.”¹⁰

Although not mentioned above, Burma, or Myanmar, is also among those countries where U.S. investment is currently prohibited. President Clinton first imposed the prohibition in 1997 using his authority under the National Emergencies Act. The prohibition has been renewed by the current Administration.¹¹

Beyond the extreme cases, it should be kept in mind that a country may indeed have serious governance problems but this does not mean US oil companies cannot operate in their specific sector in conformity with US law. Given the strategic importance of oil to the economies of producing countries, and the importance of multinational companies as providers of capital and

⁹ No oil was imported from Libya. Crude oil imports from Libya have been prohibited by Executive Order since March, 1982. The ban was extended to refined products by a subsequent Executive Order issued in November 1985. Total imports from the group in early 2003 were held down by the disruption in oil supplies from Venezuela.

¹⁰ From a speech by Lorne W. Craner, Assistant Secretary of State for Democracy, Human Rights and Labor; before the 2002 Survey Memorial Lecture, National Policy Association, Washington, DC, June 18, 2002. Iraq's status is undergoing change. On May 21, the UN Security Council adopted Resolution 1483, ending economic sanctions against Iraq. On May 23rd the US Treasury Department's Office of Foreign Assets Control authorizing most previously prohibited transactions. Current Iraqi law (still in effect as of June 12) prohibits non-Arab foreign investment in Iraqi companies.

¹¹ Section 202(d) of the National Emergencies Act provides for automatic termination of the emergency on its anniversary date unless the President notifies the Congress that the emergency is to continue. President Bush so advised Congress in May 2001 and again in May 2003. The US Geological Service does not show substantial known or undiscovered oil reserves for that country. However, its recent estimates show 10 trillion cubic feet (TCF) of known gas reserves and a mean value for undiscovered gas reserves of 27 TCF. The country ranks in the lowest quartile for all three governance indicators.

expertise, there are strong reasons for host country governments to insure favorable operating conditions, including ability to operate in a manner that respects US as well as local laws. The incentives to do so, however, would be much weaker if only the U.S. had, and enforced, certain standards for operating abroad. In such circumstances, host countries would have the option of looking elsewhere for more compliant investors. This concern has been addressed most specifically in the case of corruption. At the end of 1997, the major industrial countries adopted the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Article 1 of the Convention provides that:

Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

The Convention entered into force in February 1999 and as of early 2003, 34 countries had ratified the Convention and passed implementing legislation.¹²

To the extent the laws of the different countries ratifying the Convention are clear, consistent, and enforced, all the major companies headquartered in those countries should be on the same footing in terms of conforming to anti-corruption requirements when investing abroad and facing significant penalties if they do not. In the oil industry, however, it should be kept in mind that there are large, ambitious oil companies headquartered outside the OECD. Indeed, several are based in countries listed in the lowest quartile for corruption whose conformity with OECD Convention norms within their home countries and elsewhere cannot be taken for granted. There is a need to bring these companies into the fold on this matter. The draft UN Convention Against Corruption currently being negotiated would be, if implemented, a major step toward a global approach. A final negotiating session is to take place in July with the goal of approval by the General Assembly later this year and the opening of the Convention for signature by December.¹³

¹² These include the OECD countries (although Turkey as of late 2002 had not passed implementing legislation), Argentina, Brazil, Bulgaria, Chile, and Slovenia.

¹³ The draft that emerged from the March negotiations leaves many details and inconsistencies to be settled. For example, Article 19^{bis} regarding bribing foreign public officials says that “Each state shall adopt---” legislative and other measures making it a criminal offense to bribe a foreign official. But the article still offers a choice between “shall consider adopting” and “shall adopt” measures making it a criminal offense by a public official to accept or solicit bribes. There is agreement (Article 11, section 2) that bribes should not be tax deductible. The latest draft also contains a provision, Article 45, which would require states to insure that “entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for

Whatever their real-world limitations may be, the US anticorruption law, the OECD Convention and the draft UN Convention are explicit in their objectives. The processes of passing the law and negotiating the conventions in the first place give fair warning to companies of what is coming. In this regard, the human rights lawsuits brought in the US courts are very different.

In these lawsuits, a statute more than 200 years old is being used for a new purpose, seeking redress for alleged human rights abuses from those viewed as able to pay and reachable for payment by the US courts. In the Unocal case cited earlier, the initial lawsuit named other entities as defendants, the French company Total, the Myanmar government and the state-owned Myanmar Oil & Gas Enterprise. The Myanmar government and the state-owned company were later dismissed from the case on the grounds that they had sovereign immunity. Total was dismissed from the case on the grounds that it was not sufficiently involved in the US to be sued there.¹⁴ None of these three defendants were deemed any more or less innocent of the charges than Unocal (a 28% partner), but Unocal remains as the sole defendant potentially liable for damages.

In May of this year, the Justice Department filed amicus curiae brief with the 9th Circuit Court of Appeals regarding the Unocal case focusing exclusively on the issue of whether the court was correct in its approach to ATCA, that is to say accepting jurisdiction in the Unocal case. In the introductory section of the brief, the Justice Department stated:

In recent years, however, the ATS (referring to ATCA as the Alien Tort Statute) has been commandeered and transformed into a font of causes of action permitting aliens to bring human rights claims in United States courts, even when the disputes are wholly between foreign nationals and when the alleged injuries were incurred in a foreign country, often with no connection whatsoever with the United States.--- Although it may be tempting to open our courts to right every wrong all over the world, that function has not been assigned to the federal courts.

The brief goes on to note that the federal courts have drawn on norms of international law “from unratified treaties, non-binding United Nations General Assembly resolutions, and purely political statements.”

The 9th Circuit Court was apparently not persuaded by the brief. On June 11th the court rendered its opinion in the case of *Alvarez-Machain v. United States et al.*, a case cited in the Justice Department brief as an instance of erroneous allowance by the court of an ATCA claim. The

that damage in order to obtain compensation.” Such a provision would expand the potential exposure of US companies to lawsuits in countries ratifying the proposed UN Convention, including the US if it ratifies.

¹⁴ Total had sold off its US interests in 1997, shortly before announcing a \$2 billion contract with Iran in which it was the lead partner. The contract violated the 1996 Iran-Libya Sanctions Act.

court was being asked on appeal to rule as to whether the Mexican national, Humberto Alvarez-Machain, who was forcibly abducted in 1990 by Mexicans at the request of DEA agents to the US to stand trial regarding the 1985 murder in Mexico of a DEA agent had recourse to the US courts under ATCA. The plaintiff had been brought to trial in 1992 and acquitted with the trial court concluding at the time that the case was based on ---“whole cloth, the wildest speculation.” In its June 11th opinion, the court held, “The unilateral, nonconsensual extraterritorial arrest and detention of Alvarez were arbitrary and in violation of the law of nations under ATCA.” The court nonetheless acknowledged limits to jurisdiction under ATCA. In particular, if the US does not recognize a particular prohibition, it doesn’t qualify for ATCA jurisdiction.¹⁵

On June 17th the 9th Circuit Court of Appeals held an en banc hearing on the Unocal case with the focus to be on another key issue, namely what standards should be applied in judging potential company liability----“should the federal courts apply an international-law aiding and abetting standard (Nuremberg principles favored by plaintiffs?), or should Unocal’s liability be resolved according to general federal common law tort principles.” The question of just how far liability should extend was highlighted by a question raised in the hearing by Justice Kozinski. If consumers brought tennis shoes from companies that used forced labor would they be liable? “Where does this---go?” How do you draw the line?”¹⁶

There are other lawsuits being brought where US oil companies are accused of involvement in human rights violations committed by foreign government agencies and officials. These include *Wiwa v. Royal Dutch Petroleum Company (Shell)*, initially filed in 1996 by three Nigerian émigrés, (the son and brother of Ken Saro-Wiwa, and the son of John Kpuinin, leaders of an Ogoni protest movement who were hanged by the Nigerian government) and a woman identified only as Jane Doe. The complaint alleged that although the human rights violations were carried out by the Nigerian government and military, “they were instigated, orchestrated, planned, and facilitated---” by Shell, the operator of the project that was the target of protests (and acts of sabotage).¹⁷ In June 2001, the Washington-based International Labor Rights Fund brought a lawsuit against Exxon Mobil on behalf of eleven unnamed villagers from Aceh, a province of Indonesia. The suit alleges that the company paid and directed Indonesian security forces that committed murder, torture and rape in the course of protecting gas facilities operated

¹⁵ Thus the court did not allow an ATCA claim based on the transborder abduction itself noting that, “The United States does not recognize a prohibition against transborder kidnapping, nor can it be said that there is international acceptance of such a norm.” Elsewhere, the court states, “Unlike transborder arrests, there exists a clear and universally recognized norm prohibiting arbitrary arrest and detention. This prohibition is codified in every major comprehensive human rights instrument and is reflected in at least 119 national constitutions.”

¹⁶ Quotations are taken from the Issue(s) section of the 9th Circuit Court Status Report for *Doe v. Unocal Corporation* as published on the web June 30 and from the Reuters report of the June 17th hearing, a copy of which can be found at: http://biz.yahoo.com/rc/030617/rights_unocal_lawsuit_2.html.

¹⁷ In February 2002, the US District Court for the Southern District of New York denied Shell’s motion to dismiss the case. Earlier, in 2000, the Court of Appeals overturned a decision to dismiss the case by the same US District Court on the grounds that England was a more convenient forum. In March 2001, the Supreme Court declined to review the case, allowing the Court of Appeals action to stand. Here too the case is still unresolved.

by the company, although owned by the Indonesian national oil company, Pertamina. There has been a long-standing rebellion by separatists against Indonesian rule with gas operations a target of the rebels.¹⁸

The two cases highlight a very difficult issue for business and for policy-makers, namely how to manage the legitimate and critical need for security of company facilities and personnel in an environment where at least some elements of the security services of the host country are accused of human rights abuses.¹⁹ In Nigeria the alleged abuses were committed while the military were attempting to combat ethnic violence. In Indonesia the military were attempting to put down an ongoing separatist rebellion. Both countries have recently emerged from autocracies, 16 years of military government ending in 1999 in the case of Nigeria, and 30 years of rule by President Suharto ending in 1998 in the case of Indonesia. In both countries, the central governments have only limited control over the actions of their security forces. Both countries are important, and friendly to the United States. Policy-makers have to give some weight to the effects of such cases on U.S. strategic relationships.

Strategic concerns have been expressed most clearly in the case of Indonesia. In response to an invitation from the presiding judge in the *Doe et al. v. Exxon Mobil et al.* case, the State Department in a letter dated July 29, 2002 expressed the view that:

---the Department of State believes that adjudication of this lawsuit at this time would in fact risk a potentially serious adverse impact on significant interests of the United States, including interests related directly to the on-going struggle against international terrorism. It may also diminish our ability to work with the government of Indonesia on a variety of important programs, including efforts to promote human rights in Indonesia.²⁰

The letter noted the potential adverse effects on human rights should the Indonesian government look elsewhere for foreign investment and in this regard highlighted the presence of companies from the Peoples Republic of China that have acquired rights to Indonesian oil and gas fields. The State Department, as part of its response, also forwarded a letter from the Indonesian

¹⁸ “Gunmen have hijacked the company’s trucks and vans traveling among company sites in northern Aceh 50 times since 1999. In September 2000, the rebels began to target company buses carrying employees from the town to the gas fields. At first, the buses were stopped and burned. When Indonesian soldiers began to escort the buses, the separatists attacked them and detonated roadside pipe bombs. In March 2001, Exxon Mobil closed down the three offshore fields, and evacuated employees not native to the area. Production did not resume until July, after 2,500 Indonesian troops were deployed to protect the facilities.” The quote comes from Chapter 10 of, **The Military and Democracy in Indonesia: Challenges, Politics, and Power**, by Angel Rabasa and John Haseman, published by the RAND Corporation, 2002

¹⁹ The issue extends beyond oil companies. Rio Tinto, Coca Cola, and Del Monte have faced ATCA lawsuits over the actions of security forces and paramilitary units in Papua New Guinea, Colombia, and Guatemala.

²⁰ Letter from William H. Taft, Legal Advisor to the Department of State, to Judge Louis F. Oberdorfer, US District Court, the District of Columbia, July 29, 2002.

ambassador to the US indicating that the Indonesian government does not accept the extraterritorial jurisdiction of a US court over an allegation against a government institution and that the case “will definitely compromise the serious efforts of the Indonesian government to guarantee the safety of foreign investments.” The ambassador’s letter adds that the adjudication of the lawsuit will have an adverse impact on efforts to find a peaceful resolution to the conflict in Aceh.

There has been an important initiative on the part of the UK and US governments, private companies, and human rights organizations to find common ground in managing the need for security in environments where there is a significant possibility of human rights violations. In December 2000, seven leading US and British oil and mining companies announced their support for a set of “Voluntary Principles on Security and Human Rights.” The Principles were developed after extensive discussions involving the two governments and seven oil and mining companies as well as human rights groups and other organizations.²¹ The principles include the following regarding both public and privately hired providers of security:

(a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

The Principles are an important step in defining appropriate practices in confronting a difficult issue, although they apply only to companies accepting and implementing them. While the goals are clear, specifics of implementation are left to the participants to develop in view of their particular circumstances. In effect, the process of translating the Principles into action is still evolving. There is, however, no assurance that those explicitly accepting these Principles (or following equivalent codes of practice) will not face lawsuits in any case.

Concluding Notes

Geology and economics mean that consuming countries must look to countries with far less than ideal governance practices and human rights realities to meet much of their needs for oil. Multinational oil companies must involve themselves directly in such countries if they are to

²¹ Among the companies involved in the discussions and announcing their acceptance were Chevron, Texaco, Conoco, BP and Shell. The two mining companies involved were Rio Tinto and Freeport MacMoran. The human rights organizations that participated were Amnesty International, Human Rights Watch and International Alert. The text of the Principles can be accessed at the US State Department website: www.state.gov/g/drl/rls/2931.htm.

continue in the business of finding and producing the oil (and increasingly gas) required by consumers.

In so doing, US companies face the problem of maintaining acceptable standards of corporate conduct in what can be challenging environments. In certain cases, such as corruption, law and international agreements provide enforceable standards for US and other (but not all) companies. When it comes to human rights, egregious violations by governments and their agents may be clearly recognizable but corporate responsibility, and appropriate conduct in such circumstances is not so clear-cut. Lawsuits have made it clear that companies are at risk for allegations of complicity, participation, or “aiding and abetting” in human rights violations, but they place risks only on those reachable by US courts (and worth suing). The lawsuits do not offer guidelines as to what businesses must do to avoid being subject to such allegations. Eventually, the Supreme Court and/or Congress may be called upon to clarify the appropriate scope of legal responsibility and liability facing companies operating in difficult environments.

The Voluntary Principles discussed above achieved consensus among businesses and human rights organizations regarding appropriate business conduct in the face of a particularly difficult security and human rights issue. The approach could serve as a precedent for addressing other difficult issues involved in operating in countries where human rights are at risk. However, voluntary agreements by themselves offer no assurance to those accepting them that they will not in any case be subject to lawsuits.