BUSINESS ETHICS AND SLORC

UNOCAL AND THE YADANA GAS PIPELINE PROJECT

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SYNOPSIS

Unocal, a global energy company based in California, entered into a joint venture with SLORC, the military government of Burma (Myanmar), to build a natural gas pipeline across that country’s southern panhandle. The government agreed to provide security for the project. Human rights organizations charged that the military used force to clear the pipeline area, relocating villages, terrorizing the civilian population, conscripting villagers to clear land and build roads for the project. Although Unocal did not engage in these acts directly, the company’s critics felt that as the government’s business partner, it shared moral responsibility. Unocal denied that it had done anything wrong and argued that the company’s presence had significantly benefited residents of the pipeline region.

When is a corporation morally liable for the unethical actions of a business partner? Do multinational corporations have an ethical duty to avoid depriving individuals of rights that governments must respect under international human rights law? Do corporations have a duty to help protect individuals from being deprived of those rights by business partners?

Two other THRO exercises address related issues. Sanctions or Engagement? SLORC in Myanmar examines a public policy question: Should the international and U.S. efforts to isolate the military regime be continued? Doe v. Unocal: Forced Labor and Corporate Liability shares a common introduction with that exercise, but then presents a legal issue: whether Unocal is liable for the human rights violations of its government joint venture partner.

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CASE OUTLINE

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An Ethical Joint Venture?

John F. Imle, Jr., president of Unocal Corporation, was seated in his spacious office at the firm’s corporate headquarters in El Segundo, California. The date was January 4, 1995. Across from him sat a delegation of human rights activists concerned about the company’s involvement in a controversial gas pipeline then under construction across the southern panhandle of Burma. A longtime Unocal veteran, Imle had spent much of his career in Asia. Described by his colleagues as an “experienced international deal-maker,” the fifty-three year old petroleum engineer had been promoted to president just six months earlier.

In 1992, Unocal had entered into a joint venture with the governments of Burma and Thailand and a French oil company, Total. Their goal was to construct and operate a pipeline to deliver natural gas from a field in the Andaman Sea, across the southern panhandle of Burma, to a power plant near Bangkok. The Burmese government had agreed to provide security for the project, known as the Yadana gas pipeline. Human rights activists had charged that the government had used brute military force to clear the pipeline area, relocating entire villages and terrorizing the civilian population. Many civilians, including women, children and the elderly, had been forcibly conscripted to clear land and build roads, barracks, and helipads. Although Unocal had not engaged in these acts directly, the company’s critics felt that as the government’s business partner, it shared responsibility. Now, under mounting pressure, Imle had agreed to meet with a group of activists face-to-face.

“What is happening in the exact pipeline area,” said Paula Wellner of Greenpeace, an environmental organization, “is increased forced labor, increased relocation of villagers. And so the situation there is getting much worse... Your project is fostering massive human rights violations in the area,” she asserted.

“Well, I would suggest if there were fewer threats…” Imle began. The pipeline was being laid through a region controlled by ethnic rebels, and there had been reports of armed attacks on work crews.

“It has nothing to do with threats,” Wellner interjected. “These are just people going about their day-to-day business.”

“People are threatening physical damage to the pipeline, do you agree with that?” Imle asked.

“I agree with that, but it has nothing to do with taking people out of their villages and forcing them to work.”

“I’m sorry,” Imle persisted. “It has a lot to do with the military presence there, and an increasing military presence.”
“And using people as forced labor has to do with threats? Are you saying if they didn’t threaten to blow up the pipeline or to disrupt it…”

“You are taking what I am saying completely out of context, and you understand that,” Imle interjected. “Let’s be reasonable about this. What I’m saying is that if you threaten the pipeline there’s going to be more military. If forced labor goes hand in hand with the military, yes, there will be more forced labor. For every threat to the pipeline, there will be a reaction.”

I. Unocal's Project Energy Renaissance
Union Oil of California

At the time of this contentious conversation, Unocal was in the midst of a difficult transformation from a West Coast operator of refineries and gas stations to a global energy exploration and production company with a focus on Asia.

The Union Oil Company of California, or Unocal as it later became known, had been founded in 1890 in Santa Paula, California by Lyman Stewart and Wallace Hardison. Both men were wildcatters who had launched their careers speculatively drilling for oil in the industry’s early days in northeastern Pennsylvania. The partners had been drawn to southern California in 1883 both by the promise of plentiful crude and by the chance to escape the monopolistic business practices of John D. Rockefeller, who had already driven many competing oil men out of business in the eastern fields. Things had not gone smoothly at first. Western oil was heavy, soils were rocky, and money was short. But eventually the fledgling venture developed productive fields near Los Angeles and, later, elsewhere in the state.

Recognizing early the value of vertical integration, Union expanded its operations into research, refining, distribution and marketing. The company founded the first petroleum research facility on the West Coast, built one of its first refineries, and launched one of its first steel oil tankers. Union opened its original gas station in downtown Los Angeles in 1913, the same year that Henry Ford introduced the moving

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assembly line to produce the Model T. During the post-World War II period, the company acquired Pure Oil, with service stations in the southeast and Midwest, enabling it to spread the Union 76 brand name across much of the country. The company promoted full-service stations, high-octane fuel, clean rest rooms, and auto repair service in a bid to attract upscale motorists and to build strong brand loyalty.

A New World, A New Unocal

Although it had gradually acquired properties elsewhere in the United States and abroad, Unocal remained known through most of its century-long history as a cautious, regional player closely identified with its West Coast refineries, transportation network, and Union 76 gas stations. During the postwar period, when most oil companies were aggressively expanding their global operations, Unocal remained, in the words of one historian, “tucked into its geographical niche.” By the mid-1990s, it was clear that this strategy could no longer deliver for stockholders. The company’s retail operations were earning just two cents on the dollar, and shareholder returns were among the lowest in the industry.

Roger C. Beach, who became CEO in 1994 and Chairman the following year, later recalled in an interview:

> It was becoming increasingly apparent to us that our West Coast downstream [retail] operations – in which we had a great deal of capital tied up – were going to continue as a low-margin, low-return-on-asset business, limiting our ability to take on global upstream [exploration and production] projects which allow much higher rates of return – in the 15% to 25% range.

The California oil fields were close to played out, and opportunities for exploration in the lower 48 states were diminishing. Moreover, a well-publicized oil spill at a Unocal platform off the coast of Santa Barbara in 1969 had led to a public outcry and increasingly strict environmental regulations, including a ban on offshore drilling in California. The company was also still suffering from a heavy debt load incurred during a failed takeover bid for the company by famed corporate raider T. Boone Pickens in the 1980s.

In March 1997, Unocal’s new management team took a bold and formerly unthinkable action: they sold off the company’s core assets – all of its U.S. refineries, tankers, and gas stations – to Tosco Corporation for around $2 billion. The company used some of the proceeds to buy back stock and to pay down a portion of its debt. Then, it took most of the rest and invested in exploration and development projects overseas, mostly in Asia, where executives hoped the company could earn significantly higher returns. That same year, Unocal underscored its commitment to Asia by opening a twin corporate headquarters in Kuala Lumpur, Malaysia. President Imle relocated there from California.

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Of particular interest to the company’s management team were vertically integrated projects, where the company could develop a resource, build the infrastructure to deliver it, and market it directly to fast-growing markets. In an interview with *Petroleum Economist* in 1998, a company executive explained:

> Our market-to-resource approach is what sets us apart. Other companies typically want to go out and find oil and gas, with little thought given to the market. We’re looking at opportunities in proven resource basins where there are new markets. We want to participate in those markets, not only in energy resource production, but possibly also in pipeline and power plant projects.7

Chairman Beach and other top executives believed that this integrated approach would distinguish the company from its competition when negotiating with foreign countries. “What every government likes about Unocal,” he told a reporter for the *Wall Street Journal*, “is one-stop shopping – one group able to take the whole project from development to the marketing end.”8

Unocal envisioned itself as a growing “super independent,” the provider of choice for integrated energy projects throughout Asia. Project Energy Renaissance, unveiled in December 1997, envisioned a trans-Asia network of natural gas pipelines connecting resources to markets throughout the region, including Bangladesh, Azerbaijan, China, Thailand, Turkmenistan, Vietnam, Thailand, and Burma.9 In a 1998 briefing for security analysts, Beach summed up the company’s transformation:

> Over the past two years, we have created a new Unocal, with exploration and production making up more than 75% of our net property and equity investment. We are now the world’s largest non-state-owned E&P [exploration and production] company – one that combines [the] global reach, technical expertise and financial muscle of a major with the agility, aggressiveness and creativity of a small independent.10

In a sense, Unocal had returned to its original culture: like its founders Stewart and Hardison, the oil company was once again wildcatting, this time on a new frontier.

The Yadana Gas Pipeline Project

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One of the initiatives that figured prominently in the “new Unocal” was the Yadana gas pipeline. This project, already underway, gained importance as the company shifted its strategic focus to Asia.

In 1982, natural gas deposits were discovered in the Andaman Sea off the western coast of Burma, also known as Myanmar (Exhibit 1). In 1992, the government of Burma, seeking to develop these assets, formed a state-owned company, the Myanma Oil and Gas Enterprise (MOGE) and initiated negotiations with several international oil companies, including Unocal, over rights to these gas fields. Total, a French oil company, won the first bid, for which it paid MOGE around $15 million.

Total entered into two contracts with MOGE, a Production Sharing Contract (PSC) and a Memorandum of Understanding (MOU). These agreements clearly stated, in writing, the mutual obligations of the parties. Total agreed to be the contractor on the project, that is, first to explore the field and then to construct the gas drilling platforms and the pipeline itself. MOGE agreed to supply the rights to the gas and to provide security and rights of way for the pipeline project, as indicated in the following clause in the MOU:

MOGE shall assist and expedite Contractor’s execution of the Work Program by providing…security protection and rights of way and easements as may be requested by Contractor.11

The joint venture participants envisioned a several-stage project. First, the seabed gas field would be fully explored. If it were found to have adequate reserves, Total would formally announce a commercial discovery. At that point, the field would be developed and a pipeline constructed to deliver gas to a power plant to be built by the government of Thailand. The 36-inch diameter pipeline would run underwater from the Yadana field to landfall (215 miles), then on land across Burma’s Tenasserim panhandle (39 miles), and finally through Thailand to Ratchiburi, near the capital city of Bangkok (161 miles) (Exhibit 2). There, the gas would be used to fuel a 2,800-megawatt electric power plant operated by the Thai government. Once the project was operational, gas sales to the Thai government would, it was conservatively estimated at the time, produce around $200 million a year in revenue for the Myanmar government.12

When it was initially involved in negotiations over the Andaman gas rights, Unocal contracted with a consulting firm, the Control Risk Group, to assess the political and other risks involved in investment in Burma. The CRG’s report to the company stated:

12 “Myanmar: Trouble in the Pipeline,” The Economist, January 18, 1997, p. 39. Other estimates put the figure as high as $400 million a year.
Throughout Burma the government habitually makes use of forced labour to construct roads. In [the] Karen and Mon states the army is forcing villagers to move to more secure sites (similar to the ‘strategic hamlets’ employed by the US Army in Vietnam) in the hope of cutting off their links with the guerillas. There are credible reports of military attacks on civilians in the regions. In such circumstances UNOCAL and its partners will have little freedom of maneuver. The local community is already terrorized: it will regard outsiders apparently backed by the army with extreme suspicion.\textsuperscript{13}

Although it had lost out in the initial bidding over the Andaman gas rights, Unocal remained interested and entered into negotiations directly with Total to purchase a share of its interest in the project. In December 1992, Unocal purchased a 49 percent share of Total’s rights under the Agreements from the French company for $8.6 million. In their negotiations over this sale, the two companies discussed the issues raised by the risk analysis report concerning the role of the Burmese military. According to a deposition later given by Unocal’s vice president of international affairs:

\begin{quote}
In our discussions between Unocal and Total, we said that the option of having the military provide protection for the pipeline construction and operation of it would be they might proceed in the manner that would be out of our control and not be in the manner that we would like to see them proceed, I mean, going to the excess. So that was the hazard we were talking about. It was out of our control if that kind of full relinquishment of security was given to the government.\textsuperscript{14}
\end{quote}

Nevertheless, Unocal decided to proceed. In a further set of agreements between Unocal and Total, the French company agreed to act as “operator.” Each company would pay expenses according to its share and could vote on joint venture operations through an operating committee. Unocal formed a wholly owned subsidiary, the Unocal Myanmar Offshore Co. Ltd. (UMOC), to hold the company’s interest in the Yadana project.

In February 1995, Total declared a commercial discovery. Shortly thereafter, the joint venture partners formed a separate corporation, the Moattama Gas Transportation Company (MGTC), to build and operate the natural gas pipeline. After both MOGE and the Petroleum Authority of Thailand (PTTEP), a state agency, exercised their options to acquire a share of MGTC, ownership shares in the pipeline project were: Total, 31%; Unocal, 28%, PTTEP, 26%, and MOGE, 15%.

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II. Partners and Adversaries

A Rogue State

Burma, the nation with which Unocal had entered into a business partnership, was widely regarded in the international community as a rogue state.

Located on the Andaman Sea between Bangladesh and Thailand, Burma shared inland borders with India, China, and Laos. Slightly smaller than the state of Texas, the country consisted of a central, tropical lowlands ringed by a semicircle of rugged hills. Among the nation’s 42 million people, the dominant ethnic group was the Burman, comprising 68 percent of the population, who mainly populated the lowlands. Several minority ethnic groups, including the Shan, Karen, Kachin, Mon, Wa, and Rakhine, mainly inhabited the highlands. Most of the Burmese people lived in poverty; in the early 1990s, per capita income was between $200 and $300 a year.

For fourteen years after the country had become independent from Britain in 1948, Burma had enjoyed a constitutional democracy. However, in 1962 General Ne Win had seized power and launched the “Burmese Road to Socialism.” The regime had nationalized all property, including foreign businesses, and had isolated the country by expelling all international correspondents and limiting tourist visas. Ne Win consolidated his control in a 1974 constitution that combined executive, legislative and judicial power in a one-party system. The regime detained opposition politicians without trial and shut down the universities for years at a time. Inadequate energy resources produced regular blackouts, and the country spun into economic decline.

In 1988, opponents of the regime staged massive pro-democracy demonstrations. The opposition was brutally crushed by the junta, and full martial law was imposed. At that time, the military government assumed the title of the State Law and Order Restoration Council (SLORC) and renamed the country Myanmar. Elections were held in 1990. But after the National League for Democracy, an opposition coalition, won 82 percent of the seats in parliament, the military nullified the elections and placed many of the party's leaders, including Nobel laureate Aung San Suu Kyi, under arrest.

In the wake of the 1990 military crackdown, the Myanmar regime had apparently stepped up its reign of terror against the civilian population. The government of Burma was widely criticized by the U.S. State Department, the United Nations, Amnesty International and many other public and private organizations for escalating human rights violations. A 1995 report on human rights practices in Burma issued by the U.S. State Department summarized these concerns:

The Government’s severe repression of human rights continued... There continued to be credible reports, particularly from ethnic minority dominated areas, that soldiers committed serious human rights abuses, including extra-judicial killings and rape. Disappearances continued, and members of the security forces beat and otherwise abused detainees. Prison conditions remained harsh,
and the judiciary [was] not independent of the executive. The use of porters by
the army – with attendant mistreatment, illness, and even death for those
compelled to serve – remained a standard practice. The military continued to
force ordinary Burmese on a massive scale (including women and children) to
“contribute” their labor, often under harsh working conditions, on construction
projects throughout the country… The SLORC continued to restrict severely the
basic rights to free speech, press, assembly, association, and privacy. Workers’
rights [were] also severely limited. Political party activity remained severely
restricted, and citizens do not have the right to change their government.  

A major concern of human rights advocates was SLORC’s practice of forcibly
conscripting the labor of its own citizens. Thousands of Burmese were compelled to
work without pay, under threat of violence, in government-sponsored development
projects, building roads, railroads, dams, and canals and toiling as porters for the army.
In fact, the value to the economy of “peoples’ contributions” was so significant that it
was regularly reported as a separate line in government budget figures (Exhibit 3).
Human Rights Watch/Asia estimated in 1995 that at least two million people had been
forcibly conscripted. The government was quite open about these practices, defending
them as a continuation of the age-old practice in Burma of contributing labor for the
public good (in fact, both Buddhist kings and later British colonists had required unpaid
community service).

Many in the drug enforcement community believed that SLORC was also deeply
involved in the heroin trade. The hilly area of northeastern Burma, sometimes called the
Golden Triangle, was a major poppy-growing region (poppies provide the raw material
for the production of heroin). Satellite surveillance showed a sharp increase in areas
under poppy cultivation after the SLORC took power. By the mid-1990s, Burma
provided more than half of the world’s supply of heroin, and according to U.S. State
Department estimates, more than 60 percent of street heroin sold in the United States.
Burma was also a significant source of methamphetamine. The U.S. Embassy in
Thailand issued a report in 1996 that stated that at least half of Myanmar’s economy was
“unaccounted for and extralegal.”

Profits from the heroin trade appeared to be funding the government’s own
activity. The International Monetary Fund reported that from 1991 to 1993, the Burmese
government had purchased $1.2 billion worth of arms – although its foreign exchange
reserves for the period were a mere $300 million. Research by the nonprofit Geopolitical
Drug Watch of Paris suggested, moreover, that MOGE – the state-run oil company and
Unocal’s partner – was “the main channel for laundering the revenues of heroin produced
and exported under the control of the Burmese army.”

16 Dennis Bernstein and Leslie Kean, “People of the Opiate: Burma’s Dictatorship of
Drugs,” The Nation, December 16, 1996. This topic was also treated in a Frontline
documentary, “The Opium Kings,” aired May 20, 1997. A transcript is available at
www.pbs.org/wgbh/frontline/shows/heroin/etc/script.html.
Securing the Pipeline Route

In the early 1990s, the Burmese government moved decisively to fulfill its contractual commitment to provide security protection and rights of way for the Yadana pipeline.

The pipeline was projected to pass through a remote, mountainous, and underdeveloped region of Burma politically controlled by a rebel group, the Karen National Union (KNU). The Karen, a distinct ethnic group of about perhaps four million with their own language and culture, were descendants of Mongolians who had entered present-day Burma around the eighth century BC.¹⁷ Later, the Burman invaded, and the Karen retreated to the narrow, mountainous coastal region of the Malay peninsula, beginning centuries of conflict between the two ethnic groups. After World War II, the Karen appealed to the British to grant them a separate state; this appeal was denied, and upon independence their district became a part of Burma.¹⁸ (The location of the Karen state is shown in Exhibit 2.)

In the early-1990s, the KNU was allied with the National Democratic Front (the pro-democracy coalition) and advocated a “genuine Federal Union comprised of all the states of the nationalities on the basis of equality and self-determination.”¹⁹ The KNU ’s position was that although it was not on principle opposed to construction of a gas pipeline through Karen territory, it was opposed to “any business venture that strengthens the illegal SLORC’s hold on power and hence fuels the civil war.” Thus, although it was not opposed to any pipeline, it was opposed to this pipeline, because it would benefit the military junta.

What exactly happened in the Tenasserim region in the mid-1990s is a matter of factual dispute. The area was closed to the foreign press, and the government routinely denied visas to human rights organizations. The military itself saw no reason to justify, or report on, its own behavior. One young man, however, made extraordinary sacrifices to help this story be told. In 1988, Ka Hsaw Wa, an 18-year old Karen student, had participated in the pro-democracy demonstrations. He was tortured by SLORC officers and fled across the border to Thailand. Wa later joined with two young law students from the University of Virginia to establish EarthRights International in Thailand. With financial support from the Soros and other foundations, the former Burmese student activist and several associates made numerous trips across the border to his homeland during the 1992-96 period to collect evidence of human rights abuses from villagers in the pipeline region. In 1996, EarthRights and the Southeast Asian Information Network

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¹⁷ No accurate population census has been conducted in Burma since 1939. The KNU has claimed a population of 7 million; Human Rights Watch has estimated the Karen to number between 3 and 4 million.

¹⁸ The KNU’s interpretation of the history of the Karen people may be found at: http://karen.org/history.

published Wa’s findings under the title Total Denial.\footnote{The entire text of Total Denial is available online at: www.burmfund.org/Research_Library/yadana_natural_gas_pipeline_proj.html. The Web site for EarthRights International is at: www.earthrights.org. In 1999, Wa received the Reebok Human Rights Award for his work.} In addition to Wa’s evidence, reports published by Amnesty International, Human Rights Watch/Asia, Southeast Asia Information Network; writings by Karen activists and refugees; and depositions later given by Karen villagers from the area provide a partial view of a chaotic situation.

In 1992, the Burmese military began to build up the presence of light infantry battalions (of 400-800 soldiers each) in the pipeline area. A villager told EarthRights International:

Before 1991, we saw Burmese soldiers very seldomly, only Karen soldiers. But after 1991, light infantry battalions 408, 409, and 410 led by Major Han Htin started to base their outpost in our area...In 1992, we saw [government] soldiers almost every day.\footnote{The quotations in this section are taken from Total Denial, unless otherwise noted.}

Over the next four years, these Burmese troops asserted military control in the region. They also organized the construction of support facilities along the pipeline corridor. These facilities included a fortified base camp for Total’s use, with 60 buildings and two underground bunkers surrounded by three rings of barbed-wire fences; a nearby landing strip; a second, smaller base camp near the mid-point of the proposed route; and a dozen helicopter landing pads. The army also supervised the construction of service roads and the clearing of right of way for the pipeline.

To recruit labor for these construction projects and to serve the battalions themselves, the army forcibly conscripted local Karen villagers. One Tenasserim resident later described this process in a sworn deposition:

When the government needs porter[s], well, the soldier will inform the police, and the police will inform the head of the village. And the head of the village will tell the villagers to go for forced labor. And those who can give money and those who are rich, they can give money and stay at home, because they are afraid that they would be killed. And those who were very poor, as they cannot afford to pay money, they have to go by themselves.\footnote{Deposition of John Doe IX, quoted in testimony given by Katharine J. Redford of EarthRights International, available online at: http://www.irn.org/burma/news/testimony.html.}

Often, families sent the young and elderly to fulfill their forced labor obligations, because the more able-bodied members of the family, particularly young men, were needed to maintain their farms. Conditions in the conscripted labor gangs were brutal. Workers
who could not keep up were summarily executed. Amnesty International reported the following incident:

I heard Tun Shwe say to the soldier behind him, a private from Battalion 531, ‘Sir, don’t kill me. I will try to do my best to reach your destination. Now I cannot carry, cannot walk, but I will try. Don’t punish me, don’t kill me.’ After Tun Shwe exclaimed ‘I cannot carry, cannot walk’ the soldier shot him dead, one bullet from a G-4 at a distance of about four meters, in his back so his insides came out. After the shooting nothing happened, no one could say anything. The soldiers just said to the other porters ‘complete your duty, go on, go on’ as if he was driving cows.

Soldiers in the area routinely confiscated food and property and exhorted money from villagers to support their operations. One villager described the theft of his pig:

They [soldiers from Light Infantry Battalion 407] said, ‘what are you doing with these two pigs?’ They said, ‘we will send you and your pigs to jail tomorrow.’ Another soldier said, ‘send them to their graves.’ I thought the troops were going to kill us. Then I told them, ‘wait a minute, let me pray to God.’ When I said that, one of the soldiers pushed me very hard making me fall down. The next morning, one of the troops came and told me, ‘We are not going to kill you or send you jail, if you give us one of your pigs.’ I said, ‘Please, I want to celebrate Christmas.’ But, finally they took one of my pigs. I paid 4,000 kyat per pig. That was quite a lot.

Another villager reported having to pay what he called a “pipeline tax.”

About the pipeline construction, none of us know exactly about that, except that we have to pay money for building it. The soldiers came to our village and informed the village and asked for the donation. For our house, we have to pay 500 kyat. The villagers are getting poorer and poorer. Some are selling their own things like cattle to pay the forced labor fees, porter fees, and other forced donations, like donations for all the buildings and so many things. So many villagers are easily getting sick, like diarrhea and oh, I can’t think of it all. A lot of them are suffering. So many villagers are trying to leave and come to the border… If I mention all of the atrocities of SLORC, I’ll not be finished in two days.

Rapes and assaults were used to intimidate and terrorize civilians. In one such incident, a 54-year old Karen woman had been travelling on foot with her granddaughter in December 1993, when they encountered a light infantry battalion patrolling the area immediately south of the pipeline route.

[The commander] said, ‘Old woman, tell me the truth. How old is your granddaughter? I responded, ‘Seventeen years old.’ Then he said, ‘go and tell your granddaughter to come here.’ I took my granddaughter to him. As soon as
he saw me, he yelled at me: ‘Why did you come with her? I’ll kill you with a hoe.’…He also took out his knife and threatened me… I heard my granddaughter screaming ‘Grandma! Grandma!’ But I dared not go. I was so scared. After fifteen minutes they freed my granddaughter. My granddaughter said he told her to sleep with him. She refused. Finally, he raped her…Before they released us, they told us not to tell anyone about what happened. And the commander said, ‘Old woman, if you tell anyone about that, I’ll kill you and your relatives.’

The army was also alleged to have forcibly relocated civilians whose villages lay in the path of the proposed pipeline. The practice of forcible relocation by the army had escalated in Burma after 1988, according to human rights reports; the number of Burmese compelled to move was estimated from 100,000 to 1.5 million. Critics of the Yadana project charged that several villages that stood in the path of the proposed pipeline were forcibly relocated in the early 1990s. Unocal vigorously denied that any village relocations had occurred in the area after 1992, when the Agreement was signed. However, the company did pay local villagers about around $1 million to reimburse them for 525 acres of land used by the project. In 1995, the Thai government ran an advertisement in the Bangkok Post that stated that “Myanmar has recently cleared the way by relocating 11 Karen villages that would otherwise obstruct the passage of the gas resource development project.” The company charged that this report was in error.

Although outmanned and outgunned by the army, the KNA and the Karen National Liberation Army, its military wing, carried out a series of attacks against the pipeline project. In March 1995, Karen rebels fired on a convoy of three trucks carrying Total employees and armed SLORC soldiers. Reportedly, several Burmese employees of Total were killed. In December 1995, rebels attempted an attack on Total’s fortified base camp, which failed. In February 1996, a second attack on the base camp occurred; this time, six employees were wounded. EarthRights International reported:

The retaliation from SLORC for these attacks was swift…[Several infantry battalions] marched into Shin Byn village… The troops seized Saw Kyi Lwin, the village headman. He was accused of collaborating with the KNLA, interrogated and tortured. He was later executed by the SLORC soldiers.

During this period, thousands of villagers fled the area and sought sanctuary as refugees along the Thai border.

In 1996, the International Federation of Human Rights Leagues (FIDH), in a review of evidence collected by its member organizations, reported that the Yadana pipeline had given “occasion to large-scale, repeated and documented violations of

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24 April 17, 1995, Bangkok Post.
human rights… [W]ithout the pipeline, all, or at least some, of these violations would not have occurred.”

III. The Unocal Response

Monitoring the Situation

During the period prior to pipeline construction, Unocal monitored its investment closely. A Singapore-based Unocal executive, Joel Robinson, was assigned to oversee the company’s interest in the Yadana joint venture. At least half a dozen times prior to January 1996, Robinson and his associates visited the pipeline area to evaluate the situation first hand. He reported his findings to his superiors in a series of reports and letters. During this period, Robinson was also in communication with Total officials and with the U.S. Embassy in Thailand.

In March 1994, Robinson met with Total officials to discuss the threat to the pipeline posed by Karen rebels. He reported:

The Myanmar Army claims that, despite these people [Karen rebels], they have an area secured only along the proposed pipeline route and within +/-10 kilometers of the proposed pipeline route… The Burmese Army claims to have many battalions in the area, based in Kaleinaung, with up to 200 troops in the mountain jungle area near the border along the pipeline route.

Over the following year, Robinson learned more about the activities of the Myanmar Army, and he seemed worried about his findings. In March 1995, Robinson wrote:

[I have received] more of the publications of the ‘Karen press’ which depicted in more detail than I have ever seen before the increased encroachment of SLORC activities into the villages of the pipeline area. Our assertion that the SLORC has not expanded and amplified its usual methods around the pipeline on our behalf may not withstand much scrutiny.

His report two months later, however, was more positive.

Unocal’s observer in Myanmar spent four days in early May [1995] visiting 11 villages along the pipeline route, meeting with over 160 villagers… It is clear that there is strong local support for the project. Local people welcome the jobs, the training, and the benefits to the local economy.

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26 Unless otherwise noted, all quotations in this section and the following section are drawn from the deposition of Joel Robinson, as quoted by Judge Ronald S.W. Lew from the trial record in his decision of Aug. 31, 2000, *Doe v. Unocal*, 110 R.Supp. 2nd 1294 (C.D. Cal.2000).
That same month, Robinson met with U.S. embassy officials in Thailand. A confidential cable later sent by embassy personnel summarized their conversation.

On the general issue of the close working relationship between Total/Unocal and the Burmese military, Robinson had no apologies to make. He stated forthrightly that the companies have hired the Burmese to provide security for the project and pay for this through the Myanmar Oil and Gas Enterprise (MOGE). He said that three truckloads of soldiers accompany project officials as they conduct survey work and visit villages. He said Total’s security officials meet with military counterparts to inform them of the next day’s activities so that soldiers can ensure the area is secure and guard the work perimeter while the survey team goes about its business.27

In late 1995, perhaps in response to concerns raised by Robinson and by external human rights groups, Unocal commissioned another consultant’s report on conditions in the area, apparently in an effort to learn more about the army’s activities. The resulting document was hardly reassuring. The consultant, a former military attaché to the U.S. Embassy in Burma, wrote the company:

My conclusion is that egregious human rights violations have occurred, and are occurring now, in southern Burma. The most common are forced relocations without compensation to families from land near/along the pipeline route; forced labor to work on infrastructure projects supporting the pipeline (the SLORC calls this government service in lieu of payment of taxes); and imprisonment and/or execution by the army of those opposing these actions. Unocal, by seeming to have accepted SLORC’s version of events, appears at best naïve and at worst a willing partner in the situation.

Forced Labor

One of the issues that clearly concerned Robinson, and his contacts at Total, was the military’s use of conscripted labor. The two companies agreed that forced labor was unacceptable. In April 1994, he reported to his superiors:

Total and Unocal will insist upon western style construction practices including fair labor rates and the use of an internationally recognized contractor. I specifically asked if Total would ever agree to allow Myanmar to build a road or some other facilities as a partial contribution to the partnership knowing that they might use impressed labor. Mr. Madeo [from Total] assured us that would be unacceptable to Total.

A year later, Robinson wrote Total with his “general thoughts.” By this time, Robinson had apparently abandoned the idea that the oil companies could prevent the military from

27 Quoted in Appellants’ Opening Brief, Doe v. Unocal No. 00-56603 in the U.S. Court of Appeals for the Ninth Circuit, February 26, 2001, p. 8. This cable was produced through a Freedom of Information Act request by plaintiffs’ attorneys.
conscripting labor. His comments focused, rather, on keeping these practices clearly at arm’s length from the pipeline project. He stated:

[F]rom Unocal’s standpoint, probably the most sensitive issue is ‘what is forced labor’ and ‘how can you identify it.’ I am sure that you will be thinking about the demarcation between work done by the Project and work done ‘on behalf of’ the Project. Where the responsibility of the Project ends is very important.

Total and Unocal continued to discuss the matter of forced labor, and how to draw a line between the military’s actions and those of the operator. A few months later, Total’s construction manager, Herve Chagnoux, wrote Robinson:

By stating that I could not guarantee that the army is not using forced labour, I certainly imply that they might (and they might), but I am saying that we do not have to monitor army’s behavior: We have our responsibilities; they have their responsibilities; and we refuse to be pushed into assuming more than what we can really guarantee. About forced labor used by the troops assigned to provide security on our pipeline project, let us admit between Unocal and Total that we might be in a grey zone.

By September 1996, Total had apparently decided that the best course of action would be to pay conscripted workers directly in situations where they were arguably providing services to the pipeline project. Chagnoux wrote Robinson, “when we had knowledge of such occurrences [forced labor supporting pipeline operations], the workers have been compensated.” Total also began to provide food rations for both the army and “project helpers” “hired” by the army. Clearly, both oil companies felt uncomfortable in the “grey zone,” and Total made a point to pay wages and provide rations for local workers provided by the army to assure they were properly compensated.

Challenges at Home and Abroad

As Unocal struggled to draw a clear “demarcation” between their sphere of responsibility and the Army’s, external pressures on the company from critics in both the United States and abroad were mounting. Human rights organizations continued to express to Unocal their concerns about government abuses in the pipeline area. In January 1995, Greenpeace, EarthRights International, and other activists met with president Imle. In June 1995, Amnesty International sent Unocal their most recent human rights report on Burma. It was accompanied by a cover letter that drew the company’s attention to the use of “voluntary labor” in the pipeline area. The letter pointed out, “We know from long experience with this regime that what they call ‘voluntary’ labor is called forced labor in other parts of the world; and, forced labor not only for convicts, but of ordinary citizens. Myanmar forced labor conditions have been documented to be brutal and even deadly.”
At the state and local level, activists lobbied for selective purchasing laws that denied contracts to firms doing business in Burma.\textsuperscript{28} Four states and nearly thirty municipalities adopted selective purchasing measures before corporate litigation derailed the campaign.\textsuperscript{29}

Unocal’s challengers also took their campaign to service station managers, state governments, and company shareholders. Feminist organizations joined the growing anti-Unocal coalition to protest a proposed pipeline in Afghanistan where Taliban fundamentalists denied equal rights to women. A coalition petitioned the California attorney general to revoke Unocal’s charter because of crimes against humanity, an effort that failed to persuade the state government but attracted considerable press coverage.\textsuperscript{30} Dissident shareholder resolutions calling on Unocal to investigate and disclose information about the Yadana gas pipeline project never won more than 15 percent of votes cast, but attracted some support, including that of the powerful California Public Employees Retirement System (CalPERS). Ka Hsaw Wa visited the U.S. as part of a “Free Burma” campaign, spreading a message of human rights abuses.

Government and non-governmental organizations also became involved in the debate. Delegates to the International Labor Organization initiated a formal investigation of coerced labor in June 1996. The U.S. Department of Labor also launched an inquiry, and the United Nations continued to assign a special rapporteur to Burma. In 1997, the U.S. Congress imposed new sanctions on Burma, adopting legislation that allowed completion of existing agreements but foreclosed future corporate investments in the rogue nation. As Congress debated sanctions, a number of other corporations withdrew from Burma, giving wide publicity to their human rights concerns.

In October 1996, Burmese plaintiffs brought a class action lawsuit in U.S. District Court under the Alien Torts Act, charging the pipeline consortium with using forced labor conscripted by the military government. Unocal’s Beach and Imle were personally named as defendants. The court granted sovereign immunity to SLORC and MOGE, and also dismissed Total as a defendant, but allowed discovery to proceed against Unocal on claims of forced labor and related human rights violations.

Through Thick and Thin

On a number of occasions, Unocal executives attempted to persuade activists and the public of the company’s determination to proceed in an ethical manner in Burma. For example, in one letter to activists, CEO Beach wrote:

I want to state unequivocally that Unocal does not tolerate human rights violations in connection with any of our business activities. It is our policy only to do business in countries where we can operate ethically and responsibly. Myanmar is no exception. We are monitoring issues in Myanmar very closely, both on our own and through continuing dialog with international organizations.31

Sometime in 1995, by its own report, Unocal launched a $6 million community assistance program in 13 villages in the vicinity of the pipeline.32 Funded projects included building or renovating health centers and schools; immunizing children; constructing roads, water systems, and power lines; and supporting local enterprises such as poultry, cattle, and pig farms. The company stated that it worked with representative committees in each village to help determine how community development funds would be spent.

Outside observers noted many benefits. In its 1997 report, for instance, the World Health Organization noted that infant mortality rate in the villages in the pipeline vicinity had dropped to about half the national average – to 46 deaths per 1,000 live births, compared with 95 deaths per 1,000 live births for the country overall. The U.S. State Department reported that school attendance was also up in the pipeline region, where 77 percent of children were enrolled, compared with around 60 percent elsewhere.

The company also set out to correct what it viewed as false accusations. On its Web site, in letters to the editor of leading newspapers, and in press releases, it set forth its defense of its involvement in the Yadana project. The company stated that while human rights abuses might have taken place, it was not responsible for the actions of the Burmese government.

We have always acknowledged the challenges of working in a country under authoritarian rule. We have also acknowledged that it is quite possible that human rights abuses have occurred in Myanmar...[However,] foreign companies like Unocal have no control over the actions of the military forces of Myanmar, a sovereign nation.

Moreover, Unocal insisted that it had not directly participated in forced labor, or other abusive practices. It asserted that the pipeline contractor had always paid market wages.

We are...confident that no such [forced labor] abuses have taken place at our work sites or in activities directly related to the Yadana project. We have met with the government numerous times to express our concerns about such abuses.

Total hired an international contractor, Spie-Capag, to carry out the actual construction of the pipeline, which occurred between October 1996 and April 1997. The consortium

32 This figure and the subsequent quotations are taken from Unocal’s Web site, at www.unocal.com, unless otherwise noted.
asserted that it had hired many Burmese, including villagers from the area, and paid wages above the local prevailing rate. The U.S. State Department appeared to confirm this when it reported in 1998: “If charges are made that the pipeline itself was built with forced labor, we would find such charges very difficult to believe.”

With respect to its relationship with the Burmese military, company executives described military security in the pipeline area as the type of protection a police would routinely provide to any private business. “We cannot and I cannot personally take responsibility for the conduct of the government of Burma any more than I can take responsibility for the conduct of the Los Angeles Police Department,” Imle told a reporter for ABC’s Nightline. “I can take responsibility for what goes on in our pipeline area.”

In 1998, Unocal commissioned its own “Humanitarian Report on the Yadana Natural Gas Development Project,” by the Reverend Richard W. Timm and Justice K.M. Subhan of the Bangladeshi Commission on Justice and Peace. After a visit to the project and nearby villages, the factfinders concluded, “Not only are [the project operators] paying fair wages, well above the market price, but they are keeping their employees happy and the inhabitants of the 13 villages near the pipeline have experienced great improvement in their lives.”

On the issue of the impact of foreign investment, Unocal staunchly defended the principle of *constructive engagement*. The company argued that “engagement is by far the more effective way to strengthen emerging economies and promote more open societies.” In particular, Unocal asserted that the Yadana project had brought economic opportunity to the people of the Tenasserim region:

Unocal is proud of its involvement in the Yadana project and the tangible benefits it has brought to the people of Myanmar. This has included high-paying jobs, technical training, and medical care, schools, and socio-economic programs. Throughout the construction phase, Total and Unocal insisted on maintaining a high level of business standards and construction practices, including fair labor rates and use of an internationally recognized contractor. At all times, the project was conducted in accordance with Unocal’s guiding principles and values.

Moreover, the company maintained, natural gas supplied by the pipeline would provide a relatively clean source of power in a developing region that already suffered from severe air pollution. Low-cost energy would contribute to the emergence of an Asian middle class and, with it, democratic reform. “The culture of Asia is [based on] long-term relationships,” Beach told a reporter for *Forbes* in 1998. “You have to be there through thick and thin.”

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IV. Time for Judgment

The Yadana gas pipeline was completed on schedule in June 1998. Gas deliveries were delayed, however, because the Thai government had fallen behind in the construction of the Ratchiburi power plant. Over the next two years, the plant began receiving gas shipments gradually as it was brought online. Under the terms of a “take or pay” provision in the parties’ contract, the Thai government was required to make partial payments for the full amount of gas it had agreed to purchase, whether or not the plant was fully operational. Accordingly, Unocal received the following payments from the Thai government for gas from the Yadana project:

1998: $10 million
1999: $65 million
2000: $72 million

The Ratchiburi plant was expected to become fully operational sometime during 2001.

The authors have been unable to calculate the exact rate of return that Unocal can expect on the Yadana project. Unocal paid Total around $9 million for a share of the gas rights. Unocal’s annual reports for 1998 and 1999 reported the following capital expenditures for construction of the pipeline itself: 1997: $140 million; 1998: $90 million. No separate expenditures are reported for this item in prior years (although there may have been some expenses, included in other aggregated figures). By its own report, Unocal spent $6 million on community development initiatives in the pipeline area. Unocal also spent an undetermined, but significant sum on litigation and public relations activities related to the pipeline during this period, and continuing into the early 2000s.

The pipeline was completed and became operational in July 1998.

Assuming annual operating expenditures of $10 million a year, and revenue from gas sales of $75 million a year, the project would reach the break-even point sometime in late 2002. Over the course of the 30-year contract, using these assumptions, the company would receive revenues of $2.17 billion on an investment of $.54 billion.

Under almost any imaginable scenario, the Yadana gas pipeline would have to be considered a phenomenal success, from a strictly financial standpoint.

In 1999, at age 58, John Imle resigned as president and vice-chairman of Unocal and took a position as co-chair of a nonprofit organization based in Geneva called the Business Humanitarian Forum. The purpose of the organization was to facilitate communication and cooperation between the business and humanitarian communities.

In 2000, Judge Ronald S.W. Lew ruled in Doe vs. Unocal. Judge Lew found that the trial record demonstrated “numerous acts of violence perpetrated by Burmese soldiers in connection with forced labor and forced relocations…including torture, rape, murder,
false imprisonment, assault, intentional infliction of emotional distress, and negligence.” However, he ruled in favor of Unocal and against the plaintiffs, on the grounds that the government of Burma, not Unocal, was responsible for these crimes. The plaintiffs appealed the case, under various legal theories of vicarious liability. On December 3, 2001 the case was heard before the U.S. 9th Circuit Court of Appeals. Audio of the oral argument is available at http://oz.uc.edu/thro/doe/audio.html

Special Note on Unocal and the Taliban

In light of the events of September 11, 2001, and the subsequent “war on terrorism,” Unocal’s involvement with the Taliban regime in Afghanistan is of interest. In October 1997, Unocal joined with the government of Turkmenistan and five other energy companies to form a consortium known as Central Asia Gas (CentGas). The goal of the consortium, in which Unocal held a dominant 46.5 percent share, was to build a 790-mile pipeline from the gas fields of Turkmenistan (a landlocked former Soviet republic) through Afghanistan and Pakistan to a port on the Arabian Sea. A secondary goal was to build an extension into India. At the time, Unocal president Imle called the project “the foundation for a new commerce corridor for the region, often referred to as the Silk Road for the 21st Century.”

The project faced very significant obstacles, however. A major one was negotiating an agreement with Afghanistan, through which the pipeline would run. At the time, the Taliban had recently (1996) gained control of most of the country in Afghanistan’s long-running civil war. The United States and most other nations did not recognize the Taliban as a legitimate government. This was a problem for Unocal and the other members of CentGas, because the World Bank and most other western lenders would not finance a project in a nation that did not have an internationally recognized government. And, of course, continuing violence and anti-American sentiment in the region posed an obvious threat to a natural gas pipeline.

Nevertheless, Unocal persisted. In November 1997, Unocal invited a Taliban delegation, headed by the Minister for Industries, Mullah Ahmad Jan, to visit the company in Houston. The Taliban delegation was put up in a five star hotel, visited the zoo and the NASA Space Center, and had dinner with Unocal Vice President Marty Miller at his Houston home. The company did not strike a deal with the Taliban, however.

In August 1998, President Clinton launched an unsuccessful missile strike on Osama Bin Laden’s camps in Afghanistan, in retaliation for attacks on U.S. embassies in East Africa. At that time, Unocal suspended its participation in the consortium. It officially withdrew from the project in December, 1998, citing falling energy prices and the continuing turmoil in the region. The pipeline across Afghanistan was never constructed.

Discussion Questions
1. Should Unocal be held morally responsible for acts committed by its joint venture partner, SLORC? Specifically identify any acts by Unocal that were unethical and explain why.

2. Criminal law has amassed a considerable body of statutes and case law to draw the line between guilt and innocence of individuals associated with others who commit crimes. Can that line be defined for corporations, in situations like the one described in this case?

3. Do multinational corporations have a duty to avoid depriving individuals of rights that governments must respect under international human rights law? Do multinational corporations have a duty to help protect individuals from being deprived of those rights by business partners? Which rights affirmed by international norms would you consider morally binding on multinational corporations, and identify others that might not apply?

4. Natural resource-based industries (e.g., oil and gas, metal mining, and gem mining), companies cannot pick and choose where to do business--they must go where the resources are. Often, they face the prospect of forming partnerships with repressive governments whose reputations on human rights are poor, or where civil war or political instability makes the ethical pursuit of business difficult. A number of recent high-profile cases in international business ethics, including Royal Dutch/Shell in Nigeria, Freeport McMoRan in Irian Jaya, Mobil in Indonesia, DeBeers in Angola, and U.S. firms in apartheid South Africa turn on the problematical ethics of doing business with unsavory regimes. What generalizations can be made about the circumstances under which a business organization is morally responsible for the acts of a partner in a commercial joint venture? What questions would you ask in trying to determine if a corporation was guilty of an unethical act by a joint venture partner, such as a foreign government?
Exhibit 1: Map of Burma
Exhibit 2

Detail Map Showing Site of Yadana Gas Pipeline, Relative to Refugee Sites and Resistance Zones

Source: Le Monde Diplomatique (French), Date: January, 2000
Exhibit 3: Value of Peoples’ Contributions

Table 1: Value of “People’s Contributions” for rural projects. Source: Table 36 of the Union of Myanmar’s Review of The Financial, Economic and Social Conditions for 1996/97 (Figures for FY 95-96 and 96-97 are not final).
Appendix A: Chronology

1962 General Ne We seizes power in Burma and launches the Burmese “Way to Socialism.”

1982 Natural gas discovered in the Andaman Sea; Total invests $15 million.

1988 Pro-democracy demonstrations in Burma crushed.

1990 SLORC imposes harsh military rule and negates elections.

Dec. 1992 Unocal purchases 49% of Total’s share in the Yadana project.

Feb. 1995 Commercial discovery declared. The Burmese and Thai governments sign a thirty-year contract; Thailand agrees to purchase of gas from the Yadana field.


1995 Unocal launches $6 million community assistance program in pipeline area.

Oct. 1996 Pipeline construction begins. Two U.S. lawsuits are filed against Unocal, Beach, Imle, Total, SLORC and MOGE on behalf of Burmese villagers.

1997 U.S. Congress adopts economic sanctions against Burma, bars future investment; Massachusetts and other states adopt sanctions; Protesters introduce resolutions at Unocal shareholder meetings; U.S. court dismisses all defendants except Unocal, Beach and Imle; Unocal sells off U.S. assets, launches Project Energy Renaissance.


August 2000 Judge Lew grants summary judgment in favor of Unocal

December 2001 Oral argument on plaintiff’s appeal to the U.S. 9th Circuit
Appendix B: Glossary

<table>
<thead>
<tr>
<th>Name</th>
<th>Description</th>
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<tbody>
<tr>
<td>Aung San Suu Kyi</td>
<td>National League for Democracy party leader; Nobel laureate</td>
</tr>
<tr>
<td>Andaman Sea</td>
<td>West of Burma’s Tenasserim region, site of Yadana oil and gas field</td>
</tr>
<tr>
<td>Beach, Roger</td>
<td>Chairman, CEO of Unocal</td>
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<tr>
<td>CRG</td>
<td>Control Risk Group</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization, Geneva</td>
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<tr>
<td>Imle, John F.</td>
<td>President of Unocal</td>
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<tr>
<td>EarthRights International</td>
<td>Non-governmental organization opposed to pipeline</td>
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<td>Ka Hsaw Wa</td>
<td>Karen refugee, co-founder Earth Rights International</td>
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<tr>
<td>Karen</td>
<td>Ethnic minority group in pipeline region</td>
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<td>KNU</td>
<td>Karen National Union</td>
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<td>MGTC</td>
<td>Moattama Gas Transportation Company</td>
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<tr>
<td>MOGE</td>
<td>Myanmar Oil and Gas Exploration (Burmese state owned)</td>
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<tr>
<td>Myanmar</td>
<td>Burma, country name change made by SLORC in 1988</td>
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<tr>
<td>PSC</td>
<td>Production Sharing Contract</td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>Ne Win</td>
<td>General who seized power in Burma in 1962</td>
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<tr>
<td>PTTEP</td>
<td>Petroleum Authority of Thailand (Thai state owned)</td>
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<tr>
<td>SLORC</td>
<td>State Law and Order Restoration Council, military government after 1990; later renamed the State Committee for Peace and Development</td>
</tr>
<tr>
<td>Tenasserim</td>
<td>Panhandle region of Southern Burma on the Andaman Sea</td>
</tr>
<tr>
<td>Total, S.A.</td>
<td>French corporation; world’s eighth largest energy company</td>
</tr>
<tr>
<td>UMOC</td>
<td>Unocal Myanmar Offshore Co. Ltd. (Unocal subsidiary)</td>
</tr>
<tr>
<td>Unocal</td>
<td>Multinational corporation with offices in California and Malaysia</td>
</tr>
<tr>
<td>Yadana</td>
<td>Natural gas pipeline project linking Andaman Sea field to Thailand</td>
</tr>
</tbody>
</table>
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International Labor Organization


United Nations

United States


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Defendants/Appellees' Consolidated Answering Brief, *Doe v. Unocal* No. 00-56603 and *Roe v. Unocal,* No. 00-56628 in the U.S. Court of Appeals for the Ninth Circuit, May 7, 2001

Videotapes