Supreme Court of the United States, zaak 10-1491, Kiobel v. Royal Dutch petroleum Co., arrest van 17 april 2013

Alien Tort Statute – vordering van een vreemdeling uit onrechtmatige daad begaan in strijd met het volkenrecht of een verdrag van de Verenigde Staten – territoriale toepassing – vermoeden tegen extraterritorialiteit – onrechtmatige daad buiten de VS

Alien Tort Statute – action en responsabilité civile par un étranger pour infraction au droit international public ou à un traite liant les Etats Unis – application territoriale – quasi-délit commis en dehors des EU – présomption contre l'extraterritorialité

Syllabus

KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND KIOBEL, ET AL. v. ROYAL DUTCH PETROLEUM CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 10–1491. Argued February 28, 2012—Reargued October 1, 2012—Decided April 17, 2013

Petitioners, Nigerian nationals residing in the United States, filed suit in federal court under the Alien Tort Statute, alleging that respondents—certain Dutch, British, and Nigerian corporations—aided and abetted the Nigerian Government in committing violations of the law of nations in Nigeria. The ATS provides that "[t]he district courts hall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U. S. C. §1350. The District Court dismissed several of petitioners' claims, but on interlocutory appeal, the Second Circuit dismissed the entire complaint, reasoning that the law of nations does not recognize corporate liability. This Court granted certiorari, and ordered supplemental briefing on whether and under what circumstances courts may recognize a cause of action under the ATS, for violations of the law of nations occurring within the territory of a sovereign other than the United States.

Held: The presumption against extraterritoriality applies to claims under the ATS, and nothing in the statute rebuts that presumption. Pp. 3–14.

(a) Passed as part of the Judiciary Act of 1789, the ATS is a jurisdictional statute that creates no causes of action. It permits federal courts to "recognize private claims [for a modest number of international law violations] under federal common law." *Sosa v. Alvarez-Machain*, 542 U. S. 692, 732. In contending that a claim under the ATS does not reach conduct occurring in a foreign sovereign's territory, respondents rely on the presumption against extraterritorial application, which provides that "[w]hen a statute gives no clear indication of an extraterritorial application, it has none," *Morrison v. National Australia Bank Ltd.*, 561 U. S. ___, ___. The presumption "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord."

EEOC v. Arabian American Oil Co., 499 U. S. 244, 248. It is typically applied to discern whether an Act of Congress regulating conduct applies abroad, see, *e.g.*, id., at 246, but its underlying principles similarly constrain courts when considering causes of action that may be brought under the ATS. Indeed, the danger of unwarranted judicial interference in the conduct of foreign policy is magnified in this context, where the question is not what Congress has done but what courts may do. These foreign policy concerns are not diminished by the fact that *Sosa* limited federal courts to recognizing causes of action only for alleged violations of international law norms that are" 'specific, universal, and obligatory," 542 U. S., at 732. Pp. 3–6.

(b) The presumption is not rebutted by the text, history, or purposes of the ATS. Nothing in the ATS's text evinces a clear indication of extraterritorial reach. Violations of the law of nations affecting aliens can occur either within or outside the United States. And generic terms, like "any" in the phrase "any civil action," do not rebut the presumption against extraterritoriality. See, *e.g., Morrison*, *supra*, at ___. Petitioners also rely on the common-law "transitory torts" doctrine, but that doctrine is inapposite here; as the Court has explained, "the only justification for allowing a party to recover when the cause of action arose in another civilized jurisdiction is a well-founded belief that it was a cause of action in that place," *Cuba R. Co. v. Crosby*, 222 U. S. 473, 479. The question under *Sosa* is not whether a federal court has jurisdiction to entertain a cause of action provided by foreign or even international law. The question is instead whether the court has authority to recognize a cause of action under U.S. law to enforce a norm of international law. That question is not answered by the mere fact that the ATS mentions torts.

The historical background against which the ATS was enacted also does not overcome the presumption. When the ATS was passed, "three principal offenses against the law of nations" had been identified by Blackstone: violation of safe conducts, infringement of the rights of ambassadors, and piracy. *Sosa*, *supra*, at 723, 724. Prominent contemporary examples of the first two offenses—immediately before and after passage of the ATS—provide no support for the proposition that Congress expected causes of action to be brought under the statute for violations of the law of nations occurring abroad. And although the offense of piracy normally occurs on the high seas, beyond the territorial jurisdiction of the United States or any other country, applying U. S. law to pirates does not typically impose the sovereign will of the United States onto conduct occurring within the territorial jurisdiction of another sovereign, and therefore carries less direct foreign policy consequences. A 1795 opinion of Attorney General William Bradford regarding the conduct of U. S. citizens on both the high seas and a foreign shore is at best ambiguous about the ATS's extraterritorial application; it does not suffice to counter the weighty concerns underlying the presumption against extraterritoriality. Finally, there is no indication that the ATS was passed to make the United States a uniquely hospitable forum for the enforcement of international norms. Pp. 6–14.

621 F. 3d 111, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. KENNEDY, J., filed a concurring opinion. ALITO, J., filed a concurring opinion, in which THOMAS, J., joined. BREYER, J., filed an opinion concurring in the judgment, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.