Another ATS Case Seeking Supreme Court Review

As previously reported here, the United States Supreme Court recently granted certiorari in the case of Kiobel v. Royal Dutch Petroleum to consider the following questions: (1) Whether the issue of corporate civil tort liability under the Alien Tort Statute, 28 U.S.C. § 1350, is a merits question or instead an issue of subject matter jurisdiction; and (2) whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide or may instead be sued in the same manner as any other private party defendant under the ATS for such egregious violations. In addition to *Kiobel*, the Court also granted cert. in Mahamad v. Rajoub to consider whether whether the Torture Victim Protection Act of 1991 permits actions against defendants that are not natural persons.

There is now another cert. petition pending that follows up on the Ninth Circuit's recent decision in *Sarei v. Rio Tinto*, discussed here. Among other things. the petitionsers in *Sarei* ask the Supreme Court to grant the petition and to hear the case along with *Kiobel*. Unlike *Kiobel*, the *Sarei* petitioners raise arguments beyond the question of corporate liability under the ATS for human rights violations. Their questions presented are as follows: 1. Whether U.S. courts should recognize a federal common law claim under the ATS arising from conduct occurring entirely within the jurisdiction of a foreign sovereign, especially where the claim addresses the foreign sovereign's own conduct on its own soil toward its own citizens. 2. Whether U.S. courts should recognize a federal common law claim under the ATS based on aiding-and-abetting liability, even absent concrete factual allegations establishing that the purpose of the defendant's conduct was to advance the principal actor's violations of international law. 3. Whether a plaintiff asserting a federal common law claim under the ATS addressed to conduct occurring entirely within the jurisdiction of a foreign sovereign must seek to exhaust available remedies in the courts of that sovereign before filing suit in the United States, as international and domestic law require. 4. Whether federal common law claims asserted under the ATS for violations of international human rights law.

Interestingly, petitioners rely a great deal on former statemens of interest filed by

the United States filed in various ATS suits to buttress many of their arguments related to these questions presented. Given that the United State has not weighed in yet in *Kiobe*l, it will be interesting to see how the Solicitor General deals with these arguments, either in *Kiobel* or in this case in the event it is granted.

It could be a very big Supreme Court Term indeed for the ATS and for international law litigation generally before the Supreme Court.