

Judge Scheindlin, In Re South Africa Apartheid Litigation, and... A Non-Fully Dead ATS?

Although in the middle of the Easter holiday (at least for some), I find it is worth briefly reporting on the opinion of the U.S. District Court for the Southern District of New York *In re South Africa Apartheid Litigation*, that was delivered yesterday.

As stated and criticized by Julian Ku, most of the opinion deals with whether a corporation may be sued under the Alien Tort Statute. Julian Ku goes on explaining that as a lower court within that circuit, the district court should have been bound to follow that court's 2010 opinion *Kiobel v. Royal Dutch Shell*, which held that corporations cannot be sued under the ATS. However, the lower court judge, Shira Scheindlin, decided that since the Supreme Court had ended up dismissing the *Kiobel* plaintiffs on other grounds (e.g. extraterritoriality), the Court had *sub silentio* reversed the original *Kiobel* decision's ruling on corporate liability.

So, let's end in the same way he starts, i.e. with an open question: "maybe the use of the Alien Tort Statute against corporations for overseas activities isn't fully dead." (Add.: yet).