School of International Arbitration, Queen Mary,
University of London

# International Arbitration Case Law

*Academic Directors: Ignacio Torterola & Loukas Mistelis*[*]

## CHEVRON CORPORATION (U.S.A.) AND TEXACO PETROLEUM COMPANY (U.S.A.) V. THE REPUBLIC OF ECUADOR (PCA CASE NO. 2009-23) ORDER FOR INTERIM MEASURES

Case Report by Florencia Delia Lebensohn[**]
Edited by Ignacio Torterola[***]

---

An order for interim measures in an arbitration before a tribunal constituted in accordance with the treaty between the U.S.A. and the Republic of Ecuador concerning the encouragement and reciprocal protection of investments, signed 27 august 1993 and the UNCITRAL Arbitration Rules 1976.

| | |
|---|---|
| **Tribunal:** | V.V. Veeder QC (President), Dr. Horacio A. Grigera Naón, Professor Vaughan Lowe, QC. |
| **Claimants' Counsel:** | R. Doak Bishop, Wade M. Coriell, Isabel Fernández de la Cuesta, Edward G. Kehoe, Caline Mouawad, KING & SPALDING LLP, James Crawford SC Matrix Chambers. |
| **Defendant's Counsel:** | Ricardo Ugarte, MacNeil Mitchell, Eric Bloom, Tomas Leonard and Bruno Leurent, WINSTON & STRAWN LLP. |

[*] Directors can be reached by email at ignacio.torterola@internationalarbitrationcaselaw.com and loukas.mistelis@internationalarbitrationcaselaw.com

[**] Florencia Delia Lebensohn is currently pursuing the International Legal Studies LL.M. Program at New York University School of Law.

[***] Ignacio Torterola is the PTN/ICSID Liaison at the Embassy of Argentina in Washington, DC and an attorney representing Argentina in International Disputes.

INDEX OF MATTERS DISCUSSED

*Digest*

## *1. Facts of the Case*

This decision was issued in the dispute between Chevron Corporation and Texaco Petroleum Company ("the Claimants") and the Republic of Ecuador ("the Respondent") with respect to the violation of the Treaty between the United States of America and the Republic of Ecuador concerning the encouragement and Reciprocal Protection of Investment (the "BIT"), incorporating by reference the 1976 UNICTRAL Arbitration Rules ("the UNCITRAL Rules").

On 26 January 2011, the Tribunal issued an interim measure providing for an oral hearing on 6 February 2011 on the Claimants' Second Application for Revised Interim measures made on 14 January 2011. On 1 February 2011, the Respondent (i) declared that it will not make written submissions on the Claimants' Second Application for Revised Interim measures and (ii) submitted to the Tribunal a copy of an action brought by Chevron Corporation before the US District Court of the Southern District of New York against several defendants comprising the Lago Agrio plaintiffs and their representatives, but excluding the Respondent. This action was instituted pursuant to a claim of damages and injunctive relief under 18 U.S.C. ¶ 1962 ("RICO action").

On 2 February 2011, the Tribunal received a communication from the president of the Chamber of the Provincial Court of Justice of Sucumbíos informing it that the precise date of the judgment of the first instance court in the Lago Agrio case was uncertain but that it will be issued in the near future. On 3 February 2011, Chevron Corporation requested the US District Court for the Southern District of New York in the RICO action to issue a preliminary injunction against the defendants. By this order, the defendant as well as any person acting jointly with him would be prevented from "funding, commencing, prosecuting, advancing in any way, or receiving benefit from, directly or indirectly, any action or proceeding for recognition or enforcement of any judgment entered against Chevron [the Lago Agrio Case], or for prejudgment seizure or attachment of assets based on any such judgment".

The Tribunal held the oral hearing on 6 February 2011 and decided to continue with Paragraph C of its order for interim measures of 26 January 2011. On 8 February 2011, the Claimants informed the Tribunal that the US District Court for the Southern District

of New York had issued an order in favor of Chevron in the RICO action ordering the defendant "to temporarily refrain form taking any action to seek recognition or enforcement of a Lago Agrio judgment". On 9 February 2011, the Tribunal issued an order for interim measures.

## *2. Legal Issues Discussed in the Decision*

### *(a) Jurisdiction to decide upon an application for interim measures (Section A and B)*

The Tribunal decided, based on Articles 26, 32 (1) and 32 (2) of the UNCITRAL Rules that it had jurisdiction to decide upon the Claimants' Second Application for Interim Measures since the Claimants had established a sufficient case for the existence of such jurisdiction. The Tribunal recalled that Article VI.3 (6) of the BIT provides that an award rendered pursuant to Article VI.3 (a) (iii) of the BIT under the UNCITRAL Rules shall be binding on the parties to the dispute, and that the Contracting parties undertake the obligation to carry out the provisions contained in the award without delay and to provide for its enforcement.

### *(b) Form of the Interim Measure (Section C)*

The Tribunal acknowledged that, even if the urgency of this case prompted this decision to be made in the form of an order and not in that of an interim award, it can later confirm this order in the form of an interim award pursuant to Articles 26 and 32 of the UNCITRAL Rules. However, in any case, this cannot be construed as if the Tribunal intended for this decision to have the status of an award under the 1958 New York Convention.

## *3. Decision*

The Tribunal, taking into account the obligation of Respondent to enforce the award rendered in this arbitration, decided that (i) the Republic of Ecuador shall take all measures to suspend or cause to be suspended the recognition or enforcement of any judgment against Chevron in the Lago Agrio Case inside and outside Ecuador and shall inform the Tribunal of the measures taken and (ii) that the Claimants are jointly and severally responsible for any costs or losses which the Respondent may incur when carrying out this interim measure.