UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-1150-cv (L), 11-1264 (con) Caption [use short title] Chevron Corporation v. Donziger

Motion for: Leave to File Amicus Curiae Brief

Set forth below precise, complete statement of relief sought:

International Law Professors, as experts, seek leave to file an amici curiae brief explaining the application of international law in the case and in support of defendants-appellants

MOVING PARTY: International Law Professors Amici Curiae **OPPOSING PARTY:** Chevron Corporation

☐ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Donald K. Anton **OPPOSING ATTORNEY:** Randy Mastro

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Court-Judge/Agency appealed from: The Honorable Lewis A. Kaplan

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No
Has this relief been previously sought in this Court? ☐ Yes ☐ No
Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:
s/ Donald K. Anton **Date:** 8/6/2011

Has service been effected? ☑ Yes ☐ No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

Form T-1080

11-1150-cv(L),
11-1264-cv(CON)

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

CHEVRON CORPORATION,

Plaintiff-Appellee,

—against—

HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE, STEVEN R. DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER,

Defendants-Appellants,

(*complete caption and list of amici inside*)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK (NEW YORK CITY)

MOTION OF INTERNATIONAL LAW PROFESSORS FOR LEAVE TO FILE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND DISSOLVING THE PRELIMINARY INJUNCTION AND DISMISSING THE ACTION

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Defendants.

MOTION OF INTERNATIONAL LAW PROFESSORS FOR LEAVE TO FILE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND DISSOLVING THE PRELIMINARY INJUNCTION AND DISMISSING THE ACTION

Pursuant to Federal Rule of Appellate Procedure 29(b) counsel for prospective *amici curiae* respectfully moves for leave to file the attached BRIEF OF INTERNATIONAL LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND DISSOLVING THE PRELIMINARY INJUNCTION AND DISMISSING THE ACTION. The full list of *amici* is set out in the Brief, pp. i-ii. *Amici* sought consent from all parties to the filing of the brief. Defendants-Appellants consented to the filing, but Plaintiffs-Appellees did not.

Based on the background and interest of *amici*, counsel respectfully requests that the Court grant this motion. In support of the present motion, counsel states the following:

BACKGROUND

1. *Amici* are law professors and scholars from around the world, including the United States, with a particular expertise in all facets of pubic international law, including: transnational litigation, the international legal system, international courts and tribunals, the interrelationship between domestic law and international law, international dispute settlement, international human rights, human security law, and international environmental law.

2. Together, *amici* include recognized leaders the field of public international law. They have served by election and held leadership roles in key international law bodies, including: in the United Nations International Law Commission; as Special Advisor to the U.N. Secretary-General; in the United Nations Institute for Training and Research; in various International Law Association Committees; in the American Society of International Law and various international law societies around the world; and, as part of the American Bar Association/American Society of International Law Joint Task Force on Treaties in U.S. Law.

3. Together, *amici* have served in government and advised governments at the highest level on diverse international legal matters. *Amici* have served as advisors at the highest levels of the United Nations. *Amici* have appeared as counsel to governments and intergovernmental organizations before the International Court of Justice and the International Tribunal for the Law of the Sea. *Amici* have served as international negotiators.

4. Together, *amici* teach and write on topics that include all aspects of international law. They have produced leading texts in the field of transnational litigation, public international law, international environmental law and human rights.

INTEREST

5. *Amici* have a professional interest in the development and application of the international law in all the areas mentioned above. In this case in particular, *amici* desire to see the sound development and application of international law principles governing transnational litigation in world of separate territorial systems of law. Too frequently, domestic courts fail to appreciate the important part international law has to play in the resolution of transnational disputes.

6. *Amici* seek to provide the Court with an impartial discussion and analysis of the proper application of norms of international law. In particular, we seek to call to the attention of the Court public international law binding on the United States directly bearing on the instant case that the District Court failed to consider.

7. *Amici* have a further interest in this matter in seeing the relevant international law applied in a manner consistent with Article VI, cl. 2 of the Constitution of the United States and principles enunciated in *The Paquete Habana*, 175 U.S. 677 (1900) and *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

CONCLUSION

8. *Amici* are well-situated to advise the court about the importance of international law norms on this matter. Proposed *amici* believe that their

expertise will be of assistance to the court in resolving the issues raised by this case.

WHEREFORE, the undersigned counsel respectfully requests that the Court grant its motion for leave to file an *amicus curiae* brief.

DATED: May 9, 2011

Respectfully submitted,
By:/s/ Donald K. Anton
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ADDENDUM

11-1150-cv(L),
11-1264-cv(CON)

IN THE

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CHEVRON CORPORATION,

Plaintiff-Appellee,

—against—

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Defendants-Appellants,

(*complete caption and list of amici inside*)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF OF INTERNATIONAL LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND DISSOLVING THE PRELIMINARY INJUNCTION

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TABLE OF AUTHORITIES

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Amici are prepared, if so requested by the Court, to provide via email, pdf copies of any authority cited in this brief that may be difficult to locate.

Cases

Statutes

Federal Rules

Other Authorities

Publications

STATEMENT OF INTEREST[1]

Amici curiae seek leave of the Court to file this brief pursuant to Federal Rule of Appellate Procedure 29(a).

Amici curiae are law professors who practice, teach, and write about all aspects of public international law at law schools, colleges, and universities throughout the world. We have no personal stake in the outcome of this case. Our interest is in seeing the international rule of law upheld and applicable international law applied in a manner consistent with Article VI, cl. 2 of the Constitution of the United States and principles enunciated in *The Paquete Habana*, 175 U.S. 677 (1900) and *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). In particular, we seek to call to the attention of the Court public international law directly bearing on the instant case that the District Court failed to consider.

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[1] Pursuant to Fed. R. App. P. 29(c)(5) *amici* certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the preparation or submission of the brief; and no person other than *amici* contributed money intended to fund the preparation or submission of the brief.

SUMMARY OF ARGUMENT

This case involves important international legal issues associated with the exercise of adjudicatory jurisdiction by the District Court in this case. The District Court's failure to consider and apply international legal obligations binding on the United States has resulted in reversible error. The preliminary injunction should be dissolved and the case dismissed.

First, the preliminary injunction granted in this case is framed in such a way so as to violate the ancient customary international law principle of non-intervention. It does this by illegally intruding into Ecuador's external domestic affairs by, in essence, prohibiting any other state from independently ruling on the issue of recognition and enforcement of the Ecuadorian judgment against Chevron.

Second, the assertion of jurisdiction by the District Court is prohibited by the customary international law limitation of reasonableness because the defendants in this case lack any internationally legally significant contact with the United States.

Third, the District Court's preliminary injunction cannot stop Ecuadorian defendants from seeking to enforce the judgment outside the United States. It cannot compel any other state from assuming jurisdiction

and deciding for itself the issues of recognition and enforcement. It is accordingly a futile order and should be dissolved as improvidently granted.

Fourth, the District Court's injunctive relief offends basic standards of international comity because the preliminary injunction high handedly purports to stake out exclusive world-wide jurisdiction.

Fifth, the exhaustion of local remedies by Chevron in Ecuador is required by international law. Because the judgment in Ecuador is not final, the District Court should not have accepted jurisdiction.

ARGUMENTS[2]

I. THE DISTRICT COURT ERRED IN GRANTING PRELIMINARY INJUNCTIVE RELIEF THAT ENJOINS ALL ACTION, IN ALL COURTS ANYWHERE IN THE WORLD OUTSIDE ECUADOR, BY THE ECUADORIAN DEFENDANTS IN RELATION TO AN ECUADORIAN JUDGMENT IN THEIR FAVOR

This case presents the Court with important legal issues of first impression in relation to the preliminary injunction granted by the District Court. These issues bear on the foreign relations of the United States and involve breaches of international legal obligations of the United States resulting from the form of relief granted. The District Court framed the injunction in these terms:

> defendants . . . be and they hereby are enjoined and restrained, pending the final determination of this action, from directly or indirectly funding, commencing, prosecuting, advancing in any way, or receiving benefit from any action or proceeding, ***outside the Republic of Ecuador***, for recognition or enforcement of the judgment . . . rendered in *Maria Aguinda y Otros v. Chevron Corporation* . . . .[3]

Several features of this formulation of the preliminary injunction warrant careful attention. First, the injunction is directed at *Ecuadorian* nationals who largely comprise indigenous peoples and remote, simple farmers. The defendants have had no legally meaningful contacts with or presence in the

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[2] Pursuant to Fed. R. App. P. 28(i), *amici* hereby incorporate the Statement of the Facts in its entirety from the Brief for Ecuadorian defendant-appellants Naranjo and Payaguaje.

[3] *Chevron Corp. v. Donziger*, (SPA129)(emphasis added).

United States. Indeed, it appears to *amici* most Ecuadorian defendants have had no contact or presence at all in the United States. Second, the injunction attempts to arrogate to the District Court *world-wide exclusive jurisdiction* to determine for the entire world, the issues of recognition and enforceability of an *Ecuadorian* judgment. Third, the *Ecuadorian* judgment relates, ultimately, to an *Ecuadorian* action for breaches of *Ecuadorian* law relating to damages to persons and property in *Ecuador*.

Neither the District Court nor any other party to this proceeding of which we are aware has cited any statute, rule, case or treaty to support the District Court's authority to grant an injunction that, in essence, purports to preclude all courts, in any nation of the world outside of Ecuador from independently determining the issues of recognition and enforceability. A diligent search by *amici* failed to uncover any such authority. Instead, as this brief demonstrates, applicable international law requires that the District Court's preliminary injunction be dissolved and the case dismissed.

A. The District Court's Order for Injunctive Relief Breaches the Fundamental International Legal Obligation of the United States not to Intervene in the Domestic Affairs of Other States

The international legal pillars of independence,[4] autonomy,[5] and equality[6] of states are among the oldest legal norms of international law.[7] International law is predicated on adherence to the fundamental rule which recognizes that states occupy a defined territory and may effectively exercise jurisdiction (subject to the increasing limitations of international law)[8] over all matters and persons in that territory to the exclusion of all other states.[9] Often conceived of as part of state sovereignty,[10] these norms remain fundamental

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[4] *The Chinese Exclusion Case,* 130 U.S. 581, 604-606 (1889); *The Louis*, 2 Dod. 210, 243-44 (Adm. 1817).

[5] *The Lotus Case* (France v. Turkey), P.C.I.J., Ser. A. No. 1, 4 at 18 (1927).

[6] *The Antelope,* 23 U.S. (10 Wheat.) 66, 122 (1825). *See* EDWIN DEWITT DICKINSON, THE EQUALITY OF STATES IN INTERNATIONAL LAW (1920).

[7] *See* LOUIS HENKIN, INTERNATIONAL LAW: POLITICS AND VALUES 8-12 (1995).

[8] *S.S. Wimbledon Case*, P.C.I.J., Ser. A, No. 1 at 25 (1923). *See* Henry Schermers, *Aspects of Sovereignty*, in STATE, SOVEREIGNTY AND INTERNATIONAL GOVERNANCE 185-192 (GERARD KREIJEN, ED., 2002). As observed: "States have increasingly used their power to limit their power . . . ." Elihu Lauterpacht, *Sovereignty – Myth or Reality*, 73 INT. AFF. 137, 149 (1997).

[9] *Convention on the Rights and Duties of States*, 49 Stat. 3097, 165 L.N.T.S. 19 (Dec. 26, 1933); *The Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812); *Corfu Channel Case* (U.K. v. Alb.), 1949 I.C.J. 4, 35 (Apr. 9)(Merits).

[10] J.L. BRIERLY, THE LAW OF NATIONS 142 (4th ed., 1949).

because respect for independence, autonomy and equality is crucial in securing international peace, order and cooperation.[11]

In support of these important norms, customary international law has for centuries prohibited a state from intervening in the domestic affairs of another state.[12] This principle of non-intervention has also long precluded interference by one state in the relations between two or more other states without consent.[13] Article 8 of the *Convention on Rights and Duties of States* (the Montevideo Convention), to which both the United States and Ecuador are party, specifically provides that "[n]o state has the right to intervene in the internal or external affairs of another."[14]

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[11] *Le Louis*, 2 Dod. 210, 243-44 (Adm. 1817). *See also* WOLFGANG FRIEDMANN, THE CHANGING STRUCTURE OF INTERNATIONAL LAW 213-214 (1964); Arthur Watts, *The Importance of International Law*, IN THE ROLE OF LAW IN INTERNATIONAL POLITICS 5-16 (MICHAEL BYERS, ED., 2000).

[12] *See, e.g.,* JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS §20 at 28-29 (5th ed., 1857); HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW §63, at 91-92 (RICHARD HENRY DANA, ED.)(8th ed., 1866); L. OPPENHEIM, I INTERNATIONAL LAW: A TREATISE 181-191 (1905); CHARLES CHENEY HYDE, I INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES §69 at 116-118 (1922).

[13] WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW §88 at 337 (PEARCE HIGGINS, ED.)(8th ed., 1924). Until threats and use of force were made unlawful, however, it remained unhappily possible to turn an unlawful intervention into a permissible war.

[14] Article 8, *Convention on the Rights and Duties of States*, 49 Stat. 3097, 165 L.N.T.S. 19 (Dec. 26, 1933). See UNITED NATIONS TREATY COLLECTION, LEAGUE OF NATIONS TREATY SERIES, for status and parties to the Convention,

In the *Spanish Zone of Morocco Claims* arbitration, Arbitrator Huber emphasized:

> territorial sovereignty constitutes such a fundamental feature of modern public [international] law that foreign intervention in the relations between the State and the individuals under its territorial sovereignty can only be admitted by way of exception.[15]

The exceptions mentioned (which remain contested) relate to the ability to intervene "benignly" with a physical presence to, for instance, protect nationals or broader humanitarian values.[16] None of these exceptions conceivably apply in this case. Moreover, even when an exception might legitimize an intervention under international law, such an intervention is ordinarily viewed as a hostile act, precisely because it constitutes an attack upon the independence, autonomy and equality of the state that is the subject

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available online at <http://treaties.un.org/pages/showDetails.aspx?objid=0800000280166aef>. *See also* Article 2(7) of the *Charter of the United Nations*, 1 UNTS XVI (October 24, 1945) and n.20 *infra*.

[15] *Affaire des biens britanniques au Maroc espagnol Espagne contre Royaume-Uni. La Haye*, 1er mai 1925 (Great Britain v. Spain), II R.I.A.A. 615 (1949)(as translated by Hersch Lauterpacht in H. LAUTERPACHT, THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY §18 at 95 n.2 (1933). *See also* WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW §89 at 338 (PEARCE HIGGINS, ED.)(8th ed., 1924).

[16] Both classic and contemporary publicists admit to limited exceptions to the norm prohibiting intervention. *See, e.g.*, HENKIN, PUGH, SCHACHTER & SMIT, INTERNATIONAL LAW 929-940 (3rd ed., 1993); OPPENHEIM, I INTERNATIONAL LAW: A TREATISE 181-191 (1905).

of intervention.[17] The prohibition on intervention by one state in the domestic affairs of other states continues to be governed today by customary international law, as well as by Articles 2(4)[18] and 2(7)[19] of the *United Nations Charter*.

As regards the customary law of non-intervention, which governs the instant case along with Article 8 of the *Montevideo Convention* in which the United States expressly committed itself to non-intervention as a principle of positive law,[20] the International Court of Justice (ICJ) stated in *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (the *Nicaragua* case) that:

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[17] WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW §88 at 337 (PEARCE HIGGINS, ED.)(8th ed., 1924).

[18] Article 2(4) of the *Charter of the United Nations*, 1 UNTS XVI (October 24, 1945), prohibits "the threat or use of force against the territorial integrity or political independence of any state." *See* CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 29 (2d ed., 2004).

[19] Article 2(7) of the *Charter of the United Nations*, 1 UNTS XVI (October 24, 1945), states that "[n]othing contained in the . . . Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ." *See* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 139-154 (BRUNO SIMMA, ED., 1995).

[20] Article 2(7) may also apply as a rule of non-intervention in this case. *See Certain Questions Concerning Diplomatic Relations* (Honduras v. Brazil), Application Instituting Proceeding by the Republic of Honduras against the Federal Republic of Brazil at ¶¶ 5, 8 and 16. (available at: http://www.icj-cij.org/docket/files/147/15935.pdf). *See also* Schemers, *supra* n. 8 (Article 2(7) precludes intervention by states *and* the United Nations).

> [t]he principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law. . . . The existence in the *opinio juris* of States of the principle of non-intervention is backed by established and substantial state practice.[21]

Later in the *Nicaragua* case, the ICJ took up the content of the principle of non-intervention. In general terms, the ICJ states that "the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States" which "each State is permitted by the principle of State sovereignty, to decide freely. . . ."[22]

Unlawful intervention has taken many forms, ranging from the use of force to more subtle but insidious attacks on the political and legal independence of a state.[23] At bottom, though, an intervention is illegal when one state presumes to take action in relation to another state's domestic matters in order to alter those domestic matters legally or politically.[24] In

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[21] *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicagragua v. United States of America), [1986] ICJ Rep. 14, at 106.

[22] *Id.*

[23] PHILIP C. JESSUP, A MODERN LAW OF NATIONS 172-174 (1948); CHARLES CHENEY HYDE, I INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES §69 at 116-118 (1922).

[24] *See* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 150-151 (BRUNO SIMMA, ED., 1995). While illegal intervention was once thought to require "dictatorial interference" in another state, contemporary authority is to

considering the relationships entailed in recognition and enforcement of foreign judgments, it is certain that each state has exclusive jurisdiction over the decision. In other words, the decision to recognize a foreign judgment is a matter "of domestic jurisdiction" that international law protects "from unwanted intrusion from outside . . . ."[25]

Turning to the preliminary injunction granted by the District Court in the instant case, it is clear that it constitutes an internationally unlawful attempt to intervene in the domestic legal affairs of Ecuador. First, it is important to remember the posture of this case. This is not an action by successful foreign litigants for the recognition and enforcement of a foreign judgment in the United States. Rather, the unsuccessful foreign defendant, Chevron, has commenced a pre-emptive action against foreign nationals, over their objection, in a U.S. Court. It is in this context that the District Court has interposed itself and asserted what is in essence worldwide exclusive jurisdiction to determine for the whole world the issues of recognition and enforcement – an undoubted unwanted intrusion into the internal administration of Ecuadorian justice.

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the contrary because only the Security Council may lawfully interfere dictatorially under the U.N. Charter. *Id.* at 150.

[25] J.E.S. Fawcett, *General Course on Public International Law*, 132 REC. DES COURS 363, 392 (1971-I).

Second, in practical effect, the preliminary injunction directly intrudes into the external administration of Ecuadorian justice because recognition and enforcement of Ecuadorian judgments are issues each state is permitted to decide freely. Here, the District Court's preliminary injunction purports to interfere with Ecuador's relationship with every state in the world in which the judgment might be recognized and enforced, except the United States. It does this by seeking to prohibit every state in the world except the United States from determining the issues of recognition and enforcement. This sort of intrusion into the international relationship between Ecuador and other states puts the United States in violation of a key international obligation because each state is permitted to decide freely whether a foreign judgment should be recognized and enforced. For this reason this Court should reverse the District Court and dissolve the preliminary injunction.

A failure to reverse and dissolve the preliminary injunction will place the United States in violation of the principle of non-intervention embodied in customary international law and Article 8 of the *Montevideo Convention*. Such a failure will enable Ecuador to raise an inter-state claim against the United States by invoking U.S. responsibility.[26] Ecuador will also be entitled to take

[26] Article 42(a), *Responsibility of States for Internationally Wrongful Acts*, G.A. Res. 56/83, Annex, U.N. Doc. A/RES/56/83 (28 January 2002).

appropriate counter-measures.[27] Under international law, the United States has an immediate duty to cease its violation of the principle of non-intervention caused by the District Court's preliminary injunction in this case.[28] Failing that, Ecuador is entitled to assert its claim against the United States before any international court or tribunal with jurisdiction.[29]

B. The District Court Does Not Have Jurisdiction Over Ecuadorian Defendants Under International Law

The District Court erred in failing to consider and apply accepted international legal limits in relation to its jurisdiction to adjudicate. These limits are tied to the principle of non-intervention in the internal affairs of other states[30] and if, as here, these "limits are transgressed, then international law is violated . . .."[31] It is clear that under international law, the District Court has no jurisdiction over the Ecuadorian defendants in this case. These

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[27] *Id.*, Article 49.

[28] *Id.*, Article 30. The U.S. also has a duty to make appropriate reparations. *Id.*, Article 31.

[29] This assumes that all further avenues of appeal in the United States are exhausted by the defendants -- a requirement that Chevron has failed to observe before launching this action. *See* Part II *infra.*

[30] *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 309 (6th ed., 2003).

[31] DAMROSCH, HENKIN, MURPHY & SMIT, INTERNATIONAL LAW 756 (5th ed., 2009).

defendants lack *any* legally significant contacts at international law with the United States.[32]

> It is recognized today that:
>
> [t]he exercise of jurisdiction by courts of one state that affects interests of other states is now generally considered as coming within the domain of customary international law and international agreement.[33]

Customary international law's "operating system"[34] provides for the allocation of competences of different states. As part of this allocation, at a fundamental level, international law divides adjudicatory jurisdiction along the broad lines described by Judge Fitzmaurice in the *Barcelona Traction* case:

> international law does not impose hard and fast rules on States delimiting spheres of national jurisdiction . . . but leaves to States a wide discretion. It does however (a) postulate the existence of limits . . .; and (b) involve for every State an obligation to exercise moderation and restraint as to the extent of the jurisdiction assumed by its courts in

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[32] International law recognizes only five principles on which the projection of extra-territorial jurisdiction may be premised are: territorial, nationality, passive nationality, security, and universality. *See* ANTON, MATHEW & MORGAN, INTERNATIONAL LAW 59-77 (2005). None are implicated in this case.

[33] AMERICAN LAW INSTITUTE, I RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, Chap. 2, Introductory Note, at 304 (1987).

[34] The idea that apportionment of jurisdiction between states serves as part of the operating system for the functioning of international relations between states comes from Charlotte Ku and Paul F. Diehl, *International Law as Operating and Normative Systems: An Overview*, in INTERNATIONAL LAW: CLASSIC AND CONTEMPORARY READINGS 3-13 (KU & DIEHL, EDS, 2d ed., 2003).

> cases having a foreign element, and to avoid undue encroachment on a jurisdiction more properly appertaining to, or more appropriately exercisable, by another state.[35]

This is akin to the position taken by the American Law Institute. According to the Institute, the exercise of adjudicatory jurisdiction must be "reasonable" in order to be lawful under both the United States law of foreign relations and, more importantly for present purposes, general international law.[36] Section 421(1) of the Restatement (Third) of the Foreign Relation Law of the United States provides:

> A state may exercise jurisdiction through its courts to adjudicate with respect to a person or thing if the relationship of the state to the person or thing is such as to make the exercise of jurisdiction reasonable.
>
> The mere presence of a link between a person and a forum does not in itself justify the exercise of adjudicatory power by a state. Instead, the requirement of reasonableness requires a process of analysis and assessment that considers: the relative importance of the link(s) between the state

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[35] *Barcelona Traction, Light and Power Co.* (Belg. v. Spain) 1970 I.C.J. 3, 105 (Feb. 5)(Separate Opinion of Judge Sir Gerald Fitzmaurice).

[36] AMERICAN LAW INSTITUTE, I RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, sec. 403, comment *(a)*. *See also* Andreas F. Lowenfeld, *Public Law in the International Arena*, 163 REC. DES COURS 311 (1979-II).

asserting jurisdiction and the individual; the legitimate expectations of those affected; the likelihood of conflict with other states.[37]

The United States Supreme Court has expressly approved of this balancing test for considering exercise of international adjudicatory jurisdiction. In *F. Hoffman LaRoche Ltd v. Empagran, S.A.*, the Supreme Court used this balancing test[38] to vacate the application of U.S. antitrust law to certain defendants. The Court found that it was unreasonable to apply U.S. antitrust law to foreign conduct that causes foreign harm, where plaintiff's claim arises solely for that harm. The Supreme Court found that the "application of those laws creates a serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs."[39] The justification for the interference, moreover, was deemed "insubstantial" by the Court.[40]

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[37] *See* OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 256-261 (1991).

[38] *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164-165, 124 S.Ct. 2359, 2366-2367 (2004). For cases reaching various results, but recognizing the applicability of the Restatement balancing test, *see also In re Alstom SA*, 406 F.Supp.2d 346, 371 (S.D.N.Y. 2005); *Odyssey Marine Exploration, Inc. v. Unidentified, Shipwrecked Vessel*, 675 F.Supp.2d 1126, 1137 (M.D. Fla. 2009); *Guardian Ins. Co. v. Bain Hogg Intern. Ltd.*, 52 F.Supp.2d 536, 541-543 (D.V.I. 1999).

[39] *Id.*, 542 U.S. at 169, 124 S.Ct. at 2369.

[40] *Id.*, 542 U.S. at 165, 124 S.Ct. at 2367.

In the present case, the District Court recognized the applicability of the Restatement on Foreign Relations[41] and the international law it reflects. However, the District Court failed to engage in the requisite threshold inquiry about its jurisdiction to adjudicate under the international principle of reasonableness set out in the Restatement.[42] Instead, the District Court ignored the critical question of the international legal limits of its jurisdiction, and mistakenly moved immediately to the Restatement's standards governing recognition and enforcement.[43]

Applying the Restatement's reasonableness balancing test by weighing and evaluating all the relevant facts of the instant case clearly establishes the want of jurisdiction in this action. The Ecuadorian defendants are indigenous peoples and remote farmers living in the Amazonian rainforest and have

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[41] *Chevron Corp. v. Donziger*, (SPA80-88).

[42] The limits on jurisdiction are "relevant . . . to recognition and enforcement of foreign judgments" rules. AMERICAN LAW INSTITUTE, I RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, Chap. 2, Introductory Note, at 305 (1987). The District Court engaged in a reasonableness analysis as required by Constitutional due process. *Chevron Corp. v. Donziger*, (SPA101-103). We believe that this analysis was also deficient. However, a due process analysis is not the same as the requirement under international law which "calls for restraint" and "rules out decisions that determine the legality of jurisdiction solely on the ground of the existence of a jurisdictional base." OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE 259 (1991).

[43] *Chevron Corp. v. Donziger*, (SPA79-88).

absolutely no real or meaningful link with the United States on which jurisdiction could be established under international law. Most, if not all, of the Ecuadorian defendants have never been to the United States. There is no indication that the Ecuadorian defendants have property or other assets in the United States. The Ecuadorian defendants do no business in the United States in any real sense of the meaning of "doing business."

It is true that the Ecuadorian defendants initially sought the protection of law in the courts of the United States and retained a lawyer for that purpose, but that protection was denied in the Southern District of New York and the Ecuadorian defendants' case was ultimately dismissed on *forum non conveniens* grounds.[44] It may also be true that the Ecuadorian defendants have been involved in other litigation related to this matter in the U.S. because they have been unlucky enough to have such a dogged adversary as Chevron (as is its right). However, asserting, protecting or trying to determine valid legal rights in *other litigation* is a manifestly insufficient link by which to bootstrap international adjudicatory jurisdiction[45] as the District Court has attempted to

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[44] *Aguinda v. Texaco, Inc.,* 142 F.Supp. 2d 534 (S.D.N.Y. 2001), *aff'd* 303 F.3d 470 (2d Cir. 2002).

[45] This conclusion is strengthened by the fact that under the Restatement an alien defendant can appear specially to challenge the exercise of jurisdiction. AMERICAN LAW INSTITUTE, I RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, sec. 421(3) (1987). *See Ehrenfeld v.*

do in this case.[46] Using the Ecuadorian defendants' bad luck in this way is inherently unfair and one hopes that it is not simply a matter of:

> [w]hen push comes to shove, the domestic forum is rarely unseated. . . . When there is any doubt, national interest will tend to be favored over foreign interests.[47]

C. The District Court's Order for Injunctive Relief Constitutes a Futile Act because the Injunction Cannot Preclude Other States From Exercising Jurisdiction

Given that the District Court's preliminary injunction violates the principle of non-intervention and assumes adjudicatory jurisdiction when international law does not allow so, it is not surprising that the District Court anticipated that its injunction would not effectively constrain the defendants conduct. In contemplation of an ultimate declaration on Chevron's complaint that the Ecuadorian judgment is unenforceable, the District Court wrote that:

> even if enforcement actions were to be filed abroad in violation of an injunction, a decision by this Court with respect to enforceability of the Ecuadorian judgment likely would be recognized as sufficiently persuasive authority – if not binding on the parties – to dispose of the question of enforceability in the foreign *fora*.[48]

Mahfouz, 9 N.Y.3d 501, 509 (N.Y. 2007); *Pan Atl. Group, Inc. v.Quantum Chem. Co.*, No. 90-cv-5155, 1990 WL 180160, at *3 (S.D.N.Y. Nov. 8, 1990); *Andros Compania Maritima S.A. v. Intertanker Ltd.*, 714 F. Supp. 669, 675-76 (S.D.N.Y. 1989).

[46] *Chevron Corp. v. Donziger*, (SPA98).

[47] *Laker Airways v. Sabena, et al.,* 731 F.2d 909, 951 (D.C. Cir. 1984)

[48] *Chevron Corp. v. Donziger*, (SPA103).

If anything about this case seems abundantly clear it is that no injunction, including the outstanding preliminary injunction, will preclude the courts of any other state from making an independent determination on their own willingness to recognize and enforce the Ecuadorian judgment. It is hoary international legal doctrine indeed that teaches that no state is bound to respect the judgments of the courts of another state absent agreement, especially when made in regard to non-residents.[49] As Justice Marshall wrote in 1812:

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction and an investment of that sovereignty to the same extent in that power which could impose such restriction.[50]

In the instant case, *amici* believe that courts in many other states are likely to look with extreme disfavor on the District Court's preliminary injunction and to be strongly disinclined to abide by its terms. Indeed, *amici* are of the view that the decision of the District Court to grant an injunction as it has, world-wide in scope, is much more likely to antagonize the courts of

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[49] *See, e.g.,* JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS §22 at 30-31 (5th ed., 1857).

[50] *The Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812). Of course, the absoluteness referred to by Marshall has been significantly circumscribed over the last 200 years through practice and agreement by states. *See* n.8 *supra.*

other states than to be treated as "sufficiently persuasive authority" as is unrealistically hoped for by the District Court.

Be that as it may, the fact remains that injunctive relief ordered by the District Court cannot prohibit non-resident Ecuadorians from seeking recognition and enforcement of the Ecuadorian judgment in any state -- but the United States -- in which Chevron may have assets. Likewise, the injunctive relief ordered by the District Court cannot, by the fiat of a judicial injunction by one country, preclude the courts in other states from making their own independent determinations about recognition and enforceability. That is the self-evident essence of the international legal system within which states operate.[51]

For instance, Chevron has significant operations and assets in Australia.[52] If, after the appellate process concludes in Ecuador and the Ecuadorian defendants in this case remain victorious, then Australian courts would certainly judge the matter of recognition and enforcement independently of the District Court's preliminary injunction and any declaratory judgment and permanent injunction that might follow. Both

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[51] For a strikingly similar analysis of the situation *within* the federal system of the United States, see DAN B. DOBBS, REMEDIES: DAMAGES, EQUITY, RESTITUTION 63-64 (1973)(judges in State B are "not obliged to pay the slightest heed to [an] injunction" issued in State A).

[52] *See* Chevron Australia, http://www.chevronaustralia.com/home.aspx.

Australian Courts and the Australian Parliament have been hostile to recognizing the exercise of excessive jurisdiction by foreign courts.[53] It is certain that under the various Australian *Foreign Judgments Acts*,[54] that no court would recognize a declaratory judgment and injunction asserted as a defense by Chevron because these Acts are limited to money judgments. The District Court's orders would not serve as defenses for Chevron at common law in Australia either because a foreign injunction is only potentially enforceable if it seeks to restrain an act within the forum issuing the injunction.[55]

All of this is not to say that states cannot agree, as they often have, to harmonize their legal systems and cooperate in the realm of adjudicatory jurisdiction. In this case, however, no treaty or agreement between the United States and other states requires or permits the result hoped for by the District

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[53] *See Foreign Proceedings (Excess of Jurisdiction) Act* 1984 (Cth). *See also* PE NYGH AND MARTIN DAVIES, CONFLICT OF LAWS IN AUSTRALIA 197-198 (2002); Deborah Senz and Hilary Charlesworth, *Building Blocks: Australia's Response to Foreign Extraterritorial Legislation*, 2 MELB.J.INT'L L. 69 (2001).

[54] *Foreign Judgments Act* 1991 (Cth); *Foreign Judgments Act* 1954 (ACT); *Foreign Judgments Act* 1955 (NT); *Foreign Judgments Act* 1973 (NSW); *Reciprocal Enforcement of Judgments Act* (Qld); *Foreign Judgments Act* 1971 (SA); *Foreign Judgments Act* 1963 (Tas); *Foreign Judgments Act* 1962 (Vic); *Foreign Judgments Act* 1963 (WA).

[55] *James North & Sons, Ltd. v. North Cape Textiles, Ltd.* [1984] 1 WLR 1428; *Rosler v. Hilbery* [1925] Ch 250.

Court. Indeed, as shown, the District Court's action directly violates the United States own obligations under the Montevideo Convention and under customary international law.

All of this shows that the District Court's preliminary injunction is a futile act. It is, of course, hornbook law that equity will not do a "vain or useless thing."[56] In the present case, that is precisely what has happened because compliance with the preliminary injunction outside of the United States cannot be compelled. Accordingly, the preliminary injunction ought to be dissolved.

D. The Preliminary Injunction, to the Extent it Presumes to Arrogate an Exclusive World-wide Jurisdiction to Itself, Offends Basic Standards of International Comity

International comity, *comitas gentium*, as it is used in international law connotes a form of accommodation characterized by mutual respect and good neighborliness.[57] Comity is expressed similarly in the United States as a form of "recognition which one nation allows within its territory to the legislative,

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[56] 27A AM. JUR. 2D *Equity* § 91 (Westlaw database updated May 2011). *See Allen Bradley Co. v. Local Union No. 3, International Brotherhood of Electrical Workers*, 145 F.2d 215, 223 (2d Cir. 1944), *rev'd on other grounds*, 325 U.S. 797, 65 S.Ct. 1533.

[57] Ian Brownlie, Principle of Public International Law 28 (6th ed., 2003).

executive, or judicial acts of another nation . . . ."[58] It "dictates that American courts . . . respect . . . the integrity and competence of foreign tribunals."[59] It recognizes the strong "local interest in having localized controversies decided at home."[60] It takes account of what is at stake in enjoining an action from proceeding in foreign legal systems -- the creation of an affront to other states.[61]

In the instant case the District Court improperly disregarded these fundamental precepts. As discussed *supra*, Part I.C, the preliminary injunction issued by the District Court is breathtaking in its attempt to arrogate a world-wide and exclusive jurisdiction in this case. The action of a single American trial judge, essentially ordering the preclusion, in pre-emptive fashion, of all courts in the world outside of Ecuador from independently deciding the issues of recognition and enforcement is an extraordinary breach of comity.

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[58] *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). *See also* Joel Paul, *Comity in International Law*, 32 HARV. INT'L L.J. 1 (1991).

[59] *Roby v. Corporation of Lloyds,* 996 F.2d 1353, 1363 (2d Cir. 1993)(citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)).

[60] *Piper Aircraft v. Reyno,* 454 U.S. 235, 241 (1981)(quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947)).

[61] *Breman v. Zapata*, 407 U.S. 1, 12 (1972); *Sussman v. Bank of Israel*, 801 F.Supp. 1068, 1078 (S.D.N.Y. 1992); *Murty v. Aga Khan*, 92 F.R.D. 478, 482 (E.D.N.Y, 1981).

II. THE DISTRICT COURT ERRED IN GRANTING INJUNCTIVE RELIEF BECAUSE PLAINTIFF IS BARRED FROM SEEKING RELIEF AGAINST THE ECUADORIAN JUDGMENT OUTSIDE ECUADOR UNTIL ALL ECUADORIAN REMEDIES ARE EXHAUSTED

Under well established customary international law,[62] where a wrong is allegedly done to an alien that is imputable to a state, the alien must give the State the opportunity of redressing that wrong by seeking a remedy from the offending State's own legal system. Until all local remedies have been exhausted by the injured alien, the alien's state of nationality is precluded from exercising diplomatic protection of its national or making international claims on the national's behalf. As the ICJ in the *Interhandel* case emphasized:

> A State may not even exercise its diplomatic protection, much less resort to any kind of international procedure of redress, unless its subject has previously exhausted the legal remedies offered him by the State of whose action he complains.[63]

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[62] See the cases collected in C.F. AMERASIGNHE, LOCAL REMEDIES IN INTERNATIONAL LAW (2d ed., 2004). See also A.A. Cançado Trinidade, *Origin and Historical Development of the Rule of Exhaustion of Local Remedies in International Law*, 12 REV. BELGE DE DROIT INTERNATIONAL 511, 514-524 (1979).

[63] *Interhandel Case* (Switz. v. U.S.), 1959 I.C.J. 6, 46 (Mar. 21)(preliminary objections)(Separate opinion of Judge Córdova). *See also Case Concerning Elettronica Sicula S.p.A. (ELSI)*(U.S v. Italy), 1989 ICJ 15, 41-48 (20 July)(rejecting the claim that the rule on exhaustion does not apply in situations where declaratory judgments are sought).

This important rule of international dispute settlement, naturally, does not directly control the instant case as *customary* international law. The United States is not seeking to exercise diplomatic protection on behalf of Chevron by advancing a claim against Ecuador for the wrongs Chevron alleges to have suffered at the hands of Ecuadorian justice. That does not mean, however, that it has no bearing on the disposition of the instant appeal. The rule of exhaustion is a "general principle of law recognized by civilized nations"[64] and has compulsory application in this case as such.[65]

General principles of law, as a source of international law, apply to the administration of justice in domestic settings.[66] In the context of private

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[64] Art. 31(1)(c) of the Statute of the International Court of Justice recognizes that general principles of law give rise to binding international obligations on states.

[65] *See generally* Jonathan Charney, *Is International Law Threatened by Multiple International Tribunals?*, 271 REC. DES COURS 150, 190, 196-197, 200-210 (1998); John R. Crook, *Applicable Law in International Arbitration: The Iran-U.S. Claims Tribunal Experience*, 83 A.J.I.L. 278, 292-299 (1989); Wolfgang Friedmann, *The Uses of "General Principles" in the Development of International Law*, 57 A.J.I.L. 279 (1963); BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 177-180 (1953).

[66] *Prosecutor v. Tadić*, ICTY, Case No. IT-94-1-AR72 (1995), 35 I.L.M. 32 (1996), at ¶¶ 42-43 (general principle of law that tribunals be "established by law" can "only impose an obligation on States concerning the functioning of their own national systems"); *Kuwait and American Independent Oil Company (Aminoil)*, Award of Sept. 26, 1977, 21 I.L.M. 976 (1982), at ¶¶ 6-10 (law of the state and general principles should be considered a common body of law). *See generally* A.A. CANÇADO TRINDADE, THE APPLICATION OF

international civil litigation, it is not hard to see the utility of the requirement of exhaustion of local remedies.[67] In what is "increasingly . . . one world" it serves as a basic rule for "limiting duplicative litigation."[68] In addition to the efficiencies entailed in the administration of justice (which is well recognized in U.S. jurisprudence),[69] the rule ensures that the state in which a breach of law is alleged to have occurred has "an opportunity to address it by its own means, within the framework of its own domestic legal system."[70] In transnational civil litigation involving the operation of transnational corporations and direct foreign investment it also ensures respect for the sovereignty of the host state.[71]

THE RULE OF EXHAUSTION OF LOCAL REMEDIES IN INTERNATIONAL LAW 279-285 (1983).

[67] *See* Brief of *Amici Curiae* Sir Ninian M. Stephen and Judge Stephen M. Schwebel in Support of Rio Tinto's Cross-Appeal Regarding Exhaustion of Local Remedies 5-7 (filed Feb. 28, 2003), in *Sarei v. Rio Tinto, PLC*, 456 F.3d 1069 (9th Cir. 2006).

[68] *Cf Philip Med. Sys. Int'l B.V. v. Bruteman*, 8 F.3d 600, 605 (7th Cir. 1993).

[69] *Woodford v. Ngo*, 548 U.S. 81, 89, 126 S.Ct. 2378, 2385 (2006); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 627-28 (5th Cir.1996).

[70] *Interhandel Case* (Switz. v. U.S.), 1959 I.C.J. 6 (Mar. 21)(preliminary objections)

[71] C.F. AMERASIGNHE, LOCAL REMEDIES IN INTERNATIONAL LAW 359 (2d ed., 2004).

This aspect of the principle is reflected in Article 36[72] of the Charter of the Organization of American States:

> Transnational enterprises and foreign private investment shall be subject to the legislation of . . . host countries and to the jurisdiction of their competent courts and to the international treaties and agreements to which said countries are parties, and should conform to the development policies of the recipient countries.

Under Article 36, it is clear that Chevron, as a transnational enterprise, was and is subject to the jurisdiction of the courts of Ecuador for the acts and/or omissions that gave rise to the underlying action and resulted in the Ecuadorian judgment against Chevron. Indeed, in arguing *forum non conveniens*, Chevron itself indicated that Ecuador was the appropriate forum for resolving this dispute.[73]

Jurisdiction under Article 36 and the duty to exhaust local remedies has, of course, as its necessary counterpart Ecuador's duty to ensure local remedies are available and that parties aggrieved have standing to seek them.[74] As the Brief for Ecuadorian defendants-appellants Naranjo and Payaguaje points out,

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[72] Article 36, *Charter of the Organization of American States*, OAS, Treaty Series Nos. 1-C and 61, 119 U.N.T.S. 48 (as amended).

[73] Ecuadorian jurisdiction would exist even in the absence of Chevron's promise to submit to the jurisdiction of the Ecuadorian courts and satisfy any Ecuadorian judgment in this case. *See Jota v. Texaco, Inc.*, 157 F.3d 153, 155, 159 (2d Cir. 1998); *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 390 n.3 (2nd Cir. 2011).

[74] *Re Mannira*, 17 D.L.R.2d 482 (1959).

both parties have appealed the Ecuadorian judgment.[75] Until the Ecuadorian appellate process is at an end and Ecuadorian remedies are exhausted, it is clear that Chevron's complaint should be dismissed under the applicable general principle of law as premature.

The application of this general principle of international law in support of dismissal accords with recent treatment by the Supreme Court. In *Sosa v. Alvarez-Machain,*[76] the Supreme Court highlighted that in Alien Tort Statute[77] suits there is need to apply "an element of judgment about the practical consequences" of making federal courts readily available.[78] In particular, the Court noted that "basic principles of international law require that before asserting a claim in a foreign forum, the claimant must have exhausted any remedies available in the domestic legal system" and that "it would certainly consider this requirement in an appropriate case."[79]

The instant case is clearly an appropriate case and gives this Court the opportunity to clarify the application of general principles of law on

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[75] Brief for Ecuadorian defendants-appellants Naranjo and Payaguaje (June 2, 2011), at 34 (footnotes omitted).

[76] *Sosa v. Alvarez-Machain*, 542 U.S. 692, 124 S.Ct. 2739 (2004).

[77] Alien Tort Statute, 28 U.S.C. § 1350.

[78] *Sosa., supra* n.76, 542 U.S. at 732-733 & n.21, 124 S.Ct. at 2766 n.21.

[79] *Id.*

exhaustion outside of the context of the Alien Tort Statute.[80] Accordingly, the preliminary injunction should be dissolved and the case dismissed. However, should the Ecuadorian appellate process end unfavorably for Chevron, the District Court will still lack adjudicatory jurisdiction over the Ecuadorian defendants under international law.

CONCLUSION

The District Court failed to consider three applicable and binding norms of international law to this case. In particular, the District Court failed to consider and apply the fundamental rules pertaining to: i) the principle of non-intervention, ii) the international legal limits of the court's own jurisdiction, and iii) the requirement that Chevron exhaust local remedies in Ecuador.

Proper consideration and application of these binding rules of international law requires that the preliminary injunction be dissolved and the plaintiff's complaint dismissed.

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[80] *See Sarei v. Rio Tinto, PLC,* 550 F.3d 822, 824-825 (9th Cir. 2008). In *Sarei* the court talked in terms of prudential or discretionary exhaustion under U.S. law. *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1036-1037 (9th Cir., 2010). However, compulsory application of the local remedies rule is required here by general principles of law recognized under international law.

Respectfully Submitted,

Dated: June 9, 2011

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for *amici curiae* International Law Professors and Scholars certifies that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,996 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman font.

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When All Case Participants Are Registered for the Appellate CM/ECF System

I hereby certify that on this 9th day of June, 2011, a true and correct copy of the foregoing BRIEF OF INTERNATIONAL LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND DISSOLVING THE PRELIMINARY INJUNCTION AND DISMISSING THE ACTION was served on all counsel of record in this appeal via CM/ECF pursuant to Second Circuit Rule 25.1(h)(1)-(2).

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