UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REPUBLIC OF ECUADOR, Petitioner, v. CHEVRON CORPORATION and TEXACO PETROLEUM CORPORATION, Respondents.	09 Civ. 9958 (LBS) **MEMORANDUM & ORDER**
DANIEL CARLOS LUSITANDE YAIGUAJE, et al., Petitioners, v. CHEVRON CORPORATION and TEXACO PETROLEUM CORPORATION, Respondents.	10 Civ. 316 (LBS) **MEMORANDUM & ORDER**

SAND, J.

Chevron and Texaco (hereinafter referred to as "Chevron"), have commenced an arbitration proceeding before a tribunal pursuant to the Bilateral Investment Treaty between the United States and Ecuador.[1] Ecuador and the Yaiguaje Plaintiffs have filed petitions to stay the arbitration and have both moved for summary judgment. Chevron has moved to dismiss both petitions. Ecuador has also moved for a preliminary injunction. The three judges to hear the arbitration have been designated and the parties have designated their representatives before the arbitration panel.

We assume without deciding that this Court has the power to grant a stay, recognizing that there is a split between the judges of this Court as to whether it has the

[1] This Memorandum and Order repeats the order read aloud at oral arguments on March 11, 2010, with the addition of certain corrections.

power to stay an arbitration. Judge Scheindlin, in *Ghassabian v. Hematian*, 2008 WL 3982885 (S.D.N.Y. Aug. 27, 2008), has held that there is no federal authority to stay an arbitration. Judge Preska, writing in *Oppenheimer & Co. Inc. v. Deutsche Bank AG*, 2009 WL 4884158 (S.D.N.Y. Dec. 16, 2009), has expressed the view that Judge Scheindlin's position is an "outlier." *Id.* at *3.

Numerous cases have held that there is a strong presumption in favor of arbitration. *See, e.g., Smith/Enron Cogeneration Ltd. P'ship, Inc. v. Smith Cogenerational Int'l, Inc.*, 198 F.3d 88, 92 (2d Cir. 1999). We believe that this is particularly true where the arbitration is pursuant to an international treaty, here a treaty between Ecuador and the United States. *See, e.g., Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985) (Federal policy favoring arbitration "applies with special force in the field of international commerce."). The explicitly stated purposes of the treaty were to encourage investment by Americans in Ecuador and Ecuadorians in the United States by assuring investors that an independent, neutral tribunal exists to arbitrate claims such as the claim here that Ecuador is seeking to impose liability unlawfully. *See* Treaty Between The United States of America and The Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, U.S.-Ecuador, Aug. 27, 1993, S. TREATY DOC. NO. 103-15. It is Chevron's claim that this is what Ecuador is now in the process of doing. Thus, a motion to stay here strikes at the core purposes of the treaty between Ecuador and the United States.

We turn now to the merits and assume without deciding that this Court does have the authority under New York law to stay arbitration. Even assuming that authority, New York law dictates that "[a] court will not stay arbitration . . . unless the entire controversy

is non-arbitrable. If there is a least one arbitrable issue, arbitration should proceed." *National Grange Mut. Ins. Co. v. Vitebskaya***,** 766 N.Y.S.2d 320, 323 (N.Y. Sup. Ct. 2003). The New York Court of Appeals has held that "[a]n application for a stay will not be granted . . . even though the relief sought is broader than the arbitrator can grant, if the fashioning of some relief on the issue sought to be arbitrated remains within the arbitrator's power." *Silverman v. Benmor Coats, Inc.*, 461 N.E.2d 1261, 1266-67 (N.Y. 1984).

Without passing on the merits of all the waiver and estoppel arguments put forward, the Court finds that there is at least one arbitrable issue presented in Chevron's Notice of BIT Arbitration ("Notice"). Some of the claims in the Notice were neither waived through litigation nor could have been waived through any representations made to this court. Examples include Chevron's claim that that two Chevron attorneys were inappropriately criminally indicted and sanctioned, (Notice ¶¶ 50, 56), and Chevron's claim that it is entitled to "moral damages" as a result of President Correa's and the Ecuadorian Government's public campaign against Chevron and its attorneys (Notice ¶¶ 39, 76). Chevron's Notice of BIT Arbitration contains at paragraphs thirty through sixty-five the specific grounds asserted by Chevron why a judgment rendered against it pursuant to the litigation now pending in the Ecuadorian Court would not be one rendered in accordance with due process. Accordingly, a stay of arbitration is inappropriate, and is hereby denied. It is for the arbitral panel to decide which claims and which claims for relief are properly before it.

The Court emphasizes that it is reviewing only the arbitrability of the due process claim, and expresses no opinion with respect to any other claim or with respect to any

claim for relief. Those matters are for the arbitrators. There are also significant issues that have been raised concerning the timing of proceedings before the arbitrators, specifically, whether the arbitration can commence prior to the rendering of a decision in the suit now pending in Ecuador. That also is one of the many issues for the arbitration panel to determine.

Ecuador's motion for summary judgment and motion for a preliminary injunction are denied. The Yaiguaje Plaintiffs' motion for summary judgment is denied. Chevron's motions to dismiss Ecuador's petition and the Yaiguaje Plaintiffs' petition are granted.

The Yaiguaje Plaintiffs have advised the Court that they have no interest in having their views made known to the arbitration panel either by intervening or appearing as an amicus. Their views are fully stated in the transcript of the proceedings on March 10, 2010 and March 11, 2010, a copy of which I have directed be furnished to the arbitration panel.

With respect to proceedings for discovery in Denver and Georgia, the judge who issued the subpoena provided ample opportunities for the parties to object in his order, so there is no need for this Court to issue any stay.

SO ORDERED.

Dated: March 16, 2010
New York, NY

U.S.D.J.