Ik, Jannie Johanna van Ravesteijn-Prins, beëdigd vertaler voor de Engelse taal, beëdigd door de rechtbank te Rotterdam, geregistreerd in het *Register beëdigde tolken en vertalers* onder nummer 235, verklaar hierbij dat de navolgende tekst naar beste weten een nauwkeurige en getrouwe vertaling naar het Engels is van de Nederlandstalige tekst die aan de vertaling en aan deze verklaring is vastgehecht.
Capelle aan den IJssel, 21 juli 2017.

• • •

I, Jannie Johanna van Ravesteijn-Prins, sworn translator for the English language, appointed by the District Court in Rotterdam, registered under number 235 in the *Register Beëdigde Tolken en Vertalers* (Register of Sworn Interpreters and Translators), do solemnly and sincerely declare that to the best of my knowledge the document hereunto affixed is a true and accurate translation into English of the text as attached to the translation and reading in the Dutch language.
Capelle aan den IJssel, 21 juli 2017.

Case number 200.193.418/01

For the attention of

G.W. van der Bend, LL.M.

J.J. van Ravesteijn-Prins Sworn Translator - Rbtv Gr. 215

Case number 200.193.418/01

RULING

Appeal Court of The Hague

Sector Civil Law

Case number : 200.193.418/01
Case number court : (illegible)

Judgment dated 18 July 2017

regarding

The Republic of Ecuador
established in Quito, Ecuador
appellant
hereinafter: Ecuador
Attorney: G.W. van der Bend LL.M., in Amsterdam

vs.

1. Chevron Corporation (USA)
2. Texaco Petroleum Company,
both established in the San Ramon, United States of America
appellees
hereinafter jointly to be called: Chevron c.s., and each of them separately: Chevron and TexPet.
Attorney: G.J. Meijer in Rotterdam

Course of the proceedings

1.1 In the 13 April 2016 bailiff's notification, Ecuador appealed against the judgment between parties as given by the district Court of The Hague on 20 January 2016.

1.2 In their Appellant's brief, provided with exhibits 35 through 221, Ecuador submitted 23 grounds of appeal against the appealed judgment, which grounds of appeal were contested by Chevron c.s. in their answer on appeal, with exhibits G-40 through G-213.

1.3 Subsequently, on 9 May 2017 parties had their attorneys plead by means of the written pleadings as submitted by their attorneys. On behalf of Chevron c.s. J. van der Beek, LL.M., attorney in Amsterdam, and J.M.K.P Cornegoor LL.M., attorney in Haarlem, pleaded. Through pleadings both parties were given leave to submit new exhibits. Ecuador submitted exhibits 222 through 262 and Chevron submitted exhibits G214 through G227.

1.4 Finally parties requested ruling on basis of the copy-file as submitted for the pleadings.

Assessment of the appeal

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2. In its judgment under legal grounds 2.1 through 2.14 the court has ascertained a number of facts. There are no grounds on appeal directed against the establishment of those facts, and thus the appeal court will use those facts as basis. Below follows a brief summary.

i. Since 2001 Chevron is an indirect shareholder of TexPet.

ii. In 1964 and 1965 Ecuador granted a concession for the extraction of oil in the Amazon territory, to a syndicate from which TexPet was a part (hereinafter: the Consortium) and in which she acted as "Operator" until 1990. On 16 August 1973 a consortium agreement was concluded between the Consortium and Ecuador. The agreement was valid until 6 June 1992. Gradually the state company of PetroEcuador obtained a majority interest in the Consortium. After expiry of the concession agreement, TexPet stopped its oil extraction activities in Ecuador.

iii. In 1993 the USA and Ecuador concluded a bilateral investment treaty (hereinafter: BIT). On 11 May 1997 the BIT entered into force.

iv. In November 1993 a group of Ecuadorean citizens initiated legal proceedings against Texaco (the former parent of TexPet) in the United States District Court for the Southern District of New York (hereinafter: the New York District Court) for the environmental pollution caused by Texaco (hereinafter: the Aguinda proceedings) as a consequence of which the plaintiffs would have suffered losses. One of the defenses of Texaco was that the legal action should be taken to Ecuador. The ambassador of Ecuador supported this view.

v. In December 1994 Ecuador, PetroEcuador and TexPet signed a Memorandum of Understanding (hereinafter: MOU), the purpose of which, inter alia, was:

> *To establish the mechanisms by which TexPet is to be released from any claims that the Ministry (of energy and mines, addition by the Appeal Court) and PETROECUADOR may have against TexPet concerning the environmental impact caused as a consequence of the operations of the former PETROECUADOR- TEXICO Consortium.*

vi. On 4 May 1995 Ecuador, PetroEcuador and TexPet concluded an agreement (hereinafter to be referred to as: the 1995 Settlement Agreement), where TexPet committed themselves to perform specific environmental sanitation measures, and where the two other parties stated (in article 5.1) that they:

> *"shall hereby release acquit and forever discharge TexPet (...) and all their (...) successors, predecessors, principals and subsidiaries hereinafter referred to as "The Releases") of all the government's and PetroEcuador's claims against the Releases for Environmental Impact arising from the Operations of the Consortium (...)"*

vii. In 1996 The New York District Court declared not to have jurisdiction in the Aguinda proceedings, based on *forum non conveniens* and "international comity". In 1998 the Court of Appeals reversed the decision in 1998 to a lower court because Texaco had not agreed to the jurisdiction of the Court in Ecuador. Subsequently Texaco committed themselves not to contest the jurisdiction of the Court in Ecuador, including the enforcement proceedings, if any, and only to invoke the New York Recognition of Foreign Country Money Judgments Act. Following this, the New York District Court again declared not to have jurisdiction in August 2002, based on the *forum non conveniens*.

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viii. On 30 September 1998 Ecuador, PetroEcuador and TexPet concluded a second agreement (hereinafter to be referred to as: the 1998 Final Release), where TexPet and the other "Releasees" would be forever released and discharged of all liability towards Ecuador.

ix. In 1999 the Environmental Management Act was implemented in Ecuador, providing for the possibility of a class action for, summarized, environmental pollution (according to Ecuador such action was also possible under previous legislation).

x. In May 2003 several Ecuadorian citizens, largely the same persons as the plaintiffs in the Aguinda Proceedings, initiated legal proceedings against Chevron in the district court of the city of Nueva Loja (usually called Lago Agrio), Ecuador, on the basis of environmental pollution caused by TexPet (hereinafter: the Lago Agrio Proceedings).

xi. In 2004 Chevron and TexPet filed an application for arbitration against PetroEcuador with the American Arbitration Association (AAA) in New York, in order to oblige (among other things) PetroEcuador to hold Chevron and TexPet harmless against claims in those proceedings. PetroEcuador and Ecuador initiated legal action in New York to prohibit the arbitration. On 19 June 2007 the New York District Court definitely prohibited the AAA arbitration.

xii. On 21 December 2006, Chevron and TexPet initiated arbitration proceedings against Ecuador based on the BIT, stating that Ecuador is liable for the losses they suffered because of intolerable delays in the settlement of seven court proceedings TexPet had initiated against Ecuador under the Concession agreement (hereinafter: the Commercial Cases Dispute). The Arbitration Tribunal found in favor of Chevron and TexPet. The claim to overturn the arbitral decision has been rejected in three instances (Supreme Court of the Netherlands 28 September 2014, ECLI:NL:HR:2014:2837).

xiii. On basis of the BIT Chevron and TexPet initiated the arbitration proceedings that are the subject of these annulment proceedings on 23 September 2009. In those arbitration proceedings, they claimed inter alia (in the "Claimants' Memorial on the Merits" of 6 September 2010, par. 547, quoted by the Arbitration Tribunal in the Third Interim Award, page 9):

> *"1. Declaring that under the 1995, 1996, and 1998 Settlement and Release Agreements (Chevron and TexPet) have no liability or responsibility for environmental impact, including but not limited to any alleged liability for impact to human health, the ecosystem, indigenous cultures, the infrastructure, or any liability for unlawful profits, or for performing any further environmental remediation arising out of the former Consortium that was jointly owned by TexPet and Ecuador, or under the expired Concession Contract between TextPet and Ecuador.*
> *2. Declaring that Ecuador has breached the 1995, 1996 and 1998 Settlement and Release Agreements and the United States-Ecuador BIT.*
> *3. Declaring that under the Treaty and applicable international law Chevron is not liable for any judgment rendered in the Lago Agrio litigation.*
> *4. Declaring that any judgment rendered against Chevron in the Lago Agrio litigation is not final, conclusive or enforceable.*
> *5. Declaring that Ecuador or PetroEcuador (or Ecuador and PetroEcuador jointly) are exclusively liable for any judgment rendered in the Lago Agrio litigation.*
> *6. Ordering Ecuador to use all measures necessary to prevent any judgment against Chevron in the Largo Agrio litigation from becoming final conclusive or enforceable.*
> *7. Ordering Ecuador to use all measures necessary to enjoin enforcement of any judgment against Chevron rendered in the Lago Agrio litigation including enjoining the nominal Plaintiffs from obtaining any related attachments, levies or other enforcement devices.*

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> *8. Ordering Ecuador to make a written representation to any court in which the nominal plaintiffs attempt to enforce a judgment from the Lago Agrio litigation stating that the judgment is not final, enforceable or conclusive[.]*
> *(...)*
> *11. Awarding [Chevron and TexPet] indemnification against Ecuador in connection with a Lago Agrio judgment, including a specific obligation by Ecuador to pay [Chevron and TexPet] the sum of money awarded in to the Lago Agrio judgment*
> *12. Awarding [Chevron and TexPet] any sums that the nominal Lago Agrio plaintiffs collect against [Chevron and TexPet] or their affiliates in connection with enforcing a Lago Agrio judgment.*
> *13. Awarding all costs and attorney's fees incurred by [Chevron and TexPet] in 1. defending the Lago Agrio litigation and the criminal proceedings 2. pursuing this Arbitration 3. uncovering the collusive fraud through investigation and discovery proceedings in the United States. 4. opposing the efforts by Ecuador and the Lago Agrio plaintiffs to stay this Arbitration through litigation in the United States. 5. as well as all costs associated with responding to the relentless public relations campaign by which the Lago Agrio plaintiffs' lawyers (in collusion with Ecuador) attacked Chevron with false and fraudulent accusations concerning this case. (...)*
> *14. Awarding moral damages to compensate [Chevron and TexPet] for the non-pecuniary harm that they have suffered due to Ecuador's outrages and illegal conduct.*
> *(...)*

xiv. On 3 December 2009 Ecuador filed a request at the New York District Court to stay the arbitration. In a judgment dated 16 March 2010 this request was rejected. On 17 March 2011 the Court of Appeals confirmed this judgment.

xv. In the arbitration proceedings, Chevron and TexPet requested interim relief measures. On 9 February 2011 and on 16 March 2011 the Arbitration Tribunal issued Procedural Orders, in order to frustrate the recognition and execution of the (forthcoming) Lago Agrio judgment.

xvi. In February 2011 Chevron initiated in New York a claim against the Lago Agrio plaintiffs, their lawyer (Donzinger) and their environmental experts, so as to have established that the Lago Agrio Proceedings were fraudulent and that the execution of a judgment of the Ecuadorian court should be prohibited in advance. The New York District Court (Judge Kaplan) allowed this claim on 7 March 2011 as an interim relief, but on 26 January 2012 the Court of Appeals rejected the claim.

xvii. Chevron was sentenced (suspended) to pay US$ 8.6 billion in the Lago Agrio Proceedings by the Superior Court of Nueva Loja, in a judgment dated 14 February 2011, to be increased by US$ 8.6 billion in punitive damages and legal costs amounting to 10%, which decision was confirmed by the Appeal Court (the Provincial Court of Sucumbios) on 3 January 2012. In a ruling of 12 November 2013 the Supreme Court of Ecuador overturned the sentence to compensate punitive damages and confirmed the judgment as to the rest.

xviii. In reaction to the judgment of the Ecuadorian Appeal Court Judge, Chevron requested the Arbitration Tribunal to convert the earlier procedural orders into an interim judgment. Following that and at the request of Chevron, the Arbitration Tribunal in the First Interim Award on Interim Measures dated 25 January 2012 (hereinafter: First Interim Award) determined, inter alia, that Ecuador must take:

> *"all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against [Chevron] in the Lago Agrio case."*

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xix. In the Second Interim Award on Interim Measures dated 16 February 2012 the Arbitration Tribunal (again) determined:

> *"3. (...) The Tribunal hereby orders:*
> *(i) [Ecuador] (whether by its judicial, legislative or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the judgments by the Provincial Court of Sucumbios (...) of 3 January 2012 (...) and (...) of the judgment by Judge Nicolas Zambrane Lozada of 14 February 2011 against [Chevron] in the Ecuadorian legal proceedings known as the "Lago Agrio Case";*
> *(ii) in particular, without prejudice to the generality of the foregoing, such measures to preclude any certification by [Ecuador] that would cause the said judgments to be enforceable against [Chevron]; (...)*
> *until any further order or award made by the Tribunal in these arbitration proceedings;*
> *4. The Tribunal determines that [Chevron and TexPet] shall be legally responsible jointly and severally, to the Respondent for any costs or losses which [Ecuador] may suffer in performing its legal obligations under this Second Interim Award, as may be decided by the Tribunal within these arbitration proceedings (to the exclusion of any other jurisdiction); and further that, as security for such contingent responsibility, [Chevron and TexPet] shall deposit within thirty days of the date of this Second Interim Award the amount of US$ 50,000,000.00 (United States Dollars Fifty Million) with the Permanent Court of Arbitration in a manner to be designated separately to the order of this Tribunal; (...)"*

xx. After determining the First Interim Award, Chevron requested the Provincial Court of Sucumbios to refuse the execution of the Lago Agrio Judgment or to suspend it. On 1 March 2012 the judge rejected this request because it would be in conflict with the "right to have access to the judge".

xxi. On 9 February 2012 the Lago Agrio Plaintiffs filed a request for "*precautionary measures*" with the Inter-American Commission (for the human rights) to prevent that Ecuador would comply with the Interim Awards. The Commission asked the plaintiffs for substantiating evidence of the impact on their health in connection with their accusations. Thereupon the plaintiffs withdrew their request on 2 March 2012.

xxii. In the Third Interim Award on Jurisdiction and Admissibility dated 27 February 2012 (hereinafter: Third Interim Award), the Arbitration Tribunal gave its opinion on its jurisdiction.

xxiii. In 2012 the plaintiffs in the Lago Agrio Proceedings tried to execute the Lago Agrio judgment (after it had been confirmed in appeal) in Canada, Brazil and Argentina. These attempts have not (yet) been successful.

xxiv. In the Fourth Interm Award on Interim Measures dated 7 February 2013 (hereinafter: Fourth Interim Award), the Arbitration Tribunal judged inter alia:

> *"The Tribunal declares that [Ecuador] has violated the First and Second Interim Awards under the Treaty, the UNCITRAL Rules and international law in regard to the finalization and enforcement subject to execution of the Lago Agrio Judgment within and outside Ecuador, including but not limited to Canada, Brazil and Argentina."*

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xxv. In the First Partial Award on Track I dated 17 September 2013 (hereinafter: First Partial Award), the Arbitration Tribunal judged inter alia that:

> *"(1) [Chevron] and [TexPet] are both "Releasees" under Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release;*
> *(2) As such a Release, a party to and also part of the 1995 Settlement Agreement, [Chevron] can invoke its contractual rights thereunder in regard to the release in Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release as fully as [TexPet] as a signatory party and named Releasee;*
> *(3) The scope of the releases in Article 5 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release made by [Ecuador] to [Chevron and TexPet] does not extend to any environmental claim made by an individual for personal harm in respect of that individual's rights separate and different from [Ecuador]; but it does have legal effect under Ecuadorian law precluding any "diffuse" clam against [Chevron and TexPet] under Article 19.2 of the Constitution made by [Ecuador] and also made by any individual not claiming personal harm (actual or threatened);"*

xxvi. On 4 March 2014, in proceedings Chevron had initiated against Donziger and two Lago Agrio plaintiffs on the basis of the Racketeering Influenced Corrupt Organization Act (RICO), the New York District Court (Judge Kaplan) judged that the Lago Agrio decision had been effected by means of fraud.
On 8 August 2016 this judgment was confirmed by the Court of Appeals.

xxvii. On 12 March 2015 the Arbitration Tribunal issued its Decision on Track IB.
The Arbitration Board determined that:

> *"the (...) Lago Agrio Complaint, as originally filed, does include individual claims and cannot be read (...) as pleading "exclusively" or "only diffuse claims". To this extent, the reliance [of Chevron and TexPet] on the 1995 Settlement Agreement as a complete bar in the Lago Agrio Complaint at inception must fail in limine, as a matter of Ecuadorian law (being the law applicable to the 1995 Settlement Agreement). At this point, however, the Tribunal must suspend its further analysis for the reasons already described above, given that the Tribunal does not think it right by this decision in Track 1B of this arbitration to consider the subsequent conduct of the Lago Agrio Court, the Appellate Court of Lago Agrio and the Cassation Court in regard to their actual treatment of the Lago Agrio Complaint, being all matters scheduled for Track 2."*

3. In the present proceedings Ecuador claims the annulment of the First Interim Award, the Second Interim Award, the Third Interim Award, the Fourth Interim Award and the First Partial Award. The district court has rejected the claim.

Applicable law and jurisdiction

4.1 The district court decided that based on section 1073, subsection 1 of the Code of Civil Procedure, the sections 1020-1073 of this Code apply to the present proceedings.

4.2 The appeal court adds that the sections 1020-1073 of the Code of Civil Procedure will apply to these proceedings the way they were in force before 01 January 2015. The arbitration that is the subject of the proceedings, had already started before 01 January 2015, so that the former laws of arbitration apply to the arbitration itself. In that case section IV subsection 4of the Book 3 Dutch Civil Code Amendment Act etc (modernizing the arbitration law) establishes that on a court action the provisions of Book 4 Code of Civil Procedure, in force before 1 January 2015, remain applicable.

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Apart from that, based on article VII, paragraph 1, final words of the BIT, the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter: UAR) 1976 version, apply to the arbitration.

4.3 The place of arbitration is The Hague. The First Partial Award is a partial final award, against which according to both parties, no appeal to a higher arbitration board is possible. Therefore, based on section 1064 subsection 2 (old) Code of Civil Procedure, the district court of The Hague in first instance, and on appeal this court, has jurisdiction to take cognizance of the claim to annul the partial arbitral final award and the interim judgments that preceded it.

Assessment framework

5.1 In first instance, based on section 1065 subsection 1 Code of Civil Procedure, Ecuador claimed annulment of the arbitral awards on three grounds:
a. because a valid agreement for arbitration is lacking;
b. because the Arbitration Tribunal did not comply with its assignment;
c. because the award is in conflict with the public order.

5.2 The appeal court agrees with the opinion of the district court that the possibilities of challenging arbitral awards are limited and that a judge should exercise restraint, especially when the question is whether the award is in conflict with the public order.
There is an exception for the assessment whether a valid arbitration agreement was concluded. The principle of free access to the court implies that in the end it is up to the judge to assess whether or not the arbitration tribunal has jurisdiction and in doing this, restraint is not appropriate.

5.3 In principle, parties are not allowed to submit for the first time on appeal grounds for the annulment of the arbitral award if these grounds were not in the summons in first instance the bases of the annulment appeal (section 1065, subsection 4, old Code of Civil Procedure).

5.4 As to the ground for annulment mentioned under a, it is not always admissible for a party in annulment proceedings to invoke grounds of lacking jurisdiction of the Arbitration Tribunal, that they have not brought forward in the arbitral proceedings. (section 1065, subsection 2 together with section 1052 subsection 2 Code of Civil Procedure).

The grounds for appeal

6. Ecuador's grounds for appeal can be divided in several categories. The grounds for appeal I through IV state that there is no valid agreement for arbitration. The grounds V through XIX state that the arbitral awards are in conflict with the public order. In grounds XX through XXII Ecuador is of the view that the arbitral awards have not, or not sufficiently been motivated. Ground XXIII relates to the adjudication of the costs.

No valid arbitration agreement

7.1 Ground for appeal I argues the assessment of the court that between Ecuador and TexPet a difference on investments exists. Ecuador argues that TexPet is no respondent in the Lago Agrio Proceedings that is pending against Chevron, and thus has no claim in relation to rights from the 1995 Settlement Agreement.
Through ground for appeal II Ecuador contests the judgment of the district court that there is a valid arbitration agreement between Chevron and Ecuador, on the basis that Chevron signed neither the 1973 Concession Agreement, nor the 1995 Settlement Agreement.
Through ground III Ecuador argues that the 1995 Settlement Agreement is not an investment agreement.

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Ground IV concerns the question whether Chevron is a "*Releasee*", which question Ecuador, contrary to the district court, answers negatively. Moreover, Ecuador argues that even if Chevron would be a "*Releasee*", the final discharge granted to her would not relate to the claims as initiated by the Lago Agrio plaintiffs, since these are all individual claims. The grounds for appeal address the fact whether there is a valid arbitration agreement between Ecuador and Chevron and between Ecuador and TexPet and are eligible for joint hearing.

7.2 The jurisdiction of the Arbitration Tribunal is established in article VI of the BIT. Parties do not dispute whether the article is an open offer from one contracting state to companies of the other contracting state to have an "*investment dispute*" be settled by arbitration. Neither do parties dispute that Ecuador is a contracting state in the meaning of this provision or that Chevron and TexPet are to companies as referred to in the article. The Arbitration Tribunal has jurisdiction when the dispute between Ecuador on the one hand, and Chevron and TexPet on the other hand must be considered as an "*investment dispute*".

7.3 An "*investment dispute*" in the meaning of article VI, par. 1 of the BIT that can be presented to a Arbitration Tribunal is:

> "*a dispute between a Party and a national or company of the other Party arising out of or relating to*
> *(a) an investment agreement between that Party and such national or company;*
> *(b) [illegible word], or*
> *(c) an alleged breach of any right conferred or created by this treaty with respect to an investment.*"

The Arbitration Tribunal has investigated whether or not it had jurisdiction on the bases referred to in article VI par. 1 under (a) and (c). These are not cumulative grounds, but in view of the word "or", alternative grounds for jurisdiction: it suffices that there is an investment dispute that meets one of the descriptions mentioned.

7.4 According to the Supreme Court of the Netherlands (HR 26 September 2014, ECLI:NL:HR:2014.2837), this provision must be explained in the manner as described in articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter: VCLT). This means that the text of the BIT should be explained in accordance with the meaning of those words in everyday speech, observing their context and in the light of object and purpose of the BIT (article 31, par. 1 VCLT). Further, special meaning must be given to words in the BIT where it can be established that this was the intention of parties (article 31, par. 4 VCLT). The context not only comprises body text, but also the preamble of and annex to the BIT (article 31, par. 2 VCLT).

7.5 There is no ground for appeal against the judgment of the district court that the preamble of the BIT as included in 2.2 shows that the purpose of this treaty is to protect investments of citizens of one contract state in the other contract state, and to encourage this by a fair and reasonable treatment. Neither is contested the district court's judgment, that the broad definition of the notion "*investment*" in article 1, first paragraph under a. of the BIT ("*investment means every kind of investment*") and the not limited list of investments, implies that the notion "investment" would not coincide with the meaning it has in everyday speech. Assuming this, the appeal court agrees with the district court that the settlement of the investment must also be included in the notion "*investment*".

TexPet

8.1 As considered above, it suffices that there is an investment dispute that meets the description of either article VI par. 1 under (a) or article VI par. 1 under (c). Hereafter it will be

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assessed first whether the Arbitration Tribunal could have declared itself to have jurisdiction in the proceedings between TexPet and Ecuador on the basis of article VI par.1 under (a) of the BIT.

8.2 The Concession agreement concluded in 1973 between Ecuador and inter alia TexPet is an "*investment agreement*" in the meaning of article VI, par. 1 under (a) of the BIT. The Settlement Agreement concluded between parties in 1995 and the Final Release concluded in 1998 should be considered as an "*investment agreement*". First this follows from the circumstance that, as considered above, the notion "*investment*" should be explained in a broad sense, so that it includes agreements that aim to settle the consequences of the investment after termination. Further it is important that the agreements of 1995 and 1998 were concluded to settle the Concession Agreement, and would have no meaning without this Concession Agreement. That is evidenced by the fact that the 1995 Settlement Agreement frequently refers to the Concession Agreement: the preamble first considers that various concessions were granted to the Consortium (of which TexPet was also part), that in 1973 these concessions were united in the Concession Agreement indicated as the "1973 Contract" and that after the termination of the "1973 Contract" TexPet and Ecuador started negotiations to establish the environmental impact ensuing from the activities of the Consortium in the Oriente region – that part of the Amazon area to which the concessions related – and which is the object of the environmental repair works of TexPet and that subsequently she will be released from her obligations and liabilities ensuing from the activities of the Consortium. As correctly considered by the Arbitration Tribunal in the Third Interim Award, there should be no hesitation whatsoever to regard an agreement in which the factual consequences of a concession agreement (environmental pollution) are settled as an "investment agreement", even if it was concluded during the lifespan of the concession agreement. There would be no reason to think differently when the lifespan of the concession agreement has expired (4.34). Ground for appeal III has been presented without success.

8.3 The next question that must be answered, is whether there is a "*dispute arising out of or relating to*" the 1995 Settlement Agreement and the 1998 Final Release. TexPet claims among other things (see above under xiii):

> *1. Declaring that under the 1995, 1996 and 1998 Settlement and Release Agreements, [Chevron and TexPet] have no liability or responsibility for environmental impact, including but not limited to any alleged liability for impact to human health, the ecosystem, indigenous cultures, the infrastructure, or any liability for unlawful profits, or for performing an y further environmental remediation arising out of the former Consortium that was jointly owned by TexPet and Ecuador, or under the expired Concession Contract between TexPet and Ecuador.*
> *2. Declaring that Ecuador has breached the 1995, 1996 and 1998 Settlement and Release Agreements and the United States-Ecuador BIT (...)*

These two claims are interrelated with the 1995 Settlement Agreement, as the text already shows. They relate to the agreement as laid down in article 5.1 of that agreement, being:

> *"the Government and PetroEcuador shall hereby release, acquit and forever discharge TexPet (...) and all their (...) principals and subsidiaries (hereinafter referred to as "The Releasees") of all the Government's and PetroEcuador's claims against the Releasees for Environmental Impact arising from the Operations of the Consortium."*

whereby TexPet and the other "Releasees" are discharged from all claims by Ecuador for environmental pollution (the general Release). Where these submissions are adjudged, Ecuador must indemnify TexPet against all claims against her for environmental impact and must take its financial consequences for its account.

8.4 The remaining claims concern the Lago Agrio Proceedings. Where it would be established that the Lago Agrio plaintiffs initiated claims that in reality can only be initiated by

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Ecuador (or PetroEcuador) and for which thus general Release has been granted (indicated by the Arbitration Tribunal as "*diffuse claims*"), Ecuador would have to take these claims of the Lago Agrio plaintiffs for her account as a consequence of the general Release. Ecuador complains that the district court has not recognized that TexPet runs no risk in the Lago Agrio Proceedings because it is no party in those proceedings, for it concerns proceedings against Chevron, based on Ecuadorian civil law. TexPet has no conceivable claim on Ecuador under the 1995 Settlement Agreement, according to Ecuador. The appeal court rejects these assertions. The pollution for which Chevron is called to account by the Lago Agrio plaintiffs, directly pertains to the "*operations of the Consortium*" to which TexPet belongs and that have been executed based on the Concession Agreement. Contrary to the arguments of Ecuador, it has to be assumed that TexPet as well (directly or indirectly) has an interest in the present claims. And thus there is a "*dispute arising out of or relating to an investment agreement*" between TexPet and Ecuador. Whether actually the claims can be allowed, is not of interest for the determination of jurisdiction.

8.5 The conclusion is that the Arbitration Tribunal has jurisdiction to judge the investment dispute between Ecuador and TexPet on the basis of article VI par. 1 under (a). Thus there is no need to investigate further whether the Arbitration Tribunal (also) has jurisdiction on the basis of article VI par. 1 under (c). Ground I has been presented without success.

Chevron

9.1 Subsequently the appeal court must assess whether the Arbitration Tribunal has jurisdiction regarding the dispute between Chevron and Ecuador. First the appeal court considers what the decision of the Arbitration Tribunal exactly involves, regarding its jurisdiction vis-à-vis Chevron.

9.2 In the context of the assessment of its jurisdiction on the basis of article VI par. 1 under (a) of the BIT, the Arbitration Tribunal has assumed that Chevron itself, in the framework of the concession agreements concluded by TexPet, never invested in Ecuador, and that Chevron was no part of the Consortium and was no party in the 1995 Settlement Agreement. Further it determined that Chevron, as parent of TexPet can be considered as an indirect investor in the meaning of article I par. 1 under (a) of the BIT, because she indirectly "owns or controls" an investment in Ecuador in the meaning of article 1 par. 1 under (a) of the BIT (Third Interim Award under 4.24). Parties do not dispute that the Arbitration Tribunal has jurisdiction to assess a claim by Chevron as indirect investor (in TexPet).

9.3. The Arbitration Tribunal subsequently reacted to the matter of the claim of Chevron's liability by the Lago Agrio plaintiffs. The Arbitration Tribunal considers that it looks like Chevron and TexPet are completely equated in the Lago Agrio Proceedings, although legally they are two independent legal entities. In the arbitration proceedings, Chevron has argued that in the context of the decision regarding jurisdiction, the Arbitration Tribunal should also equate Chevron and TexPet. The Arbitration Tribunal has suspended the decision whether Chevron itself has rights as a "*direct investor*" on the basis of article VI, par. I under C of the BIT, because they needed more information on (inter alia) the question why in the Lago Agrio Proceedings Chevron has been considered a legal successor in title of Texaco regarding the liabilities of the latter (4.26 and 4.27): it moved the assessment forward to the main case (*the merits*). The Arbitration Tribunal has this authority on the basis of article 21 par. 4 of the Uncitral Arbitration Rules. Section 1052 subsection 1 Code of Civil Procedure determining that the Arbitration Tribunal itself decides on its own jurisdiction, implies that the judge must wait till that decision has bene taken before he may and can assess whether the Arbitration Tribunal has rightfully accepted jurisdiction. Thus, judgment about the question whether the Arbitration Tribunal has jurisdiction on the basis of article VI par. 1 under (c) of the BIT cannot yet be given in these proceedings (section 1052 subsection 1 old Code of Civil Procedure).

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9.4 Regarding the question whether Chevron can enforce own claims in the arbitral proceedings on the basis of article VI par. 1 under (a) of the BIT, the Arbitration Tribunal determined that in the first place ("*first issue*", legal ground 4.39 of the Third Interim Award) it has to be established whether Chevron is a "*Releasee*" in the meaning of article 5.1 of the 1995 Settlement Agreement. In the Third Interim Award (legal ground 4.53) the Arbitration Tribunal determined that, although it considers the explanation of the 1995 Settlement Agreement given by Chevron and TexPet "*serious*", a decision on that explanation is not yet given and a final award is suspended until the main case on the merits, since this has bearing on both its jurisdiction on the basis of article VI par. 1 under (a) of the BIT, and the assessment as to the contents of the claims of Chevron and TexPet in connection with the 1995 Settlement Agreement. This decision is repeated in the First Partial Award (under 3).

9.5 Subsequently in the Procedural Order No. 10 the Arbitration Tribunal decided that the proceedings on the merits will be split into two tracks. In the First Track the explanation and the legal consequences of the 1995 Settlement Agreement are handled, including the dispute whether or not Chevron is a "*Releasee*" under the 1995 Settlement Agreement (see the representation in the First Partial Award under 4). Thereupon the Arbitration Tribunal judged in the First Partial Award on Track 1 that indeed Chevron is a "*Releasee*" and can enforce rights from the 1995 Settlement Agreement. An answer to the question whether that means that the Arbitration Tribunal has jurisdiction to assess a dispute between Chevron and Ecuador about those rights on the basis of article VI par. 1 under (a) of the BIT was not given by the Arbitration Tribunal. It must be derived from the fact that the qualification as "*Releasee*" was a "*first issue*" for the Arbitration Tribunal that even more steps must be taken for the question on jurisdiction. The conditions as included in article VI par. 1 under (a) of the BIT, that the dispute is *arising out of or relating to* an investment agreement can be considered, and whether it concerns an investment agreement *between* Ecuador and Chevron. Added to that is the fact that the Arbitration Tribunal in legal ground 36 of the First Partial Award emphasized that the fact that a certain question is not discussed here, should not lead to the conclusion that in one way or another the decision on this question was implied. The conclusion from this all is that the Arbitration Tribunal still has not given a final award on its jurisdiction on the basis of article VI par. 1 under (a) of the BIT. Section 1052 subsection 1 Code of Civil Procedure, determining that the Arbitration Tribunal decides on its own jurisdiction, implies that the judge should wait till that decision is taken before he may and can asses whether the Arbitration Tribunal has rightfully accepted jurisdiction. The same is implied by section 1064 subsection 1 old Code of Civil Procedure, because the First Partial Award can be regarded as an interim award on this point.

9.6 The above leads to the conclusion that the grounds for appeal II and IV will not be assessed further. Ground IV could be read so, that a "separate" assessment of labeling Chevron as "Releasee" is required. This course will not be taken since it affects the substantive hearing of the still pending case.

10. The conclusion of the above is that the grounds for appeal I through IV relating to the validity of the arbitration agreement fail.

The awards are in conflict with the public order

11.1 The grounds for appeal V-XIX concern the claim for annulment of the arbitral awards for conflict with the public order.

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11.2 First and foremost, in the assessment whether the arbitral awards are in conflict with the public order restraint must be exercised. Annulment on this basis is only in order if the awards are in conflict with mandatory rules of law of such a fundamental nature, that compliance therewith must not be frustrated by restrictions of a procedural nature.

12.1 Ecuador is of the opinion that the interim relief measures taken by the Arbitration Tribunal are in conflict with the public order.
These measures, summarized, include an order to Ecuador (through her executive, legislative and judicial powers) to take measures to suspend) the execution and recognition of the Lago Agrio judgments (including appeal and cassation (or have these suspended). At the most Ecuador can be held liable in case there is a violation of the BIT by her judicial power, but the jurisdiction of the Arbitration Tribunal does not reach to the extent that it can interfere in the independency and sovereignty of the Ecuadorian judge, or that it can instruct the executive and/or legislative power to intervene in civil proceedings. This would create an interference of the separation of powers. Moreover, the Arbitration Tribunal wrongfully presented itself as "global judge" by trying to frustrate the recognition and execution of Ecuadorian judgments abroad, according to Ecuador.

12.2 Starting point in the assessment is that Ecuador has subjected herself to the BIT and its provisions on arbitration, including the UAR. Article 26 of the UAR grants the Arbitration Tribunal jurisdiction to take interim relief measures that are related to the case on the merits. Article 32, par. 2 of the UAR and article VI par. 6 of the BIT determine that every arbitral award binds parties and has to be executed as fast as possible. By agreeing to the arbitration and the applicable provisions, Ecuador accepted the jurisdiction of the Arbitration Tribunal and has endorsed that she will execute the measures as taken by the Arbitration Tribunal without delays, and to take the measures for its enforcement that are in her influence. This implies that Ecuador cannot complain that the measures as imposed by the Arbitration Tribunal would violate her independency and sovereignty, as long as the Arbitration Tribunal takes decisions that are within its jurisdiction on the basis of the applicable rules.
Contrary to what Ecuador seems to assume, the BIT and/or the UAR are not implying that the Arbitration Tribunal can only assess whether Ecuador is bound to compensate losses on the basis of being liable for the violation of the BIT, not even if the alleged violation was committed by her judicial power. Further the appeal court is of the opinion that, contrary to what Ecuador suggests, the Arbitration Tribunal did not order Ecuador to intervene with her executive power in the tasks that are reserved for the judicial power, and would thus interfere in the separation of powers. Ecuador, briefly, has been ordered to suspend the execution of the Lago Agrio judgment within and outside of Ecuador. This order extends to all government bodies whose cooperation is required to execute the award. It is up to the republic of Ecuador to determine by whom and in which manner the measures as imposed by the Arbitration Tribunal are executed, her executive power, her legislative power or her judicial power, or a combination thereof, for instance by provisionally not granting an apostille or by suspending the legalization. Thus Ecuador has not been ordered to exert influence on the contents or the outcome of a judgment to be issued by an Ecuadorian judge, neither has she been ordered to instruct a foreign judge to refuse the recognition of the Lago Agrio judgment, but (only) to suspend its execution (or to have it suspended). The measure is not final yet. Ecuador is not ordered to stop the execution for ever, but only to have the execution suspended until the arbiters in the arbitration have made the final award, in which a definite award about the general release (Track 1) and the denial of justice (Track 2) is decided, in order to prevent that an irreversible situation is created. Further it is important that the Arbitration Tribunal holds Chevron and TexPet liable for the losses Ecuador may suffer from complying with the obligations as imposed upon her by the Arbitration Tribunal, and has ordered Chevron and TexPet to deposit an amount of US$ 50 million as security for that possible liability.

12.3 Based on the above, the grounds for appeal V through VIII fail. Ground IX has been presented without success. The single circumstance that the measure would not be necessary, if correct at all, would not mean that such measure is in violation of the public order.

12.4 Special attention should be given to the circumstance that the interim measures of the Arbitration Tribunal also affect the interests of third parties, to with the Ecuadorian citizens who act as plaintiffs in the Lago Agrio Proceedings. For these citizens cannot execute the award when Ecuador would comply with the interim measures as imposed by the Arbitration Tribunal (or have it executed).

12.5 The appeal court considers as follows. The interim measures are not directly affecting the rights of the Lago Agrio plaintiffs. However, the Arbitration Tribunal has ordered Ecuador to arrange that the Lago Agrio award will not be executed for the time being. This implies that for the time being the Lago Agrio plaintiffs cannot enforce their rights (established by the Ecuadorian judge) against Chevron, so that temporarily suspending the execution of the judgment has an impact on these Ecuadorian citizens and thus they may suffer losses as a consequence. Insomuch there is tension between the interim relief measures imposed by the Arbitration Tribunal and the judgment in the Lago Agrio proceedings that basically are eligible for execution on the basis of the Ecuadorian law. In the opinion of the appeal court this does not imply that the Arbitration Tribunal should have refrained from the contested interim relief measures. In the understanding of the appeal court, the Arbitration Tribunal, after balancing the interests in question, imposed (for the time being) the (implicit) obligation on Ecuador to take the rights and interests of the Ecuadorian citizens into account in the execution of the interim measures (summarized: refraining from the necessary cooperation to the execution of the Lago Agrio judgment), which rights and interests follow from that same judgment.
In these annulment proceedings Ecuador has insufficiently explained why in the given circumstances the Arbitration Tribunal should not and could not make such balancing.

12.6 Ecuador argues that even when the Interim Awards have a temporary nature, they still deny the Lago Agrio plaintiffs the right to compensation, so that they are forced to live in a polluted environment for a long period of time and have the risk to become ill as a consequence thereof. According Ecuador the Arbitration Tribunal has thus decided on the rights of the Lago Agrio plaintiffs. This argument does not consider that the efforts of the arbitral proceedings are to determine who is responsible for the environmental pollution in the Oriente region and as such is obliged to clean up or to pay the costs for that operation. Chevron and TexPet allege that this is Ecuador, because Ecuador granted them general release for environmental pollution in that 1995 Settlement Agreement and accepted the liability for this, and should thus hold Chevron and TexPet harmless. It is exactly in the arbitral proceedings where it must be established who must clean up (or have cleaned up) the polluted environment of the Lago Agrio plaintiffs, or who at any rate must pay the costs. Ecuador or Chevron and TexPet. Where the latter are forced by the execution of the Lago Agrio judgment to pay the large sums of money to which they were sentenced, and finally the arbitration awards that not they, but Ecuador is liable for the damage, Chevron and TexPet must try to recover that amount. It is true that Ecuador asserts that Chevron can have recourse on her, but does not consider the fact that Chevron, also in view of the size of the amount, runs the risk that they cannot (fully) recover this amount. The appeal court further observes that maybe anyway it would have been Ecuador's responsibility to arrange that the Lago Agrio plaintiffs would no longer have to live in a polluted environment.

12.7 The viewpoint of Ecuador that the arbitration actually concerns the adoption of the legal relation between the Lago Agrio plaintiffs and Chevron, is rejected. As has become apparent from the above, starting point is that Chevron and TexPet wish to see determined in the arbitration proceedings that they have been generally discharged in the 1995 Settlement Agreement, that

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means vis-à-vis all and everyone, from any guilt regarding environmental pollution in Ecuador and that Ecuador will hold them harmless for third party claims that relate to this environmental pollution. The Arbitration Tribunal took interim measures to enable the assessment of these claims without interference of irreversible consequences,.

12.8 In the appeal pleadings Ecuador mentioned that the consequence for the Lago Agrio plaintiffs not being able to execute the judgment would be that their right of execution of the judgment will be time-barred in certain states.
Not only did Ecuador raise this submission at a very late stage, but it has also been insufficiently substantiated, so that it will not be considered.

12.9 Ground for appeal XII has also been presented without success in as far as Ecuador argues that the Chevron claims in the arbitration proceedings (also) aim to determine the judicial relation between Chevron and the Lago Agrio plaintiffs. Ecuador does not take into consideration that the Arbitration Tribunal has not yet decided on the Chevron claims as mentioned in the explanation to ground XII.
The single fact that with her claims Chevron (might) intend the Arbitration Tribunal – in the words of Ecuador – to "have the judicial relation between Chevron and the Lago Agrio plaintiffs established", is insufficient to judge that the interim measures as imposed are in conflict with the public order and should thus be set aside.

12.10 The above leads to the conclusion that the grounds for appeal X through XIII fail.

13.1 The grounds for appeal XIV-XIX are directed against the legal ground 4.30 through 4.32 wherein the court considers that the Interim Awards can only be explained by the fact that at the time of issuing them, the Arbitration Tribunal had serious indications that the Lago Agrio judgment was fraudulent.

13.2 Ground for appeal XIV in which Ecuador argues that the accusations of Chevron regarding fraud committed in the Lago Agrio judgment are not relevant, is allowed. Ecuador correctly argues that the fraud asserted by the Arbitration Tribunal did not form the basis for its decision on the jurisdiction or for the Interim Awards taking the interim measures. In the context of the question whether Chevron and TexPet "prima facie" have a serious case, the Arbitration Tribunal considered that the allegations of Chevron and TexPet are the most serious accusations that can be made against a state in the field of its judicial system. Added is that the allegations can be completely false or completely true, and that the Arbitration Tribunal has not yet given a final award (legal ground 4.58 of the Third Interim Award). Thereafter, this part of the substantive proceedings have been moved to Track 2. In his First Partial Award the Arbitration Tribunal warned that the assumption cannot be made that any subject has been implicitly decided. The ground has been presented correctly, as are the grounds XVI and XVII, but the success of these grounds cannot lead to the annulment of the award and lead to allow the claim to annul the arbitral awards as yet.
As has become evident from the considerations above, the accusations of fraud are not a part of the ruling of the appeal court that the Arbitration Tribunal had jurisdiction to assess the dispute or of the ruling that the arbitral awards are not in conflict with the public order.

13.3 Since ground for appeal XIV is allowed, ground XV, with the offer to provide proof in case the accusations of fraud would be relevant for any decision, will not be handled. For the same reasons ground XVIII, arguing that the assertions in the judgment of the New York District Court are wrong, needs not to be assessed. Ground XIX is without success on the basis of the considerations under 12.

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Insufficient reasons

14.1 In their grounds for appeal XX through XXII Ecuador turns against the decision of the court that less requirements can be set to the obligation to provide reasons to the Arbitration Tribunal.

14.2 First and foremost the appeal court asserts that in the summons, Ecuador did not invoke the ground for annulment as referred to in section 1065 subsection 1 under d Code of Civil Procedure, which is more about the signature and the reasoning of the decision (see the summary of the grounds for annulment in legal ground 4.1 of the court decision). Section 1065 subsection 4 (old) Code of Civil Procedure prevents Ecuador from submitting on appeal for the first time an inadequate substantiation of the arbitral awards in the meaning of said provision under d as basis for annulment.

14.3 The only possibility remaining is that Ecuador intends to have the challenged reasoning assessed in the context of the annulment ground of section 1065 subsection 1 under e Code of Civil Procedure (conflict with the public order), and this is how the court obviously regarded the arguments of Ecuador. But within that context annulment is only possible in case no reasoning at all is given, or the reasoning as given must be placed in one line with lacking reasoning, because it holds no explanation for the decision. However, Ecuador has not submitted this. Her argument is that the Arbitration Tribunal failed in its obligation to provide grounds, or has given evidently inadequate grounds. These lighter forms of violation of the obligation to provide grounds, if present at all, are insufficient cause for annulment on the basis of violation of the public order, now that this did not comply with the requirement of lacking reasoning or equal reasoning. Therefore the grounds of appeal XX and XXI are without success. Ground of appeal XXII fails on the reasons given under 13.

Conclusion

15. The conclusion is that most grounds of appeal fail. The grounds of appeal that have been presented rightfully do not lead to a different judgment. And so ground of appeal XXIII also fails. The decision of the court will be confirmed with an improvement of the legal grounds and Ecuador will be adjudicated to pay the costs of the proceedings.

Decision

The court of appeal:

- confirms the decision given between parties by the district court of The Hague on 20 January 2016, with an improvement of the legal grounds;
- sentences Ecuador to pay the costs of the proceedings, up to this judgment at the side of Chevron and TX estimated to be € 718.- in court fees and € 2,682.- in attorney fees;
- decides that for the adjudication on the costs, this ruling is immediately executable.

J.J. van Ravesteijn-Prins Sworn Translator

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This ruling was given by M.M. Olthof LL.M., C.J. Verduyn LL.M. and C.A. Joustra LL.M. and was pronounced at the public hearing of 18 July in the presence of the court registrar.

(signature) (signature) (signature)

Issued as certified copy
The Appeal Court Registrar
in The Hague
(signature)

J.J. van Ravesteijn-Prins Sworn Translator Rbv nr. 235