Public international law and international civil litigation

From Ecuador to the United States and back (twice) – *Chevron v Donziger*

By Donald K Anton

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THE BACKGROUND OF *CHEVRON v DONZIGER*

Between 1964 and 1991, the Texaco Petroleum Company (Texaco) owned an interest in a 1,500 square mile mining concession in Ecuador. During that time, Texaco dumped approximately 16 billion gallons of toxic substances into the surface water of the Amazon, relied upon by indigenous communities and remote farmers. Texaco also created hundreds of unlined pits in the jungle floor and filled them with toxic sludge. Toxic, and in some cases, carcinogenic chemicals, continue to contaminate water that thousands of indigenous people and small farmers depend on for every day life.

Original US litigation (1993-2002)

In 1993, the Amazonian indigenous communities and remote farmers sued Texaco in the United States, its home jurisdiction, seeking redress for damages caused by Texaco's operations.[1] From 1993 to 2002 Texaco, and later Chevron

when it acquired Texaco, fought to have the case dismissed and moved to Ecuador as the more appropriate forum to try the case. Ultimately, the US action was dismissed on *forum non conveniens* grounds.[2] However, the dismissal was conditioned on promises by Chevron to accept jurisdiction in Ecuador and satisfy any judgment rendered by an Ecuadorian court.[3] While the action in the US was ongoing, Chevron apparently removed its assets from Ecuador, ensuring that the Ecuadorian plaintiffs would be unable to enforce and collect any judgment in that country.

The litigation in Ecuador (2003 – present)

The case was re-filed and tried in Ecuador and was hotly contested for approximately eight years. As one unpublished report put it:

> 'During the evidentiary phase of the trial, hundreds of former Texaco well sites were inspected by the parties and by experts appointed by the court, and hundreds of expert reports were submitted. The inspections revealed significant contamination by various toxic chemicals at every site. Often, Chevron's own experts would report contamination exceeding Ecuadorian standards. Such exceedances [sic] were found at sites only operated by Texaco (and not subsequently by Ecuador's state-owned oil company), and even at sites that Texaco purportedly 'remediated' in the early 1990s as part of its gambit to derail the New York litigation . . .. The record in the case consists of approximately 200,000 pages, containing reams of evidence not only generated during the site inspections, but also related to Texaco's practices and Chevron's legal defenses – including its defense that it structured its merger with Texaco in such a way as to avoid the continuation of liability.'[4]

On 14 February 2011, the Provincial Court of Sucumbios awarded the Ecuadorian plaintiffs $8.6 billion in damages, with $5.6 billion going toward environmental remediation.[5] As to liability, a summary of the translated version of judgment relates that:

> 'The court observed that the essence of Texaco's conduct itself was not really in dispute. For example, the court noted that Chevron lawyer Rodrigo Pérez Pallares had admitted in a letter to a popular Ecuadorian magazine that Texaco dumped approximately 16 billion gallons of "production water" – a liquid contaminated with [a variety of toxic substances] – directly into the surface waters between 1972 and 1990. It also was undisputed that Texaco had dumped oil waste into unlined pits that were merely shallow excavations in the ground . . .. The court concluded that Texaco had the means, but not the will, to employ safer but perhaps more expensive methods. The court also cited to correspondence between Texaco officials demonstrating that they were aware of the problems with unlined pits, but decided to continue using them because they were "efficient and profitable," and the alternative would be too expensive. The court found that Texaco's practices violated multiple provisions of Ecuadorian law, including laws and regulations dealing with human health, protection of the waterways, and the management of hydrocarbons. In sum, the court concluded that Texaco's "system was designed to discharge waste to the environment in a cost-effective way, but did not correctly address the risks of damages". The court further opined that the damage was "not only foreseeable, but also avoidable".'[6]

The litigation returns to the US

Anticipating the worst, Chevron took pre-emptive action back in the US, even while the judgment in Ecuador was on appeal in Ecuador. Indeed, with no final judgment and no attempt by the Ecuadorian plaintiffs to enforce judgment in the US, Chevron filed a complaint against the Ecuadorians seeking declaratory relief for non-recognition of the Ecuadorian judgment and a preliminary injunction enjoining the enforcement of the judgment. On 7 March 2011, the US Federal District Court in the Southern District of New York granted the preliminary injunction, which purported to enjoin the Ecuadorians from seeking to have the Ecuadorian judgment recognised or enforced anywhere in the world outside of Ecuador.[7] The Ecuadorian defendants have appealed, seeking to have the injunction dissolved and the case dismissed.

The basis of Chevron's injunctive action rests on its ability to obtain hundreds of hours of video outtakes from a 2009 film about the Ecuadorian litigation entitled *Crude: The Real Price of Oil*[8] and 18 years' worth of files held by Steven Donziger, who has represented the Ecuadorian defendants since their case was originally filed in New York.[9] Donziger's files and outtakes from *Crude* were marshalled by Chevron to portray extortion as Donziger's *modus operandi*, the Ecuadorian litigation as a scheme, and the Ecuadorian courts as corrupt.

THE APPEAL AND ISSUES OF PUBLIC INTERNATIONAL LAW

As noted, the Ecuadorian defendants and Donziger have appealed from the preliminary injunction in the second US phase of the case. A group of international lawyers led by the present writer has filed, by leave of the appellate court, an *amici curiae* brief in support of the Ecuadorian defendants and dissolution of the preliminary injunction and dismissal of the action.[10]

The *amici* brief seeks to show that the District Court erred in granting the injunction and that international legal obligations of the US required that the injunction be dissolved and the case dismissed. This short article takes the reader through the three of the five particular aspects of public international law that are called to the appellate court's attention in the brief. First, the preliminary injunction is framed in such a way so as to violate the ancient customary international law principle of non-intervention. 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 US. Third, the District Court's preliminary injunction cannot stop Ecuadorian defendants from seeking >>

to enforce the judgment outside the US and cannot compel any other state from assuming jurisdiction.[11]

Unlawful intervention

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 [the action in Ecuador].[12]

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 US. Indeed, it appears to *amici* most Ecuadorian defendants have had no contact or presence at all in the US. 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*.

Customary international law has for centuries prohibited a state from intervening in the domestic affairs of another state.[13] This principle of non-intervention has also long precluded interference by one state in the relations between two or more other states without consent.[14] 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)[15] and 2(7)[16] of the *United Nations Charter*.

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.[17] Fundamentally, however, 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.[18] In 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 recognise a foreign judgment is a matter 'of domestic jurisdiction' that international law protects 'from unwanted intrusion from outside ...'[19]

The preliminary injunction granted by the US court in *Donziger* clearly seems to constitute an internationally unlawful attempt to intervene in the domestic legal affairs of Ecuador. First, it is important to remember the procedural posture of this case. This is not an action by successful foreign litigants for the recognition and enforcement of a foreign judgment in the US. Rather, the unsuccessful foreign defendant, Chevron, has commenced a pre-emptive action against foreign nationals, over their objection, in a US 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 undoubtedly unwanted intrusion into the internal administration of Ecuadorian justice.

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 that 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 recognised and enforced, except the US. It does this by seeking to prohibit every state in the world except the US from determining the issues of recognition and enforcement. This sort of intrusion into the international relationship between Ecuador and other states puts the US in violation of a key international obligation, because each state is permitted to decide freely whether a foreign judgment should be recognised and enforced.

Moreover, international civil litigation under the *Sherman Antitrust Act*[20] provides, outside the US, a paradigmatic example[21] of a widely perceived and claimed violation of the principle of non-intervention falling well short of any use or threat of military force. It is well known that many states have long complained about the legality of the extraterritorial assertion of jurisdiction in US antitrust proceedings on the basis of illegal intervention.[22] States protest that US courts violate 'the territorial sovereignty of other states . . . by purporting to exercise jurisdiction in respect of persons, matters or conduct outside the United States by reason of some alleged impact on business within the United States'.[23] The attempt to intervene through antitrust law in other states has resulted in the enactment of retaliatory blocking legislation as a counter-measure by U.S. trading partners and an outright refusal to recognise and enforce US antitrust judgments.[24]

The US courts do not have jurisdiction under international law

There are accepted international legal limits in relation to domestic jurisdiction to adjudicate. If these 'limits are transgressed, then international law is violated ...'[25] In this case, it seems certain that under international law the US courts lack jurisdiction over the Ecuadorian defendants. These defendants lack *any* legally significant contacts at international law with the US.[26] It is recognised 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'.[27]

Customary international law's 'operating system'[28] 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 cases having a foreign element, and to avoid undue encroachment on a jurisdiction more properly appertaining to, or more appropriately exercisable, by another state.'[29]

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 US law of foreign relations and, more importantly for present purposes, general international law.[30] 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 asserting jurisdiction and the individual; the legitimate expectations of those affected; and the likelihood of conflict with other states.[31]

In the present case, the lower court recognised the applicability of the *Restatement on Foreign Relations,*[32] 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*. 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.[33]

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 absolutely no real or meaningful link with the US on which jurisdiction could be established under international law. Most, if not all, of the Ecuadorian defendants have never been to the US. There is no indication that the Ecuadorian defendants have property or other assets in the US. The Ecuadorian defendants do no business in the US 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 US 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.[34] It may also be true that the Ecuadorian defendants have been involved in other litigation related to this matter in the US 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[35] as the District Court has attempted to do in this case.[36] 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 favoured over foreign interests.'[37]

International law makes the preliminary injunction futile

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 recognised as sufficiently persuasive authority – >>

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if not binding on the parties – to dispose of the question of enforceability in the foreign *fora*.'[38]

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 recognise 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 without agreement, especially when made in regard to non-residents.[39]

The 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 US – 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.[40]

For instance, Chevron has significant operations and assets in Australia.[41] 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 Australian courts and the Australian Parliament have been hostile to recognising the exercise of excessive jurisdiction by foreign courts.[42] It is certain that under the various Australian *Foreign Judgments Acts*,[43] that no court would recognise a declaratory judgment and injunction asserted as a defence by Chevron because these Acts are limited to money judgments. The District Court's orders would not serve as defences for Chevron at common law in Australia, either, because a foreign injunction is potentially enforceable only if it seeks to restrain an act within the forum issuing the injunction.[44]

The District Court's attempt to exercise jurisdiction over Ecuadorian defendants is futile. They are not present in the US. They have no interests associated with the US. They have no assets in the US. And they will not in any foreseeable future be present in the US. It is clear that the Ecuadorian defendants cannot be compelled to obey the District Court's worldwide anti-suit injunction. The District Court's Order is thus unenforceable in any legal or practical way against the defendants.[45]

Moreover, a US District Court cannot preclude the courts in all other states of the world from making their own independent determinations about recognition and enforceability of the Ecuadorian verdict against Chevron. Indeed, even Chevron agrees 'absent a treaty, no court ...has an obligation to recognise a foreign judgment'.

Thus, the District Court's injunction binds neither the Ecuadorian defendants, who might seek to enforce a judgment against Chevron outside of the US, nor the courts that might hear such a case. In short, the preliminary injunction is superfluous for these defendants. It is well-settled that courts will not issue 'vain or useless' injunctive relief.[46] A futile order undermines the authority, dignity, and prestige of the court from which it issues.

CONCLUSION

In this case, the District Court failed to consider three applicable and binding norms of international law. 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) how both of these make its preliminary injunction futile. It would seem that proper consideration and application of these binding rules of international law require that the preliminary injunction be dissolved and Chevron's complaint dismissed. ■

Postscript: On 20 September 2011, the Second Circuit Court of Appeals vacated the injunction issued by the District Court, but has yet to issue an opinion setting forth the reasons.[47]

Notes: **1** *Aguinda v Texaco, Inc*, 142 F. Supp. 2d 534 (2d Cir. 2002). **2** *Aguinda v Texaco, Inc*, 303 F.3d 470, 473 (2d Cir. 2002). **3** *Ibid.* **4** Synopsis: Opinion and Order Granting Chevron's Motion for a Preliminary Injunction, Southern District of New York, *Chevron Corp v Donziger et al*, 11 Civ. 0691, Dkt. 181, March 7, 2011, Lewis A. Kaplan, USDJ (copy on file with author). **5** *Maria Aquinda, et al, v Texaco* (Case No. 2003-002), Book No. 63, Adolfo, J. **6** Synopsis, *supra* n 4. **7** *Chevron Corp v Donziger*, 11 Civ. 0691, Dkt. 181 (7 March 2011). **8** *Chevron Corp v Berlinger*, 629 F.3d 297, 304 (2d Cir. 2011). **9** *In re Application of Chevron Corp*, No. 10-mc-0002(LAK) (SDNY). **10** Brief of International Law Professors as *Amici Curiae* in Support of Defendants-Appellants and Dissolving the Preliminary Injunction (copy on file with the author). **11** Not mentioned in this article are the detailed reasons why 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. Nor does the article canvass why US courts should not have accepted jurisdiction because Chevron has failed to exhaust local remedies in Ecuador as required by international law. **12** *Chevron Corp v Donziger*, (SPA129) (emphasis added). **13** *See, for example,* Joseph Story, *Commentaries on the Conflict of Laws* §20 at 28-9 (5th edn, 1857); Henry Wheaton, *Elements of International Law* §63, at 91-2 (Richard Henry Dana, ed.)(8th edn, 1866); L Oppenheim, *I International Law: A Treatise* 181-91 (1905); Charles Cheney Hyde, *I International Law Chiefly as Interpreted and Applied by the United States* §69 at 116-18 (1922). **14** William Edward Hall, *A Treatise on International Law* §88 at 337 (Pearce Higgins, ed)(8th edn, 1924). Until threats and use of force were made unlawful, however, it remained unhappily possible to turn an unlawful intervention into a permissible war. **15** Article 2(4) of the

Charter of the United Nations, 1 UNTS XVI (24 October 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 (2nd edn, 2004). **16** Article 2(7) of the *Charter of the United Nations*, 1 UNTS XVI (24 October 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* 139-54 (Bruno Simma, ed, 1995). **17** Philip C Jessup, *A Modern Law of Nations* 172-4 (1948); Charles Cheney Hyde, *I International Law Chiefly as Interpreted and Applied by the United States* §69 at 116-18 (1922). **18** See *The Charter of the United Nations: A Commentary*, 150-1 (Bruno Simma, ed, 1995). While illegal intervention was once thought to require 'dictatorial interference' in another state, contemporary authority is to the contrary. *Ibid*, at 150. **19** JES Fawcett, *General Course on Public International Law*, 132 Rec. des Cours 363, 392 (1971-I). **20** See, in particular, 15 USC §§ 1, 2 & 7. **21** Another example is found in more recent international protests about illegal intervention related to the *Helm-Burton Act*, 22 USC §§ 6021 91. **22** Gary B Born, *International Civil Litigation in United States Court* 584-6 (3rd edn, 1996). In recent years, protests have become more muted, but the example remains. **23** American Bar Association Section of Antitrust Law, *Antitrust Developments* 1035-6 (4th edn, 1997) (examples of protests by Australia, Canada, the Philippines, South Africa, and the United Kingdom). **24** *See* D Senz & Hilary Charlesworth, 'Building Blocks: Australia's Response to Foreign Extraterritorial Legislation', 2 *Melb.J.Int'l L.* 69 (2001). **25** Damrosch, Henkin, Murphy & Smit, *International Law* 756 (5th edn, 2009). **26** International law recognises only five principles on which the projection of extra-territorial jurisdiction may be premised: territorial, nationality, passive nationality, security, and universality. See Anton, Mathew & Morgan, *International Law* 59-77 (2005). None is implicated in this case. **27** American Law Institute, *I Restatement (Third) of the Foreign Relations Law of the United States*, Chap. 2, Introductory Note, at 304 (1987). **28** 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 edn, 2003). **29** *Barcelona Traction, Light and Power Co (Belg v Spain)* 1970 ICJ 3, 105 (5 February.) (Separate Opinion of Judge Sir Gerald Fitzmaurice.) **30** 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). **31** See Oscar Schachter, *International Law in Theory and Practice* 256-61 (1991). **32** *Chevron Corp v Donziger*, (SPA80-88). **33** *Chevron Corp v Donziger*, (SPA79-88). **34** *Aguinda v Texaco, Inc*, 142 F. Supp. 2d 534 (SDNY 2001), aff'd 303 F.3d 470 (2d Cir. 2002). **35** 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 Mahfouz*, 9 NY3d 501, 509 (NY 2007); *Pan Atl Group, Inc v Quantum Chem Co*, No. 90-cv-5155, 1990 WL 180160, at *3 (SDNY 8 November, 1990); *Andros Compania Maritima SA v Intertanker Ltd*, 714 F. Supp. 669, 675-6 (SDNY 1989). **36** *Chevron Corp v Donziger*, (SPA98). **37** *Laker Airways v Sabena, et al*, 731 F.2d 909, 951 (DC Cir. 1984). **38** *Chevron Corp v Donziger*, (SPA103). **39** See, for example, Joseph Story, *Commentaries on the Conflict of Laws* §22 at 30-1 (5th edn, 1857). **40** For a strikingly similar analysis of the situation *within* the federal system of the US, see Dan B Dobbs, *Remedies: Damages, Equity, Restitution* 63-4 (1973) (judges in State B are 'not obliged to pay the slightest heed to [an] injunction' issued in State A). **41** See Chevron Australia, http://www.chevronaustralia.com/home.aspx. **42** See *Foreign Proceedings (Excess of Jurisdiction) Act* 1984 (Cth). See also PE Nygh and Martin Davies, *Conflict of Laws in Australia* 197-98 (2002); Deborah Senz and Hilary Charlesworth, 'Building Blocks: Australia's Response to Foreign Extraterritorial Legislation', 2 *Melb.J.Int'l L.* 69 (2001). **43** *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). **44** *James North & Sons, Ltd v North Cape Textiles, Ltd* [1984] 1 WLR 1428; *Rosler v Hilbery* [1925] Ch 250. **45** See, for example, *Society of Lloyd's v White*, [2004] VCSA 101 (4 June 2004), available at: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSCA/2004/101.html (refusing to recognise an anti-suit injunction issued in England against a resident of Victoria, Australia, with no interests or assets in England, even though the anti-suit injunction purported to enforce a contractual agreement between the parties assigning exclusive jurisdiction to English courts). **46** See, for example, *New York Times Co v United States*, 403 US 713, 744 (1971) (Marshall, J, concurring) ("It is a traditional axiom of equity that a court of equity will not do a useless thing"); *Pennington v Ziman*, 216 NYS2d 1, 2 (1st Dep't 1961) (equity does not suffer a vain order to be made); *Burke v Kingsley Books, Inc*, 167 NYS2d 615, 619 (NY County 1957) ("That a court of equity will not do a useless or vain thing is an ancient maxim of hornbook learning and general recognition.") (internal quotation and citation omitted); 67A NY Jur 2d Injunctions § 38 (2005) ("A court will not stultify itself by issuing an injunction which obviously could not, for practical reasons, be enforced or accomplish anything. Even a preliminary injunction will be denied if it would be unenforceable or have no practical effect.") **47** See Martha Neil, 2nd Circuit Nixes Injunction 3 Days After Hearing, Lifts Ban on Pursuing $18bn Award Against Chevron, *ABA Journal Law News*, available at: http://www.abajournal.com/news/article/2nd_circuit_vacates_injunction_says_plaintiffs/.

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