

ENERGY DISPUTE RESOLUTION: INVESTMENT PROTECTION, TRANSIT AND THE ENERGY CHARTER TREATY

Brussels, 22-23 October 2009

Hotel Le Plaza - Boulevard Adolphe Max, 118-126

PROGRAMME (Preliminary)



ENERGY CHARTER
SECRETARIAT



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE



British Institute of
International and
Comparative Law



INTERNATIONAL CENTRE
FOR SETTLEMENT OF
INVESTMENT DISPUTES



INTERNATIONAL
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PERMANENT COURT
OF ARBITRATION

In today's energy-dependent world, securing energy investments is a challenge for producer, consumer and transit countries alike. The dramatic breakdown in gas deliveries from Russia to Europe in early 2009 demonstrates the importance of secure transit mechanisms for grid-bound energy investments.

The Energy Charter Treaty (ECT), signed in 1994 and with 53 members, is the only multilateral treaty which covers both investment protection and transit dispute resolution issues.

Following two highly successful conferences in Stockholm in June 2005 and in Washington in May 2007, the Energy Charter Secretariat is honoured to host this conference in conjunction with the Arbitration Institute of the Stockholm Chamber of Commerce, the British Institute of International and Comparative Law, the International Centre for Settlement of Investment Disputes, the International Chamber of Commerce and the Permanent Court of Arbitration.

Registration, and payment of the relevant registration fee, are required in order to attend this event. Delegates should, preferably before 2 October 2009, complete and follow the instructions on the conference registration form which is available by [clicking here](#). Late registrations will be considered depending on availability.

Queries about the substantive content of this conference should be addressed to Graham.Coop@encharter.org. Administrative enquiries should be addressed to LAConf@encharter.org.

Simultaneous English-Russian interpretation will be provided at all sessions.

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Thursday 22 October 2009

14.00 Welcome and opening remarks

André Mernier

Secretary General, Energy Charter Secretariat

Ulf Franke

Secretary General, Arbitration Institute of the
Stockholm Chamber of Commerce

Jason Fry

Secretary General, International Court of Arbitration
of the International Chamber of Commerce

Meg Kinnear

Secretary General, International Centre
for Settlement of Investment Disputes

Christiaan Kröner

Secretary General, Permanent Court of
Arbitration

15.00 Session 1: **What's new? Awards, decisions and other developments in recent
ECT investment arbitrations**

Chair:

Norah Gallagher

Director, Investment Treaty Forum,

British Institute of International and Comparative Law

The ECT offers a wide range of investment protection guarantees in its Part III. These are backed up by Article 26, which offers investors direct access to a range of arbitral and other mechanisms for resolving disputes with Contracting Parties. The ECT's investment arbitration provisions have given rise to over 20 international arbitration cases since the ECT entered into force in 1998. In this session, counsel involved in a selection of these cases explore topical issues and recent developments.

Plama v Bulgaria

Virginie Colaiuta (Hughes Hubbard & Reed LLP)
Jonathan Hamilton (White & Case LLP)

Ioannis Kardassopoulos v Georgia

David Herlihy (Skadden, Arps, Slate, Meagher &
Flom LLP)
Claudia Salomon (DLA Piper)

Amto v Ukraine

Kaj Hobér (Mannheimer Swartling)
Sergey Voitovich/Dmitry Grischenko
(Grischenko & Partners)

HEP v Slovenia

Stephen Jagusch (Allen & Overy)

Azpetrol International Holdings B.V. v

Azerbaijan

Stephen Jagusch (Allen & Overy)

AES v Hungary

Stephen Jagusch (Allen & Overy)
Jean Kalicki (Arnold & Porter LLP)

Mohammad Ammar Al-Bahloul v

Tajikistan

Adnan Amkhan (International Investment
and Commercial Arbitration Practitioner)

16.20 Afternoon coffee

16.35 Session 1 (continued)

18.00 End Session 1

20.00 Cocktail

20.30 Dinner

After-dinner speech: Key drivers for the global petroleum industry

Dr Randy Gossen

President, World Petroleum Council

Member, IDR Group



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9.00 Session 2: BITS, the ECT and the EU:
is conflict inevitable?

Chair: *Christer Söderlund*
Advokatfirman Vinge KB

The EU imports vast quantities of energy from third states and is also both a significant exporter and a significant importer of capital investment. It is, therefore, not surprising that numerous investment protection treaties exist, both between EU member states inter se and between EU member states and third states.

The ECT contains extensive investment protection provisions and is a mixed agreement to which the European Communities and their 27 member states are parties, alongside 24 non-EU members. This session is intended to review the implications of this in relation to the key area of investment protection. In several respects, the competence exercised by EU institutions in this area is undergoing expansion. Will this – despite their common objectives – necessarily lead to conflict between EU and other institutions?

Markus Burgstaller
Lovells LLP

Esa Paasivirta
European Commission

Richard Happ
Luther Rechtsanwaltsgesellschaft mbH

Robert Volterra
Latham & Watkins LLP

11.00 Morning coffee

11.15 Session 3: Provisional application: *rien ne dure comme le provisoire...*

Chair: *James Crawford*
Matrix Chambers

Provisional application, an established although not universal aspect of international treaty practice, is recognised by Article 25 of the 1969 Vienna Convention on the Law of Treaties. Article 45 of the ECT establishes a specific and detailed provisional application regime. 15 years after its signature, the ECT has yet to be ratified by a number of its signatories. This has given rise to the unusual situation in which the provisional application of the ECT has continued, for some signatories, for many years. This session explores the implications of this for the ECT and for the institution of provisional application in general.

Yas Banifatemi
Shearman & Sterling LLP

Laurent Gouiffès
Lovells LLP

Alexandre de Gramont
Crowell & Moring LLP

Michael Polkinghorne
White & Case LLP

12.45 Lunch

14.15 Session 3 (continued)

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14.45 Session 4: Transit disputes, supply disputes and the ECT:
towards an East-West thaw?

Chair: **Jonathan Stern**
Director of Gas Research, Oxford Institute for Energy Studies

Although the investment arbitration provisions of the ECT are responsible for the ECT's most widely-known contribution to international dispute resolution, the ECT also contains significant provisions relating to energy transit. The reliability of energy transit and supply arrangements has attracted increasing attention in recent years. This session aims to explore the contribution which the ECT can make to strengthening the reliability of such arrangements and thereby improving East-West relations in general.

Adnan Amkhan
International Investment and Commercial
Arbitration Practitioner

Kaj Hobér
Mannheimer Swartling
Invited speaker from Gazprom

Peter Cameron
Professor of International Energy Law and
Policy, Centre for Energy, Petroleum and
Mineral Law and Policy, University of Dundee
Invited speaker from Naftogaz

16.00 Afternoon coffee

16.15 Session 4 (continued)

17.00 Closing remarks

Norah Gallagher
Director, Investment Treaty Forum,
British Institute of International and
Comparative Law

Daniel Price
Sidley Austin LLP
Graham Coop
General Counsel, Energy Charter Secretariat

17.30 End of conference

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Administrative enquiries should be addressed to LACONF@encharter.org.

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