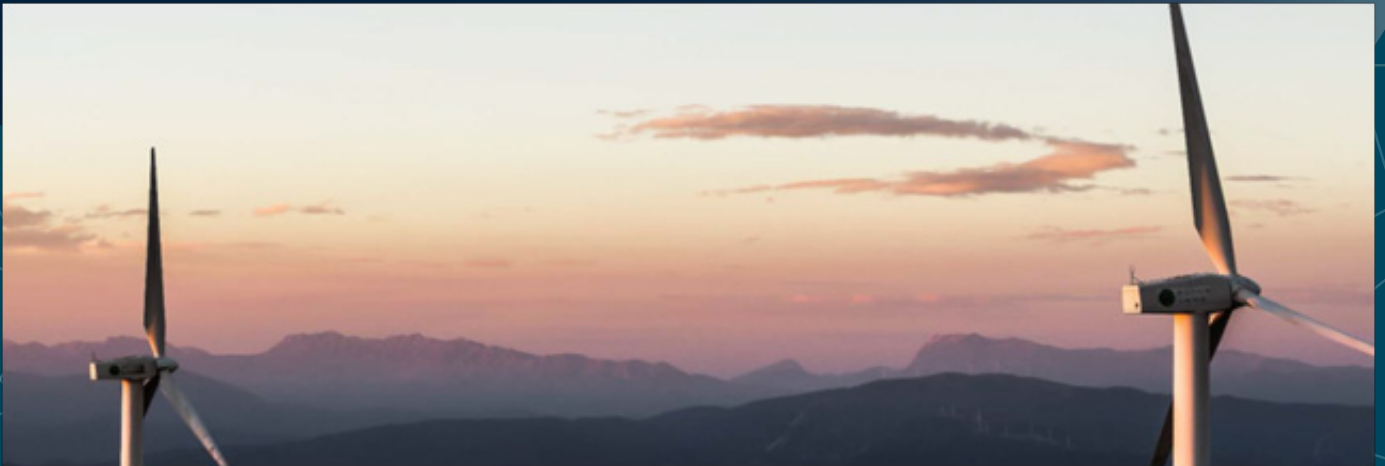


# Energy Charter Treaty Forum

KEY ISSUES IN  
INTERNATIONAL ARBITRATION

11/09/2018



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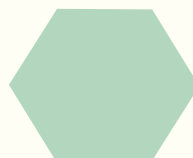
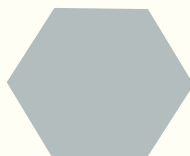
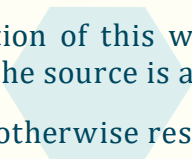
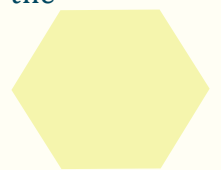
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# KEY ISSUES IN INTERNATIONAL ARBITRATION

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## Some Figures

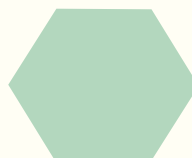
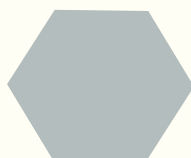
- ✓ 9% of ICSID cases are ECT cases.
- ✓ ICSID: 50 pending and 21 concluded ECT cases.
- ✓ PCA caseload -150 cases. 6,66% are ECT cases.
- ✓ PCA: 44,44% of the ECT cases involve renewables, 38,88% - gas; 5,55% - electricity; 5,55% - mining.
- ✓ 9 out of 18 PCA ECT cases have been intra-EU.
- ✓ In total, the SCC has administered 100 investment treaty disputes where 74% - under SCC Rules.
- ✓ Most of the investment disputes under SCC Rules arose from BITs and the ECT (26 cases).

On September 11, 2018, the International Centre for Settlement of Investment Disputes (ICSID) hosted the Energy Charter Treaty Forum in Paris. The event was jointly organized by the Energy Charter Secretariat, ICSID, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the Permanent Court of Arbitration (PCA).

The forum examined key issues in international dispute settlement through the lens of energy-sector arbitration and mediation. Leading arbitration practitioners, legal experts, academics and representatives from arbitral institutions explored:

- ▶ Advocacy in international arbitration involving energy disputes
- ▶ Settling investment disputes without tribunal rulings
- ▶ Damage calculations in international arbitration
- ▶ Cybersecurity in international arbitration and mediation

The event was opened by **Frauke Nitschke**, Senior Counsel and Team Leader at ICSID, who welcomed the participants and provided an overview of the ICSID cases instituted under the Energy Charter Treaty. **Annette Magnusson**, Secretary General of the SCC and **Evgeniya Goriatcheva**, Senior Counsel at the PCA, also welcomed the participants. The Secretary General of the Energy Charter Secretariat, **Dr. Urban Rusnák**, also made a welcome address to the conference participants in which he reviewed the evolution of the Energy Charter and explored modernization of the Energy Charter Treaty.





*Urban Rusnák  
Secretary General  
International Energy Charter*



*Annette Magnusson  
Secretary General  
SCC*



*Frauke Nitschke  
Team Leader/Senior Counsel  
ICSID*



*Evgeniya Goriatcheva  
Senior Legal Counsel  
PCA*



**Stephen Jagusch** of Quinn Emmanuel, London, delivered the keynote address in which he focused on advocacy in international arbitration in the energy sector. **Mr. Jagusch** subsequently moderated a panel consisting of **Carole Malinvaud**, Gide Loyrette Nouel, Paris; **David Roney**, Sidley Austin, Geneva; and **Jakob Ragnwaldh**, Mannheimer Swartling, Hong Kong. The panel discussed practical advocacy skills and shared tips for written and oral advocacy.



*Stephen Jagusch QC  
Quinn Emanuel,  
London*



*Jakob Ragnwaldh  
Vice Chairperson, SCC  
Mannheimer Swartling,  
Hong Kong*



*David Roney  
Sidley Austin, Geneva*



*Carole Malinvaud  
Gide Loyrette Nouel,  
Paris*





*Keynote speech by Stephen Jagusch QC*

The subsequent panel on settlement of investment disputes without tribunal rulings was moderated by **Frauke Nitschke** of ICSID. The panelists, comprising of **Barton Legum**, Dentons, Paris; **Joe Tirado**, Garrigues, London; and **Karl Mackie**, CEDR, London, explored the timing, tools and strategies for successful settlements. The session also reviewed investment mediation and its potential to settle investment disputes. During the session, the **Energy Charter Secretariat** also briefed participants on its efforts to promote mediation and other amicable dispute settlement mechanisms through the “Guide on Investment Mediation”, and draft “Model Dispute Management Instrument”. Also highlighted were various trainings and events on investor-state mediation organised by the Energy Charter Secretariat.



*Bart Legum  
Dentons, Paris*



*Karl Mackie  
CEDR, London*



*Joseph Tirado  
Garrigues, London*

The first afternoon panel, moderated by **Evgeniya Goriatcheva** of the PCA, reviewed damages calculations in international arbitration. The panelists, **Catherine Amirfar**, Debevoise & Plimpton, New York; **Alexis Maniatis**, The Brattle Group, Washington, D.C.; and **Alejandro López Ortiz**, Mayer Brown, Paris, discussed various aspects of expert testimony and damage calculations. The panelists also presented the findings of the ICCA-ASIL Task Force on Damages in International Arbitration.



*Panel III discussing damages*

The final session on cybersecurity in international arbitration and mediation was moderated by **Iryna De Meyer** of the Energy Charter Secretariat, and featured **Brandon Malone**, Brandon Malone & Company, Edinburgh; **Kathleen Paisley**, Ambos NBGO, Brussels; and **Yoshihiro Takatori**, Orrick, Tokyo, on the panel. The panelists discussed a range of issues related to cybersecurity and data protection in international arbitration and mediation, and addressed practical inquiries from conference participants. Mr. Yoshihiro Takatori explained the situation regarding cybersecurity in Japan, considering recent planning of new ADR facilities and institutions, such as Japan International Mediation Center in Kyoto.



*Panel IV addressing cybersecurity in international arbitration and meditation*



For 2019 ECT Forum and other events, please follow: [www.encharter.org](http://www.encharter.org)







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