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# ITA IN REVIEW

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## **IS THE FUTURE BRIGHT FOR INTERNATIONAL ENERGY DISPUTES IN ASIA? HIGHLIGHTS OF THE INAUGURAL ITA-ICC-IEL JOINT CONFERENCE – SINGAPORE 2019**

by Gabriella Richmond

The ITA-IEL-ICC Joint Conference on International Energy Arbitration was held in Singapore in September 2019, examining the future of international energy disputes in the region. There was a focus on the client perspective, with insights from a variety of speakers. The range of participants and speakers was impressive, with practitioners, in-house counsel, and institution representatives covering a broad spectrum of topics in the lifecycle of energy disputes.

As the inaugural holding of the conference in Singapore, Edwin Tong SC (Senior Minister of State for Law (“S.M.S.”)) highlighted the growing importance of Asia as an energy hub, and of Singapore as a dispute resolution hub for parties worldwide. As S.M.S. Tong noted, energy demands have grown hugely in Asia in the last 15 years, driven by Asia’s development and the infrastructure required. Singapore is Asia’s leading oil trading hub, and home to more than 300 leading energy and chemical companies. Its location and position as a neutral and stable jurisdiction make it attractive for multi-party, multi-jurisdictional, high-value disputes, particularly as the industry grows.

### **I. LIFECYCLES AND GLOBAL REACH OF ENERGY DISPUTES**

The conference covered a variety of aspects to an energy dispute, from pre-dispute responsibilities of the parties involved and early case assessment, through awards and settlement possibilities. A panel of in-house counsel and practitioners (Jennifer L. Ferratt, Chevron; Christopher Moore, Moyes & Co; Nandakumar Ponniya, Baker McKenzie; and Liz Snodgrass, Three Crowns) also discussed “Exit” disputes at the end of a project, covering the framework for such disputes, the financial and fiscal aspect, and the commercial and investment aspect of dispute resolution.

From a region-specific angle, Professor Chester Brown delivered a presentation on difficulties encountered through boundary disputes in the Asia-Pacific region, particularly significant for energy disputes. Professor Brown considered the balance



of uncertainty over making investment decisions against the demand for energy, against a background of key boundary disputes in the region.

In terms of comparisons drawn from energy disputes in Europe, Mark Mangan (Dechert LLP) and Joquin Terceno (Freshfields) took part in an interesting debate considering the similarities and differences between gas price reviews in Europe and Asia. This left conference members wondering if price reviews in Asia will follow the same pattern seen in Europe, despite many market differences.

The diversity of topics covered, and global experience of the speakers themselves was an overriding theme throughout the two days, encapsulated by two inspiring interviews with Laura M. Robertson (ConocoPhillips) and Loretta Malintoppi (39 Essex Chambers, Singapore).

## **II. INNOVATION IN ARBITRATION: KEEPING THE FUTURE BRIGHT**

A repeated topic throughout the conference was innovation in arbitration, with both institutions and practitioners staying attuned to what parties want and developments in the field, both generally and energy dispute specific. Senior representatives from the ICC, ICSID, SIAC and HKIA spoke on recent innovations and perspectives from the institutions, including prevalent topics such as third-party funding and transparency. Throughout the conference, the rising importance of mediation and ADR also became clear, particularly with the recent signing of the Singapore Convention on Mediation.<sup>1</sup>

## **III. PRACTICALITIES FROM AN IN-HOUSE PERSPECTIVE.**

The in-house perspective added a practical note to discussions, with engaged and interested clients with a desire for time and cost efficiency in proceedings. On a general note, experienced practitioners (Erin Miller Rankin, Freshfields, and Chen Han Toh, Pinsent Masons MPillay), and the client perspective from Mona Katigbak (GE Renewable Energy) and Catherine McNeilly (INPEX Australia) summarised the management of construction disputes. Client interest and involvement in selecting an arbitrator was evident, as well as the need for alignment between counsel and

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<sup>1</sup>United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018.



clients in the approach to the dispute.

The practitioners emphasized the influence and responsibility of the parties at the pre-arbitration stage, particularly in relation to attempted settlement and dispute assessment, with early case assessments and proactive resolution plans. They also made reference to the updated ICC Commission Report published in February 2019, with updates on interim measures, settlement, and translations being discussed in relation to energy disputes. The proactivity of institutions in responding to what users and clients want was apparent. As a fitting end to the conference, Craig Miles (King & Spalding) delivered a concise and entertaining review of the top energy dispute cases of the year, including the very recent award in *ConocoPhillips v Venezuela*.<sup>2</sup>

#### IV. KEY TAKEAWAYS.

The recurring themes, as highlighted by the conference co-chair Nicholas Lingard (Freshfields), were those of diversity, both in terms of experience, perspectives, and nationalities, and the omnipresence of geopolitics in energy disputes. The importance for clients in maintaining working relationships during a dispute, and the need for cost and time efficiency. Institutions and seats are responding to this by increased focus on areas such as third-party funding, settlement, and expedited arbitrations, amongst others. ADR is gaining greater traction and rising in importance outside of formal arbitration proceedings, particularly with the recent signing of the Singapore Mediation Rules.

The future for energy arbitration in Asia does look bright, bolstered by proactive institutions and engaged clients, against a backdrop of an increasingly important Asian market.

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<sup>2</sup> *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. & ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Award (Mar. 8, 2019)



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## **INSTITUTE FOR TRANSNATIONAL ARBITRATION OF THE CENTER FOR AMERICAN AND INTERNATIONAL LAW**

The Institute for Transnational Arbitration (ITA) provides advanced, continuing education for lawyers, judges and other professionals concerned with transnational arbitration of commercial and investment disputes. Through its programs, scholarly publications and membership activities, ITA has become an important global forum on contemporary issues in the field of transnational arbitration. The Institute's record of educational achievements has been aided by the support of many of the world's leading companies, lawyers and arbitration professionals. Membership in the Institute for Transnational Arbitration is available to corporations, law firms, professional and educational organizations, government agencies and individuals.

### **I. MISSION**

Founded in 1986 as a division of The Center for American and International Law, the Institute was created to promote global adherence to the world's principal arbitration treaties and to educate business executives, government officials and lawyers about arbitration as a means of resolving transnational business disputes.

### **II. WHY BECOME A MEMBER?**

Membership dues are more than compensated both financially and professionally by the benefits of membership. Depending on the level of membership, ITA members may designate multiple representatives on the Institute's Advisory Board, each of whom is invited to attend, without charge, either the annual ITA Workshop in Dallas or the annual Americas Workshop held in a different Latin American city each year. Both events begin with the Workshop and are followed by a Dinner Meeting later that evening and the ITA Forum the following morning - an informal, invitation-only roundtable discussion on current issues in the field. Advisory Board Members also receive a substantial tuition discount at all other ITA programs.

Advisory Board members also have the opportunity to participate in the work of the Institute's practice committees and a variety of other free professional and social membership activities throughout the year. Advisory Board Members also receive a



free subscription to ITA's quarterly law journal, *World Arbitration and Mediation Review*, a free subscription to ITA's quarterly newsletter, *News and Notes*, and substantial discounts on all ITA educational online, DVD and print publications. Your membership and participation support the activities of one of the world's leading forums on international arbitration today.

### III. THE ADVISORY BOARD

The work of the Institute is done primarily through its Advisory Board, and its committees. The current practice committees of the ITA are the Americas Initiative Committee (comprised of Advisory Board members practicing or interested in Latin America) and the Young Arbitrators Initiative Committee (comprised of Advisory Board members under 40 years old). The ITA Advisory Board and its committees meet for business and social activities each June in connection with the annual ITA Workshop. Other committee activities occur in connection with the annual ITA Americas Workshop and throughout the year.

### IV. PROGRAMS

The primary public program of the Institute is its annual ITA Workshop, presented each year in June in Dallas in connection with the annual membership meetings. Other annual programs include the ITA Americas Workshop held at different venues in Latin America, the ITA-ASIL Spring Conference, held in Washington, D.C., and the ITA-IEL-ICC Joint Conference on International Energy Arbitration. ITA conferences customarily include a Roundtable for young practitioners and an ITA Forum for candid discussion among peers of current issues and concerns in the field. For a complete calendar of ITA programs, please visit our website at [www.cailaw.org/ita](http://www.cailaw.org/ita).

### V. PUBLICATIONS

The Institute for Transnational Arbitration publishes its acclaimed Scoreboard of Adherence to Transnational Arbitration Treaties, a comprehensive, regularly-updated report on the status of every country's adherence to the primary international arbitration treaties, in ITA's quarterly newsletter, *News and Notes*. All ITA members also receive a free subscription to ITA's *World Arbitration and Mediation Review*, a law journal edited by ITA's Board of Editors and published in four issues per year. ITA's educational videos and books are produced through its



Academic Council to aid professors, students and practitioners of international arbitration. Since 2002, ITA has co-sponsored KluwerArbitration.com, the most comprehensive, up-to-date portal for international arbitration resources on the Internet. The ITA Arbitration Report, a free email subscription service available at KluwerArbitration.com and prepared by the ITA Board of Reporters, delivers timely reports on awards, cases, legislation and other current developments from over 60 countries, organized by country, together with reports on new treaty ratifications, new publications and upcoming events around the globe. ITAFOR (the ITA Latin American Arbitration Forum) A listserv launched in 2014 has quickly become the leading online forum on arbitration in Latin America.

Please join us. For more information, visit ITA online at [www.cailaw.org/ita](http://www.cailaw.org/ita).



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