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**A REPORT ON THE
“IN-HOUSE PERSPECTIVES: THE ENERGY INDUSTRY IN TRANSITION”
PANEL PRESENTATION**

by Patrick Aana

Delivered at the 9th ITA-IEL-ICC Joint Conference on International Energy Arbitration on January 21, 2021.

This roundtable conversation gave participants a view into the perspectives of in-house counsel from various energy companies in the wake of the COVID-19 pandemic, the recent oil price decline, and the immediate and critical challenges presenting the energy industry today during a period of transition. The speakers will offer their thoughts on how energy companies have managed the bumpy waters of 2020 and are positioning themselves for the future and what impacts they see or foresee in relation to ongoing disputes, business relationships and dispute resolution choices.

I. INTRODUCTION

From January 20 to January 22, 2021, the 9th Annual ITA-IEL-ICC Joint Conference on International Energy Arbitration was held virtually. On the second day of the conference, Marcela Berdion-Straub (Lead Counsel–Litigation, Total American Services) moderated a panel on In-House Perspectives: The Energy Industry in Transition. The panel featured three in-house attorneys: Chris Bellotti (Assistant General Counsel, Halliburton), James Cowan (Associate General Counsel, Litigation–Americas, Shell Oil Company), and Maxime Rabilloud (General Counsel, Total E&P).

These panelists, each working in disputes at their respective company for years, provided unique perspectives into the challenges and changes in the energy industry with the onset of the pandemic in 2020. With a depth of experience in disputes work and holding positions at major players and service providers in the industry (at a time when an initial drop in prices posed a near-existential threat to some actors), they provided several insights into the worlds of arbitration and energy during this critical time.



During the panel, Ms. Berdion-Straub asked the panelists questions, walking through the early days of the pandemic and into a look at the future. The questions and responses placed the effects of the pandemic into broader trends in dispute resolution and energy, hitting points on virtualization, diversity, and inclusion, and the energy transition.

II. CHRIS BELLOTTI

With respect to the early stages of the pandemic, Mr. Bellotti remarked the crowdsourcing of ideas with other teams in the company, that would not ordinarily be consulted in the course of business. And while it may not be desirable to require such collaboration in the long term, as he observed, it was certainly advantageous when dealing with the developing and breaking situation of the pandemic. The switch to virtual communication enabled this sort of collaboration across teams and across borders, but—as experienced by employers and employees in many industries around the world—it also brought with it a host of challenges.

Looking to the future, Mr. Bellotti acknowledged that some changes may be here to stay—short meetings, for example, likely won’t require a transatlantic flight and will instead be conducted virtually. But Mr. Bellotti, on the same page as Mr. Rabilloud below, explained that virtual communication is not efficient for certain functions, like onboarding, where building relationships and exposure to company culture is especially important.

Commenting on the role of outside counsel during a breaking situation like the COVID-19 pandemic, Mr. Bellotti emphasized the importance of two things: first, having a well-developed plan, even if it isn’t strictly adhered to, and second, having the ability to disagree. In these situations, advice is often being sought and received in real-time, and regulatory guidance—as many witnessed over the course of 2020—comes disparately, making candid dialogue and a trusted relationship with outside counsel even more valuable.

Mr. Bellotti envisions some permanent changes to dispute resolution practice, such as blended virtual and in-person arbitral proceedings, which he believes are not only here to stay, but will also likely bleed into court as well. And with it many



opportunities come for parties and counsel to save on costs, from travel expenses to the preparation of printed materials. Along these same lines, he also foresees a drop in telephonic hearings, in favor of virtual ones—where counsel will still have to dress up.

On the issue of diversity and inclusion, Mr. Bellotti stressed the significant role that in-house counsel have. He first mentioned the importance of casting a wide net. This means not just relying on one specific counsel, but on multiple, and really, any counsel from which you can get information. And second, he pointed out that in-house lawyers are in a position to push for greater opportunities for younger lawyers from their outside counsel, who tend to be more diverse and, as he explained, whose greater development would only benefit the company and the law firm. Mr. Rabilloud agreed, encouraging in-house counsel to look at diversity through the lens of value, as a wider net—covering more scope and territory in terms of gender, nationality, and cultural background—will increase the value that you can capture and the number of opportunities you’ll have for finding the right panel.

III. JAMES COWAN

Mr. Cowan first discussed how in the early days of the COVID-19 pandemic, there was a shift in how legal advice was considered: it had to be filtered through a “safety lens.” Not only was there an emphasis on keeping Shell’s own employees safe, but also on considering how the company could contribute to societal efforts at large. And to this end—with the pandemic posing, of course, a global challenge—teams began to think much more internationally. As Mr. Cowan observed, litigation can be a very local operation, even in a global business, but the implementation of global guidance inevitably affected local advice.

On a broader level, the cross-border collaboration was intensified by the shift to working in a virtual environment, which often provided opportunities for lawyers to work on matters outside of their home jurisdiction. Such opportunities, enabled by virtualization, provided exciting development opportunities for members of the legal team. The legal team was able to streamline and get out of the business of “writing every letter,” allowing it to focus on higher risk and higher value issues where the



expertise of the team was especially relevant.

On the topic of virtual dispute resolution, Mr. Cowan emphasized that “the medium matters”—and that we’re only at the cusp of learning how to maximize the value of the virtual one. Looking toward the future, he envisions blended proceedings, acknowledging that there will of course be a place for in-person hearings, but that they will have changed because of our experience during the pandemic. He mentions several ways in which the collective experience with virtual hearings will affect how we think about their in-person counterparts, including the length of hearing days (shorter, as we’ve become more conscious of attention spans in the virtual environment) and the effect of time zones (which we’ve grown more sensitive to, with participants tuning in at various points of their day). He wonders whether this blended model may just be another acceleration of a more long-term trend, where we’ve already seen that the rules of evidence have been converging and more value is being placed in concise case presentations.

Mr. Cowan highlighted the value of arbitrators spending time together in-person as a key part of the dispute resolution process. It’s a way for the arbitrators to build consensus and find common ground. That the current virtual reality does not allow arbitrators these opportunities—like a dinner together—to build trust, he warned, is a real danger. And it’s a danger not just to the ability to resolve a given dispute, but likely also an obstacle to greater diversity in arbitrator selection. When arbitrators are not able to easily build relationships with their fellow tribunal members, they will be more reliant on existing relationships, meaning parties are less likely to take a risk on those who are not as well known or connected.

IV. MAXIME RABILLOUD

“We need to be useful,” is the motto that Mr. Rabilloud says Total E&P lived by in the early days of the pandemic, observing the emphasis on safety. With Total E&P present in over 50 countries, it was necessary to listen to—and rely on—the people on the ground. The pandemic accelerated this kind of “integration,” whereby employees in headquarters, faced with new constraints on travel, had to rely more on the employees in each country, and they had to get comfortable with such reliance. This



reliance was necessary not just to continue performing the operations of the company, but for the company to better understand how to support its employees around the world—which was, in turn, required for the operations to continue. And Mr. Rabilloud observed exactly that: the industry managed to continue producing throughout, while maintaining a very high standard for safety—an impressive feat for 2020.

Total E&P, as explained by Mr. Rabilloud, was effective in the transition to remote work, but he commented on short-term and long-term drawbacks. First, the legal team at the Paris headquarters of Total E&P is remarkably diverse, with 16 nationalities represented. The pandemic has made the movement of expats more difficult, posing a challenge to hiring for this sort of composition. And second, Mr. Rabilloud questions the long-term sustainability of the remote model: while employees who have had the benefit of working together in-person may effectively transition to working together remotely, it will likely be difficult to maintain that course over the years, especially with the onboarding of new employees. Mr. Cowan and Mr. Bellotti echoed those concerns, acknowledging that the transition has been effective on existing relationships, but questioning how much longer it can last without “refreshing” those in-person relationships.

With specific regard to the virtual transition in dispute resolution, Mr. Rabilloud commented that, while it has brought efficiency in terms of cost, the experience is materially different than with in-person proceedings. And on this point, he emphasizes reliance on outside counsel—it is expected that outside counsel will think deeply about how to adapt to virtual proceedings and leverage them strategically, as parties that will be better positioned to succeed.

V. CONCLUSION

The panel concluded with a discussion about the energy transition—a topic that has characterized the energy industry for the years leading up to the pandemic but was certainly underscored by the effects of the COVID-19 pandemic on the economy and on human life. As Mr. Rabilloud commented, “we are in a world that is fragile.”

The pandemic will certainly be an accelerator on the energy transition itself and



societal scrutiny to that end. The panelists are generally on the same page: that the major players now will likely remain major players in the future, but as alluded to by Mr. Cowan, that the future will not necessarily look like the past. It is perhaps these major players—which, as discussed by Mr. Bellotti, have a proven ability to deliver on large, complex projects and invest in new spaces—that are best positioned to move the energy transition along, producing hydrocarbon-based energy while also bringing cleaner energy to the world.



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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.

A. 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.

B. *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.



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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.

D. *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.

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