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Is The Future Bright For International Energy Disputes In Asia?

Gabriella Richmond (White & Case LLP) · Sunday, November 3rd, 2019 · Institute for Transnational Arbitration (ITA)

The [ITA-IEL-ICC Joint Conference on International Energy Arbitration](#) was held in Singapore in September, 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) highlighted the growing importance of Asia as an energy hub, and Singapore as a dispute resolution hub for parties worldwide. As SMS 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.

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 to 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).

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.

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, the management of construction disputes was summarised by 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). Client interest and involvement in selecting an arbitrator was evident, as well as the need for alignment between counsel and clients in the approach to the dispute.

The influence and responsibility of the parties at the pre-arbitration stage, particularly in relation to attempted settlement and dispute assessment was emphasised, with early case assessments and proactive resolution plans. Reference was also made 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*.

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, was also evident. 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 Convention](#). 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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