

2020 **WAW**



WASHINGTON
ARBITRATION WEEK

WAW

2020

NOVEMBER 30 - DECEMBER 4

1ST EDITION

Wednesday, December 2nd

Fossil Fuel, Clean Energy and the Environment in International Arbitration (12:00pm – 1:30pm)

The political and economic volatility in the energy sector—which generally entails a public interest or ownership by States or State-owned companies—have created a fertile ground for investment and commercial disputes. Energy disputes, which represent 41 percent of investment disputes registered at ICSID, stand out from disputes in other sectors due to their large volume of documentation, complexity, disputed facts and significant amount of resources involved.

In addition, some of the investment arbitrations concerning the energy sector involve, on the part of the host State, environmental concerns and regulations. Though the applicable law varies from case-to-case depending on the applicable investment treaty, the majority of investment treaties fail to include provisions on the protection of the environment, other than those provisions stipulating that the State may implement environmental regulations and act to protect the environment as long as such State actions are consistent with the remainder of the treaty. A few other treaties, however, recognize the State's right to regulate and confirm the right to protect the environment as part of the State's public policy, which sometimes counts as an exception to indirect expropriation. The language of the treaty and the facts of the case determine whether the application of environmental regulations and environmental considerations justifies allegedly international unlawful State action.

This Panel will discuss the peculiarities of investment arbitration in the energy sector and the role of environmental considerations. The panelists will also discuss the effect that clean energy, environmental regulations and subsequent alleged State actions and omissions are having in the rise of investment disputes. Lastly, the Panel will address whether new environmental provisions expand the scope of State action to protect the environment with respect to foreign investments.

Speakers

Ucheora Onwuamaegbu

Ucheora Onwuamaegbu is a consulting International Attorney with Arent Fox LLP, Washington, D.C. For over a decade, he was Senior Counsel at the World Bank's International Centre for Settlement of Investment Disputes, (ICSID) and, prior to that, was a lawyer with the United Nations Compensation Commission in Geneva, Switzerland, having previously been in private law practice in London and in Nigeria. Dr. Onwuamaegbu has served as arbitrator in disputes before ICSID, ICC, PCA, DIAC and CAS. He sits on the Boards of the Silicon Valley Arbitration and Mediation Center, and of the Lagos Court of Arbitration, and is a member of the international Advisory Panel of the State of Kuwait's National Focal Point for Environmental Remediation.



Ian Laird



Ian A. Laird, Partner at Crowell & Moring in Washington, D.C.. Ian is co-chair of the firm's International Dispute Resolution Group and represents a range of clients in international arbitration proceedings involving disputes between corporations and foreign sovereign governments. For over 20 years, Ian has counseled parties in investment arbitrations under the provisions of NAFTA, CAFTA-DR, the Energy Charter Treaty (ECT), and other international investment agreements, typically applying the arbitration rules of ICSID or UNCITRAL.

Speakers

Tom Sikora

Tom is Senior Counsel of International Disputes Group, Exxon Mobil Corporation and Senior Vice Chair of the Institute for Transnational Arbitration (as of June 2021). Tom manages international commercial and investment arbitration for Exxon Mobil Corporation. Prior to joining ExxonMobil, he spent ten years at El Paso Corporation managing the company's international arbitration and complex litigation. Tom initially practiced international arbitration of energy, construction and insurance disputes at Vinson & Elkins LLP in Houston, Texas. Tom is a member of the Council (formerly Board of Directors) of the American Arbitration Association and the International Centre for Dispute Resolution. Tom also serves as a Co-Chair of the Energy Arbitrators List. He is a former officer of the IBA Arbitration Committee and former member of the ICC Commission on Arbitration. Tom graduated from Harvard with an A.B. in History and Literature and from the University of Virginia School of Law with a J.D.



Moderator

Jennifer Haworth McCandless



Jennifer Hartworth McCandless, Partner at the D.C. office of Sidley Austin LLP. Jennifer has served as counsel in complex international arbitration cases with a focus on investment treaty arbitration. She has advised and represented private and sovereign clients in proceedings before ICSID and its Additional Facility, the ICC and other arbitral institutions, as well as in ad hoc arbitrations such as under the UNCITRAL Arbitration Rules.



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