The Energy Charter Treaty (ECT) is a legally binding multilateral instrument, the only one of its kind dealing specifically with inter-governmental cooperation in the energy sector. The fundamental aim of the ECT is to strengthen the rule of law on energy issues, by creating a level playing field of rules to be observed by all participating governments, thus minimizing the risks associated with energy-related investments and trade.

In recent years, there has been an increased recourse to the ECT dispute settlement mechanism concerning investment protection, with more than a dozen cases having been brought to international arbitration by investors. The investment arbitration proceedings instituted under the ECT have revealed a range of challenging legal issues common to investor-State arbitration but also specific to the Treaty, demonstrating a continuing need to raise awareness of its provisions.

The conference will provide participants with the insight of experts into the negotiation history and the future of the ECT. It will also give participants a unique opportunity to discuss with leading practitioners key procedural and substantive issues related to investment arbitration within the framework of the ECT.
Program

May 18, 2007 • The World Bank • Lewis Preston Auditorium

8:30 – 9:00
Registration and Coffee

9:00 – 9:30
Welcome Addresses

Ana Palacio, Secretary-General, International Centre for Settlement of Investment Disputes (ICSID)

André Mernier, Secretary General, Energy Charter Secretariat (ECS)

Ulf Franke, Secretary General, Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

9:30 – 9:45
Introductory Remarks

Anne Houtman, Director in charge of General Affairs, Directorate-General for Energy and Transport, European Commission, Brussels

9:45 – 10:00
The Negotiation of the Energy Charter Treaty

The purpose of this session is to enhance participants’ understanding of the Energy Charter Treaty by describing the impact of the negotiation process on the Treaty’s contents. The panelist will review the origins of specific provisions related to investment protection and investment disputes.

Craig Bamberger, Chairman of the Legal Committee for the Negotiation of the ECT

10:00 – 10:15
Break

10:15 – 11:30
Investment Dispute Resolution and the Energy Charter Treaty

In addition to describing the mechanism for access to dispute resolution under the Energy Charter Treaty, this session will focus on two controversial jurisdictional issues under the Treaty. The first concerns the provisional application of the Treaty pending ratification by a Member State, and its application to matters affecting investments prior to the signing of the Treaty by a Member State. The second deals with a Member State’s right under certain circumstances to deny the advantages of Part III of the Treaty to a legal entity or an investment.

Moderator

Antonio R. Parra, Secretary General, International Council for Commercial Arbitration

11:30 – 11:45
Break

11:45 – 1:00
Selected Standards of Treatment Available Under the Energy Charter Treaty

The panelists will describe three investment promotion and protection standards accorded to covered investments under the Energy Charter Treaty, concerning fair and equitable treatment, most-favored-nation treatment and the purpose and meaning of the standard pertaining to taxation measures. They will comment on the relevant provisions of the Treaty in light of existing case law.

Moderator

Charles N. Brower, Member, 20 Essex Street Chambers; Judge, Iran-United States Claims Tribunal

Fair and Equitable Treatment

Christoph H. Schreuer, Professor, University of Vienna, School of Law

Most-Favored-Nation Treatment

Paul D. Friedland, Partner, White & Case, LLP, New York

Investment Protection and Taxation Measures

William W. Park, Professor, Boston University School of Law

1:00 – 3:45
Lunch Session

Questions and Observations:
Interactive Discussion with Expert Panel

The panel will debate issues concerning the Energy Charter Treaty and take questions and observations from the audience.

Moderator:
Audley Sheppard, Partner, Clifford Chance, London

Panelists:

Thomas W. Wälde, Professor, University of Dundee

Emmanuel Gaillard, Partner, Shearman & Sterling LLP, Paris

Dana Contratto, Partner, Crowell & Moring LLP, Washington, D.C.
3.45 – 4:45
Interplay of the Energy Charter Treaty with other Treaties

The Energy Charter Treaty established a detailed legal framework with regard to a broad range of matters covering, among other things, investment protection, trade and the transit of energy resources. As the Treaty is limited to the energy sector, how does it compare with other international instruments of similar kind? What is the Treaty’s role amongst other instruments and in the context of the European Union and Russia?

Moderator:

The Role of the Energy Charter Treaty in the Context of the European Union and Russia
Kaj Hobér, Partner, Mannheimer & Swartling Advokatbyra, Stockholm

The Energy Charter Treaty and other Investment Treaties: A Comparison
Andrea J. Menaker, Chief, NAFTA Arbitration Division, Office of the Legal Adviser, U.S. Department of State, Washington, D.C.

4:45 – 5:00
The Energy Charter Treaty: What Lies Ahead?

The final session will review recent and potential future developments in the Energy Charter process, including the actual and potential application of the Energy Charter Treaty to current and recent energy-related disputes and other energy industry developments.

Graham Coop, General Counsel, ECS, Brussels

5:00 – 5:15
Closing Remarks
Ana Palacio, Secretary-General, ICSID, Washington, D.C.

5:30 – 6:30
Reception

Panelists
Craig Bamberger
Chairman, Legal Committee for the Negotiation of the ECT

Juliet Blanch
Partner, McDermott Will & Emery, London

Charles N. Brower
Member, 20 Essex Street Chambers; Judge, Iran-United States Claims Tribunal

Dana Contratto
Partner, Crowell & Moring LLP, Washington, D.C.

Graham Coop
General Counsel, ECS, Brussels

Ulf Franke
Secretary General, SCC, Stockholm

Paul D. Friedland
Partner, White & Case, LLP, New York

Emmanuel Gaillard
Partner, Shearman & Sterling LLP, Paris

Kaj Hobér
Partner, Mannheimer & Swartling Advokatbyra, Stockholm

Anne Houtman
Director in charge of General Affairs, Directorate-General for Energy and Transport, European Commission, Brussels

Stephen Jagusch
Partner, Allen & Overy LLP, London

Andrea J. Menaker
Chief, NAFTA Arbitration Division, Office of the Legal Adviser, U.S. Department of State, Washington, D.C.

André Mernier
Secretary General, ECS, Brussels

Esa Paasivirta

Ana Palacio
Secretary-General, ICSID, Washington, D.C.

Antonio R. Parra
Secretary General, International Council for Commercial Arbitration

William W. Park
Professor, Boston University School of Law

W. Michael Reisman
Professor, Yale Law School

Christoph H. Schreuer
Professor, University of Vienna, School of Law

Audley Sheppard
Partner, Clifford Chance, London

Thomas W. Wälde
Professor, University of Dundee
Co-sponsors

The Arbitration Institute of the Stockholm Chamber of Commerce

The SCC Institute was established in 1917 and has over the past few decades emerged as one of the leading international arbitral institutions in the world. In recent years an increasing number of investment arbitrations has been filed with the SCC Institute both under bilateral investment protection treaties and the Energy Charter Treaty.

The present SCC Rules came into force on January 1, 2007 and are available in Chinese, English, French, German, Russian, Spanish and Swedish. The SCC Institute has also adopted rules for expedited arbitrations and mediation rules, and often serves as appointing authority in arbitrations under the UNCITRAL Arbitration Rules. For more information, visit www.sccinstitute.com

The Energy Charter Secretariat

The ECT was signed in December 1994 and entered into force in April 1998. It has been signed or acceded to by fifty-one states plus the European Union; these fifty-two members, together with other states and international organisations having observer status, constitute the Energy Charter Conference, which is the governing body for the Energy Charter. The Energy Charter Conference is served by a permanent Secretariat based in Brussels, staffed by energy sector experts from various countries of the Conference’s constituency, and headed by a Secretary General. The Secretariat’s function is to promote awareness and implementation of the Energy Charter Treaty. It does this by encouraging a dialogue among member states and other interested parties on issues related to the Treaty, and also through the provision of analytical support and advice. For more information, visit www.encharter.org

International Centre for Settlement of Investment Disputes

The International Centre for Settlement of Investment Disputes (ICSID) is one of the five intergovernmental organizations in the World Bank Group. The Centre was established in 1966 under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. ICSID currently has 143 member countries. Under the Convention, ICSID helps encourage foreign investment by providing international facilities for conciliation and arbitration of investment disputes. Many international agreements concerning investment refer to ICSID arbitration. In addition to its dispute settlement activities, ICSID carries out research and has an active publications program. For more information, visit www.worldbank.org/icsid

Conference Venue

The World Bank
Lewis Preston Auditorium
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