



Institute for  
TRANSNATIONAL  
ARBITRATION

# The Institute for Transnational Arbitration

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The Center for American and International Law

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Number 1

## 13TH ITA-IEL-ICC JOINT CONFERENCE ON INTERNATIONAL ENERGY ARBITRATION IN HOUSTON

**Conference Report by Jonathan Franks (Kuiper Law firm, Houston) and Kristina Fridman (Skadden, New York)**

On January 16 and 17, 2025, the Institute for Transnational Arbitration (“ITA”), the Institute for Energy Law (“IEL”) (both subsidiaries of The Center for American and International Law (“CAIL”)), and the International Court of Arbitration of the International Chamber of Commerce (“ICC”) held the 13th Joint Conference in Houston, Texas. The Joint Conference consisted of nine different panels and provided an annual review of key developments in international energy arbitration, a Young Arbitrators Roundtable, and a variety of social networking activities. Panel topics included: negotiating key contractual provisions in energy arbitration; potential disputes involving emerging technologies; top 10 developments; construction disputes; enforcement and collection of arbitration awards; stabilization clauses; the importance and impact of Environmental, Social, and Governance (“ESG”) initiatives, and; new developments in conflict of interest. Notably, attendees of the conference were greeted by Prof. Charles “Chip” Brower II (ITA Chair; Of Counsel, Miller Canfield; Professor of Law, Wayne State University), Michael P. Lennon, Jr. (IEL Immediate Past Chair), and Claudia Salomon (President of the ICC International Court of Arbitration).

### 1. Two Sides to Every Arbitration Clause: Negotiating Key Contractual Provisions for an Energy Arbitration (January 16, 2025)

**Moderator:** Julianne Jaquith (Quinn Emanuel Urquhart & Sullivan, LLP, Houston and Washington, DC)

**Panelists:** Courtney Giles (Baker McKenzie LLP, Houston), Grace Haidar (Aramco Americas, Houston), Mark Stadnyk (Thyssenkrupp Nucera, Houston), and Rachel Howie (Dentons Canada LLP, Calgary)

The panel considered both sides of a negotiation regarding key provisions of an arbitration clause in an energy contract—namely, applicable law, seat, and number of arbitrators. The panelists emphasized the critical role of confidentiality when selecting arbitral seats and venue. Another key consideration is the applicable law tied to the chosen arbitral seat. Parties should carefully evaluate provisions for interim measures or relief during ongoing projects. Specifying cost recovery mechanisms in the contract can also mitigate ambiguities that might otherwise be exploited by either party. The panelists highlighted the importance of selecting an appropriate arbitral institution or arbitrator when drafting an arbitration clause. Factors to consider include the institution’s procedural framework, its experience with similar disputes, and its track record with international arbitration. Ultimately, the elements to include in an arbitration clause depend on the priorities of the contracting parties.



*Courtney Giles (Baker McKenzie LLP, Houston), Rachel Howie (Dentons Canada LLP, Calgary), Mark Stadnyk (Thyssenkrupp Nucera, Houston), Grace Haidar (Aramco Americas, Houston), Julianne Jaquith (Quinn Emanuel Urquhart & Sullivan, LLP, Houston and Washington, DC)*

### 2. New Rules For New Energies? Potential Disputes Involving Emerging Energy Technologies (January 16, 2025)

**Moderator:** Rhianna Hoover (Debevoise & Plimpton LLP, New York)

**Panelists:** Brandon Caire (Air Liquide, Houston), Sylvia Leyva Martinez (Wood Mackenzie, Houston), and Tan Pham (Total Energies, Houston)

The panel explained the various types of renewable technologies, and emphasized that the policy side of renewable energy cannot be separated from development and deployment. The panelists discussed some of the differences particular to the renewable energy sector, including that communities are less aware of and familiar with renewable energy, differences in investment perspectives, and the industry’s new players. Some differences with respect to disputes are that intellectual property disputes are more frequent and prevalent in renewable energy litigation. One way that outside counsel can assist clients in this area is by developing a basic knowledge of newer technologies and helping

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Correspondence regarding ITA should be addressed to ITA Director at The Center for American and International Law, 5201 Democracy Drive, Plano, Texas 75024; dwinn@caillaw.org.

clients to formulate a good story early on. The panelists also discussed potential future trends in renewable energy, including industry maturation, market consolidation, and regulatory uniformity.



Tan Pham (Total Energies, Houston), Sylvia Leyva Martinez (Wood Mackenzie, Houston), Brandon Caire (Air Liquide, Houston), Rihanna Hoover (Debevoise & Plimpton LLP, New York)

### 3. The ITA and Wolters Kluwer: Celebrating the Next Generation of Collaboration (January 17, 2025)

The ITA announced on the second day of the 2025 Joint Conference its renewed collaboration agreement with Wolters Kluwer. Thomas “T.L.” Cubbage III (President, The Center for American and International Law and ITA Director), David Bartolone (Vice President & General Manager, Kluwer Law International; General Manager, International Group) and Prof. Charles “Chip” Brower II (ITA Chair; Of Counsel, Miller Canfield; Professor of Law, Wayne State University) signed the updated agreement. The representatives acknowledged the pioneering history of collaboration, and noted that generative artificial intelligence (“AI”) presents the biggest contemporary development.



David Bartolone (Vice President & General Manager, Kluwer Law International; General Manager, International Group) and Thomas “T.L.” Cubbage, III (President, The Center for American and International Law and ITA Director) sign an updated agreement between ITA and Wolters Kluwer

#### 4. 2024 Year In Review: The Top 10 (or Close to 10) Developments in International Energy Arbitration (January 17, 2025)

**Panelists:** Danielle Morris (WilmerHale, Washington, DC) and Timothy Tyler (Norton Rose Fulbright US LLP, Houston)

The first panel of the day presented the top decisions and developments in energy arbitration in 2024. The panelists covered the following decisions in a movie critique style:

- *TC Energy Corp. & Transcanada Pipelines Ltd. v. United States* (ICSID Case No. ARB/21/63): In light of the history of Transcanada's attempts to obtain permission to build—which the Biden administration denied in January 2021 when NAFTA's provisions had expired the previous July—the panelists analogized this sequence of events to Lucy and the football in the classic Charlie Brown.
- *Saptec v. Kingdom of Spain* (ICSID Case No. ARB/19/23) & *European Solar Farms A/S v. Kingdom of Spain* (ICSID Case No. ARB/18/45): These are the first decisions where ICSID tribunals rejected jurisdiction under the Energy Charter Treaty ("ECT"), upholding Spain's "intra-EU" objection.
- *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088 (D.C. Cir. 2024): The panel characterized the DC Circuit's decision in these cases as splitting the baby, holding that the district court has jurisdiction under the Foreign Sovereign Immunities Act ("FSIA") but reversing the grant of anti-suit injunctions, noting these impinge on the sovereignty of both Spanish and Dutch courts.
- *Klesch Group Holdings Limited & others v. Germany* (ICSID Case No. ARB/23/49): This case was a remake of the provisional measures decision in *Perenco v. Ecuador*. Here, the ICSID tribunal ordered Germany to refrain from collecting a solidarity tax, setting a fairly low bar for obtaining the provisional measure. The panelists gave the decision a thumbs up for the special effects and action, noting that the sequel is already in production to address the same tax in Denmark.
- *Eco Oro Minerals Corp. v. Republic of Colombia* (ICSID Case No. ARB/16/41): The panel focused its discussion on Professor Philippe Sands' comments about costs, and his serious concerns regarding third-party funders. It noted that his comments have now prompted a challenge against him by another case's claimants, who argue that his declaration showed inappropriate preconceived views of claims that rely on funders.
- *BP Gas Marketing v. Kosmos Energy Co* (ICC): The tribunal issued an award prohibiting Kosmos from selling liquefied natural gas ("LNG") cargos to third parties during the term of the parties' LNG sales agreement. The panelists gave the decision a thumbs up and noted that LNG-related disputes are increasingly more complex..
- *Finley Resources Inc., MWS Management Inc. and Prize Permanent Holdings LLV v. United Mexican States* (ICSID Case No. ARB/21/25): This is a NAFTA-USMCA case where the tribunal delivered a withering critique of the injustice wrought by *Petróleos Mexicanos* (Pemex), and that Finley's contract was slow walked and administratively rescinded. The panelists enjoyed that the decision consists of "judges judging," but also found the decision to be unconscionably long (much like the film *Wicked*).

- *Koch Industries, Inc. and Koch Supply & Trading LP v. Canada* (ICSID Case No. ARB/20/52): The tribunal considered the issue of what constitutes property and ultimately concluded that the claimant had failed to demonstrate "exclusive control," which was necessary to find that there was "property" under Ontario law. The panel gave the decision a thumbs down.
- *UniCredit Bank GmbH v RucChemAlliance LLC* ([2024] UKSC 30): The case was about whether the British court could issue an anti-suit injunction. The court held that English law governs an arbitration agreement if it governs the main agreement; just because the parties chose Paris as the seat of arbitration, this does not mean they chose French law to govern their arbitration clause. Calling back to Bogart in Casablanca, the panelists noted that "we won't always have Paris."
- *Uniper Global Commodities and Metha-Methanhandel v Gazprom Export* (Courts of Russian Federation): This is one of many cases in which the Russian courts upheld the exclusive jurisdiction of Russian courts to hear disputes, despite the presence of an arbitration clause in the companies' agreement.
- *Veteran Petroleum Ltd et al v. Russian Federation*, Decision of February 20, 2024, ECLI:NL:GHAMS:2024:351 (Amsterdam Ct. App.): The panelists noted that, like the Lord of the Rings trilogy, the Yukos battles just keep going. In 2024, the Netherlands Supreme Court dismissed Russia's appeal against the seizure and auction of certain vodka trademarks to satisfy a judgment. However, it was a pyrrhic victory given the low value received for those trademarks.

#### 5. Construction Disputes in Energy Projects (January 17, 2025)

**Moderator:** David Harrell (Troutman Pepper Locke LLP, Houston)

**Panelists:** Michael Kenyon (Berkeley Research Group, Dubai), Aisha Nadar (Advokatfirman Runeland AB, Stockholm), and Fritha C. Wheeler-Ozanne (Fluor, Irving)

The panel discussed the most effective methods to resolve construction disputes that arise in complex energy projects, including International Federation of Consulting Engineers ("FIDIC") contracts, dispute resolution boards, and effective advocacy methods. FIDIC contracts establish a multi-tiered dispute resolution mechanism designed to identify issues early and propose solutions or "off-ramps" to avoid arbitration. This approach also helps organizations minimize the risk of unwanted public scrutiny. Another way to address the complexities in construction disputes is for a tribunal to take a more active role in managing lay experts throughout the process. An additional cost-mitigation strategy involves planning for potential disputes in advance, which allows parties to minimize expenses and disruptions later. Interim measures can also ensure the continuity of the project while disputes are resolved. Lastly, the panel discussed how, rather than focusing on who wins the dispute, maintaining effective and constant communication and utilizing alternative dispute resolution methods can help achieve judicial efficiency.



## 6. Enforcement And Collection of Arbitration Awards (January 17, 2025)

**Moderator:** Ruth Byrne, K.C. (King & Spalding LLP, London)

**Panelists:** Jeffrey Commission (Burford Capital, Washington), Steven Kobre (Kobre & Kim LLP, New York), and Nania Owusu-Ankomah (Bentsi-Enchill Letsa & Ankomah, Accra)

This panel focused on key developments in the enforcement and collection of arbitration awards. The panel recognized that there is an incentive to comply with awards, but securing compliance can be tricky and expensive. The panel surveyed some recent enforcement decisions that specifically focused on addressing sovereign immunity. For sovereign immunity, considerations include whether the actions of an entity could be attributed to the State, government and executive involvement in the entity, corporate separateness and piercing the corporate veil, and the desirability of enforcing against sovereign agencies and not against the State itself. The panelists ended the discussion by considering the panoply of assets, business activities, and strategies that may boost the enforcement of awards. Suggestions raised included the monetization of the award and amenability to payment in tranches, locking in on the assets that may be attached as early as the request for arbitration stage, hiring local counsel early, taking a public relations-savvy approach in identifying “hot” assets to exert pressure on the governments, considering bringing fraudulent transfer actions, and securing the appointment of receivers over owned entities. The panelists agreed that creativity is key.



*Nania Owusu-Ankomah (Bentsi-Enchill Letsa & Ankomah, Accra), Steven Kobre (Kobre & Kim LLP, New York), Jeffrey Commission (Burford Capital, Washington), and Ruth Byrne, K.C. (King & Spalding LLP, London)*

## 7. A Conversation with Claudia Salomon (January 17, 2025)

During lunch at the conference, Michael McIlwrath (MDisputes, Florence) had a conversation with Claudia Salomon. Ms. Salomon reflected on the trajectory of her legal career, stressed lessons learned over time, and discussed recent updates and challenges in her current role as President of the ICC International Court of Arbitration.

## 8. Have Stabilization Clauses Lost Their Luster? (January 17, 2025)

**Moderator:** Aaron Michael Rofkar (Chevron Corporation, San Ramon)

**Panelists:** Leilah Bruton (Three Crowns LLP, London), Prof. Peter D. Cameron (Queen Mary University of London, London), Elliot Friedman (Freshfields Bruckhaus Deringer LLP, New York), and Dr. Claudia Frutos-Peterson (Curtis, Mallet-Prevost, Colt & Mosle LLP, Washington, DC)

This panel discussed the evolution and effectiveness of stabilization clauses, especially in the face of serious and continually evolving regulatory concerns. The panelists first tackled the recent shift in stabilization clauses from “freezing clauses” to “renegotiation clauses.” The former prevents states from unilaterally changing the legal framework of an investment, while the latter requires renegotiation or some other corrective action if a triggering event occurs. The panel then discussed the effectiveness of such provisions, and suggested improvements, including being prescriptive about the trigger event and expanding their scope. The panel also considered how the absence of a stabilization clause is likely to be interpreted as the State not having an obligation to stabilize the legal regime, even under other treaty standards such as the fair and equitable treatment standard. The panel concluded that stabilization clauses may be here to stay, and that the symbiotic relationship from which such clauses arose should not be forgotten.



*Prof. Peter D. Cameron (Queen Mary University of London), Leilah Bruton (Three Crowns LLP, London), Aaron Michael Rofkar (Chevron Corporation, San Ramon CA), Elliot Friedman (Freshfields Bruckhaus Deringer LLP, New York), Dr. Claudia Frutos-Peterson (Curtis, Mallet-Prevost, Colt & Mosle LLP, Washington, DC)*

## 9. The Rising Importance of ESG and its Impact on International Arbitration and Supply Chains (January 17, 2025)

**Moderator:** Caline Mouawad (Chaffetz Lindsey LLP, New York)

**Panelists:** Cristián Conejero (Cuatrecasas, Santiago), Laura Houët (CMS, London), and Kirsten Odynski (White & Case LLP, Paris)

This panel discussed recent developments and trends in the resolution of Environmental, Social, and Governance (“ESG”) disputes, including how corporations can best manage new ESG risk. The panelists outlined the current ESG regulatory framework, and the differences among various jurisdictions with respect to ESG. The panel then considered the impact of these ESG regulations on commercial arbitration. Although arbitral tribunals are generally able to handle diverse ESG disputes, there is some tension regarding confidentiality with cases that involve the public interest, and sometimes there are issues with privacy. Still, this is a growing area for commercial arbitration. The panelists also discussed ESG in the context of investment arbitration, highlighting the trend among states to preserve their right to regulate with respect to ESG issues. There is some hope that pending advisory decisions from the International Court of Justice (“ICJ”) and others will further clarify international environmental law. The panelists concluded by providing some key takeaways, including that companies should word their disclosures carefully, consider allocating risks in new and flexible ways at the contracting stage, and avoid boilerplate ESG clauses.



*Cristián Conejero (Cuatrecasas, Santiago), Kirsten Odynski (White & Case LLP, Paris), Laura Houët (CMS, London), Caline Mouawad (Chaffetz Lindsey LLP, New York)*

## 10. New Developments in Conflicts of Interest (January 17, 2025)

**Moderator:** Philippa M. Charles (Twenty Essex, London)

**Panelists:** Jennifer Kirby (Independent Arbitrator, Paris), Tomasz J. Sikora (Exxon Mobil Corporation, Houston), and Edward M. Mullins (Reed Smith LLP, Miami)

The 2025 Joint Conference wrapped up by addressing recent developments in soft law and case law, as well as practical approaches to navigating the landscape of conflicts. Arbitrator independence and impartiality are fundamental building blocks of the arbitration process, but the practicalities of implementing these principles can generate difficult questions. Moreover, there is a growing concern that arbitrator disclosures may be overblown. The panel noted that there are different standards for what an arbitrator needs to disclose, as well as what will result in an arbitrator not being confirmed, a successful challenge to an arbitrator, and a successful challenge to the award. They debated the different standards under various rules, and emphasized that an arbitrator failing to disclose is not a reason to think there is a conflict. In the investor-state context, the panel discussed the United Nations Commission on International Trade Law's ("UNCITRAL") Code of Conduct for Arbitrators in International Investment Dispute Resolution. The panelists noted that the UNCITRAL Code provides for broad disclosure obligations, and includes a detailed list of relationships that must be disclosed in all cases. It was also noted that the draft Code contains a very broad confidentiality obligation. The panel discussed in detail the case of *Grupo Unidos por el Canal, S.A. v. Autoridad del Canal de Panama*, 78 F.4th 1252 (11th Cir. 2023), and the difference between what should have been disclosed and whether the lack of disclosure amounts to a basis for vacating the award. Finally, the panel questioned whether parties may be looking to challenge an arbitrator's evident partiality as a last-ditch attempt to challenge an award, particularly given how difficult it is to overturn an arbitration award in the United States.



*Edward M. Mullins (Reed Smith LLP, Miami), Tomasz J. Sikora (Exxon Mobil Corporation, Houston), Jennifer Kirby (Independent Arbitrator, Paris), Philippa M. Charles (Twenty Essex, London)*

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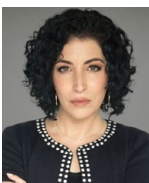
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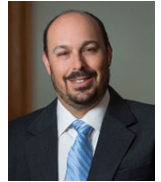
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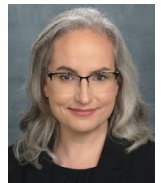
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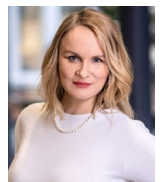
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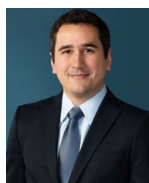
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Sustaining Member **Secretariat** has designated **Joe Skilton** as an Advisory Board representative under 40



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Sustaining Member **Secretariat** has designated **Chaitanya Arora** as a member of the Advisory Board.



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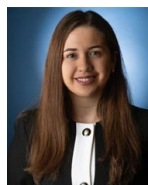
Sustaining Member **Secretariat** has designated **Ted Scott** as a member of the Advisory Board.



**Patrick Leonard** of **The Bar of Ireland - The Law Library** has joined ITA as an Associate Member.

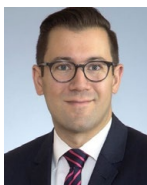


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**Joel Evans** of **Mourant Ozannes LLP** has joined ITA as a Correspondent Member.

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**Chris Kinnear Hunter** of **Torys LLP** has joined ITA as an Associate Member.

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Advisory Board Member, **Ben Love**, recently joined **Baker Botts** as a partner in Houston.

**James Castello** has retired from **King & Spalding** to become a full-time arbitrator.



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