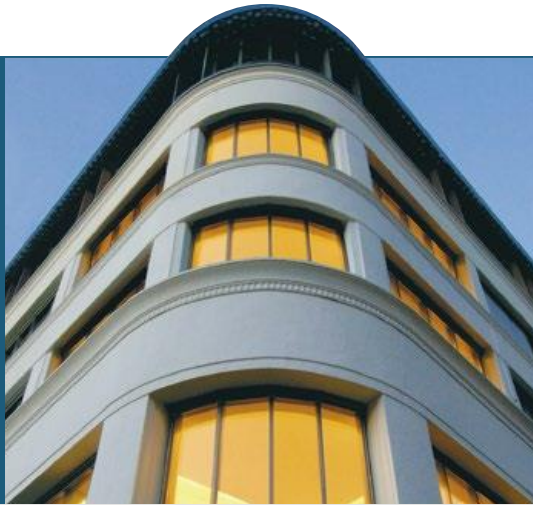


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Dispute settlement options for environmental disputes in the context of energy projects – oil and gas pipelines

Arbitration of Energy Disputes:
New Challenges
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I. Introduction

- International environmental law as a balancing act
 - Exploitation of natural resources vs environmental protection
- Energy projects as complex projects
 - Example: oil & gas pipelines
 - Multilateral intergovernmental agreements: Energy Charter Treaty (ECT)
 - Bilateral intergovernmental agreements
 - Host State agreements
 - Project agreements (pipeline agreements, transportation agreements, etc)
 - Environmental obligations may be embedded on all levels

II. Energy Charter Treaty and environmental regulation

- Part IV (“Miscellaneous provisions”)
- Article 18 (“Sovereignty over natural resources”)
 - Recognition of State sovereignty over energy resources
 - “Without affecting the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources”
 - Recognition of the State’s right to regulate the environmental and safety aspects of exploration, development and reclamation in its territory (“Area”)
- = environmental regulation as a matter of sovereign right

III. Energy Charter Treaty and environmental regulation (cont'd)

- Article 19 (“Environmental aspects”)
 - “In pursuit of sustainable development and taking into account its obligations under those international agreements concerning the environment to which it is party, each Contracting Party shall strive to minimize in an economically efficient manner harmful Environmental Impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area”
 - Polluter Pays Principle (“The Contracting Parties agree that the polluter in the Areas of the Contracting Parties, should, in principle, bear the cost of pollution, including transboundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade”)
 - List of activities covered by the best efforts obligation (policy development, information exchange, monitoring and assessment etc.)
- = environmental protection as an international best efforts obligation

IV. Resolution of environmental disputes in the context of the Energy Charter Treaty

- Article 19(2):
 - “At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in either appropriate international for a, be reviewed by the Charter Conference aiming at a solution”
 - = non-binding consultation mechanism for settlement of disputes under Article 19 (international best effort obligation)

V. Resolution of environmental disputes in the context of the Energy Charter Treaty (cont'd)

- State-to-State dispute resolution (Article 27)
 - Disputes concerning Article 19 (“Environmental aspects”) excluded
- Investor-State arbitration (Article 26)
 - Covers only Part III (investment promotion and protection) but not Part IV (e.g. environmental regulation)
 - Does not preclude investor from claiming that environmental regulatory authority has been applied in breach of Part III

VI. Pipeline projects and environmental disputes: options typically available in practice

- State-to-State: consultation, compliance mechanisms, ad hoc arbitration, arbitration clauses in intergovernmental agreements
- Domestic litigation: enforcement of local environmental regulations
- Investor-State arbitration under investment treaties
 - Alleged abuse of environmental regulatory authority
- Claims by affected local communities
 - Standing issue in local courts
 - Grievance and accountability mechanisms under financing agreements (e.g. World Bank Inspection Panel, Compliance Advisor/Ombudsman)

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