SETTLEMENT OF INVESTMENT DISPUTES UNDER THE ENERGY CHARTER TREATY

The Energy Charter Treaty has come of age, with almost fifty states parties and a small but growing body of arbitral case law. In this new study of the Treaty’s investment protection provisions, Thomas Roe and Matthew Happold set out to identify and explain the Treaty’s principal provisions and to suggest answers to some of the difficult problems thrown up by its drafting. They discuss in detail questions such as the standards of protection granted by the Treaty and the international responsibility of states for breaches of the Treaty, the various procedures available for the vindication of rights under the Treaty and the conditions to be satisfied before a claimant’s complaint may be considered on the merits. Specific issues addressed include the impact of EU law on claims under the Treaty and the Treaty’s provisions concerning taxation.

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SETTLEMENT OF INVESTMENT DISPUTES UNDER THE ENERGY CHARTER TREATY

THOMAS ROE
AND
MATTHEW HAPPOLD

Consultant Editor
JAMES DINGEMANS QC
To Helen, Alexander, Elizabeth and Theodore, and for Cassian – Ach, zu schnell erlosch’ner Freudenschein!

T.R.
‘As to precedents, to be sure they will increase in course of time; but the more precedents there are, the less occasion is there for law; that is to say, the less occasion is there for investigating principles.’

Samuel Johnson
J. Boswell, *Life of Johnson*
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Of *The Pilgrim's Progress*, Huckleberry Finn said that he 'read consider-able in it now and then', and that 'the statements was interesting, but tough'. To the quite small body of persons who have ‘read in’ them, the documents constituting the Energy Charter Treaty may or may not have been interesting, but they will surely have found them tough. In contrast with the ICSID Convention, which as a text is a masterpiece of multi-national drafting even though as a practical source of rules it lacks spine, the Energy Charter Treaty is an uncouth thicket from which even an inter-ested person could well recoil. Nevertheless, although the field of view is narrow and highly particular, it is important in theory as well as in practice, and calls for an informed, readable and scholarly monograph. This is what the present work supplies.

Since this is a foreword, not a review, I must with difficulty abstain from offering a personal appraisal of international energy law and practice; of dispute resolution in that field; and of the crippling inconsistencies in the jurisprudence of bilateral investment treaty disputes, now apparently incurable. The books get longer and longer, and so do the awards, whilst colloquia, study groups, task forces and the like continue to proliferate, often producing book-length records of their proceedings; yet in the absence of a doctrine of binding precedent there is currently no means of imposing order where it is needed. Although notable talents continue to be involved, the entire area of study seems to be heading for a thrombosis.

This bleak landscape offers an almost irresistible invitation to wade in with proposals for a remedy. But only ‘almost’, for the urge to add another pebble to the pile must be resisted, particularly in a foreword, whose writer is not given the broad licence to deploy his own ideas and personality conferred on a reviewer. A foreword must be about the book itself, not the contributor. The task is more limited, and more practical, namely to encourage a prospective reader to partake of what is on offer.

Quite often, a foreword is perfunctory, the fruits of no more than dip-ping into the book, or even its index, and the writer of it quite frequently
contributes only as a favour to the author or publisher. Not so here. With pleasure and profit, as advertisements used to say, I read the whole book straight through. This is a tribute, not only to the clarity of the language but also to careful structuring which enables the essence of the Energy Charter regime to be perceived amidst the tangled foliage. These features make the book an ideal primer for those lacking an extensive acquaintance with the subject.

There is, however, much more to it than that, for the authors offer balanced accounts of selected practical and conceptual issues. The balance and the selection are important. A schoolgirl’s celebrated review of a book, on *The Elephant*, read: ‘This book tells you more about the elephant than you want to know’, and one or two of the otherwise excellent works on the kindred topic of bilateral investment treaty disputes are handicapped by a similar surplus of material. In the present writer’s opinion the text of this trail-blazing work avoids surfeit whilst at the same time furnishing most readers with what they require. I am glad to commend *Settlement of Investment Disputes under the Energy Charter Treaty* as an enterprising, scholarly and useful volume with a very promising future ahead of it.

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The difficulties which face the scholar or practitioner of international investment law in the second decade of the twenty-first century do not include a lack of reading material. The authors of a further contribution ought therefore to begin with a defence of their decision to make it. Ours, put shortly, is that the Energy Charter Treaty’s provisions on investor–state dispute settlement deserve an up-to-date study of their own. Although the Treaty is limited in its application to just one field of international investment – energy – that field is of great significance and sensitivity, and is one in which the interests of states in attracting foreign investment on the one hand and on the other in regulating the conduct of foreign investors are inevitably in a state of real or potential tension. And what it lacks in breadth of subject-matter the Energy Charter Treaty makes up for in the number of its signatories: some forty-six countries and the European Union are parties (another state applies the Treaty provisionally and Russia must apply the Treaty for twenty years to all investments made until 18 October 2009). The Energy Charter Treaty is, in short, a very important treaty whose provisions ought to be well understood by all parties and by all relevant investors. Yet in truth the Treaty is not always easy to understand and the meaning of many of its provisions remains obscure.

In writing this study we have had three main aims. First, to describe clearly the Treaty’s principal investor–state dispute resolution provisions. Second, to think – in rather more detail than would be possible in a work on international investment protection law generally – about the meaning of those provisions, especially the ones which give rise to the most difficulty. When we conceived this project, we planned to fulfil this aim simply by identifying points of difficulty and the arguments on each side. We found this an impossible limitation to keep to and have instead felt free to state our views. Whether or not readers agree with them, we hope that we have thereby contributed to the fulfilment of our third aim: to stimulate debate and thereby contribute in a small way to the
development of an area of law which in many ways is still in its infancy. For, although the corpus of arbitral case law on bilateral investment treaties is vast (and sometimes highly relevant), very few cases have yet been determined under the Treaty itself and much remains open to debate.

We gratefully acknowledge the insights into the Energy Charter Treaty, and into the field of international investment protection generally, provided by papers and discussion at conferences organised by the Energy Charter Secretariat and attended by us in Washington DC in 2007 and in Brussels in 2009. We are grateful to Liz Heathfield for her help in conceiving this book. We thank James Dingemans QC for agreeing to act as our consultant editor and for his valuable assistance both in that capacity and in discussions about real cases. The views stated in this book are, however, ours alone; nor are they put forward to represent the views of any client. Errors, too, are ours.

Kim Hughes of Cambridge University Press has given us much guidance and shown great patience when the many other pressures of our professional and academic lives got in the way. Kate Ollerenshaw has been an astute and tactful copy-editor. We are extremely grateful. Above all we thank our respective families, of whose company the Energy Charter Treaty, interesting though it is, has deprived us for an unconscionably long time.

We have tried to state the law as at 1 August 2010.

Thomas Roe Matthew Happold
London Luxembourg
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* Most modern awards of arbitral tribunals constituted under bilateral and multilateral investment treaties are freely available on the internet. The authors have consulted in particular the Investment Treaty Arbitration website maintained by the Faculty of Law of the University of Victoria (http://ita.law.uvic.ca). The majority of references to arbitral awards are, accordingly, identified by name and date only.
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