

Governing the Energy Transition: Local Action, International Ambition

Knowledge Exchange Workshop

Third Annual Conference of the Platform on International Energy Governance

Convened by Leslie-Anne Duvic-Paoli, King's College London

Summary written by Mara Wendebourg, King's College London

On March 19, 2021, a **knowledge exchange workshop on energy governance** hosted by King's College London was held virtually. Supported by King's College London's ESRC Impact Acceleration Account, it gathered over 25 speakers, both academics and practitioners in the field of energy law with the aim to facilitate exchanges to address the impacts of international energy regimes on regional, national and local transitions. The audience was open to fellows of the Platform on International Energy Governance, selected academics and professionals in the energy sector and some postgraduate students. The workshop was divided into four panels, each focusing on a different aspect of the energy transition: it started by looking at the rationale and tools driving the clean energy transition, then focused on lessons that can be learnt for the global transition from specific domestic case studies. It then investigated the role of international economic law and ended by looking at the role of non-state and sub-state actors in facilitating or challenging the transition.

The workshop began with a **keynote speech** from Ambassador Urban Rusnák, Secretary General to the Energy Charter Treaty (ECT). Ambassador Rusnák highlighted the importance of defining the governance of energy transition, likening it to the Gordian Knot. He explained that energy transitions are inherent to our civilization and carry environmental risks. Ambassador Rusnák argued that the ECT is an important instrument that has a broad purpose but is also limited by member states' sovereignty over their natural resources. In addition, international institutions - such as the UN Framework Convention on Climate Change - while not explicitly created to govern the energy transition- are also relevant. The Ambassador was hopeful that the 21st century will be the century of renewable energy thanks to technological progress.

The first panel addressed the **conceptual framework of energy transition governance**. It was noted that 'just transition' principles are important to guide the green energy transformation. For instance, lignite and coal transitions in Poland and Colombia respectively have significant implications for the labour market. The interconnectedness of economic, environmental and social impacts and the many players involved, leads to complex legitimacy questions. An example of such complexity can be found in the case of a 50-year-long coal concession in a country of the Commonwealth and interdependent states which had planned to export the coal to China. When China banned the import of that coal, it was used for fertilizer. Another important conceptual dimension of the energy transition relates to its relationship to energy security. The panellists noted the importance of investments, trade in energy services and free transit of energy as essential to protect energy security under international law, taking the example of South Eastern European countries that cooperate in reforming the energy market through the Energy Community. Parallels between the talks were drawn, namely the issue of gas being excluded of the Just Transition Fund, even though new extracting infrastructure such

as the Nord Stream 2 pipeline are still being constructed. It confirms that the aim of the fund is to buffer social impacts and not finance the energy transition. Questions were also raised on the applicability of the ‘just transition’ to other carbon intensive sectors, such as the automotive or construction sectors. The ability of stakeholders to mobilise was stressed by panellists to be a key factor in facilitating the governance of the transition.

The second panel looked at **lessons that could be learnt from national energy transitions**. There, a talk addressed the energy transitions in South Africa, focusing on the opportunities and shortcomings of South African city initiatives. The example of the City of Cape Town against the National Energy Regulator of South Africa (NERSA) and the Minister of Energy, in which the Centre for Environmental Rights entered as an amicus of the Court, was developed. The municipality of Cape Town aimed to challenge the State to remove barriers to renewable energy in order to get access to independent power producers. A second presentation took a comparative perspective explaining low-carbon transitions in the energy sector in Australia, Taiwan and China. Panellists looked at the need to adapt electricity infrastructures to climate change threats while ensuring climate resilience. It was suggested that solutions such as hardening, smartening and greening the grid while also providing the necessary regulatory framework would ensure grid resilience.

The afternoon session started with a **keynote speech** from Professor Volker Roeben of the University of Dundee, setting the arguments for a global energy market regulation. Professor Roeben provided a bridge between the morning and afternoon sessions, as he reflected on how the governance of energy transition can be steered. Using William Twining’s framework to look at global law, Professor Roeben understands the governance of energy transition as one that would allow the integration of three theoretical dimensions: the first dimension looks at the various national approaches; the second dimension includes international law; and a third dimension takes into account transboundary regulatory issues. Professor Roeben showed that when considering the framework as a whole, common questions arise, including social welfare maximisation, regulatory tools and institutions (such as the ECT) which are essential to operationalise this framework.

The third panel concerned **energy in international economic law**. Arguments for having product standards for a low-carbon economy that would be facilitated by the World Trade Organisation (WTO) were put forward. The importance of the WTO in providing a framework for carbon standards was noted, given that they would fall under the Agreement on Technical Barriers to Trade (TBT). Indeed, 22% of the notifications made under the TBT Agreement concern regulations of environmental nature, of which 1/4th is about energy conservation and efficiency, including emissions. Finally, the importance of having a uniform methodology to calculate carbon content in production was explained. A second talk placed energy security and sustainability in the context of the ECT and the WTO, providing arguments on how to strike a balance between security and sustainability using the example of the *India – Solar Cells (US v India)* dispute. There, the Appellate Body dismissed the invocation of Article XX(g) of the General Agreement on Tariffs and Trade (GATT) as it must be interpreted as meaning that the local production of energy needs to be presently in short supply and does not take into consideration the imminent risk of energy shortage. Lastly, the interplay between border carbon adjustments (BCA) and fossil fuel subsidies was discussed. The distorting effect of these subsidies on the market may cause carbon leakage, to which international law could provide more transparency and design legally feasible BCA. In the ensuing discussion, panellists acknowledged the difficulty of differentiating products by their processes and production

methods. In addition, there is currently no official international standards body that would be able to establish carbon neutrality standards for energy intensive products.

Finally, participants showcased the plurality of actions across levels of governance and highlighted the need for innovation and creativity. The fourth panel looked at the variety of the **actors involved in low-carbon energy transitions**, including how public participation is protected under international law. The example of the role of the Aarhus Convention's compliance committee in protecting public participation in nuclear energy activities (construction but also lifetime extension) was highlighted. The importance of NGOs and civil society in the transition and the innovative way of holding states accountable was noted through litigation examples. In France, *l'Affaire du Siècle* provided a platform for NGOs to challenge the French state about its greenhouse gas emissions and ClientEarth challenged the Polish state by buying shares of a utility company and contesting the decision to construct a coal power plant as a shareholder. The complexity of the interactions between different actors was also noted. Panellists looked at the difficult interactions between state, municipal and council level energy transitions, explaining that as cities can be hubs for distributive generation, local councils sometimes have the ability to block initiatives taken at state level. Another presentation focused on the effectiveness of multi-stakeholder partnerships, noting the importance of specific factors to determine the impact of these partnerships, such as the salience of actors, the process, and the political and governance context. The example was given of public-private partnerships that aim to steer industry transition towards net-zero to which the Leadership Group for Industry Transition (LeadIT) provides a platform for cooperation. Discussing the relations between non- or sub-state actors and the state, panellists explained that NGOs and municipalities often cooperate in climate litigations and acknowledged that states increasingly facilitate avenues for public participation.