



**British Institute of
International and
Comparative Law**

Pipelines and International Law

28 February 2019

On 28th February 2019 BIICL hosted an event entitled 'Pipelines and International Law'. The event analysed the international law implications of the transport of oil and gas by means of pipelines. The panel, chaired by Graham Coop (Volterra Fietta), included Gokce Mete (Energy Charter Secretariat), Danae Azaria (University College London) and Professor John Paterson (University of Aberdeen). The event was convened by Héctor Tejero Tobed (Research Assistant in Public international Law, BIICL).

The speakers examined the protection of private-sector investors in pipeline projects, countermeasures in the transit of energy through cross-border pipelines, and the legal challenges posed by the removal and disposal of offshore pipelines (decommissioning).

Graham Coop introduced the topic of the day highlighting the overlapping international legal issues that oil and gas pipelines raise. Building on these words, Gokce Mete addressed the protection of investors in cross border pipeline projects from the perspective of the Energy Charter. She stressed the principles of freedom of transit, non-discrimination and prohibition of interruption of flows that the Energy Charter Treaty (ECT) promotes. Further, Mete commented on the process of modernisation of the Energy Charter and its role in protecting investors against important risks including discrimination, expropriation and nationalisation through its early warning mechanism and dispute settlement provisions.

Danae Azaria addressed the relationship between treaties concerning energy flows and countermeasures as part of the customary international law on State responsibility. She noted the function of countermeasures both as enforcement measures in international law and as a preclusion of wrongfulness. She argued that countermeasures in the form of interruption of energy flows are a recourse available to States provided that treaties include security exceptions and do not prohibit unilateral countermeasures. Yet, Azaria continued, customary international law imposes stringent condition including that they must be proportionate and cannot impede the concerned State to comply with its human rights obligations.

Professor John Paterson focused on several issues raised by decommissioning. He addressed the provisions of the Convention on the Law of the Sea in light of the particular challenges posed by oil and gas submarine pipelines at the end of its life. Professor Paterson discussed enterprises' concerns on perpetual residual liability of the owner of the installations and wondered whether we could follow the Norwegian example, by which the State, in return for a one-off payment, may be willing to take on this liability. He suggested that good reasons, such as providing certainty to future victims in relation to infrastructure left in place, supported this policy.

The interventions were followed by a vivid round of questions and comments which deepened the discussion on decommissioning, and raised issues such as specific national realities and the modernisation of the ECT model agreements.

Héctor Tejero Tobed

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