Climate activists protest the Energy Charter Treaty in north London, U.K.
PHOTOS: Global Justice Now

Energy Charter Treaty Stifles Climate Action

by **CHARLOTTE ELTON**

What would you do with US$190 million?

You could use the eye-watering sum to build around 500 community solar farms, or up to 120 wind turbines. With the flick of a pen, you could rehouse millions of people dispossessed by Pakistan's 2022 floods, or commission rewilding charities to reforest thousands of acres of depleted land.

Alternatively, you could give the money to a fossil fuel company.

In 2022, the Italian government was ordered to pay U.K. oil and gas corporation Rockhopper US$190 million for blocking a planned Adriatic Coast project. The lawsuit is just one among dozens of cases being brought by fossil fuel giants against governments enacting climate legislation.

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Under the Energy Charter Treaty (ECT) – an investment agreement among more than 50 countries – corporations may pursue legal action against government policies with the potential to damage company revenue.

The treaty draws on older agreements from the 1950s, when countries across Africa, South America and Asia decolonized. Newly independent states tried to nationalize their resources, threatening the profit margins of foreign companies. Over the ensuing decades a new legal principle was institutionalized, allowing corporations to sue governments threatening their revenue.

In the 1990s the ECT formalized this standard. It's been incrementally expanded – and now goes way beyond protecting existing investments, warns Nick Dearden, director of London-based campaigning organization Global Justice Now.

"Under the treaty, a 'threat' to [a company's] interests does not simply mean the government coming in and taking over an oil well, for example," he says.

"This ECT allows corporations to challenge any adverse impacts from regulatory change."

This standard – which includes potential damage to future profits – has major implications for climate action. Phasing out coal, for example, will impact the profits of coal investors. Under the ECT those investors can sue – and they have. In 2021, for example, German energy companies RWE and Uniper filed lawsuits to seek billions of dollars in compensation for the Dutch government's 2018 decision to shut all coal-fired plants by 2030.

In all, 158 ECT signatories have faced lawsuits since 2001. As governments enact climate law, the number of cases could skyrocket. According to OpenEXP – a Paris-based network of sustainability experts – the final cost in ECT compensation could exceed US$1.3 trillion.

Worse still, the treaty encourages oil and gas exploration, Dearden warns.

“The ECT incentivizes investment into fossil fuel exploration and production because it basically says if governments try and regulate the sector, don't worry, you can probably make as much money by suing them,” he explains.

“Sunset clauses” built into the treaty make it difficult for countries to simply withdraw from the ECT, as claims are valid for up to two decades. Italy left the ECT in 2014; yet it was ordered to pay Rockhopper in 2022.

But outrage is growing.

In July, the European Union (EU) announced plans to leave the treaty, ending attempts to modernize it. Though countries like Japan and Switzerland will remain in the ECT, this mass exodus will prevent companies based in EU member countries from suing other EU member countries. The exodus will defang the treaty significantly.

To mitigate the most catastrophic effects of climate change, we must rapidly decarbonize. The ECT is just one example of the secretive corporate courts that threaten this vital progress.

“I'm reasonably optimistic that [the EU departure] could be a death knell for the treaty as a whole,” Dearden says.

“But that doesn’t mean we can just sit back ... There is a long, long way to go in terms of rolling back this system, globally.”