

## The Energy Charter Treaty An East West Gateway For Investment An International Energy Resources Law And Policy Series Set

Against the background of climate change, Ottavio Quirico explores how regulatory conflicts between the Energy Charter Treaty and the law of the European Union should be resolved.

In March 2018, the Court of Justice of the European Union (EU) ruled in *Achmea* that investor-state dispute resolution provisions in intra-EU bilateral investment treaties (BITs) are incompatible with EU law and ipso facto invalid. In January 2019, EU Member States issued Declarations on the Legal Consequences of the Judgment in *Achmea* undertaking to take steps formally to terminate intra-EU BITs. However, at present, there is no consensus among them on the implications of *Achmea* on the Energy Charter Treaty, the multilateral energy treaty to which the EU and its Member States are all parties. Many EU law scholars consider the *Achmea* judgment as the death knell to intra-EU investment treaty arbitrations. Some have even predicted the end of Investor-State Dispute Settlement itself. Investment treaty and public international law scholars and legal practitioners, however, have a different view of the schism now growing between EU and international law. *The Future of Investment Treaty Arbitration in the EU* examines the current and the proposed new framework for investment protection in the EU and internationally, with a particular focus on investment treaty arbitration and energy-related investments. With contributions from leading academics and practitioners, the book addresses the following themes: Intra-EU investment protection and the rule of law, including the proposed Multilateral Investment Court. The original purpose and features of investment protection, with particular focus on the EU. The *Achmea* judgment and its impact on the Energy Charter Treaty and energy investments. The ongoing discussion to modernize the Energy Charter Treaty post-*Achmea*. EU state aid and investment arbitral awards. Recognition and enforcement of investment arbitral awards post-*Achmea* in EU Member States, including in the light of Brexit. Recognition and enforcement of investment arbitral awards post-*Achmea* in China, Singapore, Switzerland and the United States. This eminently informative book is very timely given the ongoing debate taking place in the EU and internationally regarding the interrelationship between investment treaty arbitration, public international law and EU law. The contributions from leading academics, scholars and European Commission officials provide a balanced, contextualized, detailed and critical analysis that will aid interested stakeholders to navigate their way with confidence through this difficult and changing area of the law.

*The North American Free Trade Agreement (NAFTA) and the Energy Charter Treaty (ECT)* are the first major multilateral treaties to impose obligations on governments concerning the protection and treatment of foreign investments. These obligations are enforceable by private companies. *NAFTA and the ECT* examines the effectiveness of the investment rules of these treaties and analyses the mechanisms adopted to enhance compliance, and to facilitate the implementation and enforcement of the relevant rules and regulations. Coverage of this work includes: a conceptual analysis of the precise meaning and theoretical foundation of compliance, implementation, and effectiveness; an examination of issues of direct effect and direct international responsibility in terms of the practical question of the treaties' impact on the domestic regimes of states; an exploration of the issues of transparency and monitoring to achieve enhanced compliance; and a close look at a number of key links in the field andndash; between the investment rules and the workings of national legal and governmental systems, between national and international law, between different disciplines involved (international law, international relations, international politics, and economics), and between transparency and compliance monitoring. *NAFTA and the ECT* also offers several helpful features, including results from a questionnaire-based survey circulated to the main players in the realm of foreign investment which offer unique insights on the prevalent perception of the industry towards NAFTA and the ECT; and original suggested provisions and frameworks which would enhance the effectiveness of the investment rules. The thought-provoking issues probed and conclusions reached and the interdisciplinary and comparative approach taken make *NAFTA and the ECT* a compelling new resource for academics, policymakers, and others interested in the effectiveness of international investment agreements and the tools employed in their implementation and enforcement.

"The Energy Charter Treaty was launched with great fanfare to lay out the ground rules for massive investment in the energy resources and structures of central and eastern Europe. A general political statement was readily agreed upon, but negotiations on the Basic Agreement took several years before it was finally signed in December 1994. A follow-up treaty and protocols have yet to be negotiated." "This report examines the origins and evolution of the Energy Charter, summarizes the main elements of the Basic Agreement, and assesses the strengths, weaknesses and ultimate significance of the Charter."--BOOK JACKET.Title Summary field provided by Blackwell North America, Inc. All Rights Reserved

The Energy Charter Treaty (ECT) is a multilateral treaty in the energy sector, entered into force in April 1998, which gained worldwide recognition mainly because of its provisions on the promotion and protection of investments. The ECT currently has over 45 contracting parties. Its popularity increased significantly in the last few years following the proliferation of disputes submitted to arbitration under Article 26 of the ECT, while investors became more familiarized with the rights granted by the ECT in respect of their investments. At present, more than 20 disputes between investors and contracting parties have been submitted to arbitration. The requirements of 'investor' and 'investment' are essential for the benefit of the protection offered by the ECT. The book suggests a comprehensive approach to the notion of 'investor'. It analyzes the notion of 'investor' in an inclusive manner, starting with the concept of Contracting Party to the ECT and its implications in respect of the notion of 'investor', going through nationality, permanent residency, dual nationality, companies and other legal entities and shareholders, to the notion of 'investment' and its role in defining the concept of 'investor' under the ECT. The aim of the book is to shed light on the proper meaning of the notion of 'investor' under the ECT, considering the close relationship between the ECT and other treaties such as the ICSID Convention and arbitration rules.

The Energy Charter Treaty (ECT) is unique under international law, providing a multilateral framework for energy cooperation through the operation of more open and competitive energy markets, while respecting the principles of sustainable development and sovereignty over energy resources. With 29 arbitrations currently under its provisions, a growing number of investors are resorting to the protection of the ECT. This is the first in-depth, article-by-article commentary on all aspects of the Treaty. It provides clear and comprehensive discussion of all provisions, analysing them against the background of other relevant writings such as case law and academic papers. It also considers relevant arbitral awards. It also offers insightful coverage and analysis of the history and background, as well as discussion of its relationships with other treaties. As energy investors and the legal community become more aware of the Treaty, the number of disputes relating to it is rapidly increasing, and the book considers the growing volume of case law concerning the interpretation or application of the provisions of the treaty. This is an invaluable reference tool for practitioners and investors.

The State's Power to Tax in the Investment Arbitration of Energy Disputes Outer Limits and the Energy Charter Treaty  
Cornel Marian States today are expected not only to regulate the efficient and safe production and distribution of energy to end-users but also to incentivize increased production of energy and the transition to clean energy. In recent years, states are increasingly relying on taxation measures to address the economic challenges affecting the energy sector. This book provides the first in-depth exploration of the intersection between the treaty investment protection regime and taxation measures, as these materialize in investor-state energy disputes. With the analysis of all known and pending cases under the Energy Charter Treaty (ECT), as well as non-ECT cases and bilateral investment treaties which have heavily influenced ECT jurisprudence, the author develops a deeply informed energy tax policy that greatly mitigates the points of tension in the current regime. He closely investigates the following elements of the subject: aligning the ECT Taxation Article with the taxation articles of other investment treaties; tracing current case law to the original arbitration decisions involving tax measures; extrapolating the interplay of taxation provisions with substantive standards of investment protection as reviewed by international arbitral tribunals; evaluating the outer limits of the state's power to tax under investment treaties and public international law; and addressing how the Yukos arbitration case has changed the framework of taxation issues in investment arbitration. In a clear and concise manner, the author provides the necessary framework to dissect any taxation chapter of an investment treaty and presents tools for the development of long-term tax policy and the adoption of model taxation clauses for sustainable investment protection mechanisms. The book takes a giant step toward meeting the ECT's mandate to promote long-term cooperation in the energy field with a set of defined objectives focusing on trade, cooperation, energy efficiency, and environmental protection. It will be of immeasurable value to states in developing tax-specific investment incentive schemes as well as to investors in completing a necessary level of due diligence against possible adverse tax measures. Practitioners and academics with a focus on international arbitration will benefit from the book's systematic approach to the complex taxation provisions of investment protection treaties and more readily recognize the "red flags" attached to national taxation provisions and their impact on investments in the energy sector.

Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty is a compilation of written contributions prepared in the context of a conference organized by the Energy Charter Secretariat, in cooperation with five other well-known legal institutions (the Arbitration Institute of the Stockholm Chamber of Commerce, the British Institute of International and Comparative Law, the International Centre for Settlement of Investment Disputes, the International Chamber of Commerce and the Permanent Court of Arbitration). This highly successful conference took place in Brussels in October 2009. Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty focuses on investment arbitration under the Energy Charter Treaty (or ECT) and on transit dispute resolution under the ECT. Part I consists of a review of awards, decisions and other developments in ECT investment arbitrations, of which nearly 30 were in the public domain as of 1 January 2011. Part II deals with the relationship between bilateral investment treaties, the ECT as a multilateral investment treaty, and European Union (EU) law, and addresses the question of whether conflict between these legal systems is inevitable. In Part III, the book reviews the highly developed provisional application mechanism of the ECT, particularly in relation to Russia, which signed the ECT in 1994 but has never ratified it. Part IV deals with the energy transit provisions of the ECT and the Treaty's potential application with respect to East-West energy transit and supply disputes. The book also contains an Editor's Preface, introductory and closing remarks, a table of contents, a detailed index, and an Appendix in the form of a CD-ROM containing the rules of arbitration of the three international arbitration mechanisms provided by the ECT (ICSID, SCC and ad hoc UNCITRAL arbitration). The book is of international application, particularly within the 51-country Energy Charter constituency (Western, Central and Eastern Europe, the former Soviet Union, Japan, Turkey, Mongolia and Australia), but is relevant to energy and international arbitration lawyers worldwide.

A detailed article-by-article commentary on the Energy Charter Treaty, including coverage and analysis of the Treaty's history, background, jurisprudence, and reference to relationships with other treaties.

The Energy Charter Treaty, initiated by the 1991 European Energy Charter and completed in December 1994, is an innovative major multilateral investment and trade treaty. The book has an introduction by Ruud Lubbers who, as the Dutch Prime Minister, played the key role in initiating the Energy Charter negotiations. It brings together contributions on the energy/investment background, the geopolitical context, the Energy Charter negotiations and the relevant specific topics of the Treaty (focusing on investment and trade, but also environment, competition and transit) by the key specialists on the subject, ranging from countries such as the US (which in the end decided not to join the Treaty) to Russia and Kazakhstan, including energy and investment specialists, international investment and commercial lawyers and arbitrators. The contributors include noted international energy/economic law authorities, but also key participants and observers of the Treaty negotiations. This book is intended to provide the first authoritative analysis of the background, negotiations and content of the Energy Charter Treaty and to provide support and guidance for subsequent negotiations and the difficult challenges involved in interpretation and application of the Treaty. It will be an essential tool for anybody working with the Energy Charter Treaty. The book contains in its annex the major documents of the Treaty: The 1991 European Energy Charter, the 1994 Treaty and its relevant Protocols, Annexes, Understandings and Final Act Declarations.

The Commentary on the Energy Charter Treaty (ECT) provides a unique, article-by-article, textual analysis of this important international agreement. The ECT outlines a multilateral framework for cross-border cooperation in the energy sector based on the principles of open competitive markets and sustainable development.

Commentary on the Energy Charter Treaty Edward Elgar Publishing

Towards a Universal Justice? Putting International Courts and Jurisdictions into Perspective offers a comprehensive overview of legal issues concerning the role and interrelations of international courts and jurisdictions.

Masterarbeit aus dem Jahr 2009 im Fachbereich Jura - Zivilrecht / Handelsrecht, Gesellschaftsrecht, Kartellrecht, Wirtschaftsrecht, University of Abertay Dundee (Centre for energy, petroleum and mineral law and policy), Sprache: Deutsch, Abstract: The end of the cold war signalled an emerging need for economic integration between Western

European countries and those countries which comprised the former Soviet Union. The energy sector was considered a perfect starting point for pursuing such cooperation mainly due to the fact that Eastern European countries were considered rich in oil and gas reserves. For this purpose, the Energy Charter Treaty as well as the Energy Charter Protocol were signed in December 1994 and came into effect on 16th April, 1998. The aim of the Treaty was to establish a comprehensive legal framework for promoting long-term cooperation between signatory countries in the energy sector. Indeed, the treaty is considered a powerful tool for investors as it grants direct right to initiate arbitration proceedings against host governments where there are alleged breaches of investment obligations. The purpose of this dissertation is to take a critical look at the effectiveness or otherwise of the treaty as regards the protection of international investments in the energy sector. A historical background leading up to the signing of the charter will be rendered. Also, the provisions of the treaty regarding investment protection and arbitration taking certain case studies of causes of action brought under the treaty will be discussed. Furthermore, a critical look at the shortcomings of the treaty will be attempted. The research findings will show that several successful cases have been concluded under the treaty; but criticisms and limits to the effectiveness of the treaty will be highlighted.

Starting from the premise that a multilateral legal framework is the surest way to achieve predictability and transparency under conditions of increasing reliance on internationally traded energy, the essays gathered in this book treat the many complex interlocking issues raised by examining that desideratum in the light of current reality. Concentrating on the application of WTO agreements to energy trade - as well as energy-related issues addressed in the current WTO negotiations - the authors offer in-depth discussion and analysis of such issues as the following: the effectiveness of existing WTO agreements in addressing issues pertinent to energy trade how restrictive practices of energy endowed countries can be tackled under existing international trade rules; existing frameworks for investment in highly capital-intensive energy infrastructure projects; and conditions for access to pipelines and transmission grids; regulation of energy services; bioenergy development and trade; energy issues addressed in the WTO accession negotiations of energy endowed countries; international instruments of resolution of energy-related disputes.

Against the backdrop of energy markets that have radically changed in recent decades, this book offers an in-depth study of energy regulation in international trade law. The author seeks to clarify what we define as 'energy' in the context of the applicable international trade rules, and gives the reader a thorough analysis of the concepts, history and law of the various legal frameworks underpinning international energy trade. In addition, several case studies address the ongoing quest for energy security and show how the existing rules relate to some of the vast challenges that energy markets face today, notably the decentralisation and decarbonisation of energy markets.

This monograph examines the relationship between treaties providing for uninterrupted energy transit and countermeasures under the law of international responsibility. It analyses the obligations governing energy transit through pipelines in multilateral and bilateral treaties, looking at the WTO Agreement, the Energy Charter Treaty, and sixteen bespoke pipeline treaties. It argues that a number of transit obligations under these treaties are indivisible, reflecting the collective interests of states parties. The analysis is placed in the historical and normative landscape of freedom of transit in international law. After setting out the content and scope of obligations concerning transit of energy, it distinguishes countermeasures from treaty law responses, and examines the dispute settlement and compliance supervision provisions in these treaties. Building on these findings, the work discusses the availability and lawfulness of countermeasures as, on the one hand, a means of implementing the transit states responsibility for interruptions of energy transit via pipelines; and, on the other hand, circumstances that preclude the wrongfulness of the transit states interruptions of transit.

The Energy Charter Treaty has come of age, with almost 50 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 Haggold 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.

[Copyright: 19936e82c7f0df0b0be72a64b01d9451](https://www.industrydocuments.ucsf.edu/docs/19936e82c7f0df0b0be72a64b01d9451)