access to energy see energy access
ACER (Agency for Cooperation of Energy Regulators) 243
acquis, EU energy 14–16, 97
and Energy Charter Treaty 119–21
transit, treatment of 595–611
Regulation 1775 (2006) 598–9
Regulation 715 (2009) 607–11
actor-interfaces and procedure-interfaces, structuring division of labour 66, 70
administration, as interface structuring division of labour 70–72
African Union Anti-Corruption Convention (2003) 479, 489
Agency for Cooperation of Energy Regulators (ACER) 243
Agip Mineraria 157
Agreement on Subsidies and Counterveiling Measures (SCM) 277, 286, 298, 299
AIPN (Association of International Petroleum Negotiators) 11, 83
American Society of International Law, International Economic Law Interests Group 12–13
Angola, production sharing contracts 167
anti-bribery prohibitions
Brazil Law No 10.467 489–90
Bribery Act 2010 (UK) 489
Corruption of Foreign Public Officials Act (CFPOA), 1998 (Canada) 488–9
Foreign Corrupt Practices Act (FCPA) 1977 (US) 487–8
prohibited acts 487–90
Russian Criminal Code, Art. 291 490
anti-dumping rules, GATT 239
Amorini energy ministerial, Japan (2008) 29
Arab Oil Exporting Countries forum (OAPEC) 21
Arab revolutions 23
Arab-Israeli conflicts 21, 47
arbitration
arbitral awards, recent
FET and stability 142–6
instability, preparing form 140–42
gas price review 229–40
landmark investment arbitrations and modern investment protection system 201
popularity in energy sector 199–200
standing of investors to directly sue states in 205–6
Trucial Coast Arbitration (1951) 203–4
see also disputes, energy
Arbitration Institute, Stockholm Chamber of Commerce 72
Arctic Council 229
Argentina, consumption-oriented subsidies, targeting 35
ASEAN (Association of East Asian Nations) 633
assistance, international 11, 16
Association of East Asian Nations (ASEAN) 633
Association of International Petroleum Negotiators (AIPN) 11, 83
Determinants of Maritime Boundaries
- Baselines 184–5
- Islands 185–6

Dispute Methods and Fora
- Binding 191–2
- Non-Binding 190–91

Disputed Waters, Operating in
- Confirmin 193
- Managing 194–5

Government Assistance 194–5

Host Government Contract Terms 194

IOCs, Challenges to 193–5

Joint Development Zone 189–90

Maritime Boundary Zones
- Contiguous Zone 184
- Continental Shelf 183
- Exclusive Economic Zone 183–4
- Natural Resources in 188–9
- Territorial Sea 182–3

Territorial Sea 182–3, 186

Bradbrook, Adrian 3, 4, 5, 44, 50

Brazil 38

Corruption, Energy Sector
- Accounting Requirements 496
- Enforcement Action 506
- Law No. 10.467 489–90, 494
- Penalties 498

Fossil Fuel Subsidies 34

and G20 Forum 32

rise of 25, 27, 29

See Also BRICS Countries (Brazil, Russia, India, China and South Africa)

Brazil Law No. 10.467, Anti-Bribery
- Prohibitions 489–90

Bribery, Transnational Laws
- Accounting Requirements 494–7
- Anti-Bribery Prohibitions 487–94
- Jurisdiction 490–94

Prohibited Acts 487–90

Bribery Act 2010 (UK)
- Anti-Bribery Prohibitions 489
- Jurisdiction 493

BRICS Countries (Brazil, Russia, India, China and South Africa)
- 19, 23, 25

Brownlie, Ian 51, 55
Index 653

Build-Operate-Transfer Contracts 69

Cameron International (CAM) 161

Canada
corruption, energy sector

Corruption of Foreign Public Officials Act (CFPOA) 488–9, 493–4, 496

enforcement action 505–6

penalties 498

Corruption of Foreign Public Officials Act (CFPOA), 1998 accounting requirements 496

jurisdiction 493–4

prohibited acts 488–9

and G20 forum 32

Toronto Summit (2010) 31, 34

CEDIF (Clean Energy for Development Investment Framework) 27, 28

China 38, 39

and IEA 25–7

rise of 25, 27, 29, 41–2

see also BRICS countries (Brazil, Russia, India, China and South Africa)

Citiworks case, energy market liberalization 256–7, 270

CJEU (Court of Justice of the European Union) 52

establishing foundations 254–61

history
dismantling national monopolies 251–3

oil stocks, securing 248–51

and internationalization of energy law 3, 12

merger control 259–61

multifold function 245–8

preliminary ruling procedure 254

recent developments

services of general economic interest and public service obligations 267–70

support schemes and state aid 261–70

role in energy market liberalization 241–71

third party access and non-discrimination 254–9

see also European Union (EU); liberalization, energy market

Clean Energy for Development Investment Framework see CEDIF (Clean Energy for Development Investment Framework)

climate change 19

Gleneagles Plan of Action on Climate Change 27

greenhouse gas emissions 19

United Nations Framework Convention on Climate Change (UNFCCC) 42

COMECON system 79, 86, 101

Commission v Slovakia (2011), energy market liberalization 259

compliance issue
corruption, energy sector 511–13

institutional organizations 20, 30, 32–7, 42

‘Conceptual Approach to the New Legal Framework for Energy Cooperation’ 642–3

concessions and licences, petroleum regimes 69, 151–4

duration 152

exclusive right 152

local content 154

main terms 152–4

ownership of installation 153

ownership of production 153

responsibilities of parties 153

retention of the area, payment for 154

royalties 153

signature bonus 153

Special Participation Fee 153–4

conciliation 191

consulting, international 11

consumer clubs, exclusive 19, 20–25

contiguous maritime zone 184

continental shelf boundary delimitation 187

maritime boundary zones 183

contracts

evolution of terms 128–9

‘freezing’ clauses 128
Research handbook on international energy law

as interfaces structuring division of labour 69–70
internationalization of 214–16
Liquefied Natural Gas see under LNG (Liquefied Natural Gas)
production sharing see PSC
(product sharing contract), petroleum regimes
renegotiation clause 128, 129–33
change in law 134, 135
Host Government Agreements 135–6
trigger for renegotiation 133–5
service see service contracts, petroleum regimes
stabilization clauses in 126–40

Convention on Supplementary Compensation for Nuclear Damage (1997) 5
Convention on the Prevention and Punishment of Genocide 205
Convention on Transit Trade of Land-Locked States (1965) 312

coordination between energy producer states
GE CF (Gas Export Countries Forum) 629–30
OPEC (Organization of the Petroleum Exporting Countries) 627–9
corruption, energy sector 20, 475–513
accounting requirements 494–7
anti-bribery prohibitions 487–94
jurisdiction 490–94
prohibited acts 487–90

compliance 500, 511–13
exceptions and defences 498–500
facilitating payments defence 499–500
global enforcement 501–6
Brazil 506
Canada 505–6
host country 506–8
Nigeria 507
Russian Federation 506, 507–8
United Kingdom 505
United States 501–5

international conventions
African Union Anti-Corruption Convention (2003) 479, 489
Council of Europe Criminal Law Convention (Criminal Law Convention Against Corruption of Council of Europe (CoE), 1999 479, 481–3
OAS Convention (Inter-American Convention Against Corruption), 1997 479, 483

OECD Convention (Convention on Combating Bribery of Foreign Public Officials), 1997 479, 480–81

regional 481–4

international financial institutions 508–11
legal framework 508–10
representative actions 510–11
and local law 498–9
penalties 497–8
promotional expenses 499
transnational bribery laws 487–97
accounting requirements 494–7
anti-bribery prohibitions 487–94
jurisdiction 490–94
prohibited acts 487–90

Corruption of Foreign Public Officials Act (CFPOA), 1998 (Canada)
accounting requirements 496
anti-bribery prohibitions 488–9
jurisdiction 493–4

Council of Europe Criminal Law Convention (Criminal Law Convention Against Corruption of Council of Europe (CoE), 1999 479, 481–3

Court of Justice of the European Union (CJEU) see CJEU (Court of Justice of the European Union) co-venturers 157, 158

D’Arcy concession, Persia (1901) 82–3, 150

data reliability 38–9

Deep-water Horizon Rig, Macondo well 161–3

Delaume, Georges 139
demand for energy, institutional organizations 19–20, 42
derivatives, Liquefied Natural Gas 354
desalination diverting industrial by-products for 397
solar powered desalination projects 396
sustainable, and water reuse 395–6
developing countries access to energy, increasing 28
World Bank assistance to 11

dispute resolution, international investment arbitration
landmark investment arbitrations and modern investment protection system 201
popularity in energy sector 199–200
shareholder standing to sue in 206–7
standing of investors to directly sue states in 205–6
and energy disputes 199–224
arbitration 199–201, 205–7
customary international law, obsolete and weak protection of shareholders in 207–9
damages calculations, methods first analysed and applied in 221–3
defining and applying a state’s conventional right to deny substantive protections to certain investors 220–21
Fair and Equitable Treatment and ‘legitimate expectations’ of investor 216–19
ICSID, development 202–5
internationalization of contracts 214–16
key in expanding leases of protected shareholder investors 209–11
landmark investment arbitrations from energy sector 201
positive influence on substantive protections of investors 211
potentially capricious
 modification of host-state’s law, investor protection from 214–16
recent trends 225–7
stabilization clauses in oil and gas concession agreements 211–14
standing of investors to directly sue states in arbitration 205–6
see also disputes, energy; investment protection
dispute settlement mechanism (DSM), WTO 324–7

disputes, energy 6–7 arbitration
gas price review arbitrations 229–40
investor standing to directly sue states in 205–6
landmark investment arbitrations and modern investment protection system 201
popularity in energy sector 199–200
recent awards 140–6
shareholder standing to sue in 206–7
Trucial Coast Arbitration (1951) 203–4
binding resolution 191–2
boundaries 190–2, 194–5
boundary and territorial disputes in maritime areas 227–9
cases
AES v Hungary (2010) 227
Binder v. Czech Republic (2007) 226
British Petroleum Company (Libya) Ltd. v. Libya (1973) 205
Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy) 206
Eureko BV v. Slovak Republic (2012) 226
Kuwait v. Aminoil (1982) 8–9, 130, 131–2, 204
Libyan American Oil Company (LIAMCO) v. Libya (1977) 205
Texaco Overseas Petroleum Company v. Libya (1977) 205
Texaco v Libya (1977) 201, 204, 212, 215
conciliation 191
conflict between oil companies and host governments 124
court powers, extent of 200
damages calculations, methods first analysed and applied in 221–3
dispute settlement as interface structuring division of labour 72–4
ExxonMobil case, against Venezuela 146
gas price review arbitrations 229–40
price review clauses 230–2
trigger events relied on by buyers of gas 233–7
typical areas of dispute 232–3
and international investment dispute resolution 199–224
arbitration 199–201, 205–7
damages calculations, methods first analysed and applied in energy disputes 221–3
defining and applying a state’s conventional right to deny substantive protections to certain investors 220–1
expansion of class of protected shareholder investors 209–11
Fair and Equitable Treatment and ‘legitimate expectations’ of investor 216–19
ICSID, development 202–5
internationalization of contracts 214–16
investment disputes, energy 225–7
obsolete and weak protection of shareholders in customary international law 207–9
positive influence of energy disputes on substantive protections of investor 211
potentially capricious modification of host-state’s law, investor protection from 214–16
shareholder standing to sue in arbitration 206–7
stabilization clauses in oil and gas concession agreements 211–14
international nature 50–51
investment-state dispute settlement cases 105–6
IOCs, disputes with resource owners 163
mediation 191
negotiations 190–91
non-binding resolution 190–91
oil, gas and minor sectors 147–8
recent trends
boundary and territorial disputes in maritime areas 227–9
gas price review arbitrations 229–40
investment disputes 225–7
Russian and Ukraine 28, 117
transit 316–17, 318–20
see also ICSID (International Centre for the Settlement of International Disputes)
division of labour between national and international energy law
actor-interfaces 66, 70
functions of interfaces 63–6
and rule of law 65
significance 64–5
functions of international energy law 58–63
functions of national energy law 57–8
interfaces structuring division of labour 66–74
actor-interfaces and procedure-interfaces 66, 70
administration 70–72
contracts 69–70
dispute settlement 72–4
domestic law 68–9
negotiations 74
norm-interfaces 66, 67
treaties 66–8
Index

norm-interfaces 66, 67, 68

ECS (Energy Charter Secretariat) 97, 102, 105

domestic law, as interface structuring
division of labour 68–9
treaties as interfaces 66–8
double taxation treaties (DTTs) 90, 91, 92, 95

draft Convention on energy security,
Russian proposal for 642–5
draft Energy Charter Protocol on
Transit 109, 115, 317–18, 611–13, 639–42
Art. 8 116
Art. 8(4) 116
Art. 10 116
Art. 20 97, 116, 117
REIO clause 97, 116, 117, 121, 122, 123, 641
dry-land countries, renewable energy
for water and water security
projects 387–403

national food security programmes
389–94
cost of food security 389–90
environmental challenges and
opportunities 391–2
opportunities for renewable energy
in 392–3
Qatar national food security
programme 390, 393–4, 397–402
regional cooperation, potential for
402–3
safeguarding food security 389–94
water security 394–7
d diverting industrial by-products
for desalination 397
Qatar, water consumption in
394–5
solar powered desalination
projects 396
sustainable desalination and water
reuse 395–6

DTTs (double taxation treaties) 90, 91, 92, 95
dual pricing, subsidies 299–301
dualism 51, 52, 53

economic governance, G20 as apex
forum for 30
economic growth, and sustainable
development 362–4

economics

ECT (Energy Charter Treaty) 5
development of activities in terms of
focus 110–11
and Energy Charter process 102–4
entering into force (1998) 101
and European Union 121–2,
646–9
EU energy acquis 119–21
evolution 79–82
features 314–15
as first multilateral investment
agreement 104–7
future prospects 122–3
geographical scope 107–8
international energy law 61
investment regime under 638–9
and Lithuania 238
Member States 119
as multilateral tool 95–6, 98
norm-interfaces 67–8
numbered Articles
Art. 1(7) 67
Art. 2 100
Art. 7 115
Art. 7(3) 115
Art. 8 104
Art. 9 104
Art. 10 106
Art. 10(5)(a) 106
Art. 10(5)(b) 106
Art. 13 120
Art. 14(4) 67–8
Art. 18 108
Art. 18(2) 68
Art. 26(4)(c) 72
Art. 26(6) 13
Art. 34(7) 108
Art. 45 108
Art. 45(1) 68
origins 98, 100–102
and pipelines 313–20
rollback provision 106
Russian Federation
attitudes to ECT 121–2
concerns regarding ECT 114–17
and origins of ECT 101–2
withdrawal from provisional
‘standstill’ and ‘rollback’ provisions
106
standstill provision 106–7
states signing up to 15
Trade Amendment (1998) 98, 109
transit disputes 316–17
ECT dispute conciliation
procedure (Art 7.7) 116, 614–17
ECT dispute settlement
mechanism (Investor–State)
619–21
ECT dispute settlement
mechanism (State–State)
618–19
effectiveness in resolving 318–20
transit of energy 315–16, 611–14
definition of ‘transit’ 611–12
non-interference clause 613–14
rational economic approach
639–42
transit disputes 316–17, 614–21
transit party’s obligations, under
Art. 7 of ECT 613–14
value-based political approach
646–7
EITI (Extractive Industries
Transparency Initiative) 37, 40, 42
Association 521–2
Standard 521–4
implementation by Nigeria 529–32
national implementation process
524–8, 542–4
see also transparency, international
energy
Electrabel S.A. v. Republic of Hungary
ICSID ARB/07/19) 13, 142, 227
electricity
cross-border networks 57
EU Directives 13, 15, 16
lack of access to 19
market for compared to oil, gas or
coal markets 4
renewable see renewable electricity
(RE)
emerging economies, rise of 25–32
inclusion challenge 20, 26–32
energy access 361–86
economic growth and sustainable
development 362–4
electricity, lack of access to 19
GATT, general principles applied to
energy sector 280–81
increasing, in developing countries
28
Millennium Development Goals
374–6
right to development 364–71
Energy Charter
Conference 103
‘Energy Charter Plus’ scenario 117
evolving emphasis of activities over
time 108–10
life-cycle 113
Policy Reviews 107, 108, 109, 111
political declaration (1991) 103
Process
development of activities in terms
of focus 110–11
and Energy Charter Treaty 102–4
geographical scope 107–8
and Russian Federation 114–17, 121
‘Road Map for the Modernisation of
the Energy Charter Process’ 104
role within energy-related
international organizations
111–14
signing of (1991) 100–101, 109
Transatlantic Europe 107
Warsaw Process 104
see also ECT (Energy Charter
Treaty); Energy Charter
Secretariat (ECS)
Energy Charter Secretariat (ECS) see
ECS (Energy Charter Secretariat)
Energy Charter Treaty (ECT) see ECT
(Energy Charter Treaty)
Energy Community 61
Energy Community Treaty (2005) 15, 16
Energy Council (EU–US), inter-
consumer communication 632–3
Energy Dialogue (EU–Russia) 634–6
energy efficiency
decentralised governance 445–8
EU approach 448–55
compared to US 455–9
demand-side and supply-side strategies and targets 452–5
institutional support 460–64
lessons learned from for US 467–70
progress towards meeting targets 451–2
whether EU countries reach 2020 energy efficiency target 464–6
greenhouse gas emissions and US energy policy 444–5
IEA recommendations 32–3
policy flexibility, importance 455–9
US approach 440–8
compared to EU 455–9
decentralised governance 445–8
greenhouse gas emissions and energy efficiency policy 444–5
institutional support 460–4
lessons learned from EU 467–70
see also IPEEC (International Partnership on Energy Efficiency Cooperation)
energy industries 3
energy law
defined 3
international see international energy law
national see national energy law objectives 58
resources law and policy versus energy law and policy 4
energy sector
access to energy see energy access
corruption in see corruption, energy sector
disputes relating to see disputes, energy
energy markets, evolution 79–82, 94
energy products, special character 278–80
‘energy revolution’ 18
GATT, general principles applied to 280–89
increasingly international nature of markets 80
paper energy markets 91
services, WTO provisions 293–7
see also Energy Charter process;
Energy Charter Treaty (ECT), 1994; energy law
enforceability problems, transparency 20, 22
enforcement action, corruption
Brazil 506
Canada 505–6
Russian Federation 506
United Kingdom 505
United States 501–5
Innospec 502–4
representative actions 502–5
statistics 502
TSKJ case 504–5
ENI (Italian State Oil Company) 157
environmental protection 164
Equatorial Guinea 41
equidistance line, territorial sea boundaries 186
Euratom (European Atomic Energy Community) 225
European Commission 253
as amicus curiae 227
Single Market initiative 241–2, 244
European Union (EU)
acquis 14–16, 119–21
transit, treatment of 595–611
country-by-country reporting, proposals 538–40
Court of Justice see Court of Justice of the European Union
Directives
buildings, energy performance (Directive 2010/31/EU) 14
electricity market (Directive 1996/92/EC) 13, 255–6
energy law (Directive 2003/54/EC and Directive 2009/72/EC) 14, 68
gas market (Directive 1998/30/EC) 13–14
labelling (Directive 2010/30/EU) 14
offshore oil and gas operations (Directive 2013/30/EU) 16
renewable energy (Directive 2009/28/EC) 14, 16
upstream licensing (Directive 1994/22/EC) 13
utilities procurement (Directive 98/4/EC) 13
attitudes 121–2
see also ECT (Energy Charter Treaty); Energy Charter
Energy Council (EU–US) 632–3
Energy Dialogue (EU–Russia) 634–6
energy efficiency policy 448–55
compared to US 455–9
demand-side and supply-side strategies and targets 452–5
institutional support 460–64
lessons learned for US 467–70
progress towards meeting targets 451–2
whether EU countries reach 2020 energy efficiency target 464–6
EU energy law, as international energy law 8, 12–16
gas price review arbitrations 237–8
General Court 245
growth 15
hegemony, challenge to 18–19
judicial branch 244
Ministerial Council 16
Regulations
Regulation (EEC) 1055/72 (crude oil and natural gas) 13
Regulation (EEC) 1056/72 (petroleum, natural gas and electricity) 13
Second Energy Package 258
Third Energy Package 16, 120, 227, 238, 243, 247
see also ECT (Energy Charter Treaty)
exceptions, GATT principles 288–9
exclusive economic zone (EEZ) boundary delimitation 187
maritime boundary zones 183–4
Extractive Industries Transparency Initiative see EITI (Extractive Industries Transparency Initiative)
ExxonMobil case, against Venezuela 146
Fair and Equitable Treatment see FET (Fair and Equitable Treatment)
FDI (foreign direct investments) 80
Feed-In Tariff (FIT) Programme 303–4
and free trade 427–30
FET (Fair and Equitable Treatment) 125, 140
and ‘legitimate expectations’ of investor 216–19
and stability 142–6
food security concept 389–90
cooperation as 402
in dry-land countries 387–94, 397–402
within human rights context 388–9
national food security programmes 389–94
environmental challenges and opportunities 391–2
opportunities for renewable energy in 392–3
Qatar national food security programme 390, 393–4, 397–402
Qatar challenges to renewable energy in food security programme 393–4
electricity market reform 398–9
national food security programmes 390, 393–4, 397–402
renewable energy take-off, ensuring 399–400
steps to expedite renewable energy expansion in 398
regional cooperation, potential for 402–3
safeguarding 389–94
Foreign Corrupt Practices Act (FCPA) 1977 (US)
accounting requirements 494–6
anti-bribery prohibitions 487–8
jurisdiction 490–3, 495–6
recordkeeping requirements and
internal control provisions 495
fossil fuels
contemporary market, global nature 18
‘fossil-fuel price volatility’ working
group 31
and G20 forum 30
subsidies 31, 34, 35
France 34
free trade agreements (FTAs) 96
frontier areas 161
FTAs (free trade agreements) 96
functional perspective, energy law from 4
G8 see Group of Eight (G8) forum
G20 see Group of Twenty (G20) forum
gas
Directives see First Gas Directive
1998 (Directive 98/30/EC); Second Gas Directive 2004
(Directive 2003/55/EC); Third Gas Directive 2009 (Directive
2009/73/EC)
electricity market compared to gas
market 4
‘entry-exit’ zones 88
EU Directives 13–14, 16
‘Golden Age’ 329–32
greenhouse gas emissions 19
natural 18
offshore activity 16, 189
‘point-to-point’ physical deliveries 88
price review arbitrations see gas
price review arbitrations
Russia-Ukraine gas crisis (2009) 121
stabilization clauses in concession
agreements 211–14
see also Gazprom (Russian gas
giant); LNG (Liquefied Natural
Gas); pipelines, gas
Gas Export Countries Forum see
GECF (Gas Export Countries
Forum)
gas price review arbitrations 229–40
‘changes’ or ‘trigger events,’ when
occurring 232–3
EU measures 237–8
outcomes 240
price review clauses 230–2
Russian Federation as WTO
member 239–40
start and end of reference period 232
trigger events relied on by buyers
of gas
decoupling between oil and gas
prices 236–7
economic crises 236
liberalisation of end-user markets
233–4
shale gas and LNG 234–5
whether changes temporary or long-
term 233
whether same trigger event can be
referred to in more than one
price review 233
Gas Transmission Europe (GTE) 600
gas transportation system (GTS) 118
GATS (General Agreement on Trade
in Services) 295, 306
Agreement on Basic
Telecommunication Services
297
GATT (General Agreement on Tariffs
and Trade)
anti-dumping rules 239
general principles as applied to
energy sector 280–89
exceptions 288–9
market access to energy products
and materials 280–81
most-favoured nation treatment
280–81
national treatment 281–6
quantitative restrictions 286–8
numbered Articles
Art. 1 281
Art. 1(1) 280
Art. 3 281, 283
Art. 3(2) 283, 284, 285
Art. 3(4) 282
Art. 5 239, 289–90
Art. 6(4) 282
Art. 11 286–7, 288
Art. 14 239
Art. 17 291, 292
Art. 20 288
Art. 21 289
pipelines 321–4
whether energy covered by 275–8
Gazprom (Russian gas giant) 230, 235, 237, 238, 239, 240
GCC (Gulf Cooperation Council) 35
GECF (Gas Export Countries Forum), coordination between energy producer states 629–30
General Agreement on Tariffs and Trade see GATT (General Agreement on Tariffs and Trade)
General Court 245, 260
Geneva Convention on the Continental Shelf (1958) 182
gеологии 181
geopolitics 624–50
rational economic approach 636–45
‘Conceptual Approach to the New Legal Framework for Energy Cooperation’ 642–3
Draft Convention on energy security, Russian proposal for 642–5
ECT (Energy Charter Treaty) 638–42
security, rational and political angles 626–36
coordination between energy producer states 627–30
inter-consumer communication 630–33
Producer–Consumer dialogues 633–6
value-based political approach 645–9
EU and ECT 646–7
EU’s externalization of domestic policies and ECT 647–9
Gleneagles Plan of Action on Climate Change 27
Gleneagles Summit (2005) 27, 28
global energy governance, ‘hybrid’ form 43
Global Subsidies Initiative 34
globalization 81
Gotland island, Sweden 186
greenhouse gas emissions 19
Group of Eight (G8) forum 27, 42
Aomori energy ministeriale, Japan (2008) 29
Hokkaido Toyako Summit, Japan (2008) 29, 33
inclusiveness, lack of 32
lack of representativeness 30
as ‘policy entrepreneur’ 36
St. Petersburg Summit (2006) 28, 33, 114
working groups 29
Group of Twenty (G20) forum and IEA 42, 43
inclusiveness 32
Paris ministers’ meeting (2011) 39
Pittsburgh Summit (2009) 30–31, 34, 36, 42
as ‘policy entrepreneur’ 36
Toronto Summit (2010) 31, 34
working groups 31
GTS (gas transportation system) 118
Gulf Cooperation Council see GCC (Gulf Cooperation Council)
Gulf of Mexico oil field 22
BP oil spill 31, 136
hurricanes causing damage to (2005) 23
Gulf War (1991) 23
Halliburton (HAL) 161
‘Heiligendamm Process’ (2007) 29, 30, 32
Helsinki Conference on Security and Cooperation in Europe (1975) 107
Henry Hub, US 237
Hokkaido Toyako Summit, Japan (2008) 29, 33
‘Hubbert’s curve’ 92
human rights
energy, food and water within context of 388–9
and stabilization clauses 169–70
ICJ (International Court of Justice) 136, 187
dispute methods and fora 191–2
international arbitration and energy 207–8
ICSID (International Centre for the Settlement of International Disputes) 10, 105, 146
and ‘classic’ energy arbitrations 205
Convention see ICSID Convention (2006)
creation (1965) 202–3
development in context of protection for investors investing in host-state’s natural resources 202–5
modern system of investment protection and landmark investment arbitrations 201
ICSID Convention (2006)
and Additional Facility Rules (1972–2012) 7, 199
numbered Articles, Art. 25 139, 205–6
signature 203
IEA (International Energy Agency)
18, 36
administrative functions 71–2
and Brazil 38
and China 25–7, 38
as consumer collective 23
data relied upon 39
emergency oil sharing mechanism 23, 26
energy efficiency recommendations 32–3
establishment (1974) 21
and G20 forum 42, 43
and India 25–7, 38
initial task and current role 21–2, 23
inter-consumer communication 630–2
and interface between national and international energy law 50
and investment protection 111–12
member countries 22, 25–6
and OECD 26
and Pittsburgh Summit (2009) 34
and public international law 60–61
IEF (International Energy Forum) 42
creation (1991) 23
data relied upon 39
and emerging economies 38
Kuwait Ministerial (2012) 39
member base 24
Producer–Consumer dialogues 634
transparency issue 39, 40
IIFs (international investment agreements) 91, 93, 99
ILC (International Law Commission), Articles on Responsibility of States for Intentionally Wrongful Acts (2001), Art. 32 52
India
and IEA 25–7
mining lease 164
production sharing contracts 166–7
ring fencing in 156
rise of 25, 27, 29, 38, 41–2
see also BRICS countries (Brazil, Russia, India, China and South Africa)
Indonesia
consumption-oriented subsidies, targeting 35
Law No. 44 158
information
lack of access to 20
withholding of 39
institutional organizations 18–43
compliance issue 20, 30, 32–7, 42
emerging economies, rise of 25–32, 41–2
Energy Charter, role within 111–14
enforceability problems 20, 22
exclusive consumer clubs versus exclusive producer clubs 19, 20–25
greater institutionalization, calls for 36
hegemony of EU, US and Japan, challenge to 18–19
inclusion, challenge of 20, 26–32
shortcomings of existing frameworks 19–20
tax transparency issue 20, 38–41
see also specific institutions
inter-consumer communication 630–33
Energy Council (EU–US) 632–3
IEA (International Energy Agency) 630–32
interface, between national and international energy law 44–76
cases
Kadi case (Case C-402/05 P and C 415/05 P, Kadi & Al Barakaat Int’l Found. v. Council of the E. U. & Commission of the
Research handbook on international energy law

E. C. (Kadi I), ECR 2008
53, 65
Nada v. Switzerland (10593/08),
2012 65
Nottebohm Case (second phase)
(1955) 68
Plama Consortium v. Bulgaria
(2005) 73
Prosecutor v. Dusko Tadic alka
‘Dule’ (1995) 65
Pulp Mills on the River Uruguay
(Argentina v. Uruguay)
(2010) 67
Salini Costruttori S.p.A. and
Italstrade S.p.A. v. Morocco
(2001) 67
conflicts between international and
domestic law 52
division of labour between national
and international energy law
functions of interfaces 63–6
functions of international energy
law 58–63
functions of national energy law
57–8
interfaces structuring division of
labour 66–74
and interpenetration of national
and international law 55–6
dualism 51, 52, 53–4
dualism 51, 52, 53–4
emergence of international energy
markets 46–51
expansion of international law 54
functions of interfaces 63–6
functions of international energy
law 58–63
international energy law
bilateral cross-border energy
production 60
electricity markets, versus oil, gas or
coal markets 4
and emergence of international
energy markets 46–51
EU energy law as 12–16
international law as source 5–7
Lex Petrolea as 8–12
multi-party projects 60
transnational character of energy
law 44–5

see also energy law; national energy
law
international investment agreements
(IIAs) 91, 93, 99
international law
customary, obsolete and weak
protection of shareholders
207–9
investment protection instruments in
energy before 82–9
multilateral and bilateral agreements
6
norms of public international law
7
as source of international energy law 5–7

International Law Commission (ILC)  see ILC (International Law Commission)

International Oil Companies  see IOCs (international oil companies)

International Partnership on Energy Efficiency Cooperation  see IPEEC (International Partnership on Energy Efficiency Cooperation)

International Tribunal for the Law of the Sea (ITOLOS) 192

internationalization of energy law 3–17, 81

application of norms 17

cases

*Campus Oil* (1984) 3
*Costa v. ENEL* (1964) 12
*Kuwait v. Aminoil* (1982) 8–9, 130, 131–2, 204

*Texaco Overseas Petroleum Company and California Asiatic Oil Company v. The Government of the Libyan Arab Republic* (1977) 6

contracts 214–16

cooperation programmes 11

EU energy law as international energy law 8, 12–16

international law as source of international energy law 5–7, 17

investment protection, international 6, 7

*Lex Petrolea* as international energy law 8–12

national laws, internationalization of 5, 7–16, 17

see also interface, national and international energy law

investment disputes, energy 225–7

investment protection

development curves 94–5

and development of ICSID 202–5

Energy Charter, role within energy-related international organizations 111–14

in Energy Charter Treaty 105

see also ECT (Energy Charter Treaty)

energy disputes

modern protection system and landmark investment arbitrations in energy sector 201

positive influence on substantive protections of investors 211

energy instruments before international law 82–9

energy within international law period

bilateral investments 89–95

multilateral investments 95–8, 99

hard- and soft-law 105, 112

internationalization of energy law 6, 7

’legitimate expectations’ of investor and fair and equitable treatment 216–19

from potentially capricious modification of host-state’s law 214–16

see also dispute resolution, international investment; disputes, energy

investment stability 124–48

arbitral awards, recent 140–8

Fair and Equitable Treatment and stability 142–6

preparing for instability 140–2

cases

*Alex Genin v Estonia* 143


*Occidental v Ecuador* (2012) 145–6, 148

*Parkerings Compagniet AS v Lithuania* (2007) 140, 143

*Paushok v The Government of Mongolia* (2011) 140, 142

*Sapphire International Petroleum v National Iranian Oil Co* (1967) 137
Ulysseas Inc. v Ecuador (2012) 144
and Fair and Equitable Treatment 142–6
‘legitimate expectations’ of investor 140, 143, 216–19
renegotiation clause 128, 129–33
change in law 134, 135
Host Government Agreements 135–6
PSC (production sharing contract) 169
trigger for renegotiation 133–5
stabilization clauses, investment contracts 126–40
environmental exceptions 136–7
evolution of contract terms 128–9
historical view 137–8
and human rights 169–70
hybrids 127
investment contracts 126–40
in oil and gas concession agreements 211–14
production sharing contracts 166–9
renegotiation clause 129–35, 133–5, 134, 135, 135–6
trigger for renegotiation 133–5
use of 127–8
IOCs (International Oil Companies) 11
boundary challenges to confirming a defined boundary 193
encountering a boundary dispute 193–4
managing a boundary dispute 194–5
conflict between oil companies and host governments 124
disputes with resource owners 163
global oil flows, concentration 21
resistance to agree renegotiation of concessions 150
member countries 30
Iraq
EITI compliant status (2012) 40
model contract 131
islands, international boundaries 185–6
Itaipú Binacional (hydro-electric power plant) 60
ITLOS (International Tribunal for the Law of the Sea) 192
Ivory Coast, Model PRC (1997) 131
Japan
Aomori energy ministerial (2008) 29
fossil fuel subsidies 34
hegemony, challenge to 18–19
Hokkaido Toyako Summit (2008) 29, 33
JODI (Joint Oil Data Initiative) creation (2001) 24, 37
Database 39, 40
Eighth International Conference (2011) 39
transparency issue 38, 39, 40, 42
Joint Development Zone (JDZ) 189–90
Joint Venture Agreements 157
joint ventures contractual or unincorporated 157
incorporated 158
Jordan, subsidy reduction programme (2012) 35
Karl, Joachim 106
Kazakhstan, tax stability clause 168–9
Khristenko, V. 115
Kong, Bo 27
Kuwait
IEF Ministerial (2012) 39
OPEC reserves data 38–9
Kuwait v. Aminoil (Government of the State of Kuwait v American Independent Oil Co (AMINOIL), 1982) 8–9, 130, 131–2, 204
L’Aquila Summit, Italy (2009) 29–30
LDCs (least development countries) 31, 85
League of Nations Covenant (1919) 312
Least Developed Countries (LDCs) 31, 85
legal certainty 53
legal instruments, as norm interfaces 66, 67
Lehman Brothers, collapse (2008) 236
**Lex Petrolea**, as international energy law 8–12

international consulting 11

*opinio juris* 9

petroleum, internationalization of national regimes 9–11

liberalization, energy market cases


*Almark* (C-280/00) (2003) ECR I-7747 268

*Campus Oil* (72/83) (1984) ECR 272 249, 251

*Citeworks* (C-439/06) (2008) ECR I-3913 256–7, 270

*Commission v Belgium* (C-474/08) (2009) 247


*Commission v Greece* (C-347/88) (1990) ECR I-4747 251

*Commission v Portugal* (C-367/98) (2002) ECR I-4731 249

*Commission v Slovakia* (C-264/09) (2011) ECR I-8065 259

*Costa v Enel* (6/64) (1964) ECR 585 249

*Dassonville* (8/74) ECR 837 (120/78) 248

*EDP v Commission* (T-87/05) (2005) ECR II-3745 259


*Foto-Frost* (1987) ECR 4199 245

*Köbler* (C-224/01) (2003) ECR I-10239 246

*PreussenElektra* (C-379/08) (2001) ECR I-2099 263, 264, 265, 266

*Rewe-Zentrale AG* (1979) ECR 649 248

*VEMW* (C-17/03) (2005) ECR I-4983 254, 255, 256, 259, 269, 270

former state monopolies 47

multifold function of Court of Justice 245–8

packages 242–3

role of Court of Justice 241–71

history 248–53

stranded costs 255

Libyan oil, disruption in supply 23

licences 151–4

conditions 554

limits on surrender 554

oil spill prevention

licence conditions 554

limits on surrender of licences 554

petroleum regimes

duration 152

exclusive right 152

local content 154

main terms 152–4

ownership of installation 153

ownership of production 153

responsibilities of parties 153

retention of the area, payment for 154

royalties 153

signature bonus 153

Special Participation Fee 153–4

and regulatory regimes

Australia 559–63

United Kingdom 570–74

United States 564–70

Lietuvos Dujos (Lithuanian gas company) 238

Liquefied Natural Gas (LNG) see LNG (Liquefied Natural Gas)

Lithuania 238

LNG (Liquefied Natural Gas)

Asian hub 351–2

deregulation 348–9

derivatives 354

evolution of energy markets 81

gas-to-gas competition versus oil indexation 349–50

and global market 330–31

global hurdles 332

growth areas 331–2

liberalization 348–9

long-term contracts and unhelpful contractual terms 332–42

buyer’s purchase commitment 337–9

delivery failure, liability for 334–5

diversion control 333–4

offshore title transfer 335–7
provisions promoting uncertainty 340–2
model voyage charterparty for 356–7
paper market for 353–6
price determination 349–50
regulation 347
and shale gas 234–5
short-term markets and unhelpful contractual methodology 343–7
aggregated bilateral market 345–6
existing contractual methodology 344–6
GTCs (general terms and conditions) 346–7
open multilateral market 346–7
state control 348
swaps 354–6
and United States 18
USA as exporter 352–3
Los Cabos summit (2012) 35–6
Lubbers, Ruud 100

Macondo well blow out
EU developments following 575–8
huge quantum of liability 162
impact 559–74
international developments following 578–9
liability of contractor and resource owner 161–3
mandatory third party access (MTPA) 86, 119
maritime areas
boundary and territorial disputes 227–9
boundary zones see maritime boundary zones
maritime boundary zones
contiguous zone 184
continental shelf 183
exclusive economic zone (EEZ) 183–4
natural resources in 188–9
territorial sea 182–3
median line, territorial sea boundaries 186
mediation 191
MEPs (minimum energy performance requirements) 33
merger control, Court of Justice of the European Union 259–61
Mexico 29, 35
and G20 forum 32
see also Gulf of Mexico oil field
MFN (most-favoured nation treatment) 106, 280–1
Middle East, nationalization of oil concessions (1970s) 8–9
minimum energy performance requirements (MEPs) 33
minimum work commitment (MWO) 153
monism 51, 52, 53
Montara oil spill, impact 559–74
most-favoured nation treatment (MFN) 106, 280–81
MTPA (mandatory third party access) 86, 119
multilateral agreements/investments 6, 95–8, 99
ECT as first multilateral investment agreement 104–7
multipolarity 18–19, 25, 27
MWP (minimum work commitment) 153

Nabucco Pipeline Project 60
NAFTA (North American Free Trade Agreement) 61
Chapter XI 104
National Balancing Point (NBP), England 237
national energy law functions 57–8
harmonisation 7
internationalization of 7–16
national and international, difficulties in distinguishing between 7–8
see also energy law; interface, national and international energy law; international energy law
National Iranian Oil Company (NIOC) 157
national treatment 281–6
domestic taxes 282–5
energy taxes and border tax adjustments 285–6
natural gas 18
see also LNG (Liquefied Natural Gas)
Negotiating Group on Natural Resource-based Products 276
Negotiating Group on Subsidies and Counterveiling Measures 277
negotiations
boundaries, international 190–91
as interface structuring division of labour 74
Netherlands, The, Title Transfer Facility 237
Nigeria
implementation of EITI Standard 529–32
petroleum exploitation 517
subsidy removal programme (2012) 35
NIOC (National Iranian Oil Company) 157
non-compliance issues
interface, between national and international energy law 53
OPEC (Organization of the Petroleum Exporting Countries) 36
non-discrimination provisions, and third party access 254–9
norm-interfaces 66, 67, 68
North American Free Trade Agreement see NAFTA (North American Free Trade Agreement)
North Sea, oil field 22
Norway
country-by-country reporting 541
and Energy Charter 122
petroleum resources, effective use 517–18
nuclear energy, international treaties 5
OAPEC (Arab Oil Exporting Countries forum) 21
OAS Convention (Inter-American Convention Against Corruption), 1997 479, 483
OECD (Organisation for Economic Co-operation and Development) and IEA 26
member countries, demand for energy from 19–20
Multilateral Agreement for Investment project 105
and non-member countries 19, 43
and Pittsburgh Summit (2009) 34
production subsidies for member countries 35
OECD Convention (Convention on Combating Bribery of Foreign Public Officials), 1997 479, 480–81
Office of the High Commissioner for Human Rights 169
Official Journal 258
offshore oil and gas activity
EU Directives 16
maritime boundary zones 189
OGEL (open general export licence) 11
oil crises (1970s) 47
embargo against the Western nations (1973) 21
emergency oil sharing mechanism (IEA) 23, 26
EU Directives 16
major producers 18
market as difficult to cartelize 22
offshore activity 16, 189
prices/price volatility 21, 22, 24, 36
role in industrial world 3
stabilization clauses in concession agreements 211–14
see also IOCs (International Oil Companies)
oil spills
BP oil spill, Gulf of Mexico 31, 136
capacity to meet liabilities 557–8
compensation principles 555–7
compliance and enforcement 558–9
contingency plans 554–5
emergency response 554–5
environmental and safety assessment and risk management 550–4
government response measures 555
international energy law 62–3
liability and compensation for
damage 555–8
licence conditions 554
limits on surrender of licences 554
Macondo well blow out 161–3,
559–74
regional developments following
575–9
Montara, impact 559–74
prevention 550–4
regulation, trends and challenges
579–91
industry, role in regulation 585–91
international regulatory forums,
role 582–5
national regulators, role 582–5
regulatory models 579–82
regulation in offshore installations
548–92
OPEC (Organization of the Petroleum
Exporting Countries)
coordination between energy
producer states 627–9
creation and expansion 21, 180
and emerging economies 38
member nations 22
non-compliance issues 36
and Pittsburgh Summit (2009) 34
as producer countries' club 19, 22,
23
quota allocation system 37
representation of interests 23
Organisation for Economic Co-
operation and Development
see OECD (Organisation for
Economic Co-operation and
Development)
Organization of the Petroleum
Exporting Countries see OPEC
(Organization of the Petroleum
Exporting Countries)
Participation Agreements 157–8
PEEREA (Protocol on energy
efficiency and related
environmental issues) 101, 109
petroleum
comparative data on arrangements
worldwide 84
effective use of resources, in Norway
517–18
enabling legislation 11–12
exploitation, in Nigeria 517
regimes 149–80
choice between Tax/Royalty and
Production Sharing 170–71
concessions and licences 151–4
internationalization of national
regimes 9–11, 17
production sharing contracts
158–75
service contracts 175–80
Tax and Royalty Regime 154–7
types and nature 151–80
sale, disposal and valuation 172
significance 3
sovereignty issues 6, 518–21
title in 179–80
see also OPEC (Organization of the
Petroleum Exporting Countries)
pipelines, gas
Baku-Tbili- Ceyhan (BTC) Oil
Pipeline 60, 134–5
Barcelona Convention and Statute
on Freedom of Transit (1921)
312–13
Convention on Transit Trade of
Land-Locked States (1965) 312
cross-border 308–28
division of labour between national
and international energy law
57
Energy Charter Treaty 313–20
General Agreement on Tariffs and
Trade 321–4
League of Nations Covenant (1919)
312
maritime boundary zones 188
multi-party projects 60
United Nations Convention on the
Law of the Sea 309–11
World Trade Organization 321–4
Pittsburgh Summit (2009) 30–31, 34,
36, 42
post tax rate of return (PTRR) 159,
165
predictability 53
PreussenElektra case, energy market
liberalization 263, 264, 265, 266
price review clauses, gas price review arbitrations 230–2
trigger events 231–2
typical areas of dispute 232–3
see also gas price review arbitrations
producer clubs, exclusive 19, 20–5
Producer–Consumer dialogues 633–6
IEF (International Energy Forum) 634
production sharing agreement (PSA) 69, 82, 83, 84
production sharing contract (PSC) see PSC (production sharing contract), petroleum regimes
prohibited acts, anti-bribery prohibitions 487–90
Protocol on energy efficiency and related environmental issues (PEEREA) 101, 109
Protocol on Transit see draft Energy Charter Protocol on Transit
Protocol to Amend the 1963 Vienna or 1986 Conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency 5
PSA (production sharing agreement) 69, 82, 83, 84
PSC (production sharing contract), petroleum regimes 69, 158–75
basic concept 159–60
Buy Back type 168
cost oil and profit oil 159, 165
Development PSC 173–4, 180
Exploration PSC 180
features
accounting procedure and other control tools 174–5
discovery, development and production 163
distribution of liability-insurance and indemnities 172–3
duration of contract 173–4
employment and procurement policy 172
environmental protection 164
fiscal regime 165–6
force majeure 173–4
general rights and obligations of parties 163
indirect taxes 171
liability of contractor and resource owner 161–3
license, exploration period 160–61
mining lease 164
production bonus 160
relinquishment 161
sale, disposal and valuation of petroleum 172
signature bonus 160
state equity 171
unit development 164
Value Added Tax 172
work programme 163
fiscal regime
cost oil and profit oil 165
royalty, tax, cess, etc. 165–6
fiscal stability clauses 166–72
stabilization clauses 166–70
grandfather clause 167–8
growing acceptance 130
hybrid regimes 159, 165
liability of contractor and resource owner
huge quantum of liability 162
likely consequences 162–3
Macondo well blow out and oil spill liability 161–3
Middle East 168
Model PRC for Ivory Coast (1997) 131
Mozambique, Sofalu Field (2000) 137
Parliamentary approval and ratification 168–9
petroleum acreages, offer through bidding 159
stabilization clauses 166–9
and human rights 169–70
versus Tax and Royalty Regime 170–71
PTRR (post tax rate of return) 159, 165
public international law, functions 59–63
constitutional 63
institutional 60
jurisdictional 59
market 61
public policy 62
see also international energy law
public service obligations, and SGEIs 267–70

Qatar
external competition and price maintenance 401
general investor climate 401–2
land acquisition and water regulations 400–401
national food security programme 390
challenges to renewable energy in 393–4
electricity market reform 398–9
model legal framework for 397–402
renewable energy take-off, ensuring 399–400
national food security programmes external competition and price maintenance 401
general investor climate 401–2
land acquisition and water regulations 400–401
technology transfer, ensuring 401–2
steps to expedite renewable energy expansion in 398
technology transfer, ensuring 401–2
water consumption 394–5
quantitative restrictions, GATT principles 286–8
quota allocation 37, 38
rational economic approach 636–45
‘Conceptual Approach to the New Legal Framework for Energy Cooperation’ 642–3
Draft Convention on energy security, Russian proposal for 642–5
Energy Charter Treaty investment regime under 638–9
transit provisions 639–42
reasonable rate of return (RROR) 82
renegotiation clause 128, 129–33
change in law 134, 135
Host Government Agreements 135–6
production sharing contracts 169
trigger for renegotiation 133–5
renewable electricity (RE) 407–39
common support and subsidy measures
technology at demonstration stage 418–19
technology at large commercialization and application stage 422–37
technology at R&D stage 412–13
demonstration stage, technology at 417–22
common support and subsidy measures 418–19
domestic and local industry, potential protectionism for 419–20
free trade rules, concerns 420–22
domestic and local industry, potential protectionism for technology at demonstration stage 419–20
technology at large commercialization and application stage 424–5
technology at R&D stage 413–14
Feed-In Tariff Programme 427–30
free trade rules, concerns Feed-In Tariff Programme 427–30
renewable portfolio standards 430–32
supplementary schemes 434–7
technology at demonstration stage 420–22
technology at large commercialization and application stage 425–37
technology at R&D stage 414–17
tendering 432–4
trade law, general concerns 425–7
grid issues and administrative procedure 437
large commercialization and application stage, technology at 422–37
common support and subsidy measures 423
Index 673

domestic and local industry, potential protectionism for 424–5
free trade rules, concerns 425–37
R&D stage, technology at common support and subsidy measures 412–13
domestic and local industry, potential protectionism for 413–14
free trade rules, concerns 414–17
renewable portfolio standards 430–32
supplementary schemes 434–7
grid issues and administrative procedure 437
investment subsidy 435–7
technology at demonstration stage 417–22
at large commercialization and application stage 422–37
at R&D stage 412–17
tendering 432–4
renewable energy
electricity see renewable electricity (RE)
EU Directives 14, 16
food and water security projects in dry-land countries 387–403
national food security programmes 389–94
Qatar national food security programme 390, 393–4, 397–402
regional cooperation, potential for 402–3
safeguarding food security 389–94
water security 394–7
in Qatar
challenges to in Qatar’s food security programme 393–4
electricity market reform 398–9
renewable energy take-off, ensuring 399–400
steps to expedite renewable energy expansion 398
regional cooperation on 403
World Bank renewable energy portfolio 28
WTO provisions 302–4

Resource Rent Tax (RRT) 155–6
resources, energy
energy law encompassing all 44
maritime boundary zones
offshore oil and gas activity 189
pipelines 188
sovereign rights 188
natural resources of host-state and development of ICSID 202–5
permanent sovereignty over 6, 7
incorporation into domestic petroleum law 518–21
petroleum see petroleum
‘resource curse’ 40, 517
resource nationalism 110
resources law and policy, versus energy law and policy 4
scarcity and uneven distribution 47–8
ring fencing, Tax and Royalty Regime 156
rollback provision, ECT 106
royalties, petroleum regimes concessions and licences 153
production sharing contracts 165–6
Tax and Royalty Regime 155
RROR (reasonable rate of return) 82
RRT (Resource Rent Tax) 155–6
rule of law 53
Russian Federation 25
accounting requirements 497
corruption, energy sector Criminal Code 490, 494
enforcement action 506, 507–8
penalties 498
disputes with Ukraine 28, 117, 121
Draft Convention on energy security, proposal for 642–5
Energy Charter Treaty attitudes to 121–2
concerns regarding 114–17
origins 101–2
Energy Dialogue (EU–Russia) 634–6
and G20 forum 32
oil and gas industry 28
Production Sharing Law 167
withdrawal from provisional
application of ECT (2009) 103, 117–19
YUKOS case 118
as WTO member 239–40
see also Soviet Union, former

Saudi Arabia
concessions granted to American Oil Companies 152
fossil fuel subsidies 34, 35
and G20 forum 32
OPEC reserves data 38–9
US projected to overtake as oil exporter 18

Second Energy Package 258
exemptions from TPA rules under 605–7
legacy contracts, validity 600–605
numbered Articles, Arts. 21–22 87
sector line theory 228
security, rational and political angles 626–36
coordination between energy producer states 627–30
GECF (Gas Export Countries Forum) 629–30
OPEC (Organization of the Petroleum Exporting Countries) 627–9
inter-consumer communication 630–33
AEC (Association of East Asian Nations) 633
Energy Council (EU–US) 632–3
IEA (International Energy Agency) 630–32
Producer–Consumer dialogues 633–6
EU–Russia Energy Dialogue 634–6
IEF (International Energy Forum) 634
SEFA (Sustainable Energy for All Initiative) 377–8
global action agenda 379–80, 381
Seoul Summit (2010) 31, 39
service contracts, petroleum regimes
Buy back or Risk Service Contract 176–9
Development Contract 176–9
Handover Date 179
Non-Risk 175
pure 175–6
Risk-Service 175
title in petroleum 179–80
services, energy
right of access to 371–3
SGEIs (services of general economic interest) 267–70
WTO provisions 293–7
see also service contracts, petroleum regimes
SGEIs (services of general economic interest), and public service obligations 267–70
shale gas formations, US 18
shareholders arbitration, standing to sue in 206–7
expansion of class of protected investors 209–11
obsolete and weak protection of in customary international law 207–9
Shareholders Agreement (joint venture) 158
Single Market initiative 241–2, 244
smart grids 4
South Africa fossil fuel subsidies 34
rise of 25, 29
see also BRICS countries (Brazil, Russia, India, China and South Africa)
sovereignty over resources
maritime boundary zones 188
permanent 6, 7, 150
incorporation into domestic petroleum law 518–21
Soviet Union, former 101
dissolution 79, 85
investment protection 85–6
see also Russian Federation
Special Participation Fee 153–4
St. Petersburg Summit (2006) 28, 33, 114
stability, investment see investment stability
stabilization clauses
environmental exceptions 136–7
evolution of contract terms 128–9
historical view 137–8
and human rights 169–70
hybrids 127
investment contracts 126–40
in oil and gas concession agreements 211–14
production sharing contracts 166–9
renegotiation clause 129–35
change in law 134, 135
Host Government Agreements 135–6
trigger for renegotiation 133–5
trigger for renegotiation 133–5
use of 127–8
standstill provision, ECT 106–7
state capitalism 18
state equity, production sharing contracts 171
state trading enterprises 290–3
Stockholm Chamber of Commerce, Arbitration Institute 72
subsidies
dual pricing for energy 299–301
fossil fuels 31, 34, 35
renewable electricity
demonstration stage, technology at 418–19
investment subsidy 435–7
large commercialization and application stage, technology at 423
R&D stage, technology at 412–13
support to production of renewable energy 302–4
tax breaks, domestic oil companies 35
WTO provisions 297–304
sustainable development and economic growth 362–4
right to 364–71
sustainable energy
inter-relationship between law, policy and implementation 383
provision of and centrality of the law 382–5
Sustainable Energy for All Initiative (SEFA) 377–8, 379–80, 381
World Energy Outlook 2011 380, 382
Sustainable Energy for All Initiative (SEFA) see SEFA (Sustainable Energy for All Initiative)
swaps, Liquefied Natural Gas 354–6
Tax and Royalty Regime 84, 154–7
income tax 155
joint ventures 156–8
Participation Agreements 156–8
versus production sharing regimes 170–71
Resource Rent Tax 155–6
ring fencing 156
royalties 155
transfer pricing 156–7
taxation
bilateral investment treaties see BITs (bilateral investment treaties)
border tax adjustments and energy taxes 285–6
domestic taxes 282–5
double taxation treaties 90, 91, 92, 95
GATT principles, as applied to energy sector 282–6
import duties 171
income tax 155
indirect taxes 171
power to tax as state prerogative 147
production sharing contracts 165–6, 171, 172
PSC, fiscal regime under 165–6
Resource Rent Tax 155–6
Tax and Royalty Regime, petroleum 154–7
tax breaks, domestic oil companies 35
'tax plus royalty' scheme 84
Value Added Tax 172
'windfall' profits tax 129
see also royalties
transfer pricing, Tax and Royalty
Regime 156–7
transit
Barcelona Convention and Statute
on Freedom of Transit (1921)
312–13
Convention on Transit Trade of
Land-Locked States (1965) 312
definition and evolution in
territorial international law 593–5
draft Energy Charter Protocol on
Transit see draft Energy Charter
Protocol on Transit
Energy Charter Treaty 315–16,
611–14
definition of ‘transit’ 611–12
non-interference clause 613–14
rational economic approach
639–42
transit disputes 316–17, 614–21
transit party’s obligations, under
Art. 7 of ECT 613–14
in EU energy acquis 595–611
First Gas Directive 1998
(Directive 98/30/EC) 597–8
Regulation 1775 (2006) 598–9
Regulation 715 (2009) 607–11
Second Gas Directive 2004
(Directive 2003/55/EC) 87,
598–605, 609
Third Gas Directive 2009
(Directive 2009/73/EC) 68–9,
87, 598–605, 609
91/296/EEC) 595–7
WTO provisions 289–90
see also pipelines
transit disputes 316–17
ECT dispute conciliation procedure
(Art 7.7) 116, 614–17
ECT dispute settlement mechanism
Investor–State (Art. 26) 619–21
State–State (Art. 27) 618–19
effectiveness in resolving 318–20
Transit Protocol see draft Energy
Charter Protocol on Transit
transparency, international energy 20,
38–41
accountability, increased
transparency 542–7
country-by-country reporting 533–41
background and concept 533–5
European proposals 538–40
Norway 541
suitability for purpose 545–6
US rules 535–8
factual background 517–18
legal background 518–21
OPEC reserves data 38–9
‘resource curse’ 40, 517
see also EITI (Extractive Industries Transparency Initiative)
treaties, as interfaces structuring division of labour 66–8
Treaty Establishing the Energy Community (2005) 61
Treaty of Lisbon (2009) 226
Treaty on the Functioning of the European Union see TFEU
(Treaty on the Functioning of the European Union)
Triepel, Heinrich 54–5
TRIMS (Trade Related Investment Measures) Agreement 305
Trucial Coast Arbitration (1951) 203–4
Turkey, Petroleum Code (1954) 152
Ukraine, disputes with Russia 28, 117, 121, 290
umbrella clauses, investment treaties 68, 140
allocation of sovereign rights in the sea 59
Annex VI 192
Annex VII 192
boundaries, international 181–2
environmental rules 62
numbered Articles
Art. 5 184
Art. 15 186
Art. 17 183
Art. 33 184
Art. 56 183–4
Art. 74(1) 187
Art. 76 183
Art. 79 188
Art. 121(1) 185
Art. 121(3) 185
Art. 298 192
Part XV 192
and Philippines 229
pipelines 309–11
uncooperative behaviour, OPEC states 22
UNFCCC (United Nations Framework Convention on Climate Change) 42
United Arab Emirates (UAE), OPEC reserves data 38–9
United Kingdom (UK)
corruption, energy sector
Bribery Act 2010 (UK) 489, 493
Companies Act 2006, accounting requirements 496
enforcement action 505
penalties 497–8
licensing and regulatory regimes 570–74
National Balancing Point, England 237
Oil Spill Liability Trust Fund 162
United Nations (UN)
Charter, Art. 33(1) 190
General Assembly, Resolution 1803 (XVII) 108
Security Council 65
UN Resolution on the Permanent Sovereignty over Natural Resources (1962) 150
United Nations Commission on International Trade Law (UNCITRAL) 105
United Nations Conference on Trade and Development (UNCTAD) 91
database 106
World Investment Report (WIR) 92, 93, 96–7
United Nations Convention on the Law of the Sea see UNCLOS
United Nations Framework Convention on Climate Change (UNFCCC) 42
United States (US) country-by-country reporting, rules 535–8
Index 679

investment 305–6
state trading enterprises 290–93
subsidies 297–304
technical regulations 304–5
transit 289–90
Russian Federation as member 239–40

special character of energy products 278–80
whether energy covered by GATT/WTO 275–8

Yergin, Daniel 3
YUKOS case, and Russian withdrawal from ECT 118