Introduction

This book deals with selected legal issues relating to interstate systems of energy governance. In this respect, the systems within scope are both institutional and normative frameworks, and, as is often the case, it is their interplay that provides levels of governance. International law as it stands today is not well equipped to handle interstate energy governance issues fully. This legal deficiency affects energy security negatively. If the currently fragmented and multi-layered interstate energy governance regime were streamlined for greater legal cohesiveness and international political and economic cooperation, it would promote energy security.

Before referring to the structure of our book, we would like to refer to the general premise that underpins our thinking about interstate energy governance. Energy 'governance' at the 'interstate' level takes place in a manner that is 'fragmented'. In this context, 'governance' could refer to any instance of interstate cooperation ranging from ad hoc to institutionalized, one-off to on-going, binding to voluntary, etc. When we bring in the notion of 'energy', governance could be taking place along different areas of interstate cooperation that are ostensibly (e.g., energy transit, energy market liberalization, energy exploration, et cetera) or incidentally (e.g., including trade, investment, environmental protection) linked to energy. Moreover, this governance could be taking place in a manner that is not universal, co-extensive, or coherent. For instance, while there is some interstate cooperation pertaining to energy investments, this is merely 'cooperation' or governance arising from the various interstate agreements that include norms relevant to energy investments, and which again is governance that is not necessarily relevant to all states concerned. For instance, while the Energy Charter Treaty1 contains energy investment protection norms and is a significant element of the interstate energy governance system, its normative scope is far from universal.

In this respect, as we discuss in Chapter 1, while there may be instances of interstate energy governance, these are not coherently

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1 Incidentally, the Energy Charter Treaty is not solely concerned with energy investment protection.
inter-related, for they involve disparate levels of participation, normativity, and/or thematic scope. This is unsurprising given that the residual state of affairs regarding interstate energy governance is an artifact of how interstate relations and cooperation have been conducted throughout history – namely in successive rounds, with disparate purposes involving variable groups of participants. However, while there is no truly universal energy governance system, this is not to say that there is very little to say about interstate energy governance, or about the legal issues that arise in relation to it. On the contrary, this book addresses numerous legal issues and disputes that have arisen in the area of energy and natural resources, and the ability or lack thereof for current interstate energy governance systems to handle them.

A supplementary premise that underpins how we understand the legal aspects of interstate energy governance pertains to how international law may be perceived by some – i.e., a tendency to deal with international law in terms of thematic bundles along the lines of neologisms such as ‘international energy law’, ‘international economic law’, et cetera. While the running theme of our compilation of chapters is interstate energy governance, we certainly do not espouse the view that the various legal issues in scope are somehow aspects of some creature termed ‘international energy law’. What we do is highlight the likely legal issues that arise at the juncture of interstate energy governance or that relate to it. We do not take these as amounting to some discrete area of international law in its proper sense.

While the various parts and chapters of this book are compiled based on their general subject matter (i.e., interstate energy governance), they do not necessarily share identical levels of depth of inquiry and analysis regarding the matters within their respective scopes. For instance, while Chapters 7 and 8 both discuss the renewable energy cause within the context of the World Trade Organization (WTO), Chapter 7 does this in greater depth, whereas Chapter 8 does this to the extent that we consider necessary to illustrate how, and to what degree, European Union (EU) renewable energy policy development is also restrained by WTO law. Again, while Chapter 1 explores, amongst other things, the overall institutional architecture that pertains to energy governance at the multi-lateral level, many of the various institutions referred to in Chapter 1 surface again in various chapters of this book, given that they are discussed within the context of specific perspectives of energy governance. In that respect, while there is some inevitable overlap between the various chapters, we want to point out that this overlap is neither repetitive per se nor gratuitous.
Finally, we make some theoretical points in order to situate the legal issues in scope against the backdrop of general international law. This is most noticeable in Chapter 4 (where we discuss the normative context for resolving territorial delimitation disputes in light of recent energy exploration attempts in the easternmost part of the Mediterranean), Chapter 5 (where we comment on the normative context for sovereign states to relinquish aspects of their sovereignty to supranational institutions), Chapter 6 (where we comment on normative conflicts between legal regimes, and the juridical tools to overcome them), and Chapter 7 (where we comment on how multiple policy objectives and their related norms can be integrated within an international legal system). In that respect, these references to the broader international law system seek to bring a more macro-normative approach to the issue of interstate energy governance.

STRUCTURE OF THE BOOK

This book is divided into four parts. Part I (Chapters 1–4) explores selected high-level legal issues that arise in relation to interstate energy governance. After a high-level overview in Chapter 1 of the institutional architecture and fields of cooperation involved in interstate energy governance, Chapter 2 discusses the high-level multilateral energy trade system. Chapter 3 explores the relationship between energy, trade and environmental protection in order to contextualize the conservation of exhaustible natural resources and its implications for oil trade. It also highlights ways in which the fragmented energy governance system impacts the conservation of oil resources and restricts its protection. Chapter 4 explores certain legal considerations relating to the law of the sea in order to tease out their implications for energy exploration in the Eastern Mediterranean Basin.

Chapter 1 provides an overview of the various institutions and normative systems that come to combine into a ‘global energy governance system’ of sorts. It aims to equip the reader with an account of what we deem to be the most notable aspects of a putative global energy governance system. For an ‘at-a-glance’ understanding of this system, one could refer to the various tables in Chapter 1, which list the different institutions vis-à-vis their scope and what we deem to be their normativity. While it discusses the overlaps that exist within this putative system, Chapter 1 also comments on the gaps that seem to exist, particularly within the context of global energy security objectives.
Chapter 2 discusses energy trade within the World Trade Organization (WTO). Energy trade flows within the scope of the WTO make energy trade one of the most significant trade sectors. Although there are several factors examined in this chapter which explain why international trade in energy has been treated differently from other trade sectors and products in the world trading system, it cannot be said that energy trade is treated any differently from other trade sectors within the context of the WTO. Chapter 2 presents various arguments in favor of treating energy trade as a special trade sector within the WTO.

Chapter 3 analyzes the conservation of exhaustible natural resources in the context of the General Agreement on Tariffs and Trade (GATT) and the WTO. The WTO notion of conservation of exhaustible natural resources constitutes an important WTO vehicle for bridging trade liberalization objectives and environmental protection objectives in order to achieve sustainability. Chapter 3 discusses the normative dispensations that exist within the WTO system in relation to the conservation of natural resources. It also discusses their application in WTO cases and the likely implications for the conservation of oil resources vis-à-vis the WTO system.

Chapter 4 relates to energy exploration attempts in the easternmost part of the Mediterranean, a region compounded by the discovery of underwater energy resources in maritime territories which are subject to competing claims from regional actors. The law of the sea becomes an important element of interstate energy governance, given that it regulates such significant legal questions as the delimitation of maritime areas between states.

Part II of this book (Chapters 5 and 6) deals with selected legal aspects of EU energy governance.

Chapter 5 seeks to equip the reader with an overview of the key legal considerations behind EU energy policy in order to provide insights into the complexities of EU energy security, including the plurality of actors in EU energy policy, the lack of an overall exclusive energy policy remit on the part of the EU authorities, and the disparity of energy interests among EU Member States. It analyzes the legal aspects of EU energy policy, focusing on the changes brought by the Treaty of Lisbon and the challenges the EU faces when aiming for a common energy security policy. It also analyzes how the EU’s ‘shared’ competence in the energy field affects the energy security of its member states.

Unlike Chapter 5, which is more concerned with what happens behind the EU parapet, Chapter 6 is concerned with the outer aspects of EU energy policy and the EU’s relationship with neighboring and not-so-neighboring states and regions. Chapter 6 does this by, among other
things, discussing the systemic relationship of the EU with institutional and normative systems such as the Energy Charter Treaty and the Energy Community, which, as we demonstrate, owe their existence to efforts on the part of the EU to promote its energy interests and enhance its energy security.

Part III of this book (Chapters 7 and 8) examines selected legal aspects that arise from the promotion of renewable energy in the WTO and EU contexts, and identifies certain shortcomings, pointing to the need for clearer rules and stronger governance in order to promote the use of renewable energy worldwide. Arguably, the use of renewable energy will help towards energy security regionally and climate change mitigation globally.

Chapter 7 examines selected legal issues relating to the multilateral trade system and renewable energy promotion. It argues that the WTO rules are capable of promoting environmental protection objectives. It provides an overview of the sort of legal considerations most likely to arise at the juncture of the WTO and renewable energy promotion. The chapter discusses the evolution of the GATT/WTO system into one that, ultimately, is better equipped to balance trade-related objectives with those relating to environmental protection.

Chapter 8 examines selected legal issues regarding the promotion of renewable energy within the EU and in relation to the EU’s obligations under the WTO system. Both energy and the EU, albeit for different reasons inherent to them, are complex affairs. At the juncture between EU renewable energy policy and WTO rules, a number of issues have trade-restrictive effects, which may be justified under environmental protection objectives, including the propagation of renewable energy. Striking the balance between multiple objectives is key for a functional multilateral system. In recent years, the WTO system has evolved to better accommodate environmental protection objectives. However, questions remain around unilateral measures that do not necessarily flow from international practice or from international standards, as well as the differential treatment between tradables, depending on their process and production methods.

Finally, Part IV of this book (Chapter 9) presents the future of interstate energy governance from a sustainability point of view by linking multiple policy objectives: energy, trade, and the environment. Chapter 9 presents an analysis of sustainable development goals in the context of two mega-regional trade agreements: the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP). It examines the implications for energy within the TTIP and TPP, concluding that, there too, there is room for greater coherence when it
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comes to promoting sustainable energy. Chapter 9 comments on those aspects of the agreements in scope that are likely to have important implications for how efficiently the energy, trade, and environmental protection objectives of their respective participants are balanced against each other. These preferential trade agreements are likely to present a more efficient vehicle than the multilateral trading platform, as it currently stands, when it comes to reconciling the above trinity of objectives in a way that may promote sustainable development.