EXTENDED CONTENTS

List of contributors xvii
Acknowledgements xviii
Table of cases xix
Table of legislation xxvi

Introduction 1
Rafael Leal-Arcas

Preamble 6
COMMENTARY
Antonio Morelli

PART I DEFINITION AND PURPOSE

Article 1 Definitions
Dylan Geraets and Leonie Reins
COMMENTARY 1.01
Introduction 1.01
A. Part I: Definitions and Purpose 1.03

Article 2 Purpose of the Treaty
Leonie Reins
COMMENTARY 2.01
A. ‘In accordance with the objectives and principles of the Charter’ 2.03
B. ‘Complementarities and mutual benefits’ 2.16
C. ‘Long-term cooperation in the energy field’ 2.17
D. ‘A legal framework’ 2.22

PART II COMMERCE

Article 3 International markets
Pierre Serra
COMMENTARY 3.01
A. Introduction 3.01
B. ‘An open and competitive market’ 3.02
C. ‘Energy Materials and Products and Energy-Related Equipment’ 3.05

Article 4 Non-derogation from WTO Agreement
Pierre Serra
COMMENTARY 4.01
A. Introduction 4.01
COMMENTARY ON THE ENERGY CHARTER TREATY

B. The non-derogatory provision 4.04
C. The non-derogatory provision and secondary rules 4.11

Article 5 Trade-related investment measures
Pierre Serra
COMMENTARY 5.01
A. Introduction 5.01
B. Trade-related investment measures: basic elements and the WTO approach 5.02
C. Article 5 on TRIMs, a provision-by-provision analysis 5.10
D. The Australian Declaration: exceptions and jurisdictional issues 5.23

Article 6 Competition
Pierre Serra
COMMENTARY 6.01
A. Introduction 6.01
B. The obligation of alleviation – Article 6(1) 6.04
C. Enforcement of competition provisions by the Contracting Parties – Article 6(2) 6.11
D. Obligation of cooperation between Contracting Parties and between national competition authorities – Article 6(3), (4) and (6) 6.14
E. Infringement, cooperation and dispute resolution – Article 6(5) and (7) 6.15

Article 7 Transit
Cătălin Gabriel Stănescu
COMMENTARY 7.01

Article 8 Transfer of technology
Beatriz Huarte Melgar
COMMENTARY 8.01
A. Introduction 8.01
B. Transfer of technology 8.08
C. Context of Article 8 8.12
D. Article 8, Paragraph 1 8.23
E. Article 8, Paragraph 2 8.47
F. Conclusions 8.56

Article 9 Access to capital
Beatriz Huarte Melgar
COMMENTARY 9.01
A. Introduction 9.01
B. Context of ECT Article 9 9.04
C. ECT Article 9, Paragraph 1 9.20
D. ECT Article 9, Paragraph 2: Facilities to have access to funds for facilitating trade or investment abroad 9.31
F. ECT Article 9, Paragraph 4: ‘Nothing in this Article shall prevent […]’ 9.38
G. Conclusions 9.41
## PART III INVESTMENT PROMOTION AND PROTECTION

### Article 10 Promotion, protection and treatment of investments

*Diego Mejía-Lemos*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Part III</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>10.01</td>
</tr>
<tr>
<td>B.</td>
<td>10.04</td>
</tr>
<tr>
<td>C.</td>
<td>10.22</td>
</tr>
</tbody>
</table>

### Article 11 Key personnel

*Diego Mejía-Lemos*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.01</td>
</tr>
</tbody>
</table>

### Article 12 Compensation for losses

*Diego Mejía-Lemos*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.01</td>
</tr>
</tbody>
</table>

### Article 13 Expropriation

*Diego Mejía-Lemos*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.01</td>
</tr>
</tbody>
</table>

### Article 14 Transfers related to investments

*Francesco Montanaro*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>14.01</td>
</tr>
<tr>
<td>B.</td>
<td>14.01</td>
</tr>
<tr>
<td>C.</td>
<td>14.04</td>
</tr>
</tbody>
</table>

### Article 15 Subrogation

*Apurva Mudliar*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.01</td>
</tr>
</tbody>
</table>

### Article 16 Relation to other agreements

*Francesco Montanaro*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>16.01</td>
</tr>
<tr>
<td>B.</td>
<td>16.01</td>
</tr>
<tr>
<td>C.</td>
<td>16.03</td>
</tr>
</tbody>
</table>

### Article 17 Non-application of Part III in certain circumstances

*Apurva Mudliar*

**COMMENTARY**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>17.01</td>
</tr>
<tr>
<td>B.</td>
<td>17.01</td>
</tr>
<tr>
<td>C.</td>
<td>17.04</td>
</tr>
<tr>
<td>D.</td>
<td>17.08</td>
</tr>
<tr>
<td>E.</td>
<td>17.22</td>
</tr>
<tr>
<td>F.</td>
<td>17.24</td>
</tr>
</tbody>
</table>
PART IV MISCELLANEOUS PROVISIONS

Article 18  Sovereignty over energy resources
Peter Vajda and Varvara Aleksić
Tina Hunter

COMMENTARY
18.01

COMMENTARY
18.08

Article 19  Environmental aspects
Peter Vajda and Varvara Aleksić
Tina Hunter

COMMENTARY
19.01

COMMENTARY
19.22

Article 20  Transparency
Gloria Alvarez

COMMENTARY
20.01
A. Structure and scope
20.01
B. Notion of transparency in the ECT
20.02
C. Transparency in ECT Secretariat Model Agreements
20.09

Article 21  Taxation
Gloria Alvarez

COMMENTARY
21.01
A. Introduction, structure and scope
21.01
B. Bona fide taxation measures according to the ECT
21.02
C. Structure and the general rule on Article 21
21.05
D. Exceptions to the general rule on Article 21
21.07
E. Article 21 in practice and jurisdictional issues
21.14

Article 22  State and privileged enterprises
Costantino Grasso
Tina Hunter

COMMENTARY
22.01

COMMENTARY
22.25

Article 23  Observance by sub-national authorities
Costantino Grasso

COMMENTARY
23.01

Article 24  Exceptions
Costantino Grasso
Gloria Alvarez

COMMENTARY
24.01

COMMENTARY
24.14

Article 25  Economic Integration Agreements
Costantino Grasso
Gloria Alvarez

COMMENTARY
25.01

COMMENTARY
25.13
PART V  DISPUTE SETTLEMENT

Article 26  Settlement of disputes between an investor and a contracting party
Fernando Dias Simões

COMMENTARY
A. Article 26(1) 26.01
B. Article 26(2) 26.10
C. Article 26(3) 26.14
D. Article 26(4) 26.23
E. Article 26(5) 26.31
F. Article 26(6) 26.34
G. Article 26(7) 26.37
H. Article 26(8) 26.38

Article 27  Settlement of disputes between contracting parties
Crina Baltag

COMMENTARY 27.01

Article 28  Exclusion of certain provisions of the ECT from the settlement of disputes between contracting parties
Crina Baltag

COMMENTARY 28.01

PART VI  TRANSITIONAL PROVISIONS

Article 29  Interim provisions on trade-related matters
Max Baumgart

COMMENTARY
A. Introduction 29.01
B. Temporal scope of application (para 1) 29.03
C. Incorporation of the WTO Agreement’s rights and obligations (para 2) 29.05
D. Full transparency obligation (para 3) 29.09
E. Best-endeavour commitment (paras 4 and 5) 29.11
F. Stand still clause (paras 6, 7 and 8) 29.12
G. Dispute settlement (para 9) 29.17

Article 30  Developments in international trading arrangements
Silke Goldberg, Naomi Lisney and Anne Eckenroth

COMMENTARY 30.01

Article 31  Energy-related equipment
Silke Goldberg, Naomi Lisney and Anne Eckenroth

COMMENTARY 31.01

Article 32  Transitional arrangements
Silke Goldberg, Naomi Lisney and Anne Eckenroth

COMMENTARY
A. Review of the transitional arrangements 32.01
B. The AES Corporation and Tau Power B.V. v. Republic of Kazakhstan (ICSID Case No. ARB/10/16) 32.04

xiii
PART VII  STRUCTURE AND INSTITUTIONS

Article 33  Energy Charter Protocols and Declarations
Silke Goldberg, Naomi Lisney and Anne Eckenroth

COMMENTARY 33.01
A. The PEEREA 33.05
B. The Transit Protocol 33.12

Article 34  Energy Charter Conference
Cătălin Gabriel Stănescu

COMMENTARY 34.01
A. Members and observers 34.02
B. Meetings of the Charter Conference 34.04
C. The powers and functions of the Charter Conference 34.05
D. Subsidiary bodies 34.38
E. Conclusions 34.42

Article 35  Secretariat
Cătălin Gabriel Stănescu

COMMENTARY 35.01
A. The staff of the Secretariat 35.02
B. The role and functions of the Secretariat 35.05
C. The appointment of the Secretary General 35.17
D. The Secretary General's role in ECT's Dispute Resolution Mechanisms 35.22
E. Conclusions 35.29

Article 36  Voting
Cătălin Gabriel Stănescu

COMMENTARY 36.01
A. Who can vote 36.02
B. Exercising the right to vote – voting by correspondence 36.03
C. Voting rules 36.06
D. Conclusions 36.10

Article 37  Funding principles
Cătălin Gabriel Stănescu

COMMENTARY 37.01
A. Types of costs 37.02
B. Determination of financial contributions 37.04
C. Voluntary contributions 37.06
D. Conclusions 37.07

PART VIII  FINAL PROVISIONS

Article 38  Signature
Odysseas G. Repousis

COMMENTARY 38.01
A. Introduction 38.01
B. Scope 38.02
C. Eligibility and temporal issues 38.03
D. State practice 38.05
E. Succession cases 38.07
EXTENDED CONTENTS

Article 39  Ratification, acceptance or approval
Odysseas G. Repousis

COMMENTARY
A. Introduction 39.01
B. State practice 39.03

Article 40  Application to territories
Odysseas G. Repousis

COMMENTARY
A. Introduction 40.01
B. Territories for the international relations of which a contracting party is responsible 40.03
C. Territorial declarations and the ECT 'Area' 40.06
D. Temporal issues 40.09
E. State practice 40.14
F. Territorial declarations and provisional application 40.17

Article 41  Accession
Odysseas G. Repousis

COMMENTARY
A. Introduction 41.01
B. Scope 41.03
C. State practice 41.04

Article 42  Amendments
Antonio Morelli

COMMENTARY 42.01

Article 43  Association agreements
Antonio Morelli

COMMENTARY 43.01

Article 44  Entry into force
Antonio Morelli

COMMENTARY 44.01

Article 45  Provisional application
Antonio Morelli

COMMENTARY 45.01

Article 46  Reservations
Antonio Morelli

COMMENTARY 46.01

Article 47  Withdrawal
Antonio Morelli

COMMENTARY 47.01

xv
COMMENTARY ON THE ENERGY CHARTER TREATY

Article 48  Status of Annexes and Decisions
Leonardo Borlini and Marina Petri

COMMENTARY
A. Purpose and function 48.01
B. Relevance of the article 48.03

Article 49  Depositary
Leonardo Borlini and Marina Petri

COMMENTARY 49.01
A. Purpose and function 49.01
B. Content of the article 49.04

Article 50  Authentic texts
Leonardo Borlini and Marina Petri

COMMENTARY 50.01
A. Purpose and function 50.01
B. Content and interpretative implications of the article 50.03

Appendix: Gas transit in Eurasia: transit issues between Russia and the European Union and the role of the Energy Charter
Andrey A. Konoplyanik 504

Index 515