EXTENDED CONTENTS

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

Introduction 1
Rafael Leal-Arcas

Preamble 6
COMMENTARY P.01
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 10.01
A. Part III 10.04
B. Article 10 10.22

Article 11 Key personnel
Diego Mejía-Lemos
COMMENTARY 11.01

Article 12 Compensation for losses
Diego Mejía-Lemos
COMMENTARY 12.01

Article 13 Expropriation
Diego Mejía-Lemos
COMMENTARY 13.01

Article 14 Transfers related to investments
Francesco Montanaro
COMMENTARY 14.01
A. Introduction 14.01

Article 15 Subrogation
Apurva Mudliar
COMMENTARY 15.01

Article 16 Relation to other agreements
Francesco Montanaro
COMMENTARY 16.01
A. Introduction 16.01
B. Clauses governing conflicts with other treaties in the IIAs and in the ECT 16.03

Article 17 Non-application of Part III in certain circumstances
Apurva Mudliar
COMMENTARY 17.01
A. Introduction 17.01
B. Title: Non-application of Part III in certain circumstances 17.04
C. Application of Article 17(1) of the ECT 17.08
D. Denial of benefits to an investment under Article 17(2) 17.22
E. Conclusion 17.24
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

xii
PART V  DISPUTE SETTLEMENT

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

_Fernando Dias Simões_

COMMENTARY  
A. Article 26(1)  
B. Article 26(2)  
C. Article 26(3)  
D. Article 26(4)  
E. Article 26(5)  
F. Article 26(6)  
G. Article 26(7)  
H. Article 26(8)  

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 29.01
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-effort 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 32.01
A. Review of the transitional arrangements 32.04  
B. _The AES Corporation and Tau Power B.V. v. Republic of Kazakhstan_ (ICSID Case No. ARB/10/16) 32.09
PART VII STRUCTURE AND INSTITUTIONS

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

COMMENTARY
A. The PEEREA
B. The Transit Protocol

Article 34 Energy Charter Conference
Cătălin Gabriel Stănescu

COMMENTARY
A. Members and observers
B. Meetings of the Charter Conference
C. The powers and functions of the Charter Conference
D. Subsidiary bodies
E. Conclusions

Article 35 Secretariat
Cătălin Gabriel Stănescu

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

Article 36 Voting
Cătălin Gabriel Stănescu

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

Article 37 Funding principles
Cătălin Gabriel Stănescu

COMMENTARY
A. Types of costs
B. Determination of financial contributions
C. Voluntary contributions
D. Conclusions

PART VIII FINAL PROVISIONS

Article 38 Signature
Odysseas G. Repousis

COMMENTARY
A. Introduction
B. Scope
C. Eligibility and temporal issues
D. State practice
E. Succession cases
Article 39  Ratification, acceptance or approval  
*Odysseas G. Repousis*

**COMMENTARY**
- 39.01 A. Introduction
- 39.01 B. State practice

Article 40  Application to territories  
*Odysseas G. Repousis*

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

Article 41  Accession  
*Odysseas G. Repousis*

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

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

COMMENTARY 48.01
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

Index