International Law

Academic year 2019-2020

Research Seminar on the International Law of Energy

DI112 - Printemps - 6 ECTS

Friday (every two weeks), 14h15-18h00

Course Description

This research seminar will study the legal foundations of global energy governance. Traditionally, most of the scholarship in this area has focused on joint development agreements, investment agreements or on the international regime for oil pollution damage. But on closer scrutiny, this is a very limited understanding of the topic. Indeed, numerous other norms and treaties are relevant for the international regulation of energy. Based on a conceptualisation of ‘energy’ as a legal object, the seminar will analyse three main models of energy regulation: (i) a fragmented model, (ii) an ad hoc model, and (iii) a centralised model. The seminar is intended for international law students and for students of other disciplines specialising on energy and/or environmental governance.

Syllabus

This is a research seminar intended for students with advanced knowledge of public international law. Students will be expected to take an active role in selecting the readings they are most interested in, preparing them for class and intervening in class discussions.

Primary sources:

The basic legal instruments, including treaties, soft law and case-law which you will need to study before each session will be made available on the course Moodle page.

Readings:
There are required and suggested readings. Only the first category will be available on the course website. Additional suggested readings are mentioned in the syllabus for those who would like to go further (e.g. for research purposes) or who need to prepare for the presentation.

**Evaluation:**

The examination will consist of two components: (i) participation in class (including a presentation) and (ii) a 6000-word max written paper on a case-study (i.e. an energy project, instrument or dispute to be agreed with the instructor). Further information will be given in class.

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**SESSION 1 – LEGAL FOUNDATIONS OF GLOBAL ENERGY GOVERNANCE (21 FEBRUARY)**

1. Energy as a legal object
2. The purposes of energy governance
3. Three regulatory models

**REQUIRED READINGS:**


**SUGGESTED READINGS:**


SESSION 2 – FRAGMENTED MODEL I: ENTITLEMENTS OVER ENERGY (6 MARCH)

1. Sovereignty
2. Self-determination
3. Powers of States over marine areas and international watercourses
4. Rights of individuals and collective subjects

SELECTED PRIMARY SOURCES:

Instruments:


Cases:

Island of Palmas case (Netherlands, USA), 4 April 1928, RIAA vol. II, pp. 829-871.


In the matter of an Arbitration pursuant to an Agreement to arbitrate dated 3 October 1996 between the Government of the State of Eritrea and the Government of the Republic of Yemen, Award of the Arbitral Tribunal in the First Stage of the Proceedings (Territorial Sovereignty and Scope of the Dispute), 9 October 1998, par. 438; Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation), 17 December 1999, par. 84-86.

Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001, p. 40.


Indus Waters Kinshenganga Arbitration (Pakistan v. India), PCA, Final Award, 20 December 2013, par. 76-124.

REQUIRED READINGS:

R. Higgins, ‘Natural resources in the Case Law of the international Court’, in A. Boyle and D. Freestone (eds), International Law and Sustainable Development, (Oxford University Press, 1999), chapter 5.


SUGGESTED READINGS:


M. A. Mughraby, Permanent Sovereignty over Oil Resources (Beirut: Middle East Research and Publishing Centre, 1966), chapters III, IV (section one), VI and VII.


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SESSION 3 – FRAGMENTED MODEL II: ENERGY TRANSACTIONS (6 MARCH)

1. Overview
2. Liberalising/protection in energy activities

SELECTED PRIMARY SOURCES:

Instruments:


Cases:

Saudi Arabia v Arabian American Oil Company (Aramco), Award of 23 August 1958, 27 I.L.R. 117.


Nykomb Synergetics Technology Holding AB v. Latvia, Award of 16 December 2003, Stockholm Chamber of Commerce, Case n° 118/2001, par. 1.1-1.3, 3.5-3.8, 4.1-4.3.4, 5.1-5.3.

**AES Summit Generation Limited and AES-Tisza Erömü Kft. v. Republic of Hungary, ICSID Case No. ARB/07/22, Award, September 23, 2010, sections 4-5, 7-14 and 16.**

**Electrabel S.A. v. Republic of Hungary, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, November 30, 2012, Parts II, IV (section 6), VI (sections 4 and 5), VII (sections 4 and 5), VIII (sections 4 and 5), IX (sections 4 and 5), X and XI.**


**REQUIRED READINGS:**


**SUGGESTED READINGS:**


S. Doumbé-Billé, *Défis énergétiques et droit international*, Larcier 2011, especially pp. 31-99


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**SESSION 4 – FRAGMENTED MODEL III: ENERGY TRANSACTIONS [SUITE] (20 MARCH)**

3. Liberalising trade in energy resources, products and activities (services)
SELECTED PRIMARY SOURCES:

Instruments:
- General Agreement on Trade in Services (GATS), 1869 U.N.T.S. 183.
- Agreement on Technical Barriers to Trade (TBT), 1868 U.N.T.S. 120.
- Agreement on Trade related Investment Measures (TRIMs), 1868 U.N.T.S. 186.

Cases:

REQUIRED READINGS:

SUGGESTED READINGS:


M. Desta, ‘To what extent are WTO rules relevant to trade in natural resources?’, WTO Publications (2010).


SESSION 5 – FRAGMENTED MODEL IV: GOVERNANCE OF EXTERNALITIES (20 MARCH)

1. Overview
2. Preventing and redressing adverse effects on human rights (personal injury-based approaches)

SELECTED PRIMARY SOURCES:

Instruments:


Cases:


Case of Fadeyeva v Russia, Application no. 55723/00, ECtHR, Judgment of 7 June 2005.


The Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, IACtHR Series C No 79 (31 August 2001), par. 140 et seq.

Okyay and others v. Turkey (Application n° 36220/97), ECtHR, Judgment of 12 July 2005.


Taskin and others v. Turkey (Application n° 46117/99), ECtHR, Judgment, 10 November 2004.

Tătar v. Romania (Application n° 67021/01), ECtHR, Judgment, 27 January 2009.

REQUIRED READINGS:


SUGGESTED READINGS:


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**SESSION 6 – FRAGMENTED MODEL V: GOVERNANCE OF EXTERNALITIES [SUITE] (3 APRIL)**

3. Internalising, preventing, responding and redressing adverse effects on the environment

**SELECTED PRIMARY SOURCES:**

**Instruments:**


Convention on Wetlands of International Importance especially as Waterfowl Habitat. Concluded at Ramsar, Iran, on 2 February 1971, 996 U.N.T.S. 246.


Cases:
UNECE, Report of the Compliance Committee, *Findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia (adopted by the Compliance Committee on 17 December 2010)*.


*Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion*, 1 February 2011, ITLOS Reports 2011, p. 10.

*Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Case No. 21, ITLOS, Advisory Opinion, 2 April 2015.

*Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Case no. 23, Order (25 April 2015), para 64-73, 99-101, 108(1)(d)

*Indus Waters Kinshenganga Arbitration (Pakistan v. India)*, PCA, Final Award, 20 December 2013.

*Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA, Award, 18 March 2015.


*Dispute Concerning Access to Information under Article 9 of the OSPAR Convention, Ireland v UK*, PCA, Final Award, The Hague, 2 July 2003.

*Chevron Corporation and Texaco Petroleum Company v the republic of Ecuador*, PCA Case No. 2009-23, First Partial Award on Track I, 17 September 2013.


**REQUIRED READINGS:**


**SUGGESTED READINGS:**


SESSION 7 – AD HOC MODEL I: OIL AND GAS (24 APRIL)

1. Overview
2. Levels
3. Patterns

SELECTED PRIMARY SOURCES:

Instruments:
ILC, Paper on oil and gas prepared by Mr. Chusei Yamada, Special Rapporteur on shared natural resources, 18 February 2009, UN Doc. A/CN.4/608.

Cases:
Delimitation of Maritime Boundary between Guyana and Suriname, Award, 17 September 2007, XXX RIAA 1, para 380-390, 460-477.

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire), ITLOS Case no. 23, Order (25 April 2015).

REQUIRED READINGS:


SUGGESTED READINGS:


A. Jennings, Oil and Gas Exploration Contracts (London: Sweet & Maxwell, 2002).


M. Roelandt, La condition juridique des pipelines dans le droit de la mer (Paris/Geneva : PUF/IUHEI, 1990), chapter 4.


S. Vinogradov, G. Mete, ‘Cross-Border Oil and Gas Pipelines in International Las’ (2013) 56 German Yearbook of International Law 65.


SESSION 8 – AD HOC MODEL II: HYDRO AND OTHER BILATERAL AGREEMENTS (24 APRIL)

1. Overview
2. Levels
3. Patterns

SELECTED PRIMARY SOURCES:

Instruments:
- Treaty between the United States of America and Canada relating to the uses of the Waters of the Niagara River (10 October 1950)
- Treaty between the Federative Republic of Brazil and the Republic of Paraguay concerning the Hydroelectric Utilization of the Water Resources of the Parana River Owned in Condominium by the Two Countries, from and including the Salto Grande de Sete Quedas or Salto del Guaira, to the Mouth of the Iguassu River (26 April 1973)
- Agreement between the Syrian Arab Republic and the Hashemite Kingdom of Jordan concerning the Utilization of the Yarmuk Waters (3 September 1987)

Cases:
- *Indus Waters Kinshenganga Arbitration (Pakistan v. India)*, PCA, Partial Award, 18 February 2013.
- *Indus Waters Kinshenganga Arbitration (Pakistan v. India)*, PCA, Final Award, 20 December 2013.

REQUIRED READINGS:


SUGGESTED READINGS:


Centre d’études et de recherche de droit international et de relations internationales de l’Académie de droit international de La Haye, *Droits et obligations des pays riverains des fleuves internationaux*, Martinus Nijhoff, 1990, pp. 41-47.


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<th>SESSION 9 – CENTRALISED MODEL I: NUCLEAR ENERGY (8 MAY)</th>
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1. Overview
2. Nuclear energy

**SELECTED PRIMARY SOURCES:**

**Instruments:**


Convention on Early Notification of a Nuclear Accident (Early Notification Convention) of 26 September 1986 [www.iaea.org](http://www.iaea.org)
Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Assistance Convention) of 26 September 1986 [www.iaea.org](http://www.iaea.org)


Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982

Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of 17 December 1971


**REQUIRED READINGS:**


**SUGGESTED READINGS:**


S. Cigoj, ‘The International Regulation of Civil Liability for Nuclear Risk’ (1965) 14 ICLQ 809.


**SESSION 10 – CENTRALISED MODEL II: OTHER QUASI-CENTRALISED SYSTEMS (8 MAY)**

1. Renewables
2. Fossil resources

**SELECTED PRIMARY SOURCES:**

**Instruments:**

Statute of the International Renewable Energy Agency (IRENA), signed in Bonn, 26 January 2009

Sustainable Energy for All: A Vision Statement by Ban Ki-moon, SG of the United Nations (UN: November 2011)

Statute of the Organization of the Petroleum Exporting Countries, Caracas, 1961


**REQUIRED READINGS:**


**SUGGESTED READINGS:**


Intergovernmental Panel on Climate Change (IPCC), Special Report on Renewable Energy Sources and Climate Change Mitigation (2011).


SESSION 11 – CASE STUDY I: DISPUTED ENERGY RESOURCES (22 MAY)

1. The Ghana / Ivory Coast dispute
**SELECTED PRIMARY SOURCES:**

Relevant maps of the disputed area.

*Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* ITLOS Case no. 23, Order of 25 April 2015 (Provisional measures).

*Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* ITLOS Case no. 23, Judgment of 23 September 2017 (Merits).

**READINGS:**


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**SESSION 12 – CASE STUDY II: ENERGY TRANSITION POLICIES (22 MAY)**

1. The Feed-in Tariff (FIT) Program of the Province of Ontario (Canada)

**SELECTED PRIMARY SOURCES:**


**REQUIRED READINGS:**


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**SESSION 13 – CASE STUDY III: DISTRIBUTIONAL AND EQUITY ASPECTS (22 MAY)**

1. The exploitation of Western Sahara’s energy resources
2. The exploitation of East Timor’s energy resources

**SELECTED PRIMARY SOURCES:**


Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161.
Council of the European Union v. Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario), European Commission, Judgment of the Grand Chamber of 21 December 2016, CJEU (Case C-104/16 P).


Conciliation between The Democratic Republic of Timor-Leste and The Commonwealth of Australia, PCA Case No. 2016-10, Decision on Competence, 19 September 2016.


REQUIRED READINGS:
