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ROUNDUP OF ARTICLES

A Synopsis of the Life Cycle of International Oil and Gas Industry and Intrinsic Transnational Commercial Disputes with a Glance at the Notion of Lex Petrolea

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Abstract

The international oil and gas industry still dominates the energy markets, in practically all regions the world and along the way plays a prominent role in the global economy. The process and technology utilized in the exploration, development, production, and transportation of oil and gas are complex, immensely expensive, and capital intensive. The associated transnational commercial disputes, among the various stakeholders, are contractually and legally complicated and involve a huge sum of claims, often leading to protracted and costly proceedings.

This paper captures these intriguing aspects of the petroleum industry, in an intelligible and logical progression, accompanying the reader, through a clear descriptive journey, introducing the various stages of the life cycle of a typical exploration and production (E&P) undertaking. The voyage will start from the inception of exploration prospect licensing contracts between the host state and the international oil companies (IOCs), to the collaborative relationship among oil companies in the development and production of oil and gas, culminating in the final stage when the oil and gas fields are no longer economic to produce and the inevitable decisions that await oil companies and states, in what is known as the abandonment and decommissioning phase of the offshore petroleum process facilities and the commencement of the restoration of the field to pre-licensing conditions. In each stage of the life cycle, the study presents an array of contractual and investment disputes that find their way to courts and arbitration institutions.

The convoluted nature of these transnational disputes often involves a multitude of complex legal and settlement issues, ranging from challenges to jurisdiction, choice of governing law, and frequent challenges to the awards and enforcement, in what is commonly referred to as the conflict of laws. The last stop in this journey is the presentation of the ongoing debates and views on the evolution of the industry-specific petroleum law or the concept of lex petrolea.

» [Full article here](#)

Transnational Petroleum Soft Law and its Sanction Mechanisms

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Abstract

The oil and gas industry is one of the largest, most important, and most complex industries in the world, with lots of uncertainties. Although this industry has a large community of actors and activists around the world, it also has inherent distinctive features, challenges, and complexities of its own. Over the course of more than a century, the actors in the petroleum industry have regulated unique "soft law" to regulate the relationships between different actors and manage the challenges in this industry. The question is, what would be the "transnational petroleum soft law" in the oil and gas industry, and what could be its sanctions? This article utilises an analytical approach to deal with this question. This article shows that the transnational petroleum soft law, through declarations, covenants, norms, regulatory initiatives, protocols, standards, and codes of conduct, fills the legal, technical, environmental, and social gaps. Despite the fact that transnational petroleum soft law appears to be voluntary, it has its own sanction mechanisms. A "sanction" is not simply a statutory legal sanction, but rather any effects and punishment created due to a violation of transnational petroleum soft law. This research also shows that members of the petroleum society are bound to observe transnational petroleum soft law by its own sanction mechanisms, including financial, economic, and non-financial sanctions. The members of this society formulate "transnational petroleum soft law" alongside "transnational petroleum hard law" to make "transnational petroleum law" (Lex Petrolea).

[Full article here](#)

EASTERN MEDITERRANEAN OIL AND GAS

Opinion Paper: Introducing the Republic's Maritime Rights. The Advent of Cyprus Gas may Alleviate the Dire Energy Situation in European Union

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Abstract

European Union ('the EU' or 'the Union') is braced for a 'cold winter'. The natural gas price soars, putting pressure on the households and on the government budgets. Can the Republic of Cyprus ('the Republic' or 'Cyprus'), play a role to ease the energy crisis in EU?

Significant quantities of natural gas have already been discovered in the Exclusive Economic Zone ('the EEZ') of the Republic of Cyprus, with the latest discovery taking place recently. This paper lays down the Republic's maritime sovereign rights and the growing gas prospects for the Republic. This paper favours the commercial unitisation of the gas deposits in the Republic's EEZ to excuse the construction of LNG plant. It urges Cyprus to bring to Brussels the prospect of producing Cyprus Gas through this pathway. The ultimate production of Cyprus Gas will scale up Europe's indigenous Gas production bolstering security of energy.

[Full article here](#)

HYDROGEN

Allocating the Economic Benefits of Green Hydrogen: A Fiscal Regime for the Green Hydrogen It Factor?

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Summary

Green hydrogen is produced by separating water (H₂O) into its constituent compounds (H₂ and O), using an electrolyzer powered by renewable energy. It is viewed by many as critical to avoiding the worst of global warming.

There are several barriers to the development of a robust global green hydrogen market, including technical and legal barriers and the nascent electrolyzer market, which combine to make production more expensive than the market currently will bear. However, solutions to these challenges are being developed quickly. Optimizing electrolyzer operating expenses by securing access to cheap, abundant renewable energy and water that can be dedicated to green hydrogen production will end up being the most critical piece of the green hydrogen puzzle.

As the market develops, this unique combination of inputs - cheap, abundant, and dedicated renewable energy and water - will develop a value to, and within, the production chain. The very fact that a given country can produce large quantities of cheap renewable energy that can be dedicated to green hydrogen production is a distinct input to green hydrogen production. For many countries with this combination of green hydrogen production inputs, green hydrogen is a potential source of government revenue and economic growth.

Even though the global green hydrogen market is nascent, it could be on the verge of exponential growth. For the countries whose unique resources are necessary to fueling that market growth, the time to think about a fiscal regime for green hydrogen is now. This paper explores how governments might fashion a fiscal regime that balances attractiveness to private investment, given the current state of the market, and value to the government.

[Full article here](#)

A Plan for the Implementation of Hydrogen as a Domestic Energy Source in the US and its World-Wide Implications

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Abstract

The regulation of hydrogen in the United States has focused, nearly exclusively, on the research and development of leap-wise hydrogen technologies. Although these regulatory programs have established guideposts for hydrogen-based technologies' development, regulations have not yet advanced to include practical measures that would drive the public's use of hydrogen as a low to zero-carbon emission energy source. This lack of practicality prevents any benefit from existing hydrogen technologies being realized and remains a primary hinderance to the institution of hydrogen-based fuels in the marketplace.

The domestic use of hydrogen-based fuels may represent a small portion of the current hydrogen economy, but hydrogen-based fuels provide necessary relatability and personal use by the public. This capture of the general public's sentiment through relatability is lost by other industrial hydrogen uses too far removed from the end consumer. The future use of hydrogen as an alternative energy source, to reduce environmental pollution in a meaningful way, is ultimately dependent on the public's acceptance and familiarity with hydrogen.

After a brief introduction to current hydrogen regulation in the US, this article identifies and explores opportunities for the stepwise institution of hydrogen fuels into the marketplace through existing regulatory control schemes of the Federal Energy Regulatory Commission ("FERC") and the Environmental Protection Agency ("EPA"). By utilizing existing statutes and resulting regulations these two agencies, through policy statements, may quickly create the conditions needed to realize the environmental and economic benefits of available hydrogen-based fuels.

Subsequently, as the availability of hydrogen-based fuels on the energy market increases, agencies must then determine how to regulate the labeling of hydrogen production methods in the marketplace. This article proceeds to evaluate the geopolitical aspects of this critical task of defining hydrogen production standards and identifies an easy to administer solution modeled after the "organic" program of the USDA.

Taken together, the stepwise institution of hydrogen-based fuels through existing regulations and the regulation of hydrogen production labeling, the environmental and economic benefits of existing hydrogen technology may be realized without the additional need for leap-wise hydrogen technology.

[Full article here](#)

UNITISATION AND JDZS

Unitization of Shared Reservoirs in Mexico and Risks of Indirect Expropriation

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Abstract

Seven years after the publication of the Constitutional Energy Reform, Mexico counts with 111 Contracts in force with private companies and/or Petroleos Mexicanos (PEMEX), besides 399 Entitlements exclusive to the latter, to carry out the Exploration & Production of Oil & Gas in the country. Nevertheless, the government elected in 2018 has implemented a new energy policy that rejects several of the principles of the Energy Reform and aims to reinforce the role of the State, mainly through PEMEX, in order to achieve the objectives of energy security and sovereignty. Even though the Mexican State, through the Ministry of Energy (SENER), is responsible for defining that energy policy, there is a possibility that SENER materializes acts that violate the conditions agreed under the Contracts and several international treaties. This paper focuses on the risks of the Unitization procedures (the union of Contractual and/or Entitlements' Areas that share an oil & gas reservoir) that unjustifiably benefit PEMEX in detriment of private companies and how this may materialize cases of indirect expropriation that would result pretty burdensome for the country.

This article was first published in Transnational Dispute Management (TDM, ISSN 1875-4120) Special Issue on "The Future of Investment Law in Latin America". M.C. Oliver de la Cruz; "Unitization of Shared Reservoirs in Mexico and Risks of Indirect Expropriation" TDM 4 (2022), www.transnational-dispute-management.com/article.asp?key=2912

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AFRICA

Ghana's Upstream Petroleum Fiscal Regime: Historical Developments, Current Practice and Challenges

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Introduction

The legal framework guiding the conduct of petroleum operations in Ghana, and the contractual framework that was established to regulate the relationship between the Government of Ghana and the international oil companies (IOCs), was developed in the mid-1980's following the creation of the national oil company, Ghana National Petroleum Corporation (GNPC) in 1983. GNPC served as the government agency under whose control petroleum sector activity would take place. This was largely the case until 2011 when the Petroleum Commission was established "for the regulation and the management of the utilization of the natural resources...."

Ghana made a large-scale commercial discovery of oil in 2007 and started producing in a record time of three years when a consortium of companies comprising Kosmos Energy Ghana, Tullow Ghana Limited, Anadarko Petroleum Corporation, Sabre Oil and Gas Holdings Limited and the EO Group in conjunction with GNPC discovered oil in commercial quantities in the Tano and Cape Three Points Basin in the offshore areas of the Western Region.

Prior to this large-scale commercial discovery, in the period leading up to the discovery, by a letter dated 4th June 2002, the Managing Director of GNPC, requested assistance from the Economic and Legal Section (ELS) of the Special Advisory Services Division of the Commonwealth Secretariat to review the suitability of Ghana's existing regulatory regime - including its fiscal regime - for promoting petroleum exploration. In respect of the fiscal regime, as Acheampong and Ali-Nakyea aptly note, "The fiscal regime governs the relationship between the host government and investors. This risk-reward balance is anchored on the twin goals of investment attraction and revenue maximisation."

Footnotes omitted from this introduction.

[↪ Full article here](#)

The Domestication of the Principle of Permanent Sovereignty over Natural Resources in the Tanzania Petroleum Industry: The Move Towards Nationalism is it a Sovereign Right or Wrong?

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Abstract

Using its sovereign power, the Government of the United Republic of Tanzania signed various Production Sharing Agreements (PSA) to govern the exploitation of petroleum. The power emanates from the principle of Permanent Sovereignty over Natural Resources (PSNR) promulgated in the United Nations General Assembly Resolution 1803 (XVII) which recognises, among others, the right of States to enter into agreements with foreign investors. The PSNR further requires the Government to observe the freely signed agreements in good faith. In almost all signed PSAs, the Government agreed with the foreign international dispute settlement mechanism and committed itself not to unilateral change the terms of the PSAs using its legislative powers.

In 2017, the Government domesticated the principle of PSNR in the two natural resources laws; the Natural Wealth and Resources (Permanent Sovereignty) Act and the Natural Wealth and Resources Contract (Review and Re-negotiation of Unconscionable Terms) Act. This article argues that domestication ignores the duty of honouring in good faith the already signed PSAs. The two laws mandate all disputes in the petroleum industry to be settled in Tanzania using the laws of Tanzania and empower the Government to amend the PSAs unilaterally. Implementing the dispute settlement mechanisms provided in the law may lead to unnecessary disputes considering the existing PSAs have different dispute mechanisms. Also, the re-negotiation mechanism of the so-called unconscionable terms provided in the law, which leads to unilateral amendment of PSAs, is against the requirement of mutual consent agreed in PSAs. Further, the reforms undertaken affect future investment in Tanzania's petroleum industry by creating an uncertain legal regime and removing the stability of investment contracts.

[↪ Full article here](#)

The Tanzania Petroleum Law Reforms Vis a Vis International Obligations: Compliance or Departure?

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Abstract

Bilateral Investment Treaties (BITs) and Multilateral Investment Treaties (MITs) provide a standard of protection to investors in the contracting States. These standards include fair and equitable treatment, protection against nationalisation and expropriation, a guaranteed unrestricted transfer of investments and returns, and full protection and security. The infringement of the standard of protection offered under BITs and MITs empowers an investor affected to initiate proceedings under the forum agreed.

The Government of Tanzania has enacted two laws, the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017 (Permanent Sovereignty Act) and the Natural Wealth and Resources Contract (Review and Re-negotiation of Unconscionable Terms) Act of 2017 (Unconscionable Act). The Permanent Sovereignty Act prohibits foreign dispute settlement, and the Unconscionable Act empowers the Government to amend existing Production Sharing Agreements (PSAs) unilaterally. The two laws contravene the already signed PSAs that allow foreign dispute settlement mechanisms and require mutual consent in amending the PSAs. They also contravene BITs and MITs to which the Government of Tanzania is a signatory party.

The two laws need to be amended to conform with the existing PSAs and international treaties and conventions signed and ratified by the Government of Tanzania. The Government should not opt to withdraw from BITs and MITs considering the necessity of foreign investors in the petroleum industry since they are tools for attracting investments.

[Full article here](#)

CASES & COMMENTARIES

The General Court on Network Codes: A Blow to the Commission and ACER in MEKH and FGSZ v ACER?

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Introduction

In joined cases T-684/19 and T-704/19 *MEKH and FGSZ v ACER* ('the HUAT Case'), the General Court ('GC') delivered a blow to the European Commission ('the Commission') and the EU Agency for the Cooperation of Energy Regulators ('ACER') regarding the adoption of network codes. This came about concerning the legality of a decision by ACER ordering the expansion of interconnection capacity for gas transmission between Hungary and Austria (the 'HUAT project'). The GC discussed whether the existing network codes legislation allows the Commission or ENTSOG to order a transmission system operator ('TSO') to invest in new capacity for transporting gas.

The HUAT Case clarifies how far the Commission can go when adopting network codes - not as far as was previously thought. Powers to adopt network codes must be explicitly granted in the EU energy law, such as a regulation or directive. When this is not the case, the Commission or the European Network of Transmission System Operators for Gas ('ENTSOG') cannot develop rules beyond areas in which it has been given explicit powers to do so. These are areas only for the Member States to act. If the Commission or ENTSOG were to adopt technical rules without a clear legal base, these would be contrary to EU primary law.

On the one hand, the GC confirms that it is not contrary to primary EU law to impose binding individual obligations on TSOs, requiring them to increase transmission capacity between two Member States. Indeed, the GC corroborates that Article 114 TFEU (on approximation of laws to foster the establishment and functioning of the internal market) does not preclude the Commission from drawing up rules that require network operators to increase capacity. This is so as long as those obligations are not contrary to the objective of promoting the internal market as pursued by Regulation 715/2009 on access to natural gas transmission networks.

On the other hand, and unequivocally, the GC stressed that the Commission was not empowered by Regulation 715/2009 to adopt provisions governing the incremental capacity process in a network code. This was the case as the expansion of transmission capacity was not expressly listed in said Regulation. Thus, adopting a network code and including an incremental capacity process by the Commission and ENTSOG would be contrary to

Article 277 TFEU because there is no link to areas listed in Regulation 715/2009. Consequently, this renders Chapter V of Regulation 2017/459 - dealing with the incremental capacity process as part of the network code on capacity allocation mechanisms in gas transmission systems - inapplicable.

In this opinion, we discuss the case and its implications for the future of network codes and the European internal energy market. We focus on three key legal issues: i) Can the EU require investment decisions to promote interconnection capacity, even if unwillingness exists? ii) Have the Commission and ENSTO-G gone too far when adopting the rules on capacity increment in the Capacity Network Code? What are the consequences of the HUAT Case for the future expansion of technical rules in EU energy law?

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PIPELINES

China's State-controlled Approach to Cross-provincial Gas Pipeline Planning

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Abstract

In China, the development of cross-provincial gas pipelines is subject to national planning, which can be justified by the features and practical challenges of the sector. The cross-provincial gas pipeline development plans are scattered in various national plans, and the National Development and Reform Commission and the National Energy Administration are responsible to formulate and supervise the implementation of national special plans involving gas pipeline development. The two departments also have the authority to approve the construction of cross-provincial gas pipelines, which shall comply with the development plans. At present, the central state-owned enterprise of PipeChina monopolizes the cross-provincial pipeline sector and assumes the responsibility of pipeline development.

While the establishment of PipeChina facilitates the accomplishment of the plans, the planning regime still has critical shortcomings, such as insufficient implementation due to lack of capital and ineffective supervision. Ultimately, in contrast with the on-going gas market reform, China's gas pipeline development is subject to strict state control and compulsory planning.

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LATIN AMERICA

International Investment Law Implications of Cancelling Environmental Permits for Petroleum Development: Why Guyanese Stakeholders Should have Cancellation Reservations

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Abstract

In the same way that International Investment Law recognizes Guyana's sovereign right to admit investment into its territory, it recognizes Guyana's obligation to comply with the applicable principles of law regarding its treatment of foreign investors and their investments. As such, among the many factors which the State may take into account when deciding to exercise its domestic power to cancel Environmental Permits, due consideration must be given to its International Investment Law obligations, and further the implications that can follow their breach.

It is these obligations and implications that this paper seeks to highlight in the hopes of ensuring that Guyanese stakeholders avert the undesirable legal outcomes which can flow from the exercise of this State power. Additionally, this paper seeks to offer insight into Guyana's environmental regulatory framework for the benefit of foreign investors and stakeholders from other petroleum-producing developing nations, seeking to order their own affairs.

[↪ Full article here](#)

WINDPOWER

Contractual Risk Allocation in Offshore Wind Farms Industry - "Knock-for-Knock" as a Model

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Abstract

Parties' liability of contractual risk under Offshore Wind Farm contracts seeks to radically abandon common law assumptions regarding risk allocation. Under the provisions of common law, whoever breaches a contract obligation or any particular legal obligation holds liability based on the fault committed, and therefore indemnifies the damaged person. Yet, this is not always the case in the offshore wind farm industry, where risk is allocated to the party who is capable of controlling this risk. In this regard, the parties use the contract to reduce the risk potential or control the consequences of that risk. Risk provisions are arranged either in an agreement between project

developer and contractor (multi-contracting system), or between contractor and sub-contractor (EPCI contracts regime). This research paper discusses risk allocation contracts for offshore wind energy with regard to "Knock-for-Knock" standard agreement practice.

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ELECTRICITY LAW AND REGULATION

Smart Meters & the EU's Proposed "Data Act": Raising a Red Flag for Consumer Privacy and Smart Meter Manufacturer Trade Secret Integrity

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Abstract

This paper dually focuses on (1) the propensity for financial effects that the proposed Data Act - a central part of the EU's Data Strategy - will have on smart meter integration efforts across Europe and (2) implications of the Act's effects on smart meter consumer privacy rights and smart meter manufacturer intellectual property integrity. In Part One, it will discuss the history of the EU's policies for smart meter implementations and the current legislative authority.

It will also discuss the current status of the EU's smart meter integration efforts, the investment tools and schemes that are predominantly used to facilitate a competitive market for smart meter production and procurement, and describe in greater detail the relationship between advanced metering infrastructure and privacy rights under the GDPR.

Part Two will broadly introduce the EU's data strategy and specifically discuss the ramifications the proposed Data Act will have on smart meter producers if enacted.

[↪ Full article here](#)

CLIMATE CHANGE

Changing the Conversation on Energy Transition - Aligning Interests or Mandating Actions to Combat Climate Change in Challenging Times

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Introduction

This article is focused on this apparent dilemma to enhance progress and results in climate change actions. As there are few precedents in this emerging area, this article is based on benchmark analysis the author has conducted to assist several Governments in designing policies to deal with the emerging issues that climate change is posing.

[↪ Full article here](#)

Meeting the Challenge of Climate Change: Essays on the Need for Producer-Consumer Collaboration

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John Gault SA*

*Nordine Ait-Laoussine
Nalcosa SA*

Introduction

In the following five short essays, Nordine Ait-Laoussine and John Gault argue that energy producers and consumers can accelerate the energy transition and slow global warming most efficiently by working together rather than struggling against each other. Both authors are energy consultants based in Switzerland. Mr. Ait-Laoussine is a former Algerian energy minister.

The articles were originally published by Energy Intelligence Group in their feature World Energy Opinion. The views expressed are those of the authors.

[↪ Full article here](#)

CONTRACTS

Take-or-Pay Clauses: Should I Stay, or Should I Go?

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Abstract

Take-or-pay (ToP) provisions are widely used in long-term offtake and supply agreements. A ToP provision is a clause that provides that a buyer must pay for specified quantities of a good or service from a seller, even if the buyer is unwilling to take such quantities. In its most basic format, a ToP clause requires a buyer to either (1) purchase and take a minimum contract quantity (the ToP quantity of a good or service delivered) or (2) pay the applicable contract price for that portion of the ToP quantity of goods or services not taken. Despite their wide use, or perhaps as a consequence of it, sometimes ToP contracts are employed even when the underlying circumstances make their utilization inconvenient. This article intends to shed more light on the defining characteristics of ToP provisions - and the projects they are applied to - by presenting an overview of (1) the reasons determining how and when they can be utilized and (2) whether a buyer and a seller should engage in this type of agreement. We also detail the circumstances in which the utilization of ToP provisions is not appropriate.

[Full article here](#)

BOOK REVIEWS

Book Review: The Palgrave Handbook of Natural Gas and Global Energy Transitions (eds. O.S. Damilola and E.G. Pereira)

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Introduction

The urgent call for reducing greenhouse gas emissions from the petroleum sector in response to the challenges of climate change has given rise to a paradigm shift from carbon-intensive fossil fuel energy to low-carbon options. It has been confirmed that natural gas, as a less polluting energy source, has the potential to accelerate the global energy transition to the extent that it is used sustainably. While the ramifications of the energy transition for the global gas industry have received widespread scholarly attention, little has been said about the

role of natural gas in the global energy transition. The book, *The Palgrave Handbook of Natural Gas and Global Energy Transitions* by Olawuyi S. Damilola and Eduardo G. Pereira (eds) makes a bold attempt to fill the gap as it comprehensively analyses the role of natural gas in effectively achieving global energy transition. The book assembles contributors from all over the world to analyse the past, current and emerging technological, financial, commercial, legal and regulatory underpinnings of the natural gas sector to determine how well they support its role in achieving a feasible and sustainable energy transition. The analyses are partly based on case studies from prominent natural gas-producing countries in Africa, Asia, Europe, North America, South America, Australia and the Middle East. Based on the analyses, key legal recommendations are made, including adequate commercial and financial models that will assist to position natural gas to play its role in accelerating a global energy transition.

Olawuyi S. Damilola and Eduardo G. Pereira (eds), The Palgrave Handbook of Natural Gas and Global Energy Transitions, Palgrave Macmillan Switzerland ISBN 978-3-030-91565-0, ISBN 978-3-030-91566-7 (eBook), 619 pages.

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- OGEL 1 (2005) - Production Sharing Contracts

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- OGEL 5 (2004) - Energy Charter Treaty
- OGEL 4 (2004) - Corporate Social Responsibility (CSR) - Regular issue
- OGEL 3 (2004) - Taxation / Latin America
- OGEL 2 (2004) - Renewable Energy
- OGEL 1 (2004) - Climate Change

2003

- OGEL 5 (2003) - Corruption / Geopolitics of Oil and Gas
- OGEL 4 (2003) - Natural Gas
- OGEL 3 (2003) - Energy and Electricity Regulation
- OGEL 2 (2003) - Dispute Management in the Oil, Gas and Energy Industries
- OGEL 1 (2003) - Regular issue