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Energy Charter Treaty: Towards a New Interpretation in the Light of Paris Agreement and Human Rights

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Abstract: In addition to climate change, the current war in Ukraine has highlighted the urgency of a rapid transformation to post-fossility. This paper analyses the much-lamented negative climate policy and energy transition impacts of the Energy Charter Treaty (ECT) in international law, a treaty that serves as a basis for the compensation claims of fossil fuel companies in response to losses incurred because of climate policy measures. Methodologically, a legal interpretation is conducted, i.e., the ECT is interpreted grammatically and systematically. It is shown that, with a revised legal interpretation of the ECT, such claims usually cannot be upheld at all, except in the case of direct expropriations. This is further underlined by a legal interpretation of the ECT based on the Paris Agreement and on international human rights law. The arbitral ECT tribunals would therefore have to dismiss claims and if they do not do so then, for example, EU member states could take action against such verdicts of the arbitral tribunals before the ECJ. Even if all of this was to be disputed, there are also considerable possibilities for the contracting states to subsequently exclude claims for compensation. Nevertheless, there are a lot of arguments in favour of a comprehensive reform of the treaty. However, to do so as currently planned, with transitional periods, is not sufficient.

Keywords: Energy Charter Treaty; Paris Agreement; human rights; climate governance; dispute settlement

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1. Introduction and Scope of the Paper

The Energy Charter Treaty (ECT) in international law was established in 1994 by primarily Western and post-Soviet states at the time of the economic and judicial transformation of Eastern Europe. In order to encourage and secure investments in the energy sector, the contracting parties agreed upon the possibility for compensation claims in order to secure a level playing field for all energy companies, without relying on national jurisdictions, which were not always reliable in many participating states [1–3]. The ECT therefore establishes international arbitration tribunals jointly appointed by both sides in the event of disputes in order to increase legal certainty for investments e.g., in the case of environmental policy measures that affect the economic perspectives of such investments. Under the ECT, all investments made, and all forms of energy, are protected on a long-term basis, regardless of their nature or the consequences of their operation [4–9]. Critics warn that the usage of the ECT will postpone climate protection because of the threat of compensation claims. At the very least, the ECT will make it less attractive (because it would be more expensive), although there is a clear need for action [4,10–13] (also, [14–16]). The latest report of the Intergovernmental Panel on Climate Change (IPCC) warns of an even earlier onset of global warming than was previously assumed [17–19].

Furthermore, the war in Ukraine has made it clear that, besides climate protection, biodiversity protection, disrupted nutrient cycles and pollution problems, there are further reasons to become post-fossil in all sectors as fast as possible. Dependence on fossil fuels for electricity, heat, mobility, agriculture, cement or plastics also has the potential to finance

authoritarian regimes and wars—and to lead to intensifying price spirals (on all of this see [20–22]). That is why, especially since 2022, governments have increasingly been trying to accelerate the energy transition away from fossil fuels and towards renewable energies, energy efficiency, and arguably more frugality as well [20,21,23–25]. However, this could be thwarted by the threat of high claims for damages from fossil fuel companies, which the ECT may make possible.

At the end of 2021, the European Court of Justice, the highest court in the EU, ruled that claims under the ECT under international law are incompatible with EU law. The European Court of Justice's Konstroy judgment (C-741/19) in this regard is in line with the 2018 Achmea judgement (C-284/16), which found that investor–state arbitration based on bilateral investment treaties between EU member states is not compatible with general EU law. In general, national courts in the EU are bound by ECJ rulings, so claims under the ECT on EU territory could probably no longer be enforced by companies [26].

This means that in the EU there are potentially conflicting obligations under international law and EU law and that outside the EU the ECT would continue to apply without restriction. Therefore—and for reasons of climate protection in times of the war in Ukraine—the present article analyses whether an interpretation of the ECT that strongly limits its claim and thus strongly minimizes the conflict from the outset is compelling. We discuss if the claim for compensation under the ECT is maybe less far reaching than assumed. In this context, the focus is on the climate policy effects of the ECT. This is clarified by means of legal interpretation as to how far the investment protection claims under the ECT extend in accordance with the agreement and what legal interpretative effects the Paris Agreement (PA) and international human rights law have in this respect. Thus, in contrast to the previous scholarly discussion of ECT, the purpose is not to again empirically describe the effects of the agreement—or to broadly discuss the possible consequences of leaving the treaty—or to propose alternative agreements (see [21,27,28]).

2. Materials and Methods

Currently, 53 states and organizations are party to the ECT [29]. The scope of application of the ECT and thus its scope of protection refers to investments within the energy sector. According to Art. 1(6) ECT, investments are defined as any type of assets that are directly or indirectly owned or controlled by an investor. This includes the assets listed in Art. 1(6) lit. a to f ECT, which includes: intellectual property; income; tangible, intangible, movable and immovable assets; and others. Thus, all investments in energy production are protected, regardless of their impact on the climate (see also [30]). Art. 1(7) lit. i ECT defines an investor as a natural person having the citizenship or nationality of or who is permanently residing in that contracting party in accordance with its applicable law. In addition, according to Art. 1(7) lit. ii ECT, an investor can be a company organized in accordance with the law applicable in that contracting party.

Art. 10 ECT is of particular importance. It enshrines various principles on the promotion, protection and treatment of investments. Art. 10(1) sentence 2 ECT describes the principle of fair and equitable treatment (FET). This defines an obligation of the contracting parties to ensure fair and equitable treatment between investments. In addition, this principle excludes discriminatory acts against investments of investors of other contracting parties to the ECT (explanations on the principle of FET are also given by [31]; critical comments in [32]). The paragraph continues to state that no party may interfere with and hinder investments and their management, maintenance, use, enjoyment or disposal (Art. 10(1) sentence 3 ECT). Furthermore, investments are granted most constant protection and security (Art. 10(1) sentence 3 ECT). Obstacles to investment through unreasonable or discriminatory measures are prohibited (prohibition of unreasonable or discriminatory measures, Art. 10(1) sentence 3 ECT). According to Art. 10(3) ECT, unequal treatment between domestic investments, investments of other contracting parties or of third countries is prohibited. These norms form a basis for the protection of investments and the resulting investment protection claims under the ECT (for details on Art. 10 ECT as an

umbrella clause, see [30,33–35]). Likewise, the principles of the General Agreement on Tariffs and Trade (GATT, 1947) are reaffirmed, especially in Art. 10(7) ECT [36]. The most favoured nation principle, which was established by the World Trade Organization (WTO) and defined in Art. 1 GATT, states that all advantages and benefits granted by one contracting party to another must be granted equally and unconditionally to all other parties as well [37]. In contrast, all those rights may be denied to third countries and companies based there (Art. 17 ECT).

Art. 24 ECT states that the treaty shall not prevent a party from implementing various measures. Thus, states and organizations have the possibility to restrict such rights emerging from the ECT [38] (p. 169) if the measures constitute necessary acts for the protection of human, animal and plant life or health (Art. 24(2) lit. b subpara. i ECT). In addition, it lists measures essential to the acquisition or distribution of energy materials and products in conditions of short supply arising from causes outside the control of that contracting party (Art. 24(2) lit. b subpara. ii ECT). Furthermore, investors who are aboriginal people or belong to a socially or economically disadvantaged individual or group may be granted appropriate benefits according to Art. 24(2) lit. b subpara. iii ECT provided that it does not have a significant impact on the economy and that there is no fundamental discrimination. The standard described further clarifies that measures must not constitute a restriction on economic activity in the energy sector or arbitrary and unjustified discrimination.

However, Art. 12 ECT, Art. 13 ECT and Art. 29 ECT, which refer especially to the compensation and expropriation provisions, are excluded from the provisions of Art. 24 ECT. As a result, Art. 24 ECT causes a certain "petrification" leading to a restriction of the possibility of imposing conditions in the energy sector. As a consequence, technical progress is hampered (cf. [38]). Art. 12 ECT provides for a claim for damage and compensation for losses of investors if the losses occur due to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that area. Accordingly, an investor may require the host country to compensate for its losses. Such restitution, compensation or other mitigation should be the same as the one provided by the party to any other investor, whether its own investor, the investor of another party or the investor of a third country [39]. According to its wording, this article only applies if Art. 13 ECT is not applicable. Furthermore, the rules of national treatment and most favoured nation treatment apply to the question of compensation [9,38]. Thus, no further protection as towards domestic companies needs to be guaranteed.

No such restriction is contained in the actual expropriation protection clause in Art. 13 ECT, which applies to direct expropriations and nationalizations as well as to equivalent measures [40]. According to Art. 13(1) ECT, expropriations are only permissible for reasons of public interest, in a non-discriminatory manner, in accordance with the principles of the rule of law and with the granting of compensation. Art. 13(1) sentence 2 ECT further stipulates that the amount of compensation must correspond to the fair market value of the expropriated investment at the time before the interference became known. However, Art. 13 ECT generally also applies when profit expectations are impaired, for example, if a change in circumstances due to environmental regulations means that the investments cannot be continued as before (see also [41]). Art. 13(1) ECT distinguishes between direct and indirect expropriation. However, this distinction does not lead to differing legal consequences. Thus, claims regarding future lost profits—which would, for example, not be granted under German constitutional law—can be made against states referring to the ECT [27].

Investors can pursue their claim for damages in arbitration proceedings according to Art. 26 ECT. This is a special feature of the ECT that seeks to make dispute settlement by means of proceedings through international arbitration attractive to investors (see also [31,42]). Parties to the ECT have the option to seek resolution from the courts or administrative tribunals of the contracting party to the dispute in accordance with any applicable, previously agreed dispute settlement procedure, or in accordance with the following paragraphs under Art. 26(2) ECT. These state that international arbitral tribunals

may be seized to enable settlement through various procedural systems in accordance with Art. 26(4) ECT. Possible options are proceedings in line with the International Centre for the Settlement of Investment Disputes (ICSID) (Art. 26(4) lit. a ECT), the convening of an ad hoc arbitral tribunal under the rules of the United Nations Commission on International Trade Law (UNCITRAL) (Art. 26(4) lit. b ECT) or arbitration in line with the Arbitration Institute of the Stockholm Chamber of Commerce (Art. 26(4) lit. c ECT) (for more details see [43]). Customarily, and as stated in Art. 26 ECT, a dispute in line with one of the above-mentioned dispute settlement mechanisms is heard by an international non-permanent arbitral tribunal. For each dispute, a tribunal is appointed by the parties to the dispute, consisting of three arbitrators. There is no court of appeal. The practical consequence of Art. 26 ECT is that a tribunal must apply both the interpretation of the ECT and the principles of international law [44] (on the compatibility of the ECT and EU law, see [45]).

Despite the obligation of states under Art. 20 ECT to adopt laws, regulations, court decisions and administrative rules, and thus to create transparency, this does not apply to the course of arbitration proceedings. The principle of publicity and transparency does not apply to the aforementioned arbitration proceedings. Not even the Secretariat of the ECT has to be informed [46,47]. As a result, neither the Secretariat nor the public have a complete overview of the proceedings. Based on the ECT's substantive protection standards, it is possible for investors to sue contracting parties [48]. Conversely, there is no provision for legal action against investors or in favour of environmental concerns. As described above, these include the default of unreasonable or discriminatory measures (Art. 10(1) sentence 3 ECT), fair as well as equitable treatment (Art. 10(1) sentence 2 ECT) and the most favoured nation principle (Art. 1 GATT, Art. 10(7) ECT). These, as well as other standards, must be ensured by the contracting parties. If an arbitral tribunal upholds a claim, the investor may be awarded compensation. All of this shall prevent judicial intervention by non-functioning or corrupt national jurisdictions. However, in the case of a functioning national administration of justice, a parallel judicial system is created [49]. The independence of the international tribunals from national or European courts enables investors to sue a contracting party on two legal levels. Yet, in order to receive compensation, it is already sufficient to win the case in one of the proceedings. Furthermore, there is no requirement to exhaust national legal remedies before filing a claim in front of an international arbitral tribunal [28] (see also [50] on the discrepancy between compensation under the ECT and under the German Constitution). Therefore, two proceedings can be pursued simultaneously. Consequently, this causes a disadvantage for domestic companies, as they do not have the possibility to sue under the ECT [51]—in addition to the frictions already mentioned regarding the rule of law and environmental protection [52,53]. Another dysfunctional effect lies in arbitrators' potential financial interest in the continuation of dispute settlement mechanisms. It can be assumed that the judges might choose a broad interpretation of the ECT in order to keep future application as open as possible and to ensure access to future dispute settlement procedures.

Methodologically, this article provides a legal interpretation of the ECT and the Paris Agreement and analyses whether an interpretation of the ECT which strongly limits its claim and thus strongly minimizes the conflict with climate policy from the outset is possible. Legal norms are interpreted grammatically, systematically, teleologically, and historically, i.e., according to their literal meaning, their relation to other legal norms, their purpose, and their evolution to show who exactly legal norms oblige and what they oblige them to do [21,22,54]. Usually, grammatical and systematic interpretation is applied since the other two approaches are prone to several problems. This includes discussing interpretations of norms developed by courts, but not only this. In the Anglo-Saxon legal sphere, case law as such would serve as a major source of interpretation. This is different to the continental legal sphere we are based in. Therefore, court verdicts function only as illustration of the practical relevance of our arguments derived from the wording and system of the ECT and the Paris Agreement. Regarding the ECT as such, a case law perspective—as also often practiced in international legal reasoning—would also face the

big challenge that the ECT is interpreted by the ECT arbitral tribunals, whose rulings are not publicly available. Moreover, this article is intended precisely to question whether the practice of arbitral tribunals in investment protection treaties such as the ECT (although difficult to comprehend without public judgments) to award compensation on the basis of vague clauses can really be convincing in terms of legal interpretation. Regarding the PA, we will see in the following that recent court rulings point in the same direction as legal interpretation of the norms of the ECT.

Nota bene: Regarding the epistemological background, legal interpretation is—like ethics—normative science, not empirical science; law and ethics make statements about how things *should be* rather than about how they currently *are*. Therefore, legal interpretation does not require the collection of data and facts, i.e., legal interpretation is not a case study as a case study, for example, empirically describes a process.

3. Results

3.1. Restrictive Interpretation of Investment Protection through Arguments from the ECT Itself

It must be stated that the ECT does not define direct and indirect expropriation—the latter is referred to as measures having an equivalent effect. The question is of key importance, because energy and climate policy measures appear very rarely in the form of direct or explicit expropriations. Climate policy measures can at best be classified as indirect expropriations. Thus, in legal practice, the determination of whether an indirect expropriation exists depends heavily on the view of the arbitral tribunal in a given case [4]. More recent investment treaties therefore carefully define indirect expropriation. They list factors that should be considered to determine whether indirect expropriation has occurred or not. Furthermore, they clarify that non-discriminatory measures designed and applied to protect legitimate objectives such as environmental protection do not constitute indirect expropriation or a measure of equivalent effect [4]. However, since the ECT does not make such a concretization, the scope of "expropriation" is to be determined by means of interpretation. On the one hand, this creates a dangerous legal uncertainty that threatens to be to the detriment of climate policy activities. On the other hand, interpretation can also show that the claims may often fall shorter than often assumed. Clarity can be achieved by means of systematic interpretation in the context of other provisions of the ECT (as will be explored in the present chapter; before a systematic interpretation is undertaken in the two subsequent chapters based on other legal norms outside the ECT).

Art. 19 ECT explicitly states that the "Contracting Parties shall strive to minimize harmful environmental impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area" (Art. 19(1) sentence 1 ECT). These measures should be implemented in an "economically efficient manner" (Art. 19(1) sentence 1 ECT) and thus not influence the economic expectations of investors (on the legal weakness of Art. 19 ECT see also [36,55]). Art. 24(2) subpara. 1 ECT also states that the ECT does not prevent contracting parties from taking necessary measures to protect human, animal and plant life or health in general. However, according to Article 24(1) ECT, Articles 12 and 13 ECT, which serve as the basis for investment protection claims, are excluded hereof.

Nevertheless, it still remains to be clarified what constitutes a "measure having equivalent effect" within the meaning of Art. 13 ECT. In general, it can be argued that almost all energy and climate policy measures are not as severe as expropriation. This itself is a strong argument against awarding compensation under the ECT for climate policy regulations on a broad scale. Furthermore, Art. 18 ECT emphasizes the national sovereignty of the parties over energy resources. This means that each state is free to decide whether to develop the energy resources itself, by means of state-owned enterprises or in another form [38]. Consequently, this provision limits the protection of investors against expropriation and narrows the scope of investment protection claims. This conclusion can be drawn because these claims were not designed to unilaterally protect investors' interests (cf. also [38,56]). International investment agreements do not seek to prevent legitimate state regulation but aim at equal treatment of domestic and foreign investments [57]. The aforementioned Art.

10 ECT, which generally addresses equal treatment with domestic companies, is usually also interpreted narrowly [34,58,59] (also [60,61]).

Another argument in favour of a narrow understanding of "measures of equivalent effect" is that the ECT, as Art. 19(1) ECT emphasizes, aims at economically efficient environmental protection. In the context of public decisions, this does not mean that an optimal profit margin must be opened up for companies. Rather, an economic cost–benefit accounting of the economic advantages and disadvantages of, for example, climate policy action or inaction must be considered. In this respect, it has long been known that inactivity in climate policy is much more expensive in the long run than active climate protection [21,62]. As a consequence, investors' claims to investment protection resulting from the ECT and the concept of indirect expropriation will have to be interpreted more narrowly than they have been to this day (see also [57]).

3.2. Restrictive Interpretation of Investment Protection in the Light of Other International Law Treaties, in Particular the Paris Agreement

There are further arguments in favour of a restrictive interpretation of the claim under Art. 13 ECT. The question of systematic interpretation on hand is how the ECT must be interpreted in the context of other norms of international law and how they relate to each other. The relevant norm in many cases is Article 31 of the Vienna Convention on the Law of Treaties (VCLT). By ratifying the VCLT, Germany and other states have submitted to the rules of interpretation of international treaty law [63]. According to this convention, a treaty under international law is to be interpreted in good faith in accordance with its ordinary meaning, objectives and purpose (Art. 31(1) VCLT). Furthermore, the context for the purpose of the interpretation of a treaty, comprising any agreement relating to the treaty, must be taken into account (Art. 31(2) VCLT). The (systematic) interpretation of international treaties is also served by subsequent agreements on the interpretation or application of the treaty (Art. 31(3) lit. a VCLT), subsequent legal practice indicating agreement on the interpretation (Art. 31(3) lit. b VCLT), as well as any principle of international law governing the relationship between the parties to the treaty.

Furthermore, according to Art. 30(2) VCLT, where there are two treaties between the parties on the same subject matter, the more recent treaty prevails. Whether the latter aspect is applicable here depends upon whether the PA and the ECT are regarded as contracts on a single regulatory matter. One could argue that, according to Art. 30 VCLT, the treaty adopted later automatically takes precedence, namely the PA. Following this view, the discussion on the relationship of the ECT to the PA would be redundant. The more recent PA would supersede the treaty's norms on the energy sector [4]. Domestically, such a conclusion would be possible in Germany based on Art. 59(2) sentence 1 of the German Constitution stating that international treaties have the rank of a simple law and can be superseded by subsequent laws through the lex posterior principle. Internationally, however, this interpretation is prevented within the ECT, where Art. 16 ECT stipulates that the ECT's relationship to other agreements of the same states is to be interpreted in such a way that the treaties do not contradict each other. However, even if Art. 16 ECT were to perhaps not support a simple supremacy of the PA, the norm does not argue against it, but in favour of finding an interpretation of "indirect expropriation" that is compatible with both agreements (this is not fully made clear in [4,27]). Furthermore, the above-mentioned connecting factors in Art. 31 VCLT make it clear that norms open to interpretation in a treaty (here the ECT) must be interpreted in such a way that they can be brought into line with other international law treaties (here the PA). How this can be achieved is examined in the following.

In order to conduct a systematic interpretation of the ECT in direct reference to Art. 31 VCLT, the contracting parties would first have to be states within the meaning of Art. 2(1) VCLT which are joint contracting parties to two treaties, namely the ECT and another treaty, such as the PA. States are distinguished by the characteristic factors of a state territory, a constitutive people and a state authority in the sense of the three-element theory of the

state according to Georg Jellinek [64] (p. 394 ff.). According to Art. 1(2) ECT, parties to the ECT are states and regional economic integration organizations that have agreed to be bound by the treaty and have ratified it. A regional economic integration organization is understood to be an organization formed by states to which the state has transferred competence over certain matters. This includes the power to make binding decisions in the matter transferred to it (Art. 1(3) ECT). The European Union (EU) serves as an example of this and is also party to the ECT. Since companies are recognised as legal entities under the ECT, the treaty grants them specific rights. A distinction must be made between contracting parties and beneficiaries of the ECT. Contracting parties, defined by Art. 1(2) ECT as a state or a regional economic integration organization, are granted rights and obligations by the ECT, whereas private persons, such as enterprises etc., resident in the territory of a contracting party only benefit from the awarded rights. The VCLT, however, only covers states and legal entities. The ECT protects companies that are resident in one of the member states and make investments in another state. The ECT grants them rights that are not accompanied by obligations.

At first glance, this looks like an argument against an interpretation of the ECT on the basis of the PA in the context of investment protection claims. In case of a dispute under international law between two states over the ECT and the PA, a systematic interpretation of the ECT based on the PA would not be possible if only one of the two states were a party to the treaty. However, the situation is different in investment protection claims. Here, a company is merely asserting a derived right from the relationship between two states which have ratified the ECT. Yet, this also implies that a company in this case cannot be placed in a better position as if the company's state of origin itself were a party to the proceedings. Thus, a restrictive interpretation of the ECT resulting from the PA can also be held against a company bringing an arbitration claim based on the ECT.

Accordingly, the following deals specifically with the relationship of the ECT to the PA, which, as a global climate protection agreement, binds 195 states and may be in tension with the ECT. The PA is a binding standard under international law, at least in its objective provision from Art. 2(1) PA, as discussed in earlier contributions by us and as also confirmed by the decision of the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) of 24.03.2021 [54,65,66]. According to Art. 2(1) lit. a PA, the parties shall aim to keep global warming to a level well below 2 degrees Celsius above pre-industrial levels and, if possible, to limit it to an increase of 1.5 degrees. Since the latter must be aimed for, this amounts in substance to a binding 1.5-degree limit [66,67] (see also [68]). The implementation of this target requires various measures to reduce emissions. These include reducing consumption, increasing efficiency and expanding renewable energies. In order to achieve the climate target, a transition to zero emissions is required by 2035—or even earlier since the IPCC works with optimistic empirical assumptions and calculates its carbon budget with a relatively low probability of achieving the target; however, the latter is inadmissible if the 1.5-degree limit is legally binding (elaborated in more detail in [22,54,66]). The next section illustrates that human rights arguments additionally support this reading.

Article 4(1) PA, demanding a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases only in the second half of this century, does not weaken the far-reaching obligation under Article 2(1) PA because Article 2(1) PA has priority by means of systematic interpretation (explained in detail in [60]; presupposing this, also [65]). This is supported by the fact that Article 4(3) PA is designed to reconcile the highest possible ambition of the parties and their different responsibilities due to different circumstances and abilities with the overall objective from Article 2(1) PA [69,70] (see also [71,72]). This interpretation is not impaired by the point that—within this framework—leeway for the design of nationally determined contributions (NDCs) has been granted to the parties.

The abandonment of fossil fuels as an energy source is unavoidable for the goals set in the PA [54,73,74]. Measured against this, the protection of all existing investments in the energy sector in the member states of the ECT can represent an obstacle to the energy transition. Moreover, it can impair climate protection ambitions since even fossil energy

forms, regardless of their climate-damaging nature, are extensively protected. This suggests that the ECT is incompatible with the PA, as it threatens to undermine the immediately necessary phase-out of fossil energy supply by imposing a high cost burden.

Generally speaking, the relationship between two treaties must always be considered from both perspectives [21] (omitted in [75–80]). Here, as demonstrated above, the PA gives strong indications that the protection of investments is to be interpreted narrowly. The parties to the PA have committed themselves to taking measures to limit global warming. Art. 2(1) PA is legally binding and requires the parties to take concrete action to protect the climate. This is not limited by the fact that concrete action measures for environmental and climate protection have not been explicitly stated in the ECT yet. Likewise, Art. 3 and Art. 4(3) PA require parties to set and communicate national targets, to review them regularly and to make the greatest possible efforts to achieve the climate target. Furthermore—this is another systematic argument—the preamble of the ECT already recognised the importance of the United Nations Framework Convention on Climate Change (UNFCCC), which was signed during the negotiations on the ECT [81], and which also recognises the relevance of environmental protection, energy efficiency, etc., as mentioned in the last section of this contribution. The ECT—even with the only very vague mention of indirect expropriation—is therefore open to interpretation, whereas the PA offers a relatively clear definition of content. All of this argues against the understanding of climate policy requirements that comply with the 1.5-degree limit as indirect expropriation within the framework of Art. 13 ECT. The concept of indirect expropriation must therefore be interpreted as limited to cases in which state actions actually have the effect of expropriation.

3.3. ECT, Human Rights and Ius Cogens

Furthermore, the interpretation of Art. 2 para. 1 PA in favour of a strong obligation towards climate change is supported by human rights law on an international, EU and national level as confirmed by various courts during the last years, e.g., the German Constitutional Court [65], courts in the Netherlands [82] (p. 94 ff.) [83]. Ireland [84], France [85] and Australia [86]. The focus in all these verdicts lies on some overall core ideas of human rights.

The preamble of the PA—as discussed in detail in earlier contributions—explicitly mentions that human rights are of enormous importance for climate protection. Human rights establish the obligation to secure elementary conditions of freedom, namely life, health and subsistence [21,82–94], since freedom logically implies a right to elementary preconditions for freedom. Elementary preconditions include a relatively stable world climate and environmental conditions that allow people to maintain their freedom [21,54,66,95]. Of course, there is always a need to balance different spheres of freedom. Therefore, a resulting human rights obligation to combat climate change is left primarily to political balancing (for example, because of the colliding freedom rights of consumers and enterprises); however, this leeway comes to an end when political action or inaction endangers the liberal democratic order itself [21] (for interpretation rules, see also [96,97]). This is precisely the effect that non-addressed climate change could have [18,96,98,99]. Due to such balancing limits, an ambitious climate policy is imperative from a human rights perspective [66] and includes the obligation to ensure that the transformation toward a 1.5 °C warmer world does not exacerbate poverty and vulnerability or creates new inequities but instead promotes equitable change [100,101].

This understanding of human rights and balancing limits established by these rights is further underlined by the precautionary principle as a general principle of international law. Precaution means taking measures in view of long-term, cumulating, or uncertain damages [21,102–106]. The precautionary principle does not fully prohibit causing irreversible harm by some kind of action (since precaution also implies balancing different risks and opportunities, and even daily life entails irreversible risks) but provides a tendency in this direction. Global warming exceeding the target of Art. 2 para. 1 PA will lead to such irreversible negative consequences on a global scale and therefore needs to be

mitigated. Even if some dispute the role of the precautionary principle in general [107,108], regarding climate change, the principle is clearly codified on several levels in national, EU, and international law, i.e., Art. 3 para. 3 UNFCCC, Art. 191 Treaty on the Functioning of the European Union and Art. 20a of the German Constitution (Grundgesetz). Moreover, precaution is included in human rights law, even beyond codification [21,54,82,83,86,95]. Human rights do not only protect against certain dangers today but also against future dangers if future dangers are irreversible, which applies exactly to climate change. Otherwise, the protection established by human rights would be undermined. This means that the bigger the impending damage, the more ambitious necessary protection measures have to be. Consequently, it is not enough to accept moderate probabilities when dealing with existential damages even if 100 percent certainty about future events can never be achieved [98]. Therefore ambitious climate protection with drastic GHG reductions is required.

Applying balancing rules derived from human rights guarantees for freedom and preconditions of freedom (besides the one referring to the stability of democracy mentioned above: those called suitability, necessity, efficiency, polluter pays principle etc.) enables not only the determination of a common obligation to preserve the climate but also to draw basic conclusions for burden sharing—as discussed in an earlier contribution [21,22]. Ostensibly, this might not seem important given that the global objective is zero emissions for all states. However, distributive issues matter with regard to expenses for mitigation, adaptation and loss and damage. In any case, as a balancing limit, a country cannot claim more emission rights than it is entitled to based on a per-capita calculation [21] because an existential good for whose genesis no one has contributed is endangered. There are even arguments in favour of an unequal distribution with regard to costs in favour of the countries of the Global South as EU member states such as Germany have emitted and are still emitting high amounts of GHGs per capita, which still prevail in the atmosphere. The reference to capacities and the polluter pays principle—both following as balancing limits from human-rights-based freedom—implies countries from the Global North must take actions beyond existing commitments to bear the costs of measures taken in the Global South (discussed in [87,109–111]). Nota bene, this does not rule out the possibility of buying emission rights from other countries or that, for reasons of capacity and the polluter pays principle—which point to the higher responsibility of Western states—an unequal distribution favouring the Global South seems more convincing. The remaining national carbon budget of an industrialized country can therefore at most be as high as it would be according to a distribution per capita but rather lower. Nevertheless, in order to preserve the democratic process and the system of checks and balances, only elected politicians can determine the exact extent of actions and the distribution of the costs for mitigation (as well as adaptation and loss and damage) under the premises of limited (!) fact-based and balancing-related vagueness.

Therefore, the Paris Agreement and human rights underline a legally binding obligation for small carbon budgets, even smaller than those estimated budgets of the IPCC. As shown elsewhere, the core principles of human rights also represent general principles of international law [21]. Furthermore, one can even ask whether these general legal principles should be regarded as ius cogens—i.e., as compulsory and generally binding law independent of the contractual arbitrariness of individual consenting states, as a relatively rudimentary and also unwritten constitution of international law. Following that, a human-rights-based obligation towards climate protection would even arise from a higher normative level than the ECT, thereby strengthening the overall argumentation.

Taking all of this into consideration means that arbitral tribunals would have to reject claims as a rule. If they do not do so then EU member states could, at least in certain constellations, take action against such decisions of the arbitral tribunals before the European Court of Justice or national courts, as mentioned at the beginning of the present article—a course of action now further supported by the re-interpretation of the ECT presented here.

3.4. Legitimacy of an Exit from the ECT?

The aforementioned considerations would be less explosive if a party could simply withdraw from the ECT as a signatory state. In principle, this is possible. According to Art. 47(1) ECT, a contracting party is allowed to declare its withdrawal in writing five years after the treaty entered into force, i.e., after joining the treaty. Unless otherwise specified by the withdrawing party in the declaration of withdrawal, the withdrawal becomes effective one year after the administrative body has received the resignation, according to Art. 47(2) ECT. However, Art. 47(3) ECT, the so-called "zombie clause", stipulates that the provisions of the ECT shall apply to investments for a further 20 years after the withdrawal has become effective. Thus, investments made in the territory of the withdrawing party by investors of another party or in the territory of other parties by investors of that party continue to be protected by the granted rights of the ECT [112–115]. Italy, for example, has already faced seven more arbitration claims based on the ECT since its withdrawal from the treaty in 2016 [116–128].

Therefore, the additional question to be asked here is whether a withdrawal from the contract would also be possible due to a frustration of the contract—with the consequence of a release from the 20-years subsequent liability. Particularly in the case of long-term contracts, circumstances which were not apparent at the time the contract was concluded, but which may make it excessively difficult to fulfil the contractual obligations may sometimes arise. Even in the 12th century it was recognized that in such cases some deviation from the principle pacta sunt servanda should be allowed [129]. In this context, the problem of the effect of changed circumstances basically becomes a problem of interpretation—the common intentions and expectations of the parties must be determined. This would still be in accordance with the principle of pacta sunt servanda, which is not absolute: a contract is not breached if it is not applied in the circumstances in which the parties did not intend or expect its application [130,131].

According to the German Constitutional Court ruling of 30 January 1973, a contract would be frustrated under international law "if the conditions that existed at the time of the conclusion of the contract have changed fundamentally in the meantime and, in view of this change, adherence to the contract [...] has become unreasonable" [132]. This issue has also been addressed by other courts in many jurisdictions. In fact, in many legal systems there are doctrines (statute or case law) that identify certain circumstances as exceptions to the binding nature of the contract. The term for this varies in different legal systems, such as: "Wegfall der Geschäftsgrundlage" in Germany; "frustration of contract" in England; "eccessiva onerosità sopravvenuta" in Italy; and a "rebus sic stantibus" clause in Spain [129,133,134]. Issues of termination of contracts due to changed circumstances have also been referred to by the ICJ in the case *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) for example, it named the "state of necessity" exception as a reason for non-performance of contractual obligations recognized under international law [135–140].

With regard to the ECT, this means that the stability of the physical conditions of existence on Earth is a necessary condition for supplying the world's population with energy and thus for the application of the ECT. Continuing climate change and the associated destruction of the earth can lead to irreversible damages representing a fundamental change compared with the time when the contract was established. This could result in a release from the obligations under the ECT—since humankind finds itself in a situation that has never existed before—or at least trigger the obligation to adapt the contract to the now different circumstances.

Moreover, the "zombie clause" could be rendered obsolete by a collective withdrawal of many countries from the ECT. For this to happen, the withdrawing countries would have to agree not to hold Art. 47(3) ECT against each other, as is the case, for example, with the member states of the EU. According to this Article, former member states of the ECT could still be sued on the basis of the provisions of the ECT for another 20 years after their withdrawal. Parties deciding to withdraw from the ECT at the same time can agree bilaterally or multilaterally to waive the application of Art. 47(3) ECT, i.e., agree to exclude

this legal norm from their consent. This, however, is not possible on a unilateral basis, amongst other reasons because according to Art. 46 ECT reservations against the treaty are impossible during membership (apart from the fact that they would have had to be articulated upon joining the treaty). A joint withdrawal, however, would have the effect of excluding enormous claims for damages by investors of the participating countries thereby reducing the overall risk of being sued in front of an international arbitration court based on the ECT [78].

4. Discussion and Conclusions: Options for Reforming the ECT

Our analysis has demonstrated that an interpretation of the ECT that strongly limits damage claims of fossil fuel companies that may thwart energy transition is possible. By those means, the conflict with climate policy—as well as with overall needs for post-fossility due to the war in Ukraine—can be strongly minimized from the outset. In other words, taking into account other norms of the ECT as well as legal interpretative effects of the Paris Agreement and international human rights, the claim for compensation under Art. 13 ECT is less far-reaching than assumed.

Admittedly, all the above-mentioned issues would be obsolete if there was a major reform of the ECT to happen, although such a reform is not very likely due to a lack of consensus between states which would be required for reforming an international law treaty. Due to extensive criticism of the existing ECT, there has been an attempt to renegotiate the ECT since 2020 [141–147]. This process of modernization is driven, among others, by the EU [141]. However, critics consider the negotiation subjects as cosmetic changes only. No fundamental or far-reaching changes have been discussed in the negotiation rounds so far [148,149]. There have been eleven rounds yet, the most recent of which took place in June 2022. This focused on the impact of the current global political situation on energy supply and the ECT. In addition, the Energy Charter Conference addressed the definition of some terms in the Treaty, including investment, fair and equitable treatment, indirect expropriation, right to regulation, sustainable development and social responsibility, and economic activity in the energy sector. According to the Energy Charter Conference, compromise proposals and progress were made. However, concrete results have not been released as of yet and it remains to be seen how effective the eleventh round of negotiations has been in terms of modernizing the ECT [150]. Even if a reform was proposed, its adoption and implementation by all parties is uncertain [151–153]. This is also due to the fact that some parties, such as Japan, which have strongly invested in coal production, do not have an interest in amending the treaty [154,155], partly because billions in damages are already emerging from ongoing or expected proceedings [156,157]. If unofficial statements made in the summer and autumn of 2022 were true, according to which investment protection would no longer apply to new investments in fossil fuels from the summer of 2023 on, this would indeed represent progress. However, it would leave the protection of the existing fossil fuel economy in place for at least ten years and therefore not really help in fighting an urgent environmental crisis.

An important institution for a possible ECT reform is the Energy Charter Conference, which discusses planned amendments and other matters concerning the ECT. Art. 34(3) ETC specifies all tasks and rights of the Energy Charter Conference. According to Art. 34(1) ECT, the meetings take place periodically. The possibility of amending the ECT arises from the treaty itself. According to Art. 36(1) ECT, a unanimous vote is required, as is usually the case in international law. However, this does not apply to matters concerning Art. 34 ECT (the Energy Charter Conference), Art. 35 ECT (the Secretariat) or Annex T (transitional measures of the parties under Art. 32(1) ECT). An amendment to the ECT requires all contracting parties to participate in the redrafting, to adopt a new version uniformly as contracting parties and to agree to it by consensus. Unanimity is also required when votes concern the following matters: approvals of joining the ECT according to Art. 41 by states and organizations after 16.06.1995 (Art. 36(1) lit. b ECT); authorization of the negotiation of association agreements and approval or adoption of their texts (Art. 36(1) lit. c ECT);

approval of modifications to Annexes EM (on energy materials and products in accordance with Art. 1(4) ECT), NI (on non-applicable energy materials and products for definitions of "economic activity in the energy sector" in accordance with Art. 1(5) ECT), W (on exceptions and rules governing the application of the provisions of the WTO Agreement in accordance with Art. 29(2) lit. a ECT) and B (formula for allocating charter costs in accordance with Art. 37(3) ECT); approval of technical changes to the annexes of the treaty (Art. 36(1) lit. e ECT) or approval of the nomination of members of the panel by the Secretary General according to Annex D para. 7 (Art. 36(1) lit. f ECT). The requirement of unanimity according to Art. 36(1) ECT indicates the importance of voting within the Energy Charter Conference. Each voting contracting party therefore has practically a veto power which can significantly influence the decisions of the Energy Charter Conference [158].

Since international law depends on consensual behaviour and treaty compliance, it follows from the PA and human rights law that at least an attempt must be made to modify the provisions of the ECT through negotiations. Contracting parties can thereby exert pressure to withdraw from the treaty otherwise. The difficulty is that the investors, the ones who benefit from and are protected by the ECT, are not contracting parties. Insofar there is the danger that even in the case of an agreement reached at short notice, they could sue their way out of the still binding ECT before a non-transparent arbitral tribunal. If the compensation regime was to be reformed, at least the following aspects could be considered: (1) no more compensation for lost profits; (2) compensation for investments made only to the extent that the facilities have not already been depreciated anyway according to the applicable economic regulations; (3) no compensation at all for facilities that have not been used yet (e.g., gas pipelines) and that are also suitable for transporting renewable energies (e.g., hydrogen) at a reasonable financial cost; (4) no more claims for companies that are majority-owned by a state that is a party to the ECT, this also applies to the sale of the state's shares to private parties after a certain deadline; (5) only legal actions in front of national courts; and (6) no protection for future fossil investments.

In the end, a reinterpretation or a reform of the ECT could overcome a strange contradiction. For some years now, there has been a worldwide boom in climate lawsuits that centrally assert human rights—in other words, they claim that it is not climate protection but lack of climate protection that poses the greater threat to freedom [22,159]. In sharp contrast to this (and to the old economic demand to internalise external costs), ECT allows companies to be paid by the public at large for refraining from harming the climate and thus harming people and their elementary preconditions for freedom. At a time when, as mentioned, the need for rapid post-fossility is increasingly recognised for further reasons (notably the war in Ukraine), this should be stopped.

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References and Notes

1. Hobér, K. Investment Arbitration and the Energy Charter Treaty. *J. Int. Disput. Settl.* **2010**, *1*, 153–190. [CrossRef]
2. Kreindler, R.H. Rechtsschutz für ausländische Direktinvestitionen im Energiesektor: Neue Möglichkeiten in der Investitionsschiedsgerichtsbarkeit. In *Zwischen Vertragsfreiheit und Verbraucherschutz. Festschrift für Friedrich Graf von Westphalen zum 70. Geburtstag*; Genzow, F.C., Grunewald, B., Schulte-Nötke, H., Eds.; Schmidt: Cologne, Germany, 2010; pp. 433–440.
3. Belyi, A. International Energy Governance: Weaknesses of Multilateralism. *Int. Stud. Perspect.* **2014**, *15*, 313–328. [CrossRef]
4. Bernasconi-Osterwalder, N.; Brauch, M.D. Redesigning the Energy Charter Treaty to Advance the Low-Carbon Transition. *TDM 1*. 2019. Available online: https://www.transnational-dispute-management.com/article.asp?key=2632 (accessed on 16 November 2022).
5. Jaś-Nowopolska, M. The Influence of the Energy Charter Treaty on the European Energy Market. *Int. Comp. Jurisprud.* **2018**, *4*, 77–89.

6. Energy Charter Conference. Energy Charter Treaty—Energy Charter. 2019. Available online: https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/ (accessed on 28 June 2021).
7. European Parliament. The Energy Charter Treaty (with Incorporated Trade Amendment) and Related Documents. 2014. Available online: https://www.europarl.europa.eu/meetdocs/2014_2019/documents/itre/dv/energy_charter_/energy_charter_en.pdf (accessed on 16 November 2022).
8. Selivanova, Y. International Energy Governance: The Role of the Energy Charter. In *Proceedings of the ASIL Annual Meeting*; Cambridge University Press: Cambridge, UK, 2012; Volume 106, pp. 394–398.
9. Chalker, J.; Hölscher, I. Der Energiecharta-Vertrag: Normen, Regeln, Implementierung. *Osteuropa* **2004**, *54*, 55–67.
10. Tienhaara, K. Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement. *Transnatl. Environ. Law* **2018**, *7*, 229–250. [CrossRef]
11. Tienhaara, K.; Downie, C. Risky Business? The Energy Charter Treaty, Renewable Energy, and Investor-State Disputes. *Glob. Gov. Rev. Multilater. Int. Organ.* **2018**, *24*, 451–471. [CrossRef]
12. Escher, A.; Sliskovic, V. Aktuelle Entwicklungen des Investitionsschutzrechts. TTIP und Energy Charter Treaty im Lichte der Energiewende und des Pariser Klimaschutzübereinkommens. *Recht Der Int. Wirtsch.* **2016**, *62*, 190–201.
13. Gotev, G. Nord Stream 2 Seeks Arbitration in Dispute with EU Commission. EURACTIV.com 26.09.2019. Available online: https://www.euractiv.com/section/energy/news/nord-stream-2-seeks-arbitration-in-dispute-with-eu-commission/ (accessed on 28 March 2022).
14. Götze, S. Klimakrise: Die Irrlehre von der teuren Ökowende. 2021. Available online: https://www.msn.com/de-de/finanzen/top-stories/klimakrise-die-irrlehre-von-der-teuren-%C3%B6kowende/ar-AAO4B4j?ocid=msedgntp (accessed on 28 March 2022).
15. Schmidt, N.; Maarfield, C. Climate Action Network (CAN) Europe: "Der Energiecharta-Vertrag ist ein mächtiges Instrument für Investoren". *Investig. Eur.* 2021. Available online: https://www.investigate-europe.eu/de/2021/cornelia-maarfield-of-climate-action-network/ (accessed on 29 March 2022).
16. PowerShift. Offener Brief zum Energiecharta-Vertrag (Energy Charta Treaty). 2019. Available online: https://power-shift.de/offener-brief-zum-energiecharta-vertrag-energy-charta-treaty/ (accessed on 28 March 2022).
17. IPCC. Climate Change 2021: The Physical Science Basis. In *Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*; Cambridge University Press: Cambridge, UK, 2021.
18. Hausfather, Z. Analysis: How Much 'Carbon Budget' Is Left to Limit Global Warming to 1.5C? Carbon Brief 09.04.2018. Available online: https://www.carbonbrief.org/analysis-how-much-carbon-budget-is-left-to-limit-global-warming-to-1-5c (accessed on 26 July 2021).
19. Burke, A.; Fishel, S. A coal elimination treaty 2030: Fast tracking climate change mitigation, global health and security. *Earth Syst. Gov.* **2020**, *3*, 100046. [CrossRef]
20. Rath, T.; Ekardt, F. EU-Emissionshandels-Reform, Wärmewende, EU-Sozialrecht und die digitale Transformation. *KlimR* **2022**, *138*, 171.
21. Ekardt, F. *Sustainability: Transformation, Governance, Ethics, Law*; Springer: Dordrecht, The Netherlands, 2019. [CrossRef]
22. Ekardt, F.; Bärenwaldt, M.; Heyl, K. The Paris Target, Human Rights, and IPCC Weaknesses: Legal Arguments in Favour of Smaller Carbon Budgets. *Environments* **2022**, *9*, 112. [CrossRef]
23. Ekardt, F. Suffizienz als Governance- und Rechtsproblem: Das Beispiel nachhaltige Digitalisierung. *ZUR* **2022**, *9*, 472–481.
24. Falcone, P.M. Editorial to the 'Special Issue—Energy transition in a circular economy perspective' of AIMS Energy. *AIMS Energy* **2022**, *10*, 582–584. [CrossRef]
25. Falcone, P.M. Analysing stakeholders' perspectives towards a socio-technical change: The energy transition journey in Gela Municipality. *AIMS Energy* **2018**, *6*, 645–657. [CrossRef]
26. Müller-Hoff, C.; Duarte, L. Don't Stick to a Fossil Treaty—Pull the Plug on the Energy Charter Treaty. *Völkerrechtsblog* **2022**. [CrossRef]
27. Eberhardt, P.; Olivet, C.; Steinfort, L. *One Treaty to Rule Them All. The Ever-Expanding Energy Charter Treaty and the Power It Gives Corporations to Halt the Energy Transition*; Corporate Europe Observatory, Transnational Institute: Brussels, Belgium; Amsterdam, The Nethlands, 2018.
28. Garske, B.; Schmid, M. Die Diskussion um die Investor-Staat-Streitbeilegung im Kontext von TTIP. In *Globalisierung, Freihandel und Umweltschutz in Zeiten von TTIP. Ökonomische, rechtliche und politische Perspektiven*; Ekardt, F., Unnerstall, H., Garske, B., Eds.; Metropolis Verlag: Marburg, Germany, 2016; pp. 93–134.
29. nternational Energy Charter. Contracting Parties and Signatories. 2021. Available online: https://www.energychartertreaty.org/treaty/contracting-parties-and-signatories/ (accessed on 28 June 2021).
30. Blandfort, F. *Investitionsschutz im Mehrebenensystem. Eine rechtsvergleichende Untersuchung des Investitionsschutzes im Energiesektor durch den Energy Charter Treaty, das Grundgesetz, die EMRK und das Unionsrecht*; Nomos: Baden-Baden, Germany, 2020. [CrossRef]
31. Hoffmann, R.T. *Divergenz und Transformation. Verfassungstheoretische Untersuchung des Eigentumsschutzes in der demokratischen Eigentumsverfassung und im Investitionsschutzregime*; Nomos: Baden-Baden, Germany, 2019. [CrossRef]
32. Kuzhatov, B.G. The Energy Charter Treaty reform: Why and how to reach a consensus on fair and equitable treatment? *Energy Policy* **2022**, *163*, 112769. [CrossRef]

33. Schreuer, C.H. Fair and Equitable Treatment (FET): Interactions with other Standards. *TDM 5*. 2007. Available online: https://www.transnational-dispute-management.com/article.asp?key=1138 (accessed on 16 November 2022).
34. Karimov, E. Umbrella Clauses within Energy Charter Treaty. *Baku State Univ. Law Rev.* **2018**, *4*, 80–93.
35. Reinhardt, D. Vattenfall vs. Deutschland (II) und das Internationale Investitionsschutzregime in der Kritik. *Kritische Justiz* **2014**, *47*, 86–94. Available online: http://www.jstor.org/stable/24238839 (accessed on 16 November 2022). [CrossRef]
36. Axelrod, R.S. The European Energy Charter Treaty: Reality or illusion? *Energy Policy* **1996**, *24*, 497–505. [CrossRef]
37. WTO. Legal Texts: The General Agreement on Tariffs and Trade (GATT 1947). Available online: https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm (accessed on 19 July 2021).
38. Gundel, J. Regionales Wirtschaftsvölkerrecht in der Entwicklung: Das Beispiel des Energiecharta-Vertrages. *Archiv des Völkerrechts* **2004**, *42*, 157–183. Available online: http://www.jstor.org/stable/40800078 (accessed on 16 November 2022). [CrossRef]
39. Zhang, Q. Analysis of the impact on sustainable development by investment regulations in the Energy Charter Treaty. *J. World Energy Law Bus.* **2015**, *8*, 542–558. [CrossRef]
40. Krajewski, M. Vattenfall, der deutsche Atomausstieg und das internationale Investitionsrecht. *Juridikum* **2013**, *3*, 348–360. Available online: https://www.juridikum.at/fileadmin/user_upload/ausgaben/juridikum_2013-3-pdf (accessed on 16 March 2022).
41. Bergby, I.F. Grundlagen und aktuelle Entwicklungen im Streitbeilegungsrecht nach dem Energiechartavertrag aus norwegischer Perspektive. In *Beiträge zum Transnationalen Wirtschaftsrecht*; Tietje, C., Kraft, G., Sethe, R., Eds.; Inst. für Wirtschaftsrecht, Forschungsstelle für Transnationales Wirtschaftsrecht: Halle, Germany, 2003; p. 23. Available online: https://telc.jura.uni-halle.de/sites/default/files/altbestand/Heft23.pdf (accessed on 10 March 2022).
42. Lang, A. Die Autonomie des Unionsrechts und die Zukunft der Investor-Staat-Streitbeilegung in Europa nach Achmea (The Autonomy of EU Law and the Future of Investor-State Dispute Settlement in Europe after Achmea). 2018. Available online: https://ssrn.com/abstract=3178088 (accessed on 14 March 2022).
43. Tietje, C. Grundstrukturen und aktuelle Entwicklungen des Rechts der Beilegung internationaler Investitionsstreitigkeiten. In *Arbeitspapiere aus dem Institut für Wirtschaftsrecht*; Tietje, C., Kraft, G., Eds.; Inst. für Wirtschaftsrecht, Forschungsstelle für Transnationales Wirtschaftsrecht: Halle, Germany, 2003; p. 10. Available online: https://tietje.jura.uni-halle.de/sites/default/files/altbestand/Heft10.pdf (accessed on 29 March 2022).
44. Alvarez, G.M. Redefining the Relationship Between the Energy Charter Treaty and the Treaty of Functioning of the European Union: From a Normative Conflict to Policy Tension. *ICSID Rev.—Foreign Invest. Law J.* **2018**, *33*, 560–581. [CrossRef]
45. Rösch, K.Ö. *Intraeuropäisches Investitionsrecht. Die Zulässigkeit von Schiedsverfahren und deren Harmonisierung mit dem Unionsrecht*; Nomos: Baden-Baden, Germany, 2017. [CrossRef]
46. Maier, H.J. *Handbuch der Schiedsgerichtsbarkeit. Ein Handbuch der deutschen und internationalen Schiedsgerichtspraxis*; Neue Wirtschafts-Briefe: Herne, Germany, 1998.
47. Verburg, C. Modernising the Energy Charter Treaty: An Opportunity to Enhance Legal Certainty in Investor-State Dispute Settlement. *J. World Invest. Trade* **2019**, *20*, 425–454. [CrossRef]
48. Baumgart, M.; Mantilla Blanco, S. Electrabel v. Ungarn: Aktuelle Entwicklungen beim Schutz von Auslandsinvestitionen nach dem Vertrag über die Energiecharta. *Kölner Schrift zum Wirtschaftsrecht* **2016**, *7*, 179–187. [CrossRef]
49. Klodt, H.; Klein, M.; Bungenberg, M.; Felbermayr, G.; Schick, G. Investitionsschutzabkommen: Mehr Rechtssicherheit oder Verzicht auf Souveränität? *Wirtschaftsdienst* **2014**, *94*, 459–478. [CrossRef]
50. Hoffmann, R.T. Über Richten und Schlichten. *Völkerrechtsblog* **2021**. [CrossRef]
51. Klodt, H. *TTIP: Chance Handel—Risiko Investorenschutz. Kiel Policy Brief 84*; Kiel Institute for the World Economy (IfW): Kiel, Germany, 2015; Available online: https://www.econstor.eu/handle/10419/106937 (accessed on 16 November 2022).
52. Hitzig, S. Investitions-Schiedsgerichte (ISDS) und Menschenrechte. humanrights.ch. 2017. Available online: https://www.humanrights.ch/de/ipf/archiv/international/nachrichten/investitions-schiedsgerichte-menschenrechte (accessed on 2 August 2021).
53. Fouquet, D.; Voß, J.O. Investitionsschutz für erneuerbare Energien in Europa. Anwendbarkeit und Auslegung des Energiecharta-Vertrages. *IWRZ* **2016**, *1*, 114–120.
54. Wieding, J.; Stubenrauch, J.; Ekardt, F. Human Rights and Precautionary Principle: Limits to Geoengineering, SRM, and IPCC Scenarios. *Sustainability* **2020**, *12*, 8858. [CrossRef]
55. Layard, A. The European Energy Charter. *Eur. Environ. Law Rev.* **1995**, *4*, 150–156. [CrossRef]
56. Alvarez, G.M.; Potocnik, M. *The Battle of the Giants: EU Law, ECHR and the Energy Charter Treaty; the Rematch to Protect Property Rights in Europe*; Working paper; University of Aberdeen: Aberdeen, UK, 2020.
57. Deutscher Bundestag. Klagemöglichkeiten von Energiekonzernen im Rahmen internationaler Investitionsschutzverträge. 2009. Available online: https://www.bundestag.de/resource/blob/410888/57e0466c45775d112a92dab263094de9/WD-5-069-09-pdf-data.pdf (accessed on 7 March 2022).
58. Paasivirta, E. The Energy Charter Treaty and Investments Contracts: Towards Security of Contracts. In *The Energy Charter Treaty. An East-West Gateway for Investments and Trade*; Wälde, T., Ed.; Kluwer Law International: London, UK, 1996; pp. 349–364.
59. Wolfgram, S. *Investitionsschiedsgerichtsbarkeit nach dem Vertrag über die Energiecharta*; Lit: Hamburg, Germany, 2001.
60. Happ, R. Investitionsschiedsverfahren unter dem Energiechartavertrag: AES SummitGeneration/Ungarn. *Recht der Energiewirtschaft* **2002**, *2*, 39–44.

61. Salacuse, J.W. The Energy Charter Treaty and Bilateral Investment Treaty Regimes. In *The Energy Charter Treaty. An East-West Gateway for Investments and Trade*; Wälde, T., Ed.; Kluwer Law International: London, UK, 1996; pp. 349–364.
62. Stern, N. *Stern Review: The Economics of Climate Change*; Cambridge University Press: Cambridge, UK, 2007. [CrossRef]
63. Arnauld, A. *Völkerrecht*, 3rd ed.; C.F. Müller: Heidelberg, Germany, 2016.
64. Jellinek, G. *Allgemeine Staatslehre*; Springer: Berlin/Heidelberg, Germany, 1929.
65. BVerfG. Decision of 24.03.2021—1 BvR 2656/18 et al., BVerfGE 157, 30
66. Ekardt, F.; Wieding, J.; Zorn, A. Paris Agreement, Precautionary Principle and Human Rights: Zero Emissions in Two Decades? *Sustainability* **2018**, *10*, 2812. [CrossRef]
67. Ekardt, F.; Heß, F. Intertemporaler Freiheitsschutz, Existenzminimum und Gewaltenteilung nach dem BVerfG-Klima-Beschluss—Freiheitsgefährdung durch Klimawandel oder durch Klimapolitik? *Zeitschrift für Umweltrecht* **2021**, *11*, 579–585.
68. Nückel, D. Rechtlicher Charakter des Pariser Übereinkommens—Hard law oder soft law? *ZUR* **2015**, *10*, 525–531.
69. Voigt, C.; Ferreira, F. Differentiation in the Paris Agreement. *Clim. Law* **2016**, *6*, 58–74. [CrossRef]
70. Voigt, C.; Ferreira, F. 'Dynamic Differentiation': The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement. *Transnatl. Environ. Law* **2016**, *5*, 285–303. [CrossRef]
71. Hare, B.; Roming, N.; Schaeffer, M.; Schleussner, C.-F. *Implications for the 1.5 °C Limit in the Paris Agreement for Climate Policy and Decarbonization*; Climate Analytics gGmbH: Berlin, Germany, 2016.
72. Tanaka, K.; O'Neill, B.C. The Paris Agreement zero-emissions goal is not always consistent with the 1.5 °C and 2 °C temperature targets. *Nat. Clim. Chang.* **2018**, *8*, 319–324. [CrossRef]
73. Stubenrauch, J.; Ekardt, F.; Hagemann, K.; Garske, B. *Forest Governance. Overcoming Trade-Offs between Land-Use Pressures, Climate and Biodiversity Protection*; Springer Nature: Dordrecht, The Netherlands, 2022.
74. Van de Graaf, T. Is OPEC dead? Oil exporters, the Paris agreement and the transition to a post-carbon world. *Energy Res. Soc. Sci.* **2016**, *23*, 182–188. [CrossRef]
75. McGlade, C.; Ekins, P. The geographical distribution of fossil fuels unused when limiting global warming to 2 °C. *Nature* **2015**, *517*, 187–190. [CrossRef]
76. Marhold, A.-A. The Nexus between the WTO and the Energy Charter Treaty in Sustainable Global Energy Governance: Analysis and Policy Implications. *ICTSD Glob. Platf. Clim. Chang. Trade Sustain. Energy* **2016**, *7*. Available online: https://ssrn.com/abstract=2809196 (accessed on 11 November 2022).
77. Dauphin, T. Gefahr für den Klimaschutz. 10 Gründe, warum die EU und ihre Mitgliedstaaten aus dem Energiecharta-Vertrag aussteigen müssen. Friends of the Earth Europe/BUND. 2020. Available online: https://www.bund.net/fileadmin/user_upload_bund/publikationen/ttip_und_ceta/wirtschaft_welthandel_energiecharta_10_gruende.pdf. (accessed on 9 March 2022).
78. Brauch, M.D. Should the European Union Fix, Leave or Kill the Energy Charter Treaty? *SSRN Electron. J.* **2021**. [CrossRef]
79. Flues, F.; Eberhardt, P.; Olivet, C. Busting the Myths around the Energy Charter Treaty. A Guide for Concerned Citizens, Activists, Journalists and Policymakers. PowerShift, Corporate Europe Observatory (CEO) and the Transnational Institute (TNI). 2020. Available online: https://power-shift.de/wp-content/uploads/2020/12/Busting-the-myths-around-the-Energy-Charter-Treaty-small.pdf. (accessed on 4 March 2022).
80. Miles, W.; Lawry-White, M. Arbitral Institutions and the Enforcement of Climate Change Obligations for the Benefit of all Stakeholders: The Role of ICSID. *ICSID Rev.—Foreign Invest. Law J.* **2019**, *34*, 1–31. [CrossRef]
81. Cima, E. Retooling the Energy Charter Treaty for climate change mitigation: Lessons from investment law and arbitration. *J. World Energy Law Bus.* **2021**, *14*, 75–87. [CrossRef]
82. Verschuuren, J. The State of the Netherlands v Urgenda Foundation: The Hague Court of Appeal upholds judgement requiring the Netherlands to further reduce its greenhouse gas emissions. *Rev. Eur. Comp. Int. Environ. Law* **2019**, *28*, 94–98. [CrossRef]
83. The Hague District Court. C/ 09/ 571932/ HA ZA 19-379, 25.05.2021
84. Friends of the Irish Environment. v The Government of Ireland & Ors. IESC 49, 2020
85. Tribunal Administratif de Paris. N°1904967, 1904968, 1904972, 1904976/ 4-1, 14.10.2021
86. Bush, Z. Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment. *Aust. Environ. Rev.* **2021**, *36*, 89–91.
87. Rajamani, L. The Increasing Currency and Relevance of Rights-Based Perspectives in the International Negotiations on Climate Change. *J. Environ. Law* **2010**, *22*, 391–429. [CrossRef]
88. Calliess, C. *Rechtsstaat und Umweltstaat. Zugleich ein Beitrag zur Grundrechtsdogmatik im Rahmen mehrpoliger Verfassungsrechtsverhältnisse*; Mohr Siebeck: Tübingen, Germany, 2001.
89. Koch, T. *Der Grundrechtsschutz des Drittbetroffenen: Zur Rekonstruktion der Grundrechte als Abwehrrechte*; Mohr Siebeck: Tübingen, Germany, 2000.
90. Skillington, T. Climate change and the human rights challenge: Extending justice beyond the borders of the nation state. *Int. J. Hum. Rights* **2012**, *16*, 1196–1212. [CrossRef]
91. Verheyen, R. *Climate Change Damage and International Law: Prevention, Duties and State Responsibility*; Nijhoff & Brill: Leiden, The Netherlands; Boston, UK, 2005.
92. Unnerstall, H. *Rechte zukünftiger Generationen*; Königshausen & Neumann: Würzburg, Germany, 1999.
93. Schmidt-Radefeldt, R. *Ökologische Menschenrechte. Ökologische Menschenrechtsinterpretation der EMRK und ihre Bedeutung für die umweltschützenden Grundrechte des Grundgesetzes*; Nomos: Baden-Baden, Germany, 2000.

94. Bauer, N.; Rose, S.K.; Fujimori, S.; Van Vuuren, D.P.; Weyant, J.; Wise, M.; Cui, Y.; Daioglou, V.; Gidden, M.J.; Kato, E.; et al. Global energy sector emission reductions and bioenergy use: Overview of the bioenergy demand phase of the EMF-33 model comparison. *Clim. Chang.* **2020**, *163*, 1553–1568. [CrossRef]
95. Read, R.; O'Riordan, T. The Precautionary Principle Under Fire. *Environ. Sci. Policy Sustain. Dev.* **2017**, *59*, 4–15. [CrossRef]
96. Šušnjar, D. *Proportionality, Fundamental rights, and Balance of Powers*; Nijhoff & Brill: Leiden, The Netherlands, 2010.
97. Meßerschmidt, K. *Gesetzgebungsermessen*; Berlin-Verlag Spitz & Nomos Verlagsgesellschaft: Berlin, Germany, 2000.
98. Rajamani, L.; Werksman, J. The legal character and operational relevance of the Paris Agreement's temperature goal. *Philos. Trans. R. Soc. A* **2018**, *376*, 20160458. [CrossRef]
99. Rogelj, J.; Schaeffer, M.; Friedlingstein, P.; Gillett, N.P.; Van Vuuren, D.P.; Riahi, K.; Allen, M.; Knutti, R. Differences between budget estimates unravelled. *Nat. Clim. Chang.* **2016**, *6*, 245–252. [CrossRef]
100. Patterson, J.J.; Thaler, T.; Hoffmann, M.; Hughes, S.; Oels, A.; Chu, E.; Mert, A.; Huitema, D.; Burch, S.; Jordan, A. Political feasibility of 1.5 °C societal transformations: The role of social justice. *Curr. Opin. Environ. Sustain.* **2018**, *31*, 1–9. [CrossRef]
101. Robinson, M.; Shine, T. Achieving a climate justice pathway to 1.5 °C. *Nat. Clim. Chang.* **2018**, *8*, 564–569. [CrossRef]
102. O'Riordan, T.; Cameron, J. *Interpreting the Precautionary Principle*; Routledge: London, UK, 2013.
103. Sands, P.; Peel, J. *Principles of International Environmental Law*, 4th ed.; Cambridge University Press: Cambridge, UK, 2018.
104. Gardiner, S.M. A Core Precautionary Principle. *J. Political Philos.* **2006**, *14*, 33–60. [CrossRef]
105. Garske, B. *Ordnungsrechtliche und ökonomische Instrumente der Phosphor-Governance*; Metropolis: Marburg, Germany, 2019.
106. Stubenrauch, J. *Phosphor-Governance in ländervergleichender Perspektive—Deutschland, Costa-Rica, Nicaragua. Ein Beitrag zur Nachhaltigkeits- und Bodenschutzpolitik*; Metropolis: Marburg, Germany, 2019.
107. Sunstein, C.R. *Laws of Fear: Beyond the Precautionary Principle (The Seeley Lectures)*; Cambridge University Press: Cambridge, UK, 2005.
108. Gardiner, S.M. *A Perfect Moral Storm—The Ethical Tragedy of Climate Change*; Oxford University Press: Oxford, UK, 2011.
109. MacDougall, A.H. The Transient Response to Cumulative CO2 Emissions: A Review. *Curr. Clim. Chang. Rep.* **2016**, *2*, 39–47. [CrossRef]
110. Collins, W.J.; Webber, C.P.; Cox, P.M.; Huntingford, C.; Lowe, J.; Sitch, S.; Chadburn, S.E.; Comyn-Platt, E.; Harper, A.B.; Hayman, G.; et al. Increased importance of methane reduction for a 1.5 degree target. *Environ. Res. Lett.* **2018**, *13*, 1–9. [CrossRef]
111. Frankhauser, S.; Smith, S.M.; Allen, M.; Axelsson, K.; Hale, T.; Hepburn, C.; Kendall, J.M.; Khosla, R.; Lezaun, J.; Mitchell-Larson, E.; et al. The meaning of the zero and how to get it right. *Nat. Clim. Chang.* **2022**, *12*, 15–21. [CrossRef]
112. Schmidt, N. Die Zombie-Klausel. IPG Journal 14.03.2021. Available online: https://www.ipg-journal.de/rubriken/wirtschaft-und-oekologie/artikel/europaeische-energiecharta-5044/ (accessed on 11 August 2021).
113. Attac. Der Energiecharta-Vertrag. Goldgrube für Profite—Bremsklotz auf dem Weg zur Energiewende und zu Klimagerechtigkeit. 2021. Available online: https://www.attac.de/kampagnen/handelsabkommen/einzelne-handels-und-investitionsabkommen/energiecharta-vertrag (accessed on 28 March 2022).
114. BMWi. Schriftliche Frage an die Bundesregierung im Monat Februar 2021. Frage Nr. 444. Bundesministerium für Wirtschaft und Energie. Available online: https://www.bmwi.de/Redaktion/DE/Parlamentarische-Anfragen/2021/01/02/03/2-444.pdf?__blob=publicationFile&v=4 (accessed on 28 March 2022).
115. Taylor, K. Energy Charter Treaty Strikes Again as Uniper Sues Netherlands over Coal Phase-Out. EURACTIV.com 20.04.2021. Available online: https://www.euractiv.com/section/energy/news/energy-charter-treaty-strikes-again-as-uniper-sues-netherlands-over-coal-phase-out/ (accessed on 28 March 2022).
116. Bernasconi-Osterwalder, N.; Schaugg, L.; van den Berghe, A. Energy Charter Treaty reform: Why withdrawal is an option. *ITN* **2021**, *12*, 16–20. Available online: https://www.iisd.org/system/files/2021-06/iisd-itn-june-2021-english.pdf (accessed on 2 August 2021).
117. International Energy Charter. Italy—Energy Charter. 2015. Available online: https://www.energycharter.org/who-we-are/members-observers/countries/italy/ (accessed on 20 July 2021).
118. UNCTAD. Rockhopper v. Italy. Investment Dispute Settlement Navigator. UNCTAD Investment Policy Hub. 2017. Available online: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/800/rockhopper-v-italy (accessed on 20 July 2021).
119. ICSID. Case Details: Belenergia, S.A. v. Italian Republic. (ICSID Case No. ARB/15/40). 2019. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/40 (accessed on 2 September 2021).
120. ICSID. Case Details: Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic. (ICSID Case No. ARB/17/14). 2019. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/14 (accessed on 2 September 2021).
121. ICSID. Case Details: Eskosol S.p.A. in liquidazione v. Italian Republic. (ICSID Case No. ARB/15/50). 2020. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/15/50 (accessed on 2 September 2021).
122. ICSID. Case Details: Encavis and others v. Italian Republic. (ICSID Case No. ARB/20/39). 2021. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/20/39 (accessed on 2 September 2021).
123. ICSID. Case Details: ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic. (ICSID Case No. ARB/16/5). 2021. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/5 (accessed on 2 September 2021).
124. ICSID. Case Details: Hamburg Commercial Bank AG v. Italian Republic. (ICSID Case No. ARB/20/3). 2021. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/20/3 (accessed on 2 September 2021).

125. ICSID. Case Details: VC Holding II S.a.r.l. and others v. Italian Republic. (ICSID Case No. ARB/16/39). 2021. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/39 (accessed on 2 September 2021).
126. ICSID. Case Details: Veolia Propreté SAS v. Italian Republic. (ICSID Case No. ARB/18/20). 2021. Available online: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/18/20 (accessed on 2 September 2021).
127. Iacob, I.-G.; Cirlig, R.-E. The Energy Charter Treaty and settlement of disputes—Current challenges. *Trib. Jurid.* **2016**, *6*, 71–83.
128. Energie Zukunft. Energiecharta-Vertrag: Austritt unausweichlich. 2021. Available online: https://www.energiezukunft.eu/politik/austritt-unausweichlich/ (accessed on 28 March 2022).
129. Klasiček, D.; Ivatin, M. Modification or Dissolution of Contracts due to Changed Circumstances. *Pravni Vjesnik God* **2018**, *34*, 27–55.
130. Lissitzyn, O.J. Treaties and Changed Circumstances (Rebus Sic Stantibus). *Am. J. Int. Law* **1967**, *61*, 895–922. [CrossRef]
131. Baranauskas, E.; Zapolskis, P. The Effect of Change in Circumstances on the Performance of Contract. *Jurisprudence* **2009**, *4*, 197–216.
132. BVerfG, German Constitutional Court ruling of 30.01.1973—2 BvH 1/72-, BVerfGE 34, 216-238
133. Martínez Velencoso, L.M. Change of Circumstances. In *European Perspectives on the Common European Studies Sales Law*; Studies in European Economic Law and Regulation 4; Plaza Penadés, J., Martínez Velencoso, L.M., Eds.; Springer: Cham, Switzerland, 2015; pp. 137–162.
134. Hutchinson, A. Gap Filling to Address Changes Circumstances in Contract Law—When it comes to Losses and Gains, Sharing is the Fair Solution. *Stellenbosch Law Rev.* **2010**, *21*, 414–428.
135. Nakamichi, M. The International Court of Justice Decision Regarding the Gabcikovo-Nagymaros Project. *Fordham Environ. Law Rev.* **2017**, *9*, 337–372.
136. Viñuales, J.E. The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment. *Fordham Int. Law J.* **2008**, *32*, 232–258.
137. International Court of Justice. Gabčíkovo-Nagymaros Project (Hungary/Slovakia). Press release 2017/31, 21 July 2017. Available online: https://www.icj-cij.org/case/92 (accessed on 27 February 2023).
138. Juste-Ruiz, J. The International Court of Justice and International Environmental Law. In *International Courts and the Development of International Law*; Boschiero, N., Scovazzi, T., Pitea, C., Ragni, C., Eds.; T.M.C. Asser Press: The Hague, The Netherlands, 2013; pp. 383–401.
139. Fuyane, B.; Madai, F. The Hungary-Slovakia Danube River dispute: Implications for sustainable development and equitable utilization of natural resources in international law. *Int. J. Glob. Environ. Issues* **2001**, *1*, 329–344. [CrossRef]
140. Árnadóttir, S. Termination of Maritime Boundaries Due to a Fundamental Change of Circumstances. *Utrecht J. Int. Eur. Law* **2016**, *32*, 94–111. [CrossRef]
141. European Commission. Commission Presents EU Proposal for Modernising the Energy Charter Treaty. 2020. Available online: https://trade.ec.europa.eu/doclib/press/index.cfm?id=2148 (accessed on 29 July 2021).
142. European Commission. Communication on the First Negotiation Round to Modernise the Energy Charter Treaty. 2020. Available online: https://trade.ec.europa.eu/doclib/press/index.cfm?id=2167&serie=1751&langId=en (accessed on 29 July 2021).
143. Attac. Petition gegen den Energiecharta-Vertrag. 2020. Available online: https://www.attac.de/kampagnen/handelsabkommen/petition-gegen-den-energiecharta-vertrag (accessed on 28 March 2022).
144. CAN Europe. Stop the Anti-Climate Agreement! Sign Now! 2021. Available online: https://caneurope.org/ect-petition/ (accessed on 19 July 2021).
145. Deutscher Naturschutzring. Klima & Energie. Nord Stream 2 schaltet Schiedsgericht ein. 2019. Available online: https://www.dnr.de/eu-koordination/eu-umweltnews/2019-klima-energie/nord-stream-2-schaltet-schiedsgericht-ein/ (accessed on 28 March 2022).
146. EEB. Should EU Member States Fix the Energy Charter Treaty or withdraw from It? Webinar—30 March 2021. Available online: https://eeb.org/should-eu-member-states-fix-the-energy-charter-treaty-or-withdraw-from-it-30-march-webinar-2/ (accessed on 14 July 2021).
147. Energie Zukunft. Energiecharta: Konzernschutz vor Klimaschutz? Nicht mit uns! 2021. Available online: https://www.energiezukunft.eu/meinung/die-meinung/konzernschutz-vor-klimaschutz-nicht-mit-uns/ (accessed on 28 March 2022).
148. Client Earth. The Commission's Draft Proposal for the Modernisation of the Energy Charter Treaty. Legal briefing. 2020. Available online: https://www.documents.clientearth.org/wp-content/uploads/library/2020-04-23-legal-briefing-on-the-commission039s-draft-proposal-for-the-ect-modernisation-ce-en.pdf (accessed on 28 March 2022).
149. Corporate Europe Observatory. Busting Myths around the Energy Charter Treaty. 2021. Available online: https://corporateeurope.org/en/2020/12/busting-myths-around-energy-charter-treaty (accessed on 28 March 2022).
150. International Energy Charter. Modernisation of the Treaty 2022. Available online: https://www.energychartertreaty.org/modernisation-of-the-treaty/ (accessed on 11 April 2022).
151. Simon, F. France Puts EU Withdrawal from Energy Charter Treaty on the Table. EURACTIV.com 03.02.2021. Available online: https://www.euractiv.com/section/energy/news/france-puts-eu-withdrawal-from-energy-charter-treaty-on-the-table/ (accessed on 29 July 2021).
152. Taylor, K. Germany's RWE Uses Energy Charter Treaty to Challenge Dutch Coal Phase-Out. EURACTIV.com 05.02.2021. Available online: https://www.euractiv.com/section/energy/news/germanys-rwe-uses-energy-charter-treaty-to-challenge-dutch-coal-phase-out/ (accessed on 28 March 2022).

153. Transnational Dispute Management. Letter from Claude Turmes Minister of Energy Luxembourg to the European Commission—Energy Charter Treaty Modernization Process: Definition of Economic Activities to Terminate Investment Protection in Fossil Fuels. 2021. Available online: https://www.transnational-dispute-management.com/legal-and-regulatory-detail.asp?key=28020 (accessed on 28 March 2022).
154. Energy Charter Secretariat (CCDEC 2019, 08 STR). *Decision of the Energy Charter Conference. Policy Options for Modernisation of the ECT*; Energy Charter Secretariat: Woluwe-Saint-Lambert, Belgium, 2019.
155. Knaul, S. Europäisches Energiecharta-Abkommen. Hartnäckig fossil, 13.07.2021. Available online: https://taz.de/Europaeisches-Energiecharta-Abkommen/!5781082/. (accessed on 28 March 2022).
156. Kaiser, T. Energiecharta: Europa steckt in einer Milliarden-Falle, 31.08.2021. Available online: https://www.welt.de/wirtschaft/article233437559/Energiecharta-Europa-steckt-in-einer-Milliarden-Falle.html (accessed on 2 September 2021).
157. van Harten, G. Foreign Investor Protection and Climate Action: A New Price Tag for Urgent Policies. 2015. Available online: https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1145&context=olsrps (accessed on 1 July 2021).
158. CNCD-11.11.11. Investment and Climate: Reforming the Energy Charter Treaty. 2021. Available online: https://www.cncd.be/policy-brief-reforming-the-energy-charter-treaty (accessed on 28 March 2022).
159. Ekardt, F.; Heyl, K. The German Constitutional Verdict is a Landmark in Climate Litigation. *Nat. Clim. Chang.* **2022**, *9*, 697–699.