

**ESIL Interest Group**  
**Energy and International Law**  
**Proposal**

The Interest Group (IG) on ‘Energy and International Law’ has two fundamental purposes. First, it aims to allow for in-depth discussions and analyses of specific energy-related questions under international law, such as fossil fuel subsidies, renewable energy investments, or the presence of energy resources in territorial or maritime delimitation disputes, just to name a few. These discussions will encompass nearly all areas of international law, from international trade to investment law, from environmental law to the law of the sea, to human rights law and even humanitarian law. This is due to the fact that, unlike other areas of international law, no comprehensive multilateral convention is in force covering the entire domain of energy—something we could call *international energy law*—and, as result, rules applicable to this domain have to be sought in a number of different legal instruments and well-established areas of general international law. At the same time, energy resources, products, activities, and technologies possess characteristics and pose challenges that are entirely unique, thus requiring a tailored approach and explaining the need for an IG expressly devoted to the role and treatment of energy under international law.

This takes us to the second fundamental purpose of this IG, namely to contribute to a conceptualization of the international legal framework applicable to energy resources, activities and markets. In this spirit, this IG aims to promote collaboration and host discussions pertaining to energy and international law among both ESIL members and the broader international law research community, including across interest groups and research clusters devoted to a wide variety of issues, as most of them can be of relevance, directly or indirectly, to the role that international law plays in regulating energy in all its forms.

Considering the unique characteristics of the energy sector, as well as the current many opportunities and challenges posed by the global energy transition to the formulation and application of international law, we believe that the establishment of an IG on Energy and International Law is most relevant at this moment.

## **1. Approaches**

In line with the two fundamental purposes presented above, the IG will approach the theme of the application of international law to energy-related questions and problems from two main interconnected and interdependent angles: (i) a *fine-grained* approach, focusing on the application of specific areas of international law to energy; and (ii) a *holistic* approach, trying to combine different principles and norms in a coherent system.

### *(i) Fine-Grained Approach*

The legal questions posed by the expansion and development of the energy sector and of energy markets all around the world have not emerged in a legal vacuum but rather in the context of an already well-established legal framework. The result is that, depending on the specific characteristics of individual

energy-related issues, the applicable framework may be international trade law or investment law, environmental or human rights law, law of the sea or even general international law. And in the application of each legal framework, the energy sector poses new challenges that require ad-hoc responses and discussions. As a result, the IG aims to provide a platform for collaboration and discussion on various topics related to international law applicable to energy, such as, but not limited to:

- The treatment of energy resources and products under international trade law, including both the law of the World Trade Organization and Free Trade Agreements
- The role of investment treaties and investment arbitration in the current global renewable energy transition
- The climate law framework and the facilitation of a transition to a low-carbon economy
- The role of transnational corporations operating in the energy sector and the question of their accountability under international/national law
- The protection of indigenous peoples' rights in the context of energy-related activities
- The impact of energy activities on the local/global environment
- The protection of human rights in the context of energy activities
- The different roles that energy can play in the case of armed conflict, both as a target of military operations, and as a source to finance them
- The presence of energy resources and their impact on maritime delimitation disputes
- The legal regime applicable to critical minerals for the energy transition
- Energy security

*(ii) Holistic Approach*

While important, limiting the discussions to a fine-grained approach, is not sufficient. Rather, this sectoral analysis of the application of international norms to energy should be combined with a holistic analysis, to allow for a comprehensive and well-rounded vision and understanding of the international legal framework applicable to this area. To obtain a more comprehensive—and therefore accurate—view of the way in which international law deals with energy, it is necessary to take a step back from the particularities of individual areas of regulation, combining these different sets of norms to form a coherent system. This second approach will entail discussions on cross-cutting themes, such as but not limited to:

- The role of international courts and tribunals in energy matters
- The main general principles that guide international law applicable to energy
- The legal techniques adopted to address the advantages/challenges posed by different energy resources, products, and activities
- The role of domestic law and decisions in the development of international norms applicable to energy
- The international governance of energy within and outside the UN System

## **2. Objectives and Activities**

The IG on Energy and International Law aims to become a research network that attracts academics (including doctoral and post-doctoral researchers) and practitioners active in different areas of international law and interested in exploring the challenges and opportunities posed by energy and looking beyond the techniques and best practices of their area of specialization. Considering the cross-cutting nature of the topic, the IG seeks to encourage cooperation and to create synergies between the different research projects undertaken by the ESIL members and the broader international law research community.

To this end, the IG will organize workshops, events, roundtables, capacity building activities (in particular for Central Europe and developing countries), and will participate in the organization of future conferences on its core topics. It will also organize side events to the ESIL Annual Conferences and Research Fora. It will liaise with other groups to facilitate cross-regional discussions, including with other related interest groups in the area, such as the ASIL Interest Groups on International Economic Law and International Environmental Law, the Centre for International Sustainable Development Law (CISDL), the European Federation of Energy Law Associations (EFELA) and the Swiss Energy Law Association (SELA).

## **3. Co-Conveners**

### **Elena Cima**

Elena Cima is a Lecturer in International Energy and Environmental Law at the University of Geneva. She holds a PhD in International Law from the Graduate Institute of International and Development Studies (IHEID) in Geneva, a Bachelor of Laws from the University of Milan and an LL.M degree from Yale Law School, where she was editor of the Yale Journal of International Law. She has recently published a monograph with Brill entitled *From Exception to Promotion: Rethinking the Relationship between International Trade and Environmental Law*, and has co-edited a volume with Prof. Makane Moïse Mbengue titled *A Multifaceted Approach to Trade Liberalisation and Investment Protection in the Energy Sector*. She has published in several peer-reviewed journals on international environmental law, as well as on the interface between international environmental law and trade, investment, human rights and energy law.

### **Ilaria Espa**

Ilaria Espa is Senior Assistant Professor of International Economic Law at the Università della Svizzera italiana, Senior Research Fellow at the World Trade Institute and Adjunct Professor at the Catholic University of the Sacred Heart in Milan. She is furthermore Lead Counsel of the ‘Natural Resources’ Programme of the Centre for International Sustainable Development Law (CISDL). Formerly awarded a Marie Curie fellowship from the European Commission for her post-doctoral studies, Ilaria holds a PhD in International Law and Economics from the Department of Legal Studies of Bocconi University and was a visiting scholar at Columbia Law School. She has published extensively on issues at the intersection of trade and sustainability, mainly in the areas of climate change, energy and commodities, as well as on the law governing the sustainable management of natural resources. Ilaria is a member of the IUCN World Commission on Environmental Law, the elected Secretary-General of the Swiss Energy Law Association (SELA), and a member of the Scientific Committee of the European Association of Energy Law Associations (EFELA).

## Co-conveners

**Elena Cima** (University of Geneva)

**Ilaria Espa** (Università della Svizzera Italiana)

**Alessandro Monti** (University of Copenhagen)

## Members

1. **Crina Baltag** (Stockholm University)
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