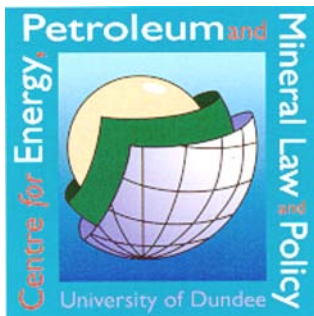


Investment Disputes in the Oil and Gas Sector: their Implications for the ASEAN Region

Professor Peter Cameron

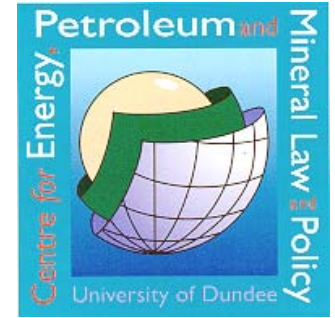


1. WHO I AM

Director, CEPMLP (UK)

Barrister

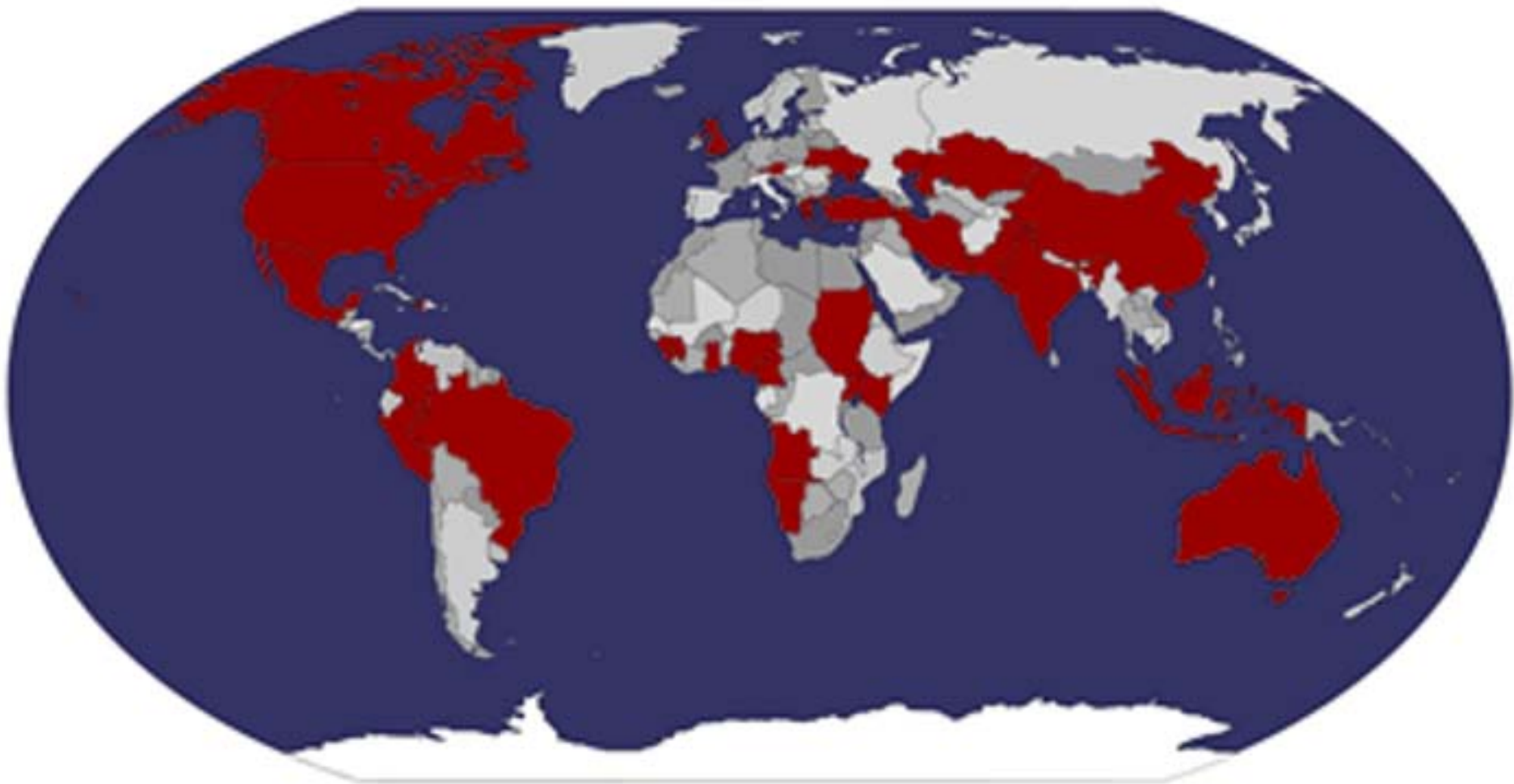
CEPMLP - Teaching



- Students originally from UK/North Sea area – in 1970s/early 1980s
- Focus on Oil/Gas Law
- Reorientation to international recruitment from 1990 onwards
- And now – around 600 students with different degrees; not only law; distance learning + PhD

27 nationalities 2011 (Masters programme)

- Nigeria
- Ghana
- Uganda
- Turkey
- Colombia
- Peru
- Brazil
- India
- UK
- Pakistan
- Indonesia
- Australia
- China
- Iran
- Sierra Leone
- Kenya
- Greece
- USA
- Guinea
- Trinidad & Tobago
- Mexico
- Austria
- Canada
- Thailand
- Malaysia
- Namibia
- Liberia



Research

- Individual research
- Projects: 3 large ones
 - EU Framework Programme – Competition and Collaboration in Access to Energy
 - World Bank – Internet Source Book on Energy
 - Economic and Physical Sciences Research Council – Decentralized Electricity Systems
- Total: about US\$ 7 million 2010-2012

Website Snapshot (1)

EI SourceBook

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BEST PRACTICE IN KEY ACTIVITIES IN THE INTERNATIONAL OIL, GAS & MINING INDUSTRIES



Source Book Introduction

This Source Book is a tool designed to consolidate policy frameworks and development for oil, gas and mining, in view of assisting resource-rich developing countries to adequately structure their upstream extractive industries.

The Source Book was prepared by consultants to the World Bank funded out of a multi-stakeholder grant. The lead consultant is the University of Dundee (Centre for Energy, Petroleum and Mineral Law and Economics). Additional consultancies include (Queensland, Witswatersrand, etc.)

This source book draws on good practices, and is intended to assist the resource-rich developing countries manage their natural endowments and resource wealth.

> [Read more about the Source Book](#)

Core Topics

- Resource Curse
- Extractive Industries
- Policy, Legal, Contractual and Regulatory Framework
- Sector Organization and Oversight
- Fiscal Design, Instruments & Administration
- Revenue Management and Allocation
- Implementation of Sustainable Development Policies & Projects
- Cross Cutting Topics

EI SourceBook

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II. Our Topic: Investment Disputes in Oil & Gas

Why They Matter

Types of Disputes

- State-State Disputes
Example: Boundary Disputes – S China Seas, E Mediterranean and offshore W Africa
- State-Investor Disputes
Involve BITs – ECT
ICSID etc
A new area of law
- Company-Company Disputes
Involve JOAs, unit development agreements, gas sale and purchase etc
- Individual-Company Disputes
Alien Tort Statute; fraud etc
- Group actions-companies



Context: Extra Legal Drivers

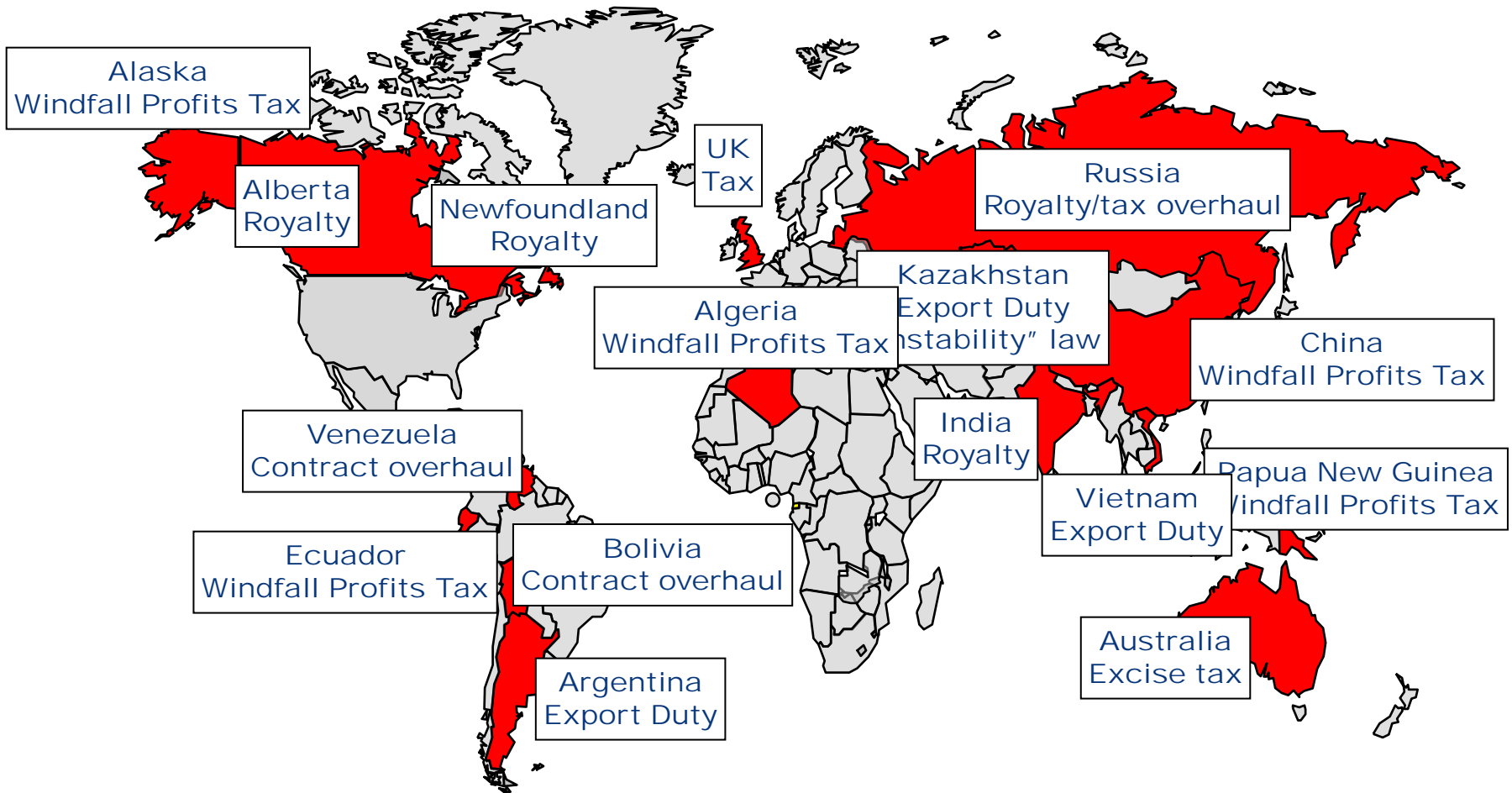


CONTEXT: THE LEGAL DRIVERS

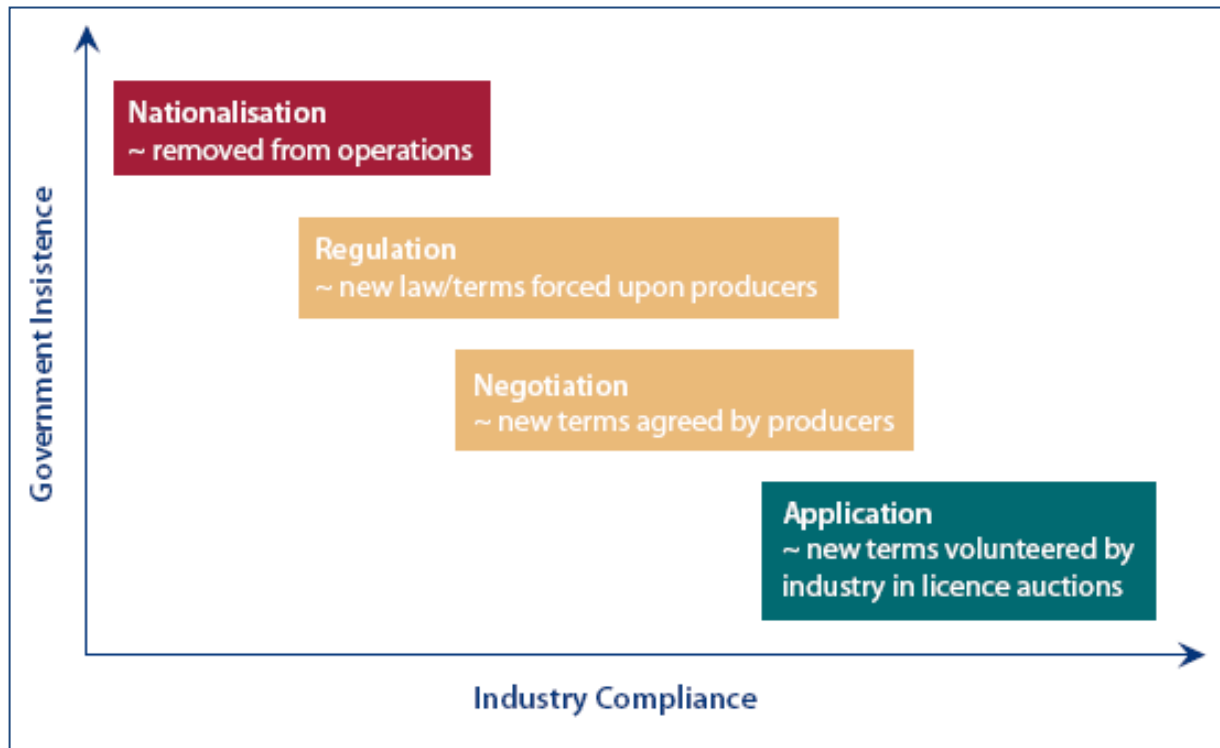
- Greater willingness to go to International Arbitration than pre-21st century
- More legal options available: large number of BITs plus ECT and fora such as ICSID, ICC, SIAC, etc
- AND ALSO:
- More states involved in the extractive industries, especially in developing economies
- Spreading from Latin America to Africa and Asia
- Growing competition for disputes based on contract and BITs, and MITs (ECT)
- World Bank estimates that number has increased to more than 50 countries dependent upon extractive industries for economic development

Changing Contractual & Fiscal Landscape

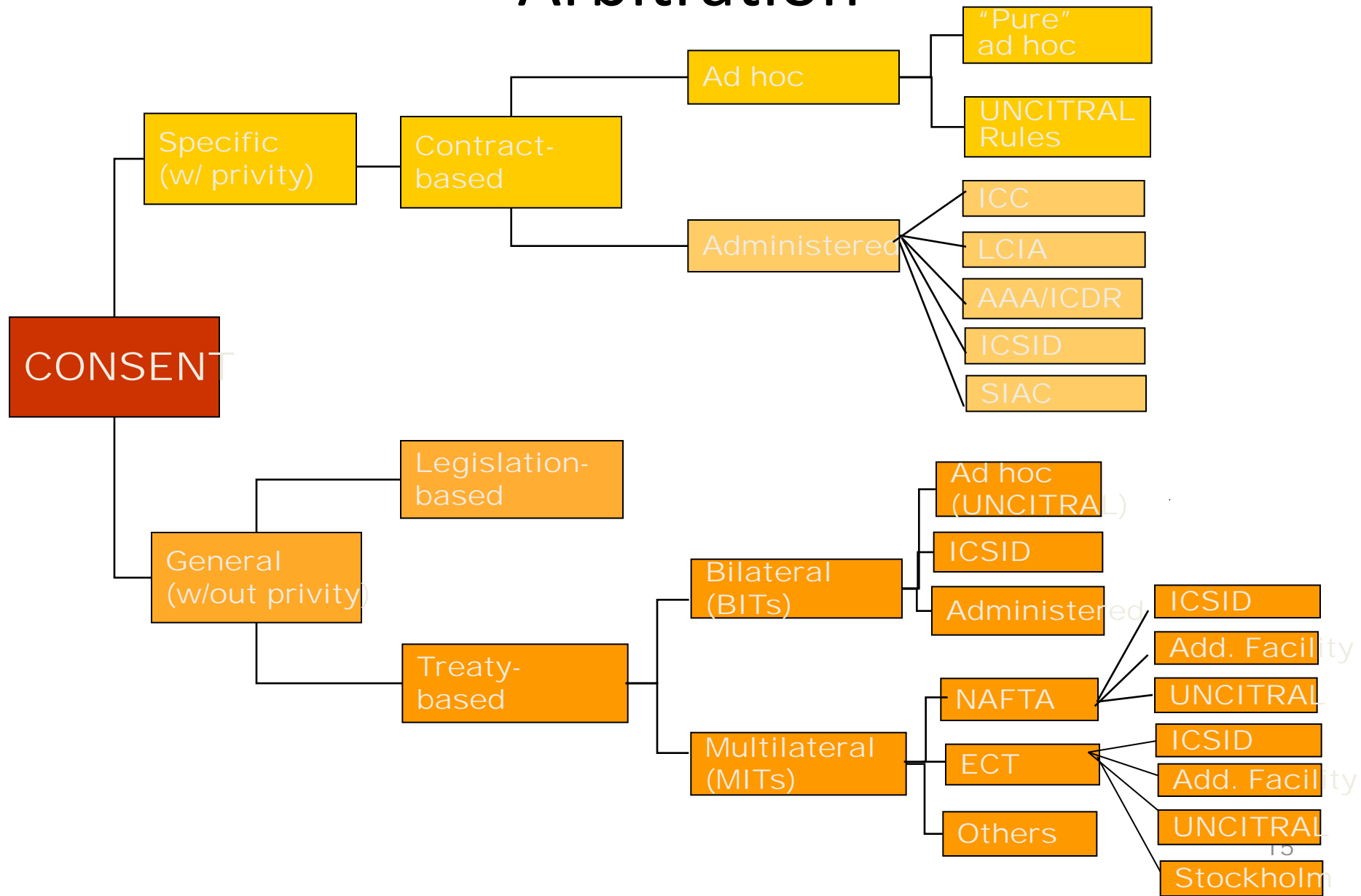
Regulation: increases in Government Take from existing assets
(since 2002)



The Changing Contractual and Fiscal Landscape: What Investors Get



Investment Protection through Arbitration



Investor-State Disputes

1. Newest legal developments are in international investment law which has become over past 15 years increasingly integrated into general international law
2. Looking at oil and gas cases over this period we can see:
 - a. Many of the post 1998 cases address claims brought by an investor under a BIT providing substantive protections to foreign investors and allowing them to submit a dispute to international arbitration. Prior to 1998 not one had been brought by an oil and gas company
 - b. Only 1 award relates to nationalisation in contrast to a large number of earlier awards
 - c. Several awards relate to claims following changes to the host State's fiscal regime (e.g. So-called windfall profits taxes)

Six General Observations

- System has borne up well under pressure despite protests about fairness; generalisations from Argentine cases at ICSID and challenges to arbitrators
- Continued interplay between arbitral processes and settlements in oil and gas industry
- Asian based investors losing their reservations
- Loss of confidence in local courts boosts arbitration option; deficiencies were evident in Ecuador case (Chevron)
- NOCs: need to revisit doctrine of attribution
- Sovereignty doctrine under strain

Specific Comments

- Several very large cases are pending before international tribunals
- Yukos award shows limits to mega-claims
- Chevron case
- Conoco Phillips and Venezuela

III. LOOKING AHEAD

Three Conclusions

Oil and Gas Disputes – Green Light!

1. Use of arbitration in managing oil and gas disputes is likely to grow as familiarity with mechanism increases and awareness of its value in negotiations with host State
2. Boundary disputes likely to prove a serious obstacle to oil and gas development in certain offshore areas
3. Disputes increasingly likely in ‘soft law’ areas concerning environment (oil spills, decommissioning), human rights (indigenous peoples and local communities) and transparency related issues (anti-corruption law)

THANK YOU!

From Scotland!