

The Legal Approaches of Geopolitical Risk Management in Transboundary Energy Contracts: Reconciling Permanent Sovereignty over Natural Resources (PSNR) with the Doctrine of Contractual Sustainability

المقاربات القانونية لإدارة المخاطر الجيوسياسية في عقود الطاقة العابرة للحدود:

دراسة تحليلية للتوفيق بين السيادة الوطنية الدائمة على الموارد الطاقوية و ضمانات الاستدامة العقدية.

* Dr. Aiouadj Taleb.

Professor. Ksouri Rafika.

University of Khenchela

University of Khenchela

E-mail: aiouadj.taleb@univ-khenchela.dz

E-mail: ksouri.rafika@univ-khenchela.dz

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Abstract:

This paper examines the complex legal framework governing the transit of conventional fossil fuel energy resources, namely oil and gas, via cross-border international pipelines and high-seas infrastructure, as well as maritime transport through specialized carriers (LNG/Oil Tankers). Furthermore, it addresses the transmission of electricity via interconnected terrestrial grids or submarine cables, extending to the transport and supply contracts for emerging energy sources, such as Helium and various types of Hydrogen.

The study highlights prominent, purely legal impediments arising from the reconciliation between the principle of permanent sovereignty of states over their territories and energy resources, and the transboundary nature of these contractual arrangements. Such dynamics often engender gaps and divergent interpretations of contractual clauses and agreements pertaining to the security of supply, particularly regarding the requisite quantities and quality amidst multilevel geopolitical fluctuations and disruptions associated with regional and international instability risks which directly imperil the integrity of energy transit modalities, refineries, liquefaction and gathering plants, and shipment ports. Accordingly, this study analyzes 'Force Majeure' and 'Material Change of Circumstances' (Rebus Sic Stantibus) clauses as risk management instruments, reviewing international jurisprudential and judicial solutions to ensure the maintenance of contractual equilibrium between the parties.

Keywords: Transit of Energy, Geopolitical fluctuations, Regional and international instability risks, Cross-border pipelines, High-seas infrastructure, Force Majeure, Material Change of Circumstances.

الملخص:

تتناول هذه الدراسة الإطار القانوني المركب الذي يحكم عمليات نقل موارد الطاقة الأحفورية التقليدية كالغاز والنفط بواسطة الأنابيب العابرة للحدود البرية الدولية وفي أعالي البحار، بالإضافة إلى النقل بواسطة السفن المتخصصة (LNG/Oil Tankers)، فضلا عن نقل الكهرباء عبر الربط البيني لشبكاتها الحدودية المتجاورة أو عبر الكوابل البحرية، مروراً بعقود نقل وتوريد مصادر الطاقة الجديدة كالهيليوم والهيدروجين بأنواعه، بحيث تبرز في الواجهة عقبات ذات طابع قانوني بحت تتمثل في التوفيق بين مبدأ سيادة الدولة على إقليمها ومواردها الطاقوية وبين الطبيعة العابرة للحدود لهذه العقود، مما يولد فجوات وتباين في تفسير وتأويل بنود العقود والإتفاقات المتعلقة بضمان إستمرارية الإمدادات بالكميات والنوعية المناسبة في ظل التقلبات الجيوسياسية متعددة المستويات والاضطرابات المرتبطة بمخاطر عدم الاستقرار الإقليمي والدولي الماسة بسلامة وسائط نقل الطاقة ومحطات التكرير والتجميع وبموانئ الشحن، إذ تحلل الدراسة بنود "القوة القاهرة" و "التغير الجسيم في الظروف" كأدوات لإدارة المخاطر، مستعرضين في ذلك الحلول الفقهية والقضائية الدولية لمثل هذه الحالات بغية ضمان التوازن العقدي بين الأطراف.

الكلمات المفتاحية: نقل موارد الطاقة، التقلبات الجيوسياسية، مخاطر عدم الاستقرار، خطوط الأنابيب العابرة للحدود، البنية التحتية في أعالي البحار، القوة القاهرة، التغير المادي الجسيم في الظروف.

Introduction:

Cross-border energy transit contracts constitute the 'arteries' sustaining the global economy's viability. However, the legal frameworks governing such transit and supply frequently collide with the multiplicity of legislative regimes and the overlapping of jurisdictional competencies among states. Consequently, these contracts represent a complex legal challenge for legislators, international arbitration centers, judges, jurists, scholars, and policymakers alike. This stems from the fact that energy transit contracts are not merely commercial agreements; they are vital instruments embodying inherently contradictory dimensions. They encapsulate the interplay between territorial land sovereignty and international conventions and treaties governing trade and Investment agreements, maritime spaces, including the Law of the Sea, straits, and artificial canals.

Yet the movement of energy across national frontiers is among the oldest and most consequential forms of international economic interdependence. Since the mid-twentieth century, states have constructed an elaborate pipelines networks and power grids of cross-border carrying oil and natural gas, high-voltage transmission lines linking national electricity grids, and complex commodity-sharing arrangements governing everything from hydroelectric generation to liquefied natural gas (LNG) terminal access. So, the substantive complexity of these contracts lies in their characterization as both long-term and transboundary in nature, thereby rendering them susceptible to political, security, and military fluctuations. It is worth noting past and present facts that cross-border energy transactions have functioned as arenas in which the competing claims of sovereign authority, private investment, and systemic supply security converge and frequently collide. The collapse of the concession era in the 1950s and 1960s, the OPEC oil embargo of 1973, the oil and gas prices war in the mid-eighties of the twentieth century, gas crises induced by the Russia-Ukraine disputes of 2006 and 2009, and the cascading energy disruptions precipitated by the Russian – Ukraine war in 2022, the 2026 war in the Arabian-Persian gulf, all illustrate a recurring pathology: that transboundary energy contracts are uniquely vulnerable to geopolitical shock, and that existing legal frameworks however sophisticated have struggled to provide durable remedies.

Consequently, the matter transcends mere commercial profitability and the speculations of energy markets and exchanges; rather, it extends to the nexus where Public International Law which safeguards state sovereignty intersects with Private International Law, which governs the frameworks of international energy contracts. These complexities are further compounded by the emergence of new energy sources, such as Hydrogen and Helium, as strategic commodities requiring a legal regime that have yet to fully mature. This place both the legislator and the international arbitrator before the challenge of balancing the dualism of “pacta sunt servanda” the binding force of the contract and the doctrine of unforeseen circumstances “rebus sic stantibus”, so, it results in the existence of a manifest incongruity between the actualities of commercial and physical interdependence and the normative instruments of international law designed to govern them, which remain underdeveloped or misaligned.

This paper aims to define and to determine the legal nature of international transit contracts and to deconstruct risk-allocation clauses within maritime and terrestrial

environments, and to identify the legal characterization of contractual structures for energy transport, specifically Transit Agreements, Interconnection Agreements, and Shipping Contracts.

The study purports to analyze the Sovereignty vs. Commercial Interests relationship that imply the set of mechanisms for reconciling the sovereignty of the host state regarding pipelines with the contractual rights of purchasers and suppliers.

Also, this research endeavors to bridge and assess the gap of the efficacy of “Force Majeure and Material Adverse Change” (MAC) clauses in the face of contemporary geopolitical disputes.

The significance of the study is manifested in addressing the Scholarly Lacuna characterized by the inadequacy of traditional legal texts to mitigate multiform of known and emerging risks as cyber-attacks, and sovereign disputes obstructing international pipeline-grid routes.

The core inquiry explores how domestic and international law reconciles the rigid doctrine of “pacta sunt servanda” with the volatile reality of geopolitical shifts, So, the overarching question governing this analysis is: **how geopolitical risk should be managed within transboundary energy contracts, and how the doctrine of Permanent Sovereignty over Natural Resources “PSNR” can be reconciled with an emerging duty of contractual sustainability?**, has not received the systematic treatment it demands.

The article proceeds in two parts. **Part I** surveys the principal legal instruments governing cross-border energy transfer. **Part II** examines the doctrine of permanent sovereignty over natural resources and its application in the energy context. **Part III** concludes.

PART I: Legal Instruments Governing Cross-Border Energy Transfer.

I.A. The Treaty Framework for Transboundary Energy.

I.A.1. The Energy Charter Treaty and Its Discontents.

The Energy Charter Treaty “ECT”, opened for signature in Lisbon in December 1994 and entering into force in April 1998 (ECT Charter, 1994)¹ remains the most comprehensive multilateral instrument specifically governing cross-border energy transactions. Born of the geopolitical transition that followed the dissolution of the Soviet Union, the “ECT” was designed to integrate the energy sectors of post-communist states, as Russia, Kazakhstan, Azerbaijan, Turkmenistan, and Uzbekistan into the Western European market order, ensuring the security of transit and investment flows in both directions across the emerging Eurasian energy corridor.

The “ECT's” core provisions address three distinct but interrelated domains. One establishes a framework for trade in energy materials and products, drawing on World Trade Organization “WTO” (WTO Organization, 1994)² disciplines but extending them into areas not fully covered by the General Agreement on Tariffs and Trade “GATT” (Lowenfeld, Andreas F, 2008)³. The second provides investment protections for energy sector investors, including the Fair and Equitable Treatment “FET” standard, protections against unlawful expropriation, and full protection and security obligations. Article 10 of the “ECT” has been interpreted by arbitral tribunals as encompassing a stabilization-type obligation that constrains radical regulatory change affecting existing investments (AES Summit Generation VS Republic of

Hungary, 2010)⁴. The third addresses transit, imposing obligations on transit states not to interrupt or reduce energy flows pending resolution of disputes.

Article 7, in particular, has been invoked controversially in the context of gas transit disputes¹, as Article 7 is interpreted as a positive obligation to facilitate transit, however, it does not preclude legitimate regulatory measures, such as the revocation of pipeline permits for security or environmental reasons, provided they are non-discriminatory in Nord Stream2 case.

Algeria has neither signed nor ratified the “ECT”, it holds Observer Status with the Energy Charter Conference, specifically as “an observer by invitation” since before 2015, when such status was phased out for non-signatories by the end of 2016, such the reason of maintaining a cautious distance from the “ECT” accession due to sovereignty concerns over its energy sector and the country prioritize national control via Sonatrach and bilateral deals with “EU” partners rather than “ECT’s” investor-state dispute settlement “ISDS” mechanisms under Articles 10 and 26 (Baltag.C, 2023)⁵, but the Algerian Hydrocarbon Law No. 19-13, dated December 11, 2019, Governing Hydrocarbon Activities, permits investment in downstream activities, including pipeline transportation, refining, processing, storage, distribution, and the regeneration of used oils, Through a pipeline transportation concession, which is a license granted exclusively by the Minister to the National Corporation, Based on a recommendation from the Hydrocarbons Regulatory Authority “ARH” (Law 19-13, 2019)⁶.

Furthermore, international power interconnection activities are subject to the Algerian Law No. 02-01, dated by February 5, 2002, relating to electricity and gas distribution via pipelines (Law 02-01, 2002)⁷, This Law authorizes natural persons and legal entities to freely engage in electricity export and import operations, subject to prior notification of the Electricity and Gas Regulatory Commission “CREG” before the export process. In addition, the Law establishes the possibility of international electricity exchange between interconnected border grids, falling under the rules of grid operation or mutual assistance, in this same vein, this Law defines power transmission networks as a set of facilities composed of overhead lines, underground cables, and international interconnections used for the transmission of electricity to customers, producers, and distributors.

Regarding hydrogen “Blue & Green”, Algeria launched the National Strategy for Hydrogen Development in September 2023, which adopted a roadmap to effectively implement this strategy and achieve energy transition objectives, and Algeria intends to position itself on the international energy scene as an essential and reliable supplier of clean hydrogen, aiming to transform this energy vector into a lever for economic growth and a means to increase its non-hydrocarbon foreign currency revenues (CEREFÉ, 2023)⁸, Also the 2026 Finance Act incorporates significant incentives, including exemptions from customs duties and taxes on electrolyzers and solar panels, aimed at bolstering investments in this vital sector.

Despite its ambition, the “ECT” has been beset by systemic difficulties. Russia signed but never ratified the Treaty, invoking the provisional application clause of Article 45 as the basis for its partial engagement (Morelli, 2018)⁹, a characterization challenged in arbitral proceedings arising from the “Yukos” affair¹⁰. The European Court of Justice's “CJEU” landmark ruling in “Slovak Republic” vs. “Achmea BV” of 2018 and the subsequent

“Komstroy” decision of 2021 effectively rendered intra-EU ECT arbitration impermissible under EU law, dramatically curtailing the Treaty's utility within the bloc that had been its principal champion (Komstrov Vs Moldova, 2021)¹¹. A modernization process launched in 2017 concluded in 2022, but the revised text was rejected by France, Germany, Spain, and the Netherlands, prompting a cascade of withdrawals including by the United Kingdom, the Netherlands, France, Germany, Poland, Slovenia, Luxembourg, and Portugal (Dulian, 2023)¹².

These developments do not render the “ECT” irrelevant, it continues to bind many signatories and remains operative for investments made before withdrawal during the sunset clause period of twenty years, but they do underscore the fragility of the multilateral framework and the need for supplementary legal instruments.

I.A.2. Bilateral Investment Treaties and the Energy Sector.

In the absence of a universally ratified sectoral treaty, transboundary energy transactions are governed in large part by the approximately 2,800 bilateral investment treaties “BITs” currently in force worldwide. “BITs” provide substantive protections, non-discrimination, expropriation protections, and most-favoured-nation clauses, and crucially grant investors the right to bring claims against host states before international arbitral tribunals under the International Centre for Settlement of Investment Disputes “ICSID” Convention or the United Nations Commission on International Trade Law “UNCITRAL” Rules (Martinez, 2018)¹³.

The energy sector has generated a disproportionately large share of “BIT-based” arbitration. Cases arising from Argentina's emergency measures following the 2001 financial crisis, from Czech and Polish regulatory changes in the renewable energy sector, from Kazakhstan's hydrocarbon sector disputes, and from various expropriation claims across Sub-Saharan Africa and Latin America have collectively produced a rich if internally inconsistent body of jurisprudence on the obligations of host states toward foreign energy investors.

Algeria's energy sector confronts significant risks from Bilateral Investment Treaty “BIT” and contractual arbitration cases, which are frequently caused by regulatory changes, investment limits, and the previous 51/49 mandatory local ownership requirement. While the country continues to be a major oil and gas producer, this dependency raises concerns about infrastructure, taxation, and contract compliance (GAR, 2025)¹⁴.

For the sake of this analysis, three doctrinal disputes are especially important. The first relates to the interpretation of the “FET” (Fair and Equitable Treatment) standard: does it allow for regulatory evolution as long as it is proportionate and non-discriminatory, or does it incorporate a legitimate expectations doctrine that freezes the regulatory environment at the time of investment?, The second relates to the extent to which states may use the necessity defense when citing grave economic emergencies or vital security reasons, a debate crystallized in the “CMS” Gas Transmission, “Enron”, and “Sempra” arbitrations against Argentina. The third concerns the content of the expropriation prohibition: specifically, whether creeping or regulatory expropriation through progressive interference with the economic substance of an investment requires compensation equivalent to direct taking.

I.A.3. The United Nations Convention on the Law of the Sea and Offshore Energy Resources.

The United Nations Convention on the Law of the Sea “UNCLOS”, in force since 1994, establishes the fundamental framework for the delimitation of maritime zones and the allocation of sovereign rights over the natural resources they contain. For offshore energy hydrocarbon extraction, liquefied natural gas “LNG” infrastructure, and increasingly offshore wind, “UNCLOS” provides the foundational jurisdictional architecture.

Articles 55 through 75 vest coastal states with sovereign rights over the exploration and exploitation of natural resources in their exclusive economic zones “EEZs”, extending to 200 nautical miles (almost 370km) from their baselines. Article 76 and the complex provisions governing the extended continental shelf create additional entitlements for states meeting the geological criteria established by the Commission on the Limits of the Continental Shelf. These provisions have generated overlapping claims in the South China Sea, the Eastern Mediterranean, and the Arctic, all of which are energy-rich zones whose legal status remains contested (Beckman, 2013)¹⁵.

Transboundary energy contracts and the “UNCLOS” framework interact in a number of ways. The creation of “sui generis” contractual arrangements that combine public international law and private contract law has made joint development zones, which are negotiated between nations with overlapping claims, crucial tools for controlling resource extraction in contested waters. By defining or disturbing the sovereign territory within which they operate, the delimitation jurisprudence of the International Court of Justice and the International Tribunal for the Law of the Sea “ITLOS” influence the legal stability of offshore energy ventures (Cameron, 2016)¹⁶.

I.B. Customary International Law and General Principles.

I.B.1. “Pacta Sunt Servanda” and Its Limitations in State Contracts.

The principle that “agreements must be kept” “pacta sunt servanda” is foundational to international law and equally to the private law of contracts. In the context of transboundary energy contracts, it supports the enforceability of long-term commitments entered into between states, state enterprises, and private investors. The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts “ARSIWA” confirm that a state **may not invoke its internal law as justification for the non-performance of international obligations** (ILC, General Assembly resolution 56/83,2001)¹⁷.

However, in international experience, “pacta sunt servanda” has never been an absolute ideal, especially when it comes to governmental contracts. Article 62 of the Vienna Convention on the Law of Treaties codifies the doctrine of “rebus sic stantibus,” which means “as matters now stand.” This doctrine allows a party to invoke a fundamental change of circumstances as grounds for withdrawal from a treaty obligation when the circumstances that existed at the time of the treaty's conclusion constituted an essential basis of the parties' consent and the effect of the change radically transforms the extent of obligations still to be performed. While Article 62 by its terms applies to treaties rather than private contracts, its influence pervades the analysis of long-term commercial agreements.

In arbitral practice, the “pacta sunt servanda” principle has been invoked with particular force in petroleum agreements containing stabilization clauses. These clauses which commit the

host state to refrain from altering the legal and fiscal framework applicable to the investment create tension with the state's sovereign prerogative to regulate in the public interest. The jurisprudence of the “Iran-United States” Claims Tribunal, the arbitrations arising from “Libya's” petroleum nationalizations in the 1970s, and the (ICSID) awards of the 2000s have collectively traced a contested boundary between legitimate regulatory change and compensable breach (Chukwubuikem J.S. Azoro, Chinedu A. Onah, 2021)¹⁸.

I.B.2. Good Faith, Changed Circumstances, and the Duty to Renegotiate.

Based on the concepts of good faith and reasonableness, an increasing body of international arbitral authority affirms the existence of an obligation to renegotiate long-term contracts in situations of substantial change. The duty has been deduced from the (PECL) “Principles of European Contract Law,” the “UNIDROIT” Principles of International Commercial Contracts, which are a non-binding “soft law” set of rules that restate the general principles of international commercial contract law (formation, validity, interpretation, performance, non-performance, remedies, etc.), and a teleological reading of long-term energy agreements themselves, which usually take price review mechanisms and adaptation clauses into consideration as essential elements (Berger, 2003)¹⁹.

The duty to renegotiate is conceptually distinct from the force majeure or hardship doctrines, though it may be triggered by events that also satisfy those thresholds. It imposes a procedural obligation to engage in good faith negotiations aimed at adapting the contract to changed circumstances without necessarily determining the substantive outcome of those negotiations. Where a party refuses to renegotiate unreasonably, tribunals have occasionally awarded damages or ordered specific performance (Ingeborg S, Edgardo M, 2019)²⁰.

There are important ramifications for transboundary energy contracts. Although they may not always meet the strict requirements for force majeure or treaty-based necessity defenses, geopolitical disruptions, sanctions regimes, transit state misconduct, armed conflict, and infrastructure sabotage may place enough burdens on the parties to trigger the duty to renegotiate (Andy, 2024)²¹.

I.C. Regional and Sectoral Instruments.

I.C.1. The European Union's Internal Energy Market Framework.

Within the European Union; where *Algeria* is the strategic and the primary most reliable supplier of energy and hydrocarbon to the European Union. Spain, Italy, France, and Turkey are among its key customers, cross-border energy transfer is governed by an increasingly dense body of secondary legislation constituting the “internal energy market” framework. The successive packages of energy legislation from the First Energy Package of 1996 through the Third Energy Package of 2009 to the Clean Energy for All Europeans package of 2019 have progressively liberalized the gas and electricity sectors²², unbundled transmission and supply functions, mandated third-party access to infrastructure, and established independent national regulatory authorities operating within a European framework coordinated by the Agency for the Cooperation of Energy Regulators (ACER).

The EU's Gas Regulation (EC 715/2009), as amended, and the Gas Directive (2009/73/EC) establish legally binding rules governing the access of third-country suppliers to EU pipeline infrastructure a provision that acquired acute geopolitical salience in the context of the “Nord Stream 2” pipeline and the European Commission's extension of the Gas Directive's

unbundling rules to it. The dispute between Russia's "Gazprom" and the Commission over the "OPAL" (Ostsee-Pipeline-Anbindungsleitung) pipeline's capacity allocation illustrated the intersection of EU competition law, energy security policy, and international investment commitments (Jeutner, 2019)²³.

The "REPower EU" plan constitutes the official strategic framework of the European Union, launched in May 2022 and subsequently updated with revised objectives and legislative mandates through 2026. It is designed to achieve complete decoupling from Russian fossil fuel dependencies while simultaneously accelerating the overarching energy transition, it represents the most significant reorganization of EU energy supply strategy since the establishment of the internal market. Its legal implications for existing supply contracts, for infrastructure investment commitments, and for relations with third-country suppliers are still unfolding and represent an important case study in the legal management of geopolitical energy disruption.

I.C.2. OPEC, Gas Exporting Countries Forum, and Intergovernmental Agreements.

Transboundary energy is managed by a complex web of intergovernmental agreements that occupy a contentious position between public international law and soft law, in addition to the treaty and regulatory frameworks mentioned above. In order to stabilize prices and profits, the Organization of the Petroleum Exporting Countries (OPEC), which was founded by the Baghdad Conference in 1960 and granted a formal Statute in 1965, controls production levels among its member nations. "OPEC's" choices have a significant impact on the price environment in which supply contracts operate as well as the budgetary expectations of producing states, even though they do not directly govern the terms of individual supply contracts (EIA, 2026)²⁴.

The Gas Exporting Countries Forum (GECF), established in 2001 and granted a formal Statute in 2008, plays a less institutionalized coordinating role for major gas producers. Its significance lies less in formal legal regulation than in the information-sharing and political coordination it facilitates among states that collectively control the majority of the world's proved natural gas reserves (GECF, 2026)²⁵.

Intergovernmental agreements (IGAs) and host government agreements (HGAs) for major transboundary pipeline projects such as the connection of the southern part of Italy by natural gas pipeline network to two cross-border gas pipelines originating in North Africa. The Trans-Mediterranean or "TransMed" also known as the Enrico Mattei gas pipeline links Algeria's national gas dispatching center in "Hassi R'mel" to "Mazara del Vallo" in Sicily via Tunisia. The "TransMed" has an annual capacity of 33 billion cubic metres (bcm) and started commercial operation in 1983.

In addition to the proposed expansion of the "TransMed" capacity, a previously abandoned project of a direct link between Algeria and Italy was revisited during official meetings of the two countries. The Gazoduc "Algerie - Sardaigne Italie", or "GALSI", with an annual design capacity of 8 bcm was planned during the 2000s. But it was shelved due mainly to a lack of gas demand in Italy and Europe to justify the building of an additional inter-regional gas pipeline. The recent collapse of Russian and Persian Gulf gas supplies to Europe and changing international energy market dynamics have renewed interest in this proposed new

gas interconnection, which this time would be designed to transport blue or green hydrogen as well as methane (Ouk, 2023)²⁶.

These instruments, negotiated between sovereign states, typically provide for stabilization commitments, access guarantees, and environmental standards. They interact with and sometimes override the private law contracts between the project company and individual states.

PART II: Permanent Sovereignty Over Natural Resources (PSNR) in the Eenergy Context.

II.A. The Doctrinal Architecture of PSNR.

II.A.1. Genesis and Codification: From Resolution 1803 to the New International Economic Order (NIEO).

In the process of decolonization, the concept of Permanent Sovereignty over Natural Resources (PSNR) emerged. In recent times, independent states pressed for recognition of their right to control the natural wealth of their territories on terms of their own decisions because their economies had been built around the extraction and export of primary hydrocarbon fossils under concession agreements created by colonial powers and their corporate agents. In response, the United Nations General Assembly passed a number of resolutions that gradually expanded the content of the doctrine.

United Nations General Assembly Resolution 1803 (XVII) of 1962, entitled “Permanent Sovereignty over Natural Resources” were the foundational text. It affirms that “the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned”. It acknowledges the legitimacy of foreign investment but subjects it to “the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities”. On nationalization or expropriation, Resolution “1803” requires that “appropriate compensation” be paid “in accordance with international law” (UNGA, 1962)²⁷.

The Charter of Economic Rights and Duties of States (CERDS), adopted as General Assembly Resolution 3281 (XXIX) in 1974, advanced the PSNR doctrine further and more assertively. Article 2(1) proclaimed that “every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities”. Article 2(2)(a) confirmed “the right to nationalize but conspicuously omitted the reference to international law as the standard for compensation”, substituting instead the “appropriate domestic law of the nationalizing State and by such international law as the State may deem applicable” (UNGA, C E R, 1974)²⁸.

These resolutions were strongly contested, particularly with regard to the compensation threshold, Western powers denied that (CERDS) reflected customary international law. Three decades of energy investment arbitration were shaped by the ensuing debate between a developmentalist position asserting sovereign autonomy in determining compensation and a traditional international law position requiring “prompt, adequate, and effective” compensation under the “Hull formula” also called the “Hull Rule” (Cox, 2019)²⁹.

II.A.2. PSNR in Arbitral Practice.

Arbitral tribunals have engaged with PSNR doctrine in a variety of contexts, with results that resist easy systematization. In the Libyan Oil arbitrations of the late 1970s, “Texaco v. Libya”, “LIAMCO v. Libya”, and “BP v. Libya”, the arbitrators reached divergent conclusions on the status of (UNGA) resolutions as sources of customary law. Professor René-Jean Dupuy in Texaco famously distinguished between resolutions that reflect the “*opinio juris*” that relates the subjective element required to establish a rule as customary international law. So, the international community and those that represent only the political preferences of a bloc of states, concluding that Resolution 1803 reflected customary law while (CERDS) did not, at least on the compensation standard (Cantegreil, 2011)³⁰.

The International Court of Justice “ICJ’s” decision in Armed Activities on the Territory of the Congo “DRC v. Uganda”, on 2005, provided significant support for the “PSNR” doctrine as a principle of customary international law binding on states, holding Uganda internationally responsible for the exploitation of the DRC’s natural resources in violation of it. The Court’s reasoning implied that “PSNR” creates correlative duties, not merely rights including a duty to refrain from plundering the resources of other states and, arguably, from disrupting the legitimate exercise of sovereignty by other states over their natural wealth (Dufrsene, 2007)³¹. In the investment arbitration context, “PSNR” has been invoked both as a shield, by respondent states seeking to justify regulatory measures affecting energy investments and as a sword by claimants arguing that the host state’s sovereign authority carries with it an obligation to maintain the stability of the legal framework within which the investment was made. This dialectical function of PSNR reflects its inherently dual character as both a right and a responsibility (Okowa, 2007)³².

II.B. “PSNR” and the Energy Sector: Special Considerations.

II.B.1. Hydrocarbon Resources and Resource Nationalism.

The hydrocarbon sector encompassing oil, natural gas, and coal has been the primary arena in which PSNR has been operationalized and contested. Resource nationalism, defined as the exercise of sovereign control over natural resources in ways that reassert state authority at the expense of foreign investors, has manifested in waves corresponding to the political economy of commodity prices.

The first major wave of resource nationalism in the energy sector occurred in the 1970s, The wave of nationalization of the hydrocarbons sector in Algeria including pipeline transportation officially commenced on February 24, 1971. On this date, the authorities announced several landmark historical decrees, the most prominent of which included:

- **Nationalization of Pipeline Transportation:** All petroleum and gas pipelines transporting hydrocarbons from the Sahara to various ports were transferred to the ownership of the Algerian State.
- **Acquisition of 51% Equity in French Companies:** The State asserted majority control over foreign entities operating within the hydrocarbons sector by seizing 51% of the shares held by French companies.
- **Nationalization of Natural Gas:** The State reclaimed full sovereign control over all natural gas fields (Ordinance 71-22, 1971)³³.

This decision served as the culmination of an extensive and arduous consultative and elective negotiation process. Its primary objective was the realization of **full economic sovereignty**, serving as the necessary corollary to the nation's prior political independence.

driven by OPEC's success in coordinating production cuts and price increases following the 1973 War. The nationalizations of the Libyan oil industry, the Venezuelan nationalization of 1976, the Mexican hydrocarbons policy anchored in the constitutional monopoly of "PEMEX" Mexico's state-owned oil company, and the Iranian revolution's expropriation of the Anglo-Persian Oil Company's successors all represented assertions of PSNR that transformed the global energy landscape.

A second wave emerged in the 2000s, associated with high commodity prices and the political economies of "left-turn" governments in Latin America, resource-abundant states in Central Asia, and the Russian state's progressive reassertion of control over its energy sector through the instrumentalization of "Gazprom" and "Rosneft". The partial renationalization of Bolivia's gas industry under president "Evo Morales" in 2006, Venezuela's nationalization of "Orinoco" heavy oil projects under "Hugo Chávez", Kazakhstan's progressive revision of the terms applicable to the "Kashagan" oil field development, and Russia's effective expropriation of "Yukos" upheld in part by the Permanent Court of Arbitration in the 2014 "Yukos" Awards, subsequently annulled by Dutch courts before being reinstated on appeal are the landmark events of this period.

These episodes collectively establish that resource nationalism, however legitimately grounded in PSNR, imposes systemic costs that extend beyond the immediate parties to the expropriated contracts. Supply disruptions, price volatility, and investment deterrence produce externalities that affect importing states and their populations. The legal framework must account for these systemic effects (Stevens, 2008)³⁴.

II.B.2. PSNR and the Energy Transition: New Dimensions.

The global energy transition and the switch from fossil fuels to low-carbon energy sources motivated by the need to mitigate climate change, has introduced new aspects to the "PSNR" doctrine that have not yet been completely taken into account by legal research creating a number of different tensions.

First, states in the Global South that possess large reserves of hydrocarbons face a profound tension between their sovereign right to exploit those reserves for development purposes and the global pressure to decarbonize rapidly. The doctrine of PSNR, developed in the decolonization context to protect the right to exploit natural resources, arguably provides legal cover for continued fossil fuel development, while the "Paris Agreement" framework and customary international law norms on climate change obligations point in the opposite direction.

Second, PSNR equally applies to new categories of natural resources created by the energy transition, such as lithium, cobalt, rare earth elements, and other minerals essential to battery technologies and renewable energy systems, but they have not received the same level of legal elaboration. The geopolitical risks connected to petroleum contracts may be replicated in transboundary agreements for the supply of these essential minerals.

Third, the question of whether PSNR includes states' autonomy to choose the terms and speed of their energy transition, with what some academics have dubbed "transition sovereignty"

arises. With important ramifications for transboundary energy contracts that cross the fossil fuel to clean energy boundary, this is a truly fresh theological topic (Ahad Al Yahyai, Tina.S 2025)³⁵.

II.C. PSNR, Energy Security, and the Rights of Importing States.

II.C.1. The Asymmetry of Energy Interdependence.

The conventional “PSNR” theory was developed from the viewpoint of resource-owning nations attempting to control their natural resources in opposition to outside parties. The rights and interests of importing states that rely on resources were not intended to be addressed. However, the law must take into consideration the links of structural vulnerability created by energy interdependence.

The concept of “energy security”, defined by the International Energy Agency as the uninterrupted availability of energy sources at an affordable price, has been progressively recognized as a legitimate state interest capable of grounding international legal obligations. The UN General Assembly **Resolution 71/233** (adopted **December 21, 2016**) and subsequent resolutions, has affirmed that “the importance of access to affordable, reliable, sustainable and modern energy for the achievement of **economic growth and sustainable development**” (UN, A/RES/71/233, 2016)³⁶, The Security Council has increasingly addressed energy supply disruptions as threats to international peace and security in specific regional contexts (UN Doc, Energy, 2001- 2023)³⁷.

The sovereign right to control natural resources may be conditioned by an obligation not to purposefully weaponize such sovereignty in ways that cause systemic harm to dependent importing states, which lays the groundwork for a counterbalancing concept to PSNR. Although the legal foundation for this obligation is still up for debate, it can be derived from a number of sources, including: (i) the general principle of good faith in international relations; (ii) the law of countermeasures and reprisals, which forbids extreme measures disproportionate to the wrong suffered; (iii) the emerging law of economic coercion; and (iv) the duty of international cooperation in the energy domain expressed in various instruments (Cogan, 2024)³⁸.

II.C.2. The Weaponization of Energy Supply: Legal Consequences.

The concept of energy weaponization the deliberate use of control over energy supply as an instrument of geopolitical pressure received its most vivid demonstration in the Russian restriction and eventual complete cutoff of natural gas supplies to European states following its invasion of Ukraine, but It should, however, be noted that even the European Union Member States have imposed unilateral and often precipitous economic and financial sanctions on the Russian energy sector. While Russia characterized its actions through various contractual and technical justifications, the political context was widely understood as the deliberate deployment of energy dependence as a coercive tool (Quliyeva, 2025)³⁹.

The legal consequences of energy weaponization remain inadequately theorized. Potential legal bases for claims by affected importing states include: Article 2(4) of the “UN Charter”, prohibiting the threat or use of force, which may in extreme cases encompass economic coercion; the customary international law prohibition on intervention in the internal or external affairs of other states “WTO” world trade organization rules on import restrictions and quantitative limitations, and obligations under specific transit agreements. None of these

provides a fully adequate remedy; the legal framework was not designed for this kind of scenario (Robert G. Lee, Rachel Powell, , 2025)⁴⁰¹.

The paper argues in the last part that the doctrine of contractual sustainability by imposing obligations on both exporting and importing states, and on the private parties they sponsor, to maintain critical energy flows through geopolitical disruption provides the most promising framework for addressing energy weaponization through legal, rather than purely political or military means.

PART III: Conclusions and Proposals.

This paper has advanced a coherent analytical framework for understanding and managing geopolitical risk in transboundary energy contracts, organized around the reconciliation of the doctrine of Permanent Sovereignty over Natural Resources with an original doctrine of contractual sustainability. The principal findings may be summarized as follows:

First, the existing multilateral legal framework for transboundary energy centered on the Energy Charter Treaty, bilateral investment treaties, and the WTO's trade disciplines, is structurally incomplete and politically fragile. The ECT's progressive dismantlement by European states, the contradictions between investment protection and sovereign regulatory space, and the absence of any mechanism for addressing systemic supply disruptions leave transboundary energy contracts exposed to geopolitical shocks that the framework was not designed to absorb.

Second, the “PSNR” doctrine, while firmly established in customary international law, is not absolute. Its proper interpretation requires attention to the correlative duties it **generates: the obligation not to weaponize resource control against dependent importing states, the duty of energy cooperation, and the emerging obligation to manage the energy transition in a manner that does not produce catastrophic disruption of import-dependent economies.**

Third, the existing contractual risk management toolkit, force majeure, hardship, stabilization clauses, sanctions carve-outs, is inadequate to address the full spectrum of geopolitical disruptions that transboundary energy contracts face. A more systematic taxonomy of geopolitical risks, combined with a reformed contractual architecture incorporating sustainability principles is required.

Fourth, the dispute settlement mechanisms currently available for transboundary energy disputes investment arbitration, state-to-state proceedings, domestic litigation are each deficient in ways that the doctrine of contractual sustainability can help to address. Reformed mechanisms should incorporate sustainability imperatives, expedited procedures for supply emergencies, and standing provisions for affected third parties.

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- ⁹ - Morelli, A. Article 45: Provisional Application, The Energy Charter Treaty: A commentary, In R. Leal-Arcas (Ed), Publisher: Edward Elgar Publishing, UK, Year:2018, Pp:523-540.
- ¹⁰ - Russia provisionally applied the ECT pursuant to Article 45 from the date of signature until 19 August 2009, when it notified the ECT Depository (Portugal) of its intention not to ratify and to terminate provisional application with effect from 18 October 2009, in connection with concerns regarding the Transit Protocol (pipelines).
- ¹¹ - The CJEU ruled on march 6, 2018, that arbitration clauses in intra-EU bilateral investment treaties (BITs), like the Netherlands- Slovakia BIT, violate EU law by undermining the autonomy of EU law and Article 344 TFEU, for Komstroy v.Moldova, in its September 2,2021, judgement (Case C-741/19), the CJEU extend Achema to the ECT, holding Article 26 inapplicable to intra-EU disputes between EU investors and EU states.
- ¹² - In 2022, UK, France, Portugal were among the European states that expressed strong reservations and blocked the adoption of the revised text of the ECT, primarily due to its perceived misalignment with climate goals under the Paris Agreement and Net Zero transition, See; Monica Dulian, EU Withdrawal from the ECT (2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI\(2023\)754632_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754632/EPRS_BRI(2023)754632_EN.pdf).
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²⁰ - Ingeborg Schwenzer, & Edgardo Muñoz, Duty to renegotiate and contract adaptation in case of hardship, Published by: Oxford University Press on behalf of UNIDROIT & Uniform Law Review (Unif. L. Rev.), Doi:10.1093/ulr/unz009, Vol: 24, Issue 1, Year:2019, Pp:149–174.

²¹ - Idara Andy, Judicial enforcement of transboundary energy agreements addressing cross-border pipelines, electricity trade, and equitable natural resource allocation, Published by: Magna Scientia Advanced Research and Reviews, Volume:12, Issue:02, Year:2024, pages: 431–447.

²² - ** First Energy Package: 1996 (Electricity Directive 96/92/EC); 1998 (Gas Directive 98/30/EC), Key Liberalization Measures: Introduced internal market liberalization for gas and electricity; required unbundling of transmission operators.

** Second Energy Package: 2003, Furthered supplier choice for industrial/domestic consumers; mandated independent national regulatory agencies.

** Third Energy Package, 2009, Strengthened retail competition; two Directives (electricity 2009/72/EC, gas 2009/73/EC) and three Regulations on networks, ACER, and access.

** Clean Energy for All Europeans Package, 2019, Culminated reforms: eight legislative acts on renewables, efficiency, governance, and electricity market design; shifted toward decarbonization while building on prior liberalization.

²³ - Valentin Jeutner, Amendments, annexations, alternatives: Nord Stream 2's contemporary status under EU and international law, Publisher: The Journal of World Energy Law & Business, Volume:12, Issue:6, December 2019, Pages 502–512.

²⁴ - OPEC member countries produce approximately 35% to 40% of the world's crude oil, accounting for roughly half of all internationally traded oil. When including non-OPEC allies (OPEC+), the coalition controls over 50% of global crude production and holds roughly 80% of the world's proven oil reserves. **Available at:** <https://www.eia.gov/finance/markets/crudeoil/supplyopec.php#:~:text=OPEC%20countries%20collectively%20produce%20about,significantly%20influence%20global%20oil%20prices>. Accessed On: December, 19, 2025.

²⁵ - The Gas Exporting Countries Forum (GECF) member countries collectively hold over 70% of the world's proven natural gas reserves, 44% of its marketed production, 53% of the pipeline, and 57% of the liquefied natural gas (LNG) exports, serving as a dominant force in the global energy market, **Available at:** <https://www.gecf.org/Portals/0/xBlog/uploads/2026/4/8/GGO-10hedition-slidedeck-final.pdf>. Accessed On: December, 20, 2025.

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