

**MUNI**  
**LAW**

# **Energy in International Law (2023)**

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## Definition:

**“The system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties.”**

**What makes LAW different from other normative systems?**

- **Adopted by a state (legislative body)**
- **Legally binding**
- **Law enforcement**



**Law**

- **Concerns the management of energy resources and organisation of the energy sector**

**Energy  
Resources**

**Energy  
Sector**

**Energy plays a fundamental role in the economy of a country - employment, future economic development, personal health.**

**Recently, energy security, climate change and energy prices draw people's and government's attention.**

**Energy Law**

## Reasons:

- a matter of national security
- energy as a source of wealth
- energy as a driver of national development and economic growth
- negative environmental impact of energy related activities
- energy access and affordability

**Governments tend to regulate energy-related activities and the energy sector.**

## **A) Permanent sovereignty over natural resources**

**“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.”**

***(UN General Assembly Resolution resolution 1803 (XVII) on the “Permanent Sovereignty over Natural Resources”)***

**Governments tend to regulate energy-related activities and the energy sector.**

## **B) Human rights – health/environment**

**The energy sector is a major contributor to greenhouse gas (GHG) emissions and other types of air pollution that negatively impact human health and the environment.**

### **World Health Organisation (WHO) :**

“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.

**Governments tend to regulate energy-related activities and the energy sector.**

## C) Are states obliged to provide their own citizens with access to energy?

### International Covenant on Economic, Social and Cultural Rights:

#### Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

### Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

#### Article 14:

*“To enjoy adequate living conditions, particularly in relation to housing, sanitation, **electricity** and water supply, transport and communications.”*

**Governments tend to regulate energy-related activities and the energy sector.**

There are four main elements having significant impact on national energy law:

- ***The aim of Government***
- ***Availability of Finance***
- ***Availability of Technology***
- ***Societal preferences***



**National Law**



## **The aim of Government**

**Germany:** *With the election of Angela Merkel's government in 2005, energy policy in Germany changed. The energy policy promoted by her party and government involved a significant emphasis on renewable energy development and the closure of nuclear energy plants—which did receive an impetus after the Fukushima accident in Japan in 2011.*

**United Kingdom:** *The indecision of the UK coalition government elected in May 2010 has delayed new investment in the UK energy sector. It took the first few years of the government for both parties (the Conservatives and the Liberal Democrats) to agree a way forward. This indecision has reduced the interest from investors in the UK energy sector, and there has been little interest in developing new energy infrastructure.*

**France:** *Since the election of Francois Hollande of the French socialist party as president of France in May 2012, French energy policy has changed. The previous dominance of nuclear energy within the French energy policy is being reduced and a new emphasis has been placed on renewable energy development, with a planned limit on the use of nuclear energy to 50 per cent of the country's energy mix by 2025.*



**National Law**

## ***Availability of Finance***

*Obtaining finance for a project has become increasingly difficult and investors are looking for a guaranteed return on their investment.*

*Energy projects are traditionally viewed as risky due to long construction times, long planning processes. In a time of recession, investors look for more secure projects. There have been many cases where investors have pulled out from completing major energy projects.*



**National Law**

## ***Availability of Technology***

*Advances in the technology for wind turbines and solar energy are having a major impact in many countries. This has resulted in many countries changing their energy law in part to capture these technological benefits from more efficient technology.*

*EXAMPLE: shale gas, low-carbon technologies*



**National Law**

## **Societal Preferences**

*Different countries have different societal structures which contribute in part to different societal preferences. In many countries, this emanates from how the culture developed over time.*

*EXAMPLE: Ireland has a very anti-nuclear stance. The UK/France population views nuclear energy as part of the UK/France energy mix. In Denmark, there has been cross-party political support for the development of wind energy since 1970s. In the USA, certain states have a culture that has developed around their coal-mining industry.*



**National Law**

## **ADMINISTRATIVE LAW**

The legal framework within which public administration is carried out.

### **Objectives:**

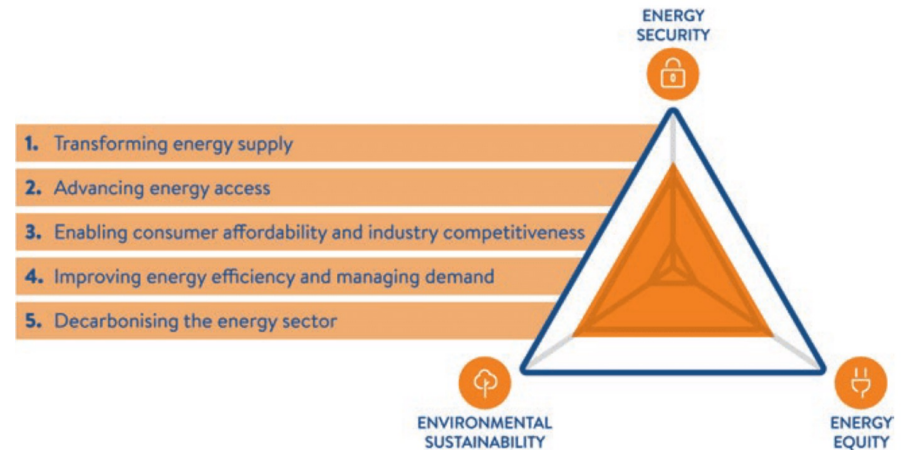
energy security,  
functioning energy market (affordability),  
environmental protection.

### **EXAMPLES:**

National regulation.  
Licences.  
Environmental impact assessment.  
Price regulation.

**Energy is highly regulated sector.**

## **National Law**



## ***CONTRACT LAW/BUSINESS LAW***

Contractual disputes between energy companies.  
(*contract law, business law*)



**National Law**

## **INTERNATIONAL LEVEL**

**“International law, also called public international law or law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognised as international actors.”**

## **NATIONAL LEVEL**

**Constitutional law, Administrative Law, Business Law**



**Energy Law**

# International Law





## **International Law**

**Definition: “International law, also called public international law or law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors.”**

**Objectives:**

**peace,**

**international coexistence,**

**international cooperation**

### **Public International law:**

**legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognised as international actors.**

### **Private International law:**

**governs the choice of law to apply when there are conflicts in the domestic law of different countries related to private transactions. Issues addressed by Private International Law include what jurisdiction applies - choice of court, forum selection, choice of applicable law recognition or enforcement of a foreign judgment.**



**Private International law:**

is a body of rules used to resolve legal disputes between **private** individuals who cross **international** boundaries.

Example: *Naftogaz v. Gazprom*

Private International Law determines:  
Applicable law.  
Jurisdiction.

Parties to a dispute can choose **applicable law**.

Parties to a dispute **can choose an arbitrator**.



## Key principle: Sovereignty

❖ **Internal sovereignty** refers to the supreme authority within a territory or the ultimate power within that territory.

❖ **External sovereignty** - the principle of sovereign equality (international law governs relations between independent States. **The rules of law binding upon States therefore emanate from their own free will** as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence (sovereignty) of States cannot therefore be presumed.)

### ❖ **EXCEPTION\_JUS COGENS:**

States can be bound through objective legal norms they have not consented to or cannot derogate to imperative norms even if they want to. // peremptory norms accepted by the international community of states as a norm from which no derogation is permitted (prohibition of genocide)

# International Law

❖ *Origins of the sovereign equality of states in international law can be traced to the Peace of Westphalia (1648)*

❖ *Emerich de Vattel: “a dwarf is as much as man as a giant is; a small republic is no less sovereign state than the most powerful kingdom”.*

❖ *Article 2 of the UN Charter: the organization is based on the principle of the sovereign equality of all its members.*

❖ *States should not intervene in the internal affairs of other states.*



## **International Law**

# **CONSENT**

*Sources:*

- ❖ *international treaties*
- ❖ *customary international law derived from the practice of States*
- ❖ *general principles of law recognised by civilised nations*

**Decentralised system.**

**Dispute settlement: consent is required (ICJ).**

**UNGA resolutions are not legally binding.**

**UNSC resolution are legally binding.**

**International Law**

**Customary law** is not a written source of law. A rule of customary law has two elements:

**First**, there must be **widespread and consistent State practice** – i.e. States must, in general, have a practice of according immunity to a visiting Head of State.

**Secondly**, there has to be what is called “**opinio juris**”, usually translated as “**a belief in legal obligation; i.e. States must accord immunity because they believe they have a legal duty to do so.** As the ICJ has put it: - *‘Not only must the acts concerned be a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it. ... The States concerned must feel that they are conforming to what amounts to a legal obligation.’* (North Sea Continental Shelf cases, ICJ Reps, 1969, p. 3 at 44)



**International Law**

# There is no hierarchy of sources or rules.

## Exception:

### Priority of obligations arising from the UN Charter (Article 103):

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the UN Charter shall prevail.”



**International Law**



The UN Charter obliges states to settle their disputes peacefully.

**Article 33 of the UN Charter:**

**Non - legally binding**

- **Negotiation** (two parties trying to talk things through)
- **Mediation** (a third party is involved)
- **Inquiry** – a third party is entrusted with a fact-finding task
- **Conciliation** – a third party plays even more intensive role acting almost like a tribunal, hearing evidence, reading memorials and presenting a recommendation based on the evidence. However, such recommendation is not binding.

**Legally  
binding**

**Judicial settlement  
Arbitration (ad-  
hoc/arbitration  
centres)**

## JURISDICTION - CONSENT

- Due to the sovereignty of states, there is no such thing as truly compulsory jurisdiction in international law.
- **A state cannot be subject to the jurisdiction of any court without its consent to the jurisdiction.**
- States can accept the jurisdiction of a court before a dispute occurs or after it occurs.

Consent to arbitration may result from a direct agreement to bring before an arbitral tribunal

- a) either future disputes arising from the investment operation
- b) or an existing dispute.

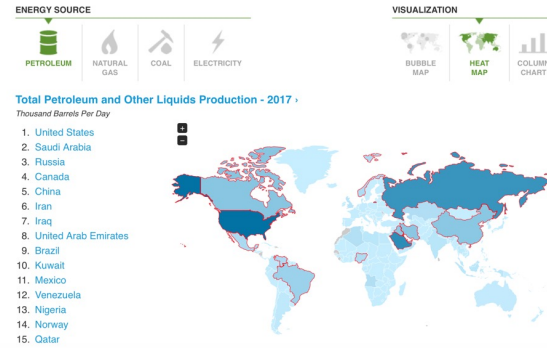
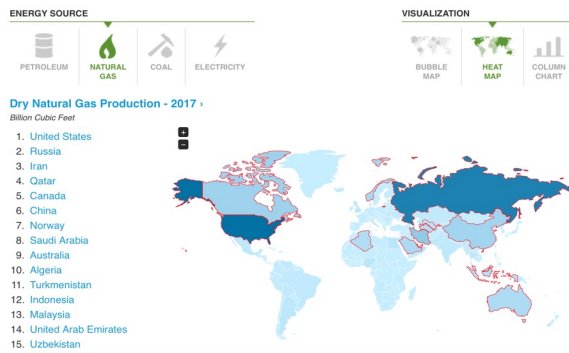
**The States parties to the Statute of the Court may “at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court” (Art. 36, para. 2, of the Statute).**

**Judicial settlement  
Arbitration (ad-  
hoc/arbitration  
centres)**

# Growing need for access to energy resources:

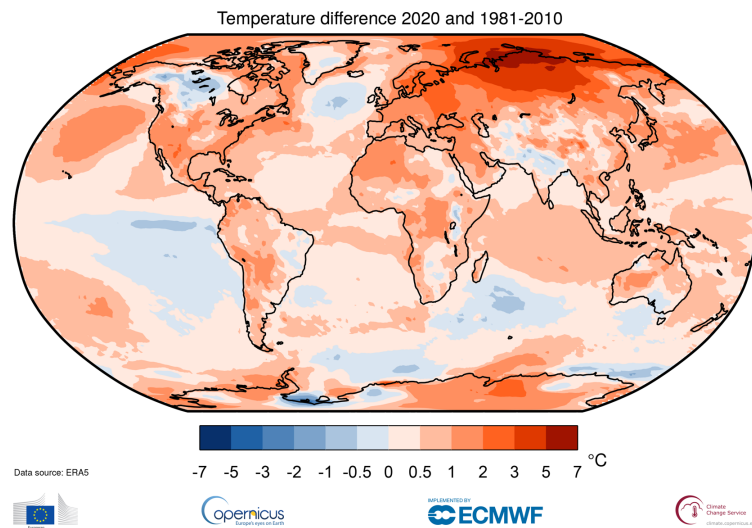
- Investments
- Trade
- Transit
- Energy Security

# International Energy Law



# Impact of energy on the environment (trans-border) and climate change

# International Energy Law



There is **no single international organization** dealing with global energy issues and governance.

There is **no single agreement dealing with energy in a comprehensive manner.**

There are **multitude of instances of interstate cooperation** that touches upon energy.

## Renewables

*Renewables, including solar, wind, hydro, biofuels and others, are at the centre of the transition to a less carbon-intensive and more sustainable energy system.*

Share of global electricity generation  
2019

**23.2** %

## Nuclear

*Nuclear power has historically been one of the largest global contributors of carbon-free electricity, however, it faces significant challenges in some countries.*

Operating nuclear reactors worldwide  
2021

**439** REACTORS

## Coal

*Coal is both the largest source of electricity generation and the largest single source of CO2 emissions*

Share of unabated coal-fired power generation  
2020

**35.2** %

## Oil

*Coal is both the largest source of electricity generation and the largest single source of CO2 emissions*

## Gas

*Natural gas is the cleanest burning and fastest growing fossil fuel, now accounting for about a quarter of global electricity generation*

STATE

Energy Company



STATE

Energy Company

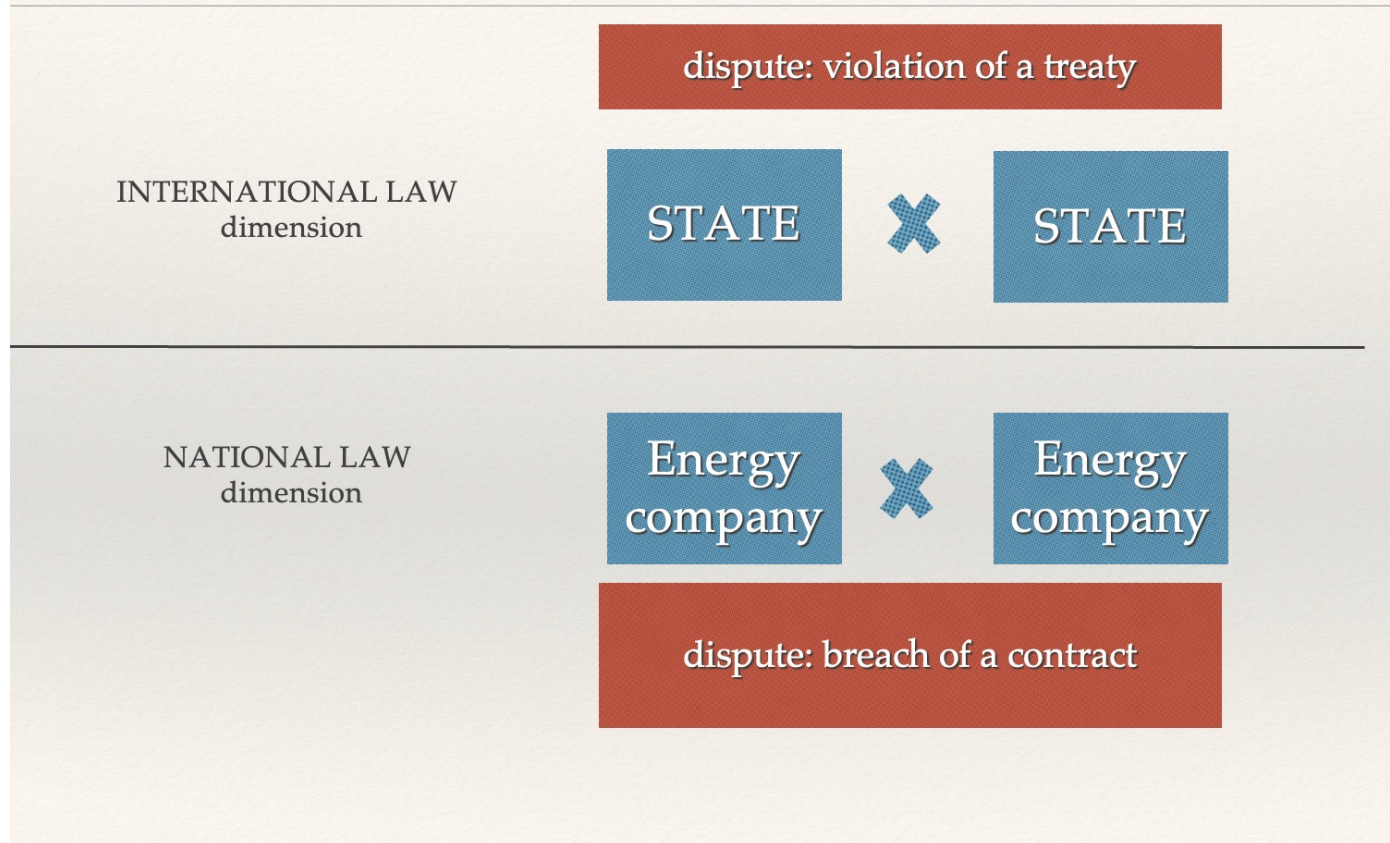


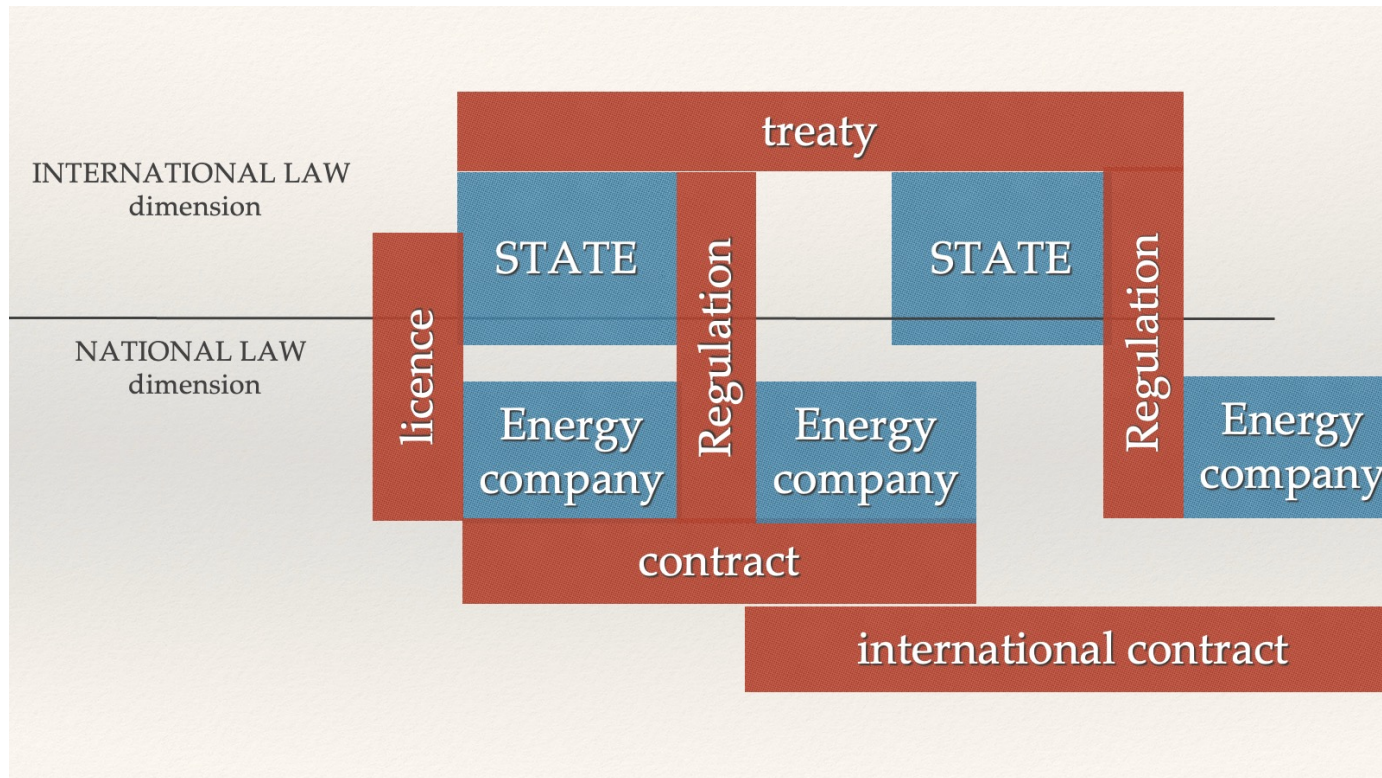


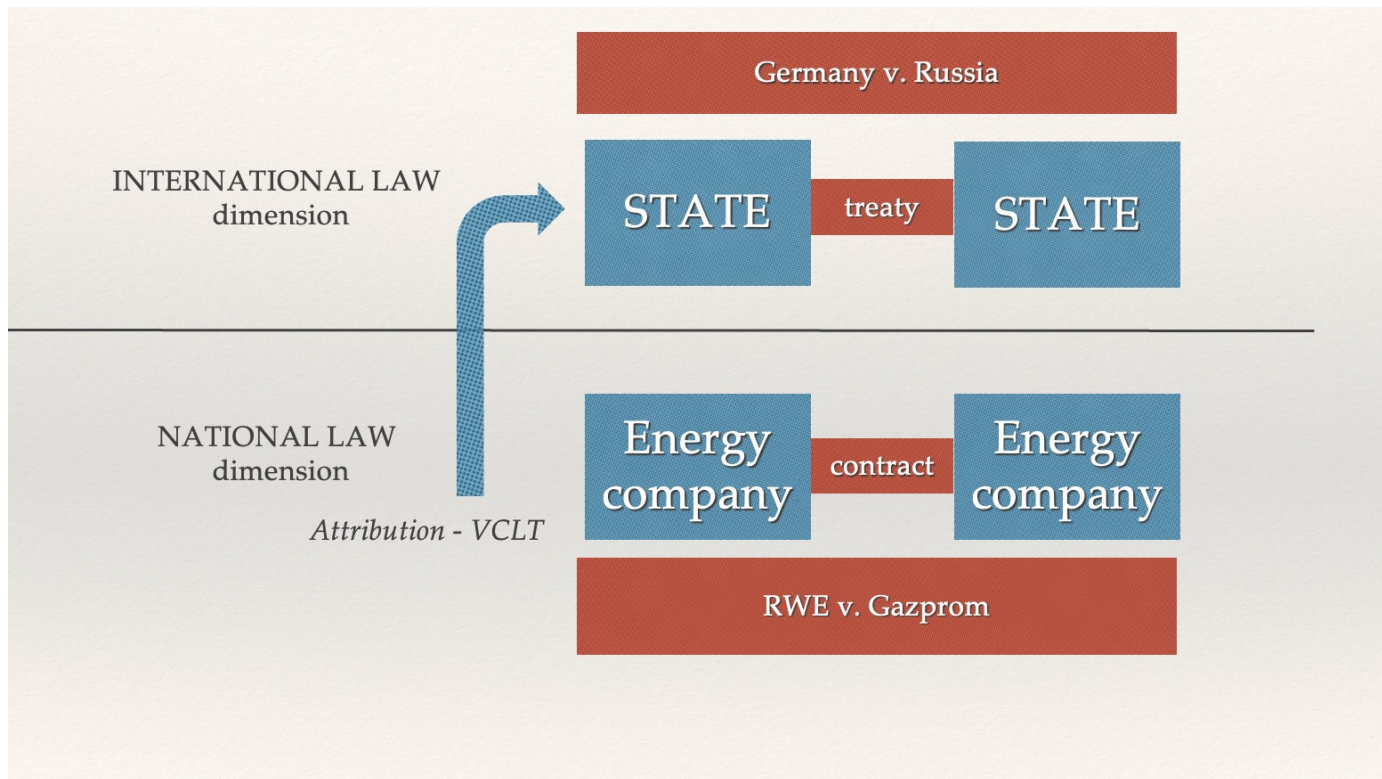
**ExxonMobil**



## Different Stakeholders -> Different norms







# International Energy Law

WTO

International Energy Agency

Energy Charter Treaty

OPEC

IRENA

IEF



iea



MUNI  
LAW

Fossil Fuels  
*coal, oil, gas*

## INTERNATIONAL LAW dimension

Energy as a driver of national development and economic growth + Limited reserves + Uneven distribution of fossil fuels over the planet

- a matter of national security (security of supply)
- energy access and affordability

Uneven distribution of fossil fuels over the planet

- energy as a source of wealth (security of demand)

Significant source of CO<sub>2</sub> emissions

- negative environmental impact of energy related activities

### INVESTMENTS

Exporting/Importing Countries

### TRADE

Exporting/Importing Countries

### TRANSIT

Exporting/Importing Countries

### ENVIRONMENTAL PROTECTION/CLIMATE CHANGE

M U N I  
L A W

**PSNR**



Jihlava (13.  
century)

**Iura montium et  
montanorum**

the oldest written  
Mining Law in  
Central Europe  
was codified

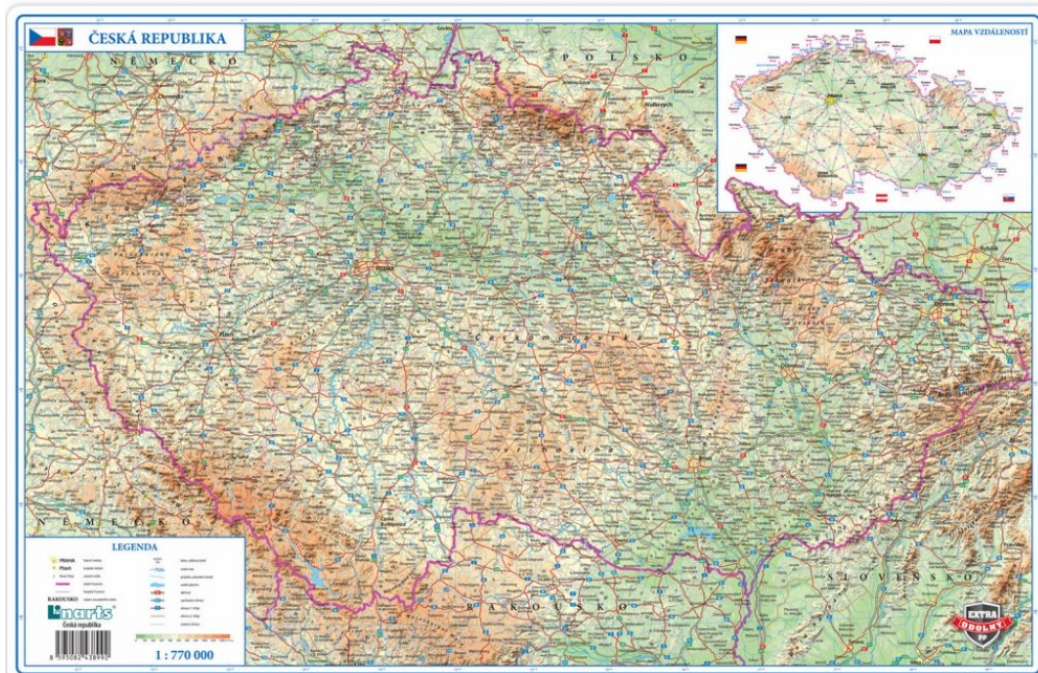
**MUNI  
LAW**

## § 5

### Mineral resources

(1) Pursuant to this Act mineral resources consist of deposits of reserved minerals (hereinafter referred to as "reserved deposits").

(2) Mineral resources within the territory of the Czech Republic are owned by the Czech Republic.



#### Classification of minerals as reserved and non-reserved

(1) Reserved minerals are the following:

- a) radioactive minerals,
- b) all kinds of coal, crude oil and flammable natural gas and bituminous rock,
- c) minerals from which metals can be produced by industrial processes,
- d) magnesite,
- e) minerals from which phosphorus, sulfur and fluoride or their compounds can be produced by industrial processes,
- f) rock salt, potassium, boron, bromine and iodine salts,
- g) graphite, barite, asbestos, mica, talc, diatomite, glass-making and welding sands, mineral dyes, bentonite,
- h) minerals from which rare earth elements and elements with semiconductor properties can be produced by industrial processes,
- i) granite, granodiorite, diorite, gabbro, diabase, serpentine, dolomite and limestone provided they are suitable for quarrying and polishing, and travertine,
- j) technically utilizable mineral crystals and precious stones,
- k) halloysite, kaolin, ceramic clays, fireclays and claystones, gypsum, anhydrite, feldspar, perlite and zeolite,
- l) quartz, quartzite, limestone, dolomite, marl, basalt, phonolite, trachyte provided that these minerals are suitable for chemical and technological processing or smelting,
- m) mineralised water from which reserved minerals can be produced by industrial processes,
- n) technically utilizable natural gases which are not listed under letter b).

(2) Other minerals are non-reserved minerals.



# PSNR

PSNR emerged against the background of the decolonisation process taking place after the WWII. (1950s)

Newly established states were seeking to gain **an economic independence** on the former colonial powers and the **utilization of natural resources** were supposed to contribute to such goal.

However, natural resources were at that time often utilised by companies representing the former colonial powers (**foreign investors**). Pursuant to long-term contracts these companies had often exclusive licenses.

Newly established states were seeking to regain the control over natural resources located within their territory.

However, it would require **a termination of contracts and revocation of licences.**

## *Anglo-Persian (Iranian) Oil Company*

In 1921, there was a coup d'état in Persia led by British.

Reza Pahlavi became Iran's prime minister. In 1925, Reza Pahlavi was appointed as the legal monarch of Iran by decision of Iran's constituent assembly.

**In 1933: Anglo-Persian Oil Company and Persia concluded a concession agreement. APOC obtained an exclusive right to extract and process petroleum in a specified area in Iran up to 1993 (60 years).**

In 1951, the socialist government of Iran, led by P-M Mohammed Mossadegh, announced the official decision to **nationalize the property rights of the APOC and to terminate the concession agreement.**

Nationalized oil fields were to be exploited by newly established company – The National Iranian Oil Company.

## *Anglo-Persian (Iranian) Oil Company*

From the APOC perspective, **there was no forum other than Iranian courts.**

Thus, the UK stepped in. It took up the company's case and instituted proceedings before the **ICJ**.

Iran disputed the Court's jurisdiction. **Iran argued that its decision should be view as the exercise of its sovereignty.**

In its Judgment of 22 July 1952, the Court decided that it had no jurisdiction to deal with the dispute. The Court rejected the view that the agreement of 1933 was both a concessionary contract between Iran and the company and an international treaty between Iran and the United Kingdom, **since the United Kingdom was not a party to the contract.**

## PSNR

PSNR is a materialization of the internal dimension of a state's sovereignty = **supreme/ultimate authority within a territory.**

Was there a need to declare PSNR?

**Against the background of the battle for decolonisation, the independence movement led by the then still colonies discovered the necessity to control the natural resources in their territory.**

Fossil Fuels  
coal, oil, gas

*UNGA Resolution 523 (VI) adopted in 1952*

Upstream

Against the background of the battle for decolonisation, the independence movement led by the then still colonies discovered the necessity to control the natural resources in their territory.

Exploration and  
Production

**523 (VI). Integrated economic development and commercial agreements**

*The General Assembly,*

*Considering that the under-developed countries have the right to determine freely the use of their natural resources and that they must utilize such resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests, and to further the expansion of the world economy,*

(ii) The development of natural resources which can be utilized for the domestic needs of the under-developed countries and also for the needs of international trade,

provided that such commercial agreements shall not contain economic or political conditions violating the sovereign rights of the under-developed countries, including the right to determine their own plans for economic development;

## Fossil Fuels *coal, oil, gas*

## UNGA Resolution 1803 (XVII) adopted in 1962

1. 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.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with 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.

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

Fossil Fuels  
*coal, oil, gas*

## UNGA Resolution 3201 (S-VI) adopted in 1974

3201 (S-VI). Declaration on the Establishment of  
a New International Economic Order

*The General Assembly*

*Adopts the following Declaration:*

DECLARATION ON THE ESTABLISHMENT OF  
A NEW INTERNATIONAL ECONOMIC ORDER

*Solemnly proclaim* our united determination to work urgently for THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations, and, to that end, declare:

(e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;

Fossil Fuels  
coal, oil, gas

## *The Charter of Economic Rights and Duties of States UNGA Resolution 3281*

**Full permanent sovereignty over natural resources** and all economic activities.  
States exercising PSNR are **not required to pay full compensation** (see Article 4 e) of the resolution).

Declaration aimed at addressing **economic inequality**.

Principles enshrined in the Declaration on the Establishment of the New International Economic Order became pillars of the **Charter of Economic Rights and Duties of States (UNGA Resolution 3281 (XXIX))**.

The Charter was **opposed** by six **developed countries** (the UK and the US, Belgium, Denmark, Germany, Luxembourg), 10 OECD countries absented.



# *PERMANENT SOVEREIGNTY OVER ENERGY RESOURCES*

STATE

Foreign  
Energy  
company

PSNR

Fossil Fuels  
*coal, oil, gas*

## *Topco v. Libya Arbitration*

### **Factual Background:**

At the time of its independence in 1951, Libya was an extraordinarily poor country with almost no natural resources, with uneducated population, and small area of arable land (90% of the country is desert).

Between 1951 and 1979 Libya experienced unprecedented economic growth as a result of the discovery, extraction and exportation of petroleum.

**Petroleum placed Libya among the world's 15 wealthiest countries. Its** GDP grew from 40 USD in 1951 to 6500 USD in 1977.

In 1973, Libya sought direct equity participation in the oil concessions owned by foreign oil companies. With respect to the companies, Libya made a series of demands and threats ranging from 51 percent to 100 percent government ownership of the concession. The companies responded with counter-proposals, all of which were rejected by Libya.

**In 1973, Libya broke off negotiations and promulgated Decree No. 66 of 1973, nationalizing 51 percent of the interests and property of the companies. In 1974, Libya acted again and promulgated Decree No. 11 of 1974, nationalizing the remaining 49 percent of the interests and property of the companies.**

## Fossil Fuels coal, oil, gas

## Topco v. Libya Arbitration

Affirming that every state maintains the absolute right to exercise full sovereignty over its natural resources, the Arbitrator questioned whether there is no limit to this sovereignty.

The December 1962 Resolution No. 1803 of the United Nations General Assembly confirmed the right of permanent sovereignty over natural resources but limited it to cases of public and national interest within the perimeters of international law.

UNGA Resolution 1803 (XVII) adopted in 1962

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

3201 (S-VI). Declaration on the Establishment of a New International Economic Order

The General Assembly  
Adopts the following Declaration:

DECLARATION ON THE ESTABLISHMENT OF  
A NEW INTERNATIONAL ECONOMIC ORDER

**(e) Full permanent sovereignty of every State over its natural resources and all economic activities.**

**In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;**

Fossil Fuels  
*coal, oil, gas*

## *Topco v. Libya Arbitration*

Rene-Jean Dupuy analysed **the legal impact of United Nations General Assembly resolutions and the possible existence of a customary principle of law.**

Consensus of states - **the voting patterns within the UN General Assembly.**

**The 1962 Resolution (Resolution No. 1803): 87 countries voting in favour, 2 voting against and 12 abstaining**

Voted for by developing countries as well as developed countries represented agreement among states from all geographical areas and economic levels.

**The Charter of Economic Rights and Duties of States (Resolution No. 3281): 118 countries voting in favour, 6 voting against and 10 abstaining**

**a standard of international law for acts of nationalization, was voted on separately and approved by 104 countries voting in favour, 16 voting against and 6 abstentions**

The **1962 Resolution (No. 1803)** seemed to Rene-Jean Dupuy **to reflect the position of customary law existing in the field. Resolution No. 3281**, its background and the voting pattern illustrated that it was a "**political rather than a legal declaration concerned with the ideological strategy of development and, as such, supported only by non-industrialized States.**"

# PERMANENT SOVEREIGNTY OVER ENERGY RESOURCES

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

**Appropriate compensation** in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law, **should be paid to the owner in case of nationalization**

STATE

Energy  
company

PSNR

# PERMANENT SOVEREIGNTY OVER ENERGY RESOURCES

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

**Appropriate compensation** in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law, **should be paid to the owner in case of nationalization**

State  
Sovereignty

PSNR

Legal obligations (Contractual or International)

# PERMANENT SOVEREIGNTY OVER ENERGY RESOURCES v. Contractual obligations

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

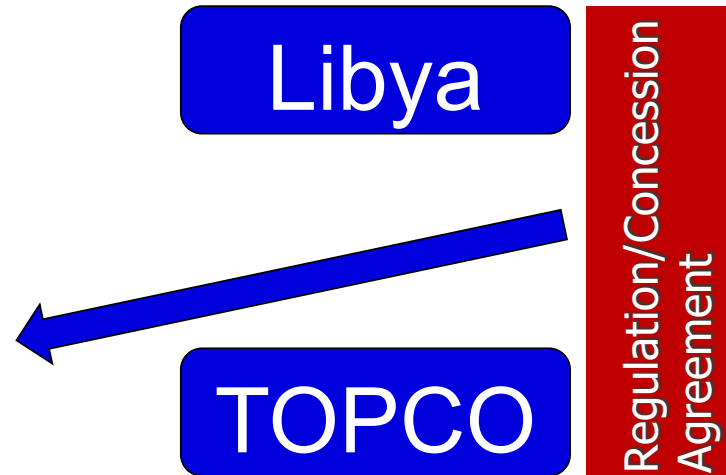
**Appropriate compensation** in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law, **should be paid to the owner in case of nationalization**

## TOPCO v. Libya

Every state can invoke its sovereignty and expropriate assets of foreign companies, however, by doing so, such state cannot violate its contractual obligations (*pacta sunt servanda* principle), **a contract is just another materialization of state sovereignty.**

***Pacta sunt servanda* is a principle of international law, Islamic law and even Libyan law.**

**By adding a stabilization clause into the concession agreement, Libya effectively limited its sovereignty.**



# PERMANENT SOVEREIGNTY OVER ENERGY RESOURCES v. *International legal obligations*

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**Appropriate compensation** in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law, **should be paid to the owner in case of nationalization**

## INTERNATIONAL OBLIGATIONS – Legal regimes

### TRADE -> WTO, ECT

Exporting/Importing Countries

### TRANSIT -> WTO, ECT, Multilateral Agreements

Exporting/Importing Countries

### Energy Security -> IEA / OPEC

### ENVIRONMENTAL PROTECTION/CLIMATE CHANGE -> UNFCCC, Paris Agreement



## Fossil Fuels *coal, oil, gas*

**PSNR**

**Energy Charter Treaty**, Article 18.

**UNFCCC** also acknowledges the sovereign right of states to exploit their own resources.

**Convention on Biological Diversity (CBD):**

*Article 3. of the CBD*

**States have**, in accordance with the Charter of the United Nations and the principles of international law, **the sovereign right to exploit their own resources** pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

## Fossil Fuels *coal, oil, gas*

**PSNR**

### INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO (DEMOCRATIC REPUBLIC OF THE CONGO v. UGANDA)  
JUDGMENT OF 19 DECEMBER 2005

“The Court recalls that the principle of permanent sovereignty over natural resources is expressed in General Assembly resolution 1803 (XVII) of 14 December 1962 and further elaborated in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S.VI) of 1 May 1974) and the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX) of 12 December 1974). **While recognizing the importance of this principle, which is a principle of customary international law,** the Court notes that there is nothing in these General Assembly resolutions which suggests that they are applicable to the specific situation of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State, which is the subject-matter of the DRC’s third submission.”

## Fossil Fuels *coal, oil, gas*

## PSNR: CONCLUSIONS

- 1) 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.**
- 2) Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. **In such cases the owner shall be paid appropriate compensation,** in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.
- 3) **OTHER INTERNATIONAL OBLIGATIONS (WTO, ECT)**
- 4) **SUSTAINABLE DEVELOPMENT/CLIMATE CHANGE RELATED OBLIGATIONS**