EXPLORING THE LEGAL AND POLICY IMPACT OF THE RUSSIA-UKRAINE WAR ON ENERGY SECURITY

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Abstract

There is more to any short-term economic, political, human, and environmental risks associated with Russia's invasion of Ukraine. The war has likely far-reaching energy security implications of particular international concern. This paper focuses on the Russia-Ukraine war to analyse its global energy security implications from a legal and policy perspective. The war, in addition to sanctions imposed on Russia, has a potential for breach of existing energy contracts between nationals and petroleum companies from Russia and Ukraine, as well as countries sanctioning Russia. These risks would perhaps result in eventual high-profile commercial and/or investment disputes. There have been disruptive geopolitical energy supply shifts and price reactions across global energy markets since the war began. Thus, a realignment of energy geopolitics remains very high to be seen globally as a result of the war. Even so, opportunities for development in national and international energy law and policy as well as investments in new energy resources abound. This particular development will inform new directions for Russian, Ukrainian, and European countries' energy laws and policies. This paper has implications for planning energy transitions and reimagining global energy geopolitics and energy law and policy, especially in dealing with over-dependence on foreign energy importation and/or consumption.

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1.0 Introduction

The global energy sector has never faced a sequence of unprecedented challenges as seen in recent times. Major global crises such as the ongoing invasion of Ukraine by Russia and the COVID-19 pandemic have triggered a wake-up call that is critical to the future of the energy industry. Though the energy security concern raised by COVID-19 is still being analysed, Russia's invasion of Ukraine has been dominating global news headlines with its pungent, energy-wide security implication being analysed. These events have highlighted the need for deeper reflections on the growing vulnerabilities of fossil fuels due to overly dependence on such resources and their revenues.[1] The reflections provide a boost for global energy transitions to a net-zero emissions future based on the implementation and deployment of low-carbon renewable energy resources to support equitable, affordable and sustainable energy access. There is no doubt that a reliance on hydrocarbons has an inherent vulnerability to supply disruptions and price shocks, which are not ideal for sustainable economic, industrial, and human development.

The invasion of Ukraine by Russia has attracted remarkable political condemnations from the international community and has been responded to with sanctions targeted mainly at the Russian energy sector and more vital economic sectors by a pro-Ukraine alliance.[2]

[1] Cosmos Nike Nwedu and Solomon A Alo, 'Force Majeure in Post COVID-19: The Implications for Future Energy Law Contracts' (2021) 1(2) Global Energy Law and Sustainability, 179-183; Cosmos Nike Nwedu, 'The Rise of Force Majeure amid the Coronavirus Pandemic: Legitimacy and Implications for Energy Laws and Contracts' (2021) 61(1) Nat Resources J, 1-18.

[2] Oleksii Maslov and Nelli Kichigina, 'Cutting-Off Russia from ISDS: Another Tool to Consider?' (Kluwer Arbitration Blog, 26 March 2022)<https://www.http://arbitrationblog.kluwerarbitration.com/2022/03/26/cutting-off-russia-from-isds-another-tool-to-consider/>, accessed 15 June 2024.

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These sanctions have been designed to economically neutralise Russia's political power and presence in Ukraine, and consequently, triggering massive cessation of investment and an exodus of international businesses and multinational companies from Russia. Most Western firms, including oil and gas companies, have already begun to wind up their businesses and investments, whilst some others that took initial temporary measures made a turnabout and decided to finally leave the country.[3] On 8 March 2022, global oil giant, Shell announced its plan to withdraw from Russian oil and gas.[4] But it is uncertain whether countries shutting against Russia's oil would eventually return to a peaceful post-conflict era. There are, however, economic consequences for Russia, Ukraine, the European Union (EU), and companies leaving Russia.

Europe has gradually witnessed disruptive energy supply shifts from Russia.[5] But global oil and gas prices have stayed strong as war-triggered prices, and so boosted post-COVID-19 oil recovery. Even so, Russia's invasion of Ukraine arguably represents bad news likely to erode the world's pandemic recovery efforts given that the financial impact of the pandemic is already increasingly affecting global economies.[6] Most observers believe the implications of the war will count as a major global energy crisis like the 1973 oil embargo.[7] The EU economy is energy import-oriented. Most EU countries are widely

[3] The New York Times, 'Companies Are Getting Out of Russia, Sometimes at a Cost' (2022)< https://www.nytimes.com/article/russia-invasion-companies.html>, accessed 15 June 2024.

[4] See 'Shell announces intent to withdraw from Russian oil and gas', 8 March 2022. <https://www.shell.com/media/news-and-media-releases/2022/shell-announces-intent-to-withdraw-from-russian-oil-and-gas.html>, accessed 15 June 2024.

[5] Mike Fulwood, 'Europe's Infrastructure and Supply Crisis' (2022) Oxford Institute for Energy Studies (OIES).

[6] Raphael J Heffron, 'The identification and impact of justice risks to commercial risks in the energy sector: post COVID-19 and for the energy transitions' (2021) 39(4) Journal of Energy and Natural Resources Law, 439-468.

[7] Anne-Sophie Corbeau, 'The Russia Invasion of Ukraine and the Global Energy Market Crisis' (Columbia/SIPA Center on Global Energy Policy, 24 March 2022)<https://www.energypolicy.columbia.edu/research/qa/qa-russian-invasion-ukraine-and-global-energy-market-crisis#_edn2>, accessed 15 June 2024.

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attributed with over-reliance on energy importation from Russia, which suggests the EU economy and energy security are exposed to the market health of its energy supplier. This reflects a bad legacy of European energy law and policy. To one extreme, enforcing sanctions on Russia ultimately places EU member countries at high risks of energy security, and any sanction-related counter-response from Russia can intensify such dicey consequences. Thus, it will be critical to engage in any completely unplanned ban on Russian oil and gas inflow into Europe. This is partly because extreme weather in Europe requires coping strategies with constant switches and long-term securitisation of natural gas supplies for domestic heating. Even as the EU considers a complete future ban on Russian oil, such an oil embargo on the world's largest producer of hydrocarbons will generate more real-world shocks across markets and perhaps trigger geopolitical realignment.

This paper analyses the far-reaching energy security implication of Russia's invasion of Ukraine from a legal and policy perspective. The need for a clear understanding of such geopolitical energy security risk is the rationale for the study. The study has implications for conceptualising contemporary energy security and understanding global energy geopolitics. The background analysis of the Russia-Ukraine war follows next, as a symbol of an unprecedented shift from existing global energy geopolitics. The next sections examine the energy security concept and extensive analysis of the wider energy security implications of the war respectively. Finally, section five, in conclusion, presents key points and lessons derived from the paper.

2. Overview of the Russia-Ukraine War

On 24 February 2022, Russian President Vladimir Putin began a long-range, invasive attack dubbed a 'special military operation' on Ukraine.[8] This has attracted profound empathy, humanitarian support for the victims, and wide condemnations from observers, political analysts,

[8] UN News, 'As Security Council meets on Ukraine crisis, Russia announces start of 'special military operation' (2022)<https://news.un.org/en/story/2022/02/1112596>, accessed 15 June 2024.

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diplomats, industry practitioners, and the international community at large. The most visible supports began with providing information, armaments, and logistics for Ukraine and imposing various economic sanctions reflecting purely 'economic warfare' on Russia,[9] which come from the North Atlantic Treaty Organisation (NATO),[10] and Group of 7 (G7) countries. Both NATO and G7, as an alliance of Western countries, have ceaselessly been backing Ukraine to remove Russia's occupying forces from its disputed territorial borders historically established in 1991.[11]

The encompassing sanctions have been, nevertheless, gradually directed to the Russian energy industry. This is unsurprising due to Russia's big take on global energy revenues, which means sanctions designed to stop energy revenues from funding the war would have ordinarily been considered a strategic policy approach. The United States, in particular, has imposed a ban on the importation of Russian crude oil, certain petroleum products, natural gas, and coal, in addition to bans on any investments by American companies that are capable of expanding the Russian energy sector.[12] There has also been a ban on Russian commodity exports to international markets.[13] But whether imposed by NATO, G7, or the United States, sanctions directed to

[9] Christof Rühl, 'Energy Markets and the Design of Sanctions on Russia' (Columbia/SIPA Center on Global Energy Policy, 2022)<https://www.energypolicy.columbia.edu/research/commentary/energy-markets-and-design-sanctions-russia>, accessed June 2024.

[10] This is also known as the North Atlantic Alliance; an intergovernmental military alliance between 30 member states, 28 of which are European countries whereas 2 are North American countries. For more detailed information. See https://www.nato.in

[11] The US, Russia, and Ukraine are believed to have confirmed the borders in occupation by Russian forces via Trilateral Statement in 1994. For more information on this, see Steven Pifer, 'The Trilateral Process: The United States, Ukraine, Russia and Nuclear Weapons' (2022) Brookings Arms Control Series Paper 6<https://www.brookings.edu/wp-content/uploads/2016/06/05_trilateral_process_pifer.pdf>, accessed 15 June 2024.

[12] Winnie Makau and Silas Samoei, 'Russia-Ukraine Conflicts and its Effects on Global Energy Security' (KIPPRA, 16 August 2022)<https://kippra.or.ke/russia-ukraine-conflict-and-its-effects-on-global-energy-security/>, accessed 15 June 2024.

[13] Rühl, op. cit. 9.

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Russia's energy resources could trigger non-performance of existing energy contracts between Russia and countries dependent on its energy, which suggests potential legal disputes. The EU appears to be tactically disinclined to impose strict sanctions that are likely to directly affect the Russian energy sector, perhaps as member countries rely heavily on Russian oil and gas. Because most energy supply scenarios are barely factored into extreme emergency events, it suffices to argue that Europe's disinclination to either impose strict sanctions on Russia or completely stop its energy inflow into Europe is strategically logical.

Most professionals now, however, question the effectiveness of sanctions on Russia. Though largely designed to achieve real impacts, experts believe such sanctions are otherwise counter-productive and have not achieved any real result. The financial sanctions by the EU and the United States have instead affected global energy markets.[14] For example, clearance and insurance of payments and energy trading in the energy markets are considered to have been under impedance that is linked to energy supplies from Russia.[15] The war-linked energy supply disruptions have led to an unprecedented global increase in oil and gas prices. On 5 July 2022, oil prices increased to US$114.3 per barrel in the Organisation of the Petroleum Exporting Countries (OPEC), with global gas prices rising from US$2.55 in January 2022 to US$3.27 in July 2022, according to one source.[16] Despite oil-producing countries are reaping from such price increases, energy-importing countries are not.

These increases have created shocks and led to increased pump prices in different countries globally, and so fomenting energy security challenges. Traditionally, rising market prices raise some economic and political interests, and so can trigger legal and policy changes that very often push for price renegotiation in existing supply contracts. These interests must be balanced between suppliers and purchasers; otherwise,

[14] Ibid.
[15] Makau and Samoei, op. cit. 12.
[16] Ibid.

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they will lead to a contractual breach and legal dispute. The period of supply disruptions due to disputes poses risks to energy security. Most recent strikes targeted at Ukraine's critical energy infrastructure by Russia have the potential to even intensify global oil and gas shocks more. Though Russia and Ukraine are not members of OPEC, each of them has a standing agreement to cooperate with member countries in oil and gas pricing and production. For stabilisation in global oil production and prices, increasing production output remains key. The United States, United Kingdom, and EU have appealed to OPEC to increase oil output as a price mitigation strategy, but OPEC is unwilling to act, given some considerations such as the limited capacity of some member countries and respect for Russia's partnership.[17] One might assume that a far more underlying political and economic motive is masked in Russia's invasion of Ukraine. Likewise, NATO and G7's backing of Ukraine raises a deeper concern beyond mere humanitarian support. By a relative measure of conventional power, any direct military confrontation by a European and American alliance would have meant a defeat for Russia. However, the nuclear capability of Russia might have deterred such a confrontation that might have spiked a large-scale world war. Thanks to Russia's nuclear arsenal and the western alliance's introspection of possible global catastrophe.

From a legal viewpoint, in any case, Russia's invasion of Ukraine has remained a keen subject of international debate as well as a matter of international law and standards. More importantly, the invasion raises critical questions about the ultimate features and efficacy of the international legal order on the one hand, and a country's territorial integrity and right to self-determination,[18] in which case Ukraine's sovereignty on the other hand. Most international legal experts suggest that Russia's war attack on Ukraine is an unlawful invasion under international law. One singular reason for their position is that Ukraine is a sovereign nation. More so, an expert has described the invasion as

[17] Makau and Samoei, op. cit. 12.

[18] Marcin Marcinko and Bartosz Rogala, 'The Ukrainian Crisis: A Test for International Law?' (2017) 5(1) Polish Review of International and European Law, 37-71.

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an 'international law wrongdoing' with far-reaching direct and indirect consequences.[19] The war implies that Russia's strategic standing in the global energy market poses an extreme energy security concern, not just in Europe but also across many countries. The full-scale war fronts a significant, negative impact on the Ukrainian energy sector in particular, since the country's energy infrastructures and facilities have been primarily targeted for destruction by the Russian military.

The major question is about what Russia's act of invasion constitutes in international law. The United Nations (UN) Charter has a well-established cardinal principle that requires UN member states to refrain from the 'use of force against the territorial integrity and political independence of any state'.[20] Most interestingly, Russia and Ukraine are members of the UN.[21] Therefore, certain inviolable provisions of the Charter regarding respect for national sovereignty, self-determination, and non-interference bind both countries.[22] Except for self-defence to armed attacks,[23] every country is free from external aggression in international law. However, Russia and its officials make a justification for using military force on Ukraine under article 54 of the Charter, which defence is believed to have no place both in fact and law.[24] But whether Russia's invasion of Ukraine suffices to be unlawful or not in

[19] Pieter Bekker, 'The Human Impact of Defiance of International Law' (Harvard Advanced Leadership Initiative, 25 April 2022)<https://www.sir.advancedleadership.harvard.edu/articles/human-impact-of-defiance-of-international-law>, accessed 15 June 2024.
[20] UN Charter 1945, art 2(4).
[21] For detailed information about UN member states, see <https://www.un.org/en/about-us/member-states>, accessed 15 June 2024.
[22] UN Charter (n 20), arts 2(1), 1(2), 2(7) respectively.
[23] Ibid, art 51.
[24] John B Bellinger, 'How Russia's Invasion of Ukraine Violates International Law' (Council on Foreign Relations, 28 February 2022)<https://www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law>, accessed 15 June 2024; Kieran O'Meara, 'Understanding the Illegality of Russia's Invasion of Ukraine' (E-International Relations, 13 March 2022)<https://www.e-ir.info/2022/03/13/understanding-the-illegality-of-russias-invasion-of-ukraine/>, accessed 15 June 2024.

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international law is a matter well within the competence of the International Criminal Court (ICC), which with the referrals from States Parties, has proceeded to launch war crimes investigation into the situation against Russia.[25] The fact is that international law is being tested, and an outcome of Russia-Ukraine war, as well as a decision of the ICC, would greatly impact international legal order in like situations in the future.

3. Energy Security: Evolving from a war-driven concept to people-oriented approach

Much has been written about energy security as a concept from an interdisciplinary lens, including mainly law and economics. Energy security is part of broader energy law jurisprudence, which has been identified as one of the principles of energy law.[26] The concept is considered a popular issue in political interactions of policymakers and governing systems across the world.[27] Energy securitisation is hence a governance issue with political underpinning. This means a linkage between energy security and political warfare exists.

Theoretical studies on the energy security concept began in the 1960s.[28] There are, however, significant nuances between the past and modern conceptualisations of energy security that reflect divergent contextual public perceptions.[29] This observation marks a shifting paradigm in the understanding of energy security, beginning with decoupling energy security from a war-oriented concept to people-centered approach. Most

[25] ICC, 'Situation referred to the ICC by 43 States Parties: March – April 2022' (2022)<https://www.icc-cpi.int/ukraine>, accessed 15 June 2024.
[26] Raphael J Heffron and others, 'Justice in solar energy development' (2021) 218 Solar Energy, 68-75.
[27] Amed Elbassoussy, 'European energy security dilemma: major challenges and confrontation strategies' (2019) 4(4) Review of Economics and Political Science, 321-343.
[28] Harold Lubell, 'Security of supply and energy policy in Western Europe' (1961) 13(3) World Polit., 400-422.
[29] Vylius Leonavicius, Dainius Genys and Ričardas Krikštolaitis, 'Public perception of energy security in Lithuania' (2015) 4(4) Journal of Security and Sustainability Issues, 311-322.

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analyses have shown that energy security surfaced in the early 20th century with a history of oil supply for militaries.[30] One seminal work defines energy security as a constant supply of inexpensive oil under risks of impediments and influences of export prices.[31] Moreover, a study indicates that energy security emerged as a consequence of oil crisis in the 1970s.[32] There is a good instance of conditions of barriers and price influences for Russian oil and gas, due to sanctions imposed on Russia for invading Ukraine.

Energy security has re-emerged from mere supplies of oil to encompass a broad range of evolving global concerns and principles in recent times.[33] Even as an academic interest in energy security lowered in the late 1980s and 1990s, as a result of oil prices stabilisation and lessened political bans, it resurfaced in 2000s, in response to demand rise in Asia, disruptions in gas supplies in Europe, and global movement for energy systems decarbonisations.[34] Trends with global repercussions, such as disruptions in Russian oil and gas supplies to Europe have deepened human consciousness of energy security. This, in addition to COVID-19, is already pushing the frontier of the 21st-century energy security concept to a new level. These events also demand a more critical

[30] Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Simon and Schuster, 1991).
[31] E William Colglazier and David A Deese, 'Energy and security in the 1980s' (1983) 8(1) Annu Rev Energy, 415-449.
[32] Aleh Cherp and Jessica Jewell, 'The concept of energy security: Beyond the four As' (2014) 75 Energy Policy, 415-421.
[33] Daniel Yergin, 'Ensuring energy security' (2006) Foreign Affairs, 69-82; Jonathan Elkind, 'Energy security: call for a broader agenda' in Carlos Pascual and Jonathan Elkind (eds), *Energy Security: Economics, Politics, Strategies, and Implications* (Washington, DC: Brookings Institution Press, 2009) 57-73.
[34] Llewelyn Hughes and Lipscy Phillip, 'The politics of energy' (2013) 16(1) Ann Rev Polit Sci, 449-469; Kathleen J Hancock and Vlado Vivoda, 'International political economy: a field born of the OPEC crisis returns to its energy roots' (2014) 1 Energy Res Soc Sci, 206-216; Jessica Jewell and Elina Brutschin, 'The politics of energy security' in Kathleen J Hancock, and Juliann Emmons Allison (eds), *The Oxford Handbook of Energy Politics* (Oxford: Oxford University Press, 2019).

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imagination of what should be robust constituents of contemporary energy law for society to effectively address energy security challenges.

Today, energy security is being constructed on various conditions from a technical to the theoretical lens.[35] For example, it has been defined as 'low vulnerability of vital energy systems'.[36] Exposure to war risks and resilience capacities highlights a security concern for energy systems. Energy security embraces 'availability, accessibility, affordability, and acceptability.'[37] This is relatively about how modern energy sources can be equitably and sustainably accessed and climate change mitigated.[38] Besides, it expands to the overall concern about the environment.[39] Energy poverty is also being seen as an energy security policy issue. The desire to attain national energy and combat global climate change is a key objective driver of changes to how energy security is being theorised nowadays.[40] Thus, energy security means different outcomes to different people, as energy systems vary from one jurisdiction to another and so pose different energy security concerns.[41] The difference is also not surprising because energy laws vary from contexts to political systems and legal systems.

[35] Felix Ciuta, 'Conceptual notes on energy security: total or banal security?' (2010) 41 Security Dialogue, 123-144.
[36] Cherp and Jewell, op. cit. 34.
[37] Asia Pacific Energy Research Centre (APERC), 'A Quest for Energy Security in the 21st Century: Resources and Constraints' (2007) Institute of Energy Economics, Japan.
[38] Andreas Goldthau, 'Governing global energy: existing approaches and discourses' (2011) 3(4) Curr Opin Environ Sustain, 213-217.
[39] Beng Wah Ang, Wei Lian Choong and Tsan Sheng Ng, 'Energy security: Definitions, dimensions and indexes' (2015) 42 Renewable and Sustainable Energy Reviews, 1077-1093.
[40] Cosmos Nike Nwedu, 'Will a Transition to Renewable Energy Promote Energy Security Amid Energy Crisis in Nigeria' in Victoria R Nalule (ed), *Energy Transitions and the Future of African Energy Sector: Law, Policy and Governance* (Cham: Palgrave 2020); Raphael J Heffron and others, 'Justice in solar energy development' (2021) 218 Solar Energy, 68-75.
[41] Cherp and Jewell, op. cit. 34.

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Different models are very often in understanding a country's level of energy security.[42] It has been argued that substantial reliance on imported energy resources with limited domestic production is a major threat to energy security.[43] EU member countries make a deep illustration for over-reliance on Russian oil and gas, which is a big challenge for EU energy security.[44] Most critics believe that climate change should be a fundamental aspect in readdressing European energy security approach.[45] This assumption has been particularly re-established by climate activists, noting the potential of wartime mobilisation of policy model for climate mitigation strategies.[46] Though disparities abound, energy security could be internal when the risks it poses stem from inadequacies of a country's energy law and policy to address domestic energy production and supply processes and energy systems, and external when such risks are contingent upon reliance on foreign energy importation. The EU faces what is a somewhat external energy security threat from overdependence on Russian energy,[47] and so could be seen as a consequence of a prioritised external energy policy.

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[42] Larry Hughes, 'A generic framework for the description and analysis of energy security in an energy system' (2012) 42(C) Energy Policy, 221-231; Jessica Jewell and Aleh Cherp, 'The three perspectives on energy security: intellectual history, disciplinary roots, and the potential for integration' (2011) 3 (4) Current Opinion in Environmental Sustainability, 202-212; IEA, 'Measuring short-term energy security' (2011)<https://www.iea.org/reports/measuring-short-term-energy-security>, accessed 15 June 2024.

[43] Gal Luft and Anne Korin, *Energy Security Challenges for the 21st Century: A Reference Handbook* (Praeger International, 2009).

[44] Henry Helen, 'The EU's energy security dilemma with Russia' (2010) 4 Polis Journal. 1.

[45] Thomas Raines and Shane Tomlinson, 'Europe's energy union: foreign policy implications for energy security, climate and competiveness' (Chatham House, The Royal Institute of International Affairs, 2016)<https://www.chathamhouse.org/2016/03/europes-energy-union-foreign-policy-implications-energy-security-climate-and>, accessed 15 June 2024.

[46] Laurence L Delina and Mark Diesendorf, 'Is wartime mobilisattion a suitable policy model for rapid national climate mitigation?' (2013) 58 Energy Policy, 371-380.

[47] Matúš Mišík, *External Energy Security in the European Union: Small Member States' Perspectives* (1st edn, Routledge, 2019).

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4. The Energy Security-wide Implication of Russia's Invasion of Ukraine

Geopolitical energy security

The supply and economic disruptions accompanying the Russia-Ukraine war have a far-reaching geopolitical energy security concern. Energy is central to geopolitical ruction.[48] Thus, energy geopolitics is seen as an impact that location of resources unleashes on states' politics, with dependency very often seen as a key determinant applicable to energy revenues and consumption needs.[49] By a relative implication, energy geopolitics is concerned with how 'international relations, power, and vulnerabilities' are shaped by geographies.[50] This means both resource-rich energy-producing and non-energy-producing countries can be affected by the global geopolitics of energy. More issues, such as erratic changes of government and legal and regulatory regimes of investment are crucial in considering whether countries reliant on energy importation can be guaranteed a strong level of energy security.

More emphasis remains on the EU, which, in particular, faces external energy security due to overdependence on Russian oil and gas.[51] Back to history, the energy security concern in Europe has evolved with an antecedent of war between Russia and Ukraine in 2014 and 2009, concerning the incident of natural gas crises that fueled negative future energy development relations with Russia.[52] The sustained resource geopolitics of reliance on Russian energy, nonetheless, arguably reveals that EU member countries have failed to

[48] Morgan Bazilian and others, 'Model and manage the changing geopolitics of energy' (2019) 569 Nature, 29-31.
[49] Ian Skeet, 'Geopolitics of energy' (1996) 14(3-4) Energy Exploration and Exploitation, 265-272.
[50] Ole Gunnar Austvik, 'Concepts of Geopolitics and Energy Security' (2018) IAEE Energy Forum, 25.
[51] Mišík, op. cit. 47.
[52] Matúš Mišík and Andrej Nosko, 'The Eastring gas pipeline in the context of the Central and Eastern European gas supply challenge' (2017) 2 Nat Energy, 844-848.

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learn from history. For countries seeking a route to energy security, sufficient and reliable energy supplies are required, of course from domestic sources and generators under a home government's regulation.

Empirical evidence has shown that Russia is the second world's largest oil and natural gas supplier after the United States, with global average supplies of 13 percent and 17 percent in 2020 respectively.[53] Surprisingly, Germany has had 30 percent and 50 percent of its oil and natural gas respectively supplied only by Russia. More so, a recent report shows that the total gas consumption by EU member countries accounts for about 40 percent of supplies from Russia in 2021,[54] It has been shown that almost one-third of natural gas used for domestic and industrial consumption comes from Russia, whereas 25 percent accounts for crude oil import. On average, EU member states imported 380 million cubic meters (mcm) of pipeline-based natural gas from Russia per day, which equals 140 billion cubic meters (bcm) yearly,[55] and about 155 BCM was supplied as liquefied natural gas (LNG). This means Russia maintains a strategic security position in energy geopolitics and its share of global energy export, as well as any measures to stop it is sufficient to generate a sharp surge in global oil prices and most likely trigger systemic energy security risks, particularly for countries in Europe.[56]

Before the Russia-Ukraine war broke out, global oil prices were already high following the COVID-19 recovery. But high and volatile energy prices, garroting economic consequences, and inflationary

[53] Seyed Ehsan Hosseini, 'Transition away from fossil fuels towards renewables: Lessons from Russia-Ukraine crisis' (2022) 1(1) Future Energy, 2-5.
[54] International Energy Agency (IEA), 'A 10-Point Plan to Reduce the European Union's Reliance on Russian Natural Gas' (2022)<https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas> accessed 15 June 204.
[55] Ibid.
[56] Christof Rühl, 'Energy Sanctions and the Global Economy: Mandated vs Unilateral Sanctions' (2022) 19(2) International Economics and Economic Policy, 1.

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pressures are undeniably now felt worldwide as a post-pandemic reality, exacerbated by the war. Experts have argued that such conditions will affect oil-linked LNG contracts' prices, which accounted for 56 percent of LNG trade in 2020.[57] Thus, high oil prices or unavailability of oil supplies would constrain importers of LNG from a switch to the industrial and energy sectors, and so result in energy security challenges. Though most oil and gas-producing countries will benefit from steep global oil prices, consumer countries, including EU member countries and non-oil-producing nations will face energy security risks due to the inability to meet supply needs with available incomes already impacted by inflationary pressures from the war and COVID-19.

Europe's overdependence on a limited number of energy suppliers poses security risks and undermines its energy law. To one extreme, over-reliance on imported energy, perhaps from fossil fuels from Russia, does not make Europe or any country involved a true advocate of climate change mitigation and sustainable development. This peculiarity raises a legitimate question, for example, whether European member countries have a real commitment to global climate change. The EU has made strong political and policy declarations to adopt new energy strategies aimed at diversifying its energy supply sources, with an increased reliance on renewable energy sources in response to tackling foreign energy supply dominance.[58] Despite acknowledging that achieving an appropriate level of energy security is unavoidable and would not be compromised, particularly with regards to broader energy security risks, such as increasing geopolitical threats, grave price dips, supply disruptions, sustainability concerns, and destructive environmental impacts,[59] Europe's energy policy is still rifted with some critical challenges.

The lessons are simple. European energy laws and policies have failed to address member countries' energy security concerns or challenges. There is a common consensus among scholars, researchers,

[57] Corbeau, op. cit. 7.
[58] Elbassoussy, op. cit. 27.
[59] Ibid.

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politicians, and policymakers that Europe's dependence on overseas energy supply is one of the biggest weaknesses of its energy policy. The global patterns and trends in defining not only what contemporary energy security fully involves, but also Europe's strategic position in global energy geopolitics do not show any long-term impact of the long history of European energy laws and policy. The EU needs energy law and policy overhauling, which must prioritise domestic energy investment, production, supply, diversification, and storage. However, long-term energy security requires timely investments.[60] Most importantly, regulatory interventions must be conditioned on effective, sustainable short and long-term results. This also requires energy sector liberalisation for new entrants and the creation of a healthy competitive energy sector and market environments for energy producers, suppliers, and consumers.

The implication for energy and investment law

There are possible, new legal and policy directions for the global energy landscape, due to the invasion of Ukraine by Russia, especially in terms of energy resources investment, diversification, and development. This has already begun to happen. For example, on 8 July 2022, two houses of the German parliament passed emergency legislation to reactivate suspended coal-fired power plants to support electricity generation due to growing fears of gas scarcities that are expected to arise from capacity control by Russia.[61] The reactivated power plant has some environmental law and policy considerations of paramount attention. Typical legal and policy issues, for example, are central to effective Environmental Impact Assessment (EIA) and public or social acceptability. These considerations are a crucial index of

[60] Anna Bluszcz, 'European economies in terms of energy dependence' (2017) 51 Qual Quant, 1531-1548.
[61] Kate Konnolly, 'Germany to reactivate coal-power plants as Russia curbs gas flow' (The Guardian, 8 July 2022)<https://www.theguardian.com/world/2022/jul/08/germany-reactivate-coal-power-plants-russia-curbs-gas-flow>, accessed 15 June 2024.

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contemporary energy security because energy projects' impact can intensify energy security risks and be rejected by the public.

By far, energy security demand stemming from Russia's invasion of Ukraine opens up new energy investments and market opportunities in Europe and resource-rich countries, and will ultimately be driven by legal regimes for energy in those countries. There is a prospect for regulatory frameworks that create chances for mainstreaming energy transitions and implementation of new, distributed technologies based on large-scale renewable energy resources. Most resource-rich countries will provide new energy hotspots for regions or countries doing away with Russian energy. There are already some indications that Europe is considering investments in Africa's vast deposit of natural gas and oil or the United States' energy resources either. Likewise, Russia will need to outsource new energy consumers to fill a demand gap due to sanctions affecting the supply of its energy products, particularly to Europe.

The EU and international oil and gas companies are likely to push for a significant share of local or overseas energy investment as a wake-up call from the Russia-Ukraine crisis. The type of energy resources or projects pursued to address energy security challenges, for example, by countries and companies in Europe or elsewhere would determine their commitment to global climate change goals. This can impede global efforts for a net-zero emissions future and trigger an emergence of a new type of global energy geopolitics and international relations. EU's emergency energy policy responses have focused on short-term locking of available supply and consumer protection. Russia may tend to face long and short-term energy supply sustainability challenges. Though Russia might strategically outsource buyers or consumers of its energy products from energy-consuming countries in Asia and Africa, urgent risks of economic crisis and access to the global financial market tied to sanctions imposed on Russian energy resources cannot be overlooked. These risks have become immediately manifesting, as Russia warns of its inability to pay its debts in dollars, and that countries buying its oil must pay in rubles. On 31 March 2022, President Putin signed a Decree to give effect to an obligation requiring

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buyers of Russian oil and gas to pay in the rouble.[62] This is capable of altering existing or triggering new energy laws and policy direction in Russia. Thus, possible new alliances or a systemic reorientation of energy geopolitics are not far from anticipation but can be expected on a global scale.[63]

Breach of energy contracts

Both short and long-term energy supply and related investment contracts are most likely to be impacted by emergency changes to existing law and policy, for example, energy law and policy in Russia, Ukraine, and countries dependent on Russian oil and gas. First, changes to energy law and policy with sanction-driven counter-responses are capable of causing a breach or termination of energy supply and similar investment contracts between Russia and sanction-imposing alliance's nationals and companies. Beyond regulatory changes, Russia may unilaterally terminate existing contracts with Ukraine or EU member countries, and vice versa, depending on relevant provisions of any existing contractual obligations and national and international laws. This scenario heralds energy security threats with supply distortion.

The unprecedented rate of Foreign Direct Investment (FDI) outflow from Russia has resulted in a new bill seeking to nationalise assets of companies leaving Russia, with caution by state prosecutors to arrest top managers of desertion companies.[64] Energy security requires

[62] See Decree on the Special Procedure on Payments made by Foreign Buyers to Russian Suppliers of Natural Gas', 31 March 2022<http://kremlin.ru/events/president/news/68094>, accessed 15 June 2024; Agnieszka Ason, 'Rouble gas payment mechanism: implications for gas supply contracts' (2022) OIES.
[63] Hosseini, op. cit. 53.
[64] Jennifer Maloney, Emily Glazer and Heather Haddon, 'Western Prosecutors Warn Western Companies of Arrests, Assets Seizures' (Wall Street Journal News Exclusive, updated 14 March 2022, 10:52 am ET)<https://www.wsj.com/articles/russian-prosecutors-warn-western-companies-of-arrests-asset-seizures-11647206193>, accessed 15 June 2024.

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significant investments. Though dispute due to termination or breach of contracts may be high, this risk depends on whether termination itself is considered a rationally legal and policy option by a terminating party. Effectively, a terminating party is unlikely to be protected by any common law principles of force majeure, frustration, impossibility, or impracticability as events leading to the Russia-Ukraine war cannot be argued to be unforeseen or outside the control of both countries.

On many occasions, Russia has warned of shutting gas supplies to EU countries, which was next executed by Gazprom, cutting off gas to Poland and Bulgaria.[65] These countries are seen as enemies by Russia, regardless of their non-direct involvement in the war. The Ukrainian Minister of Foreign Affairs, in a letter dated 18 August 2022, informed the Energy Charter Secretariat, of its exercise of rights under article 17(2) (a) – (b) of the Energy Charter Treaty (ECT),[66] to deny the advantages of Part III of the ECT on investment promotion and protection to investments of investors of the Russian Federation beginning from 15 August 2022.[67] EU member states have also recently resolved to invoke 'most-favoured-nation' (MFN) trade status with Russia, as the fourth round of sanction.[68] Like national treatment, MFN is a well-considered treaty-based obligation, which obliges host countries to treat foreign investors and their investments as foreign investors from other nations would have generally been preserved in comparable circumstances and environments in oil and gas and general trade agreements, such as Bilateral Investment Treaty (BIT), and Multilateral Investment Treaty (MIT). As Russia and Ukraine continue

[65] Emily Rauhala and others, 'Russia cuts off gas to Poland, Bulgaria, stoking tensions with E.U.' (The Washington Post, 26 April 2022, updated 27 April 2022 at 7:27 p.m. EDT)<https://www.washingtonpost.com/world/2022/04/26/russia-cuts-gas-bulgaria-poland-gazprom>, accessed June 2024.

[66] See ECT 1994, art 17(2) (a) – (b).

[67] The letter is accessible from <https://www.energycharter.org/fileadmin/DocumentsMedia/News/0297-IN-19082022-Ukraine__Mission_to_the_EU.pdf>, accessed June 2024.

[68] RFE/RL, 'EU Members Agree New Package of Russia Sanctions' (2022)<https://www.rferl.org/a/eu-sanctions-russia-invasion/31752636.html>, accessed 15 June 2024.

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in a war faceoff, experts are suggesting counter options for either country. Termination of BITs with Russia is one of such options suggested as the right policy route for Europe to weaken and make Russia's economy less attractive to FDIs, and cut it off investment treaty arbitration solely aimed at international FDI protection.[69]

But ascertaining whether a measure is consistent with an MFN treatment is a question of whether a foreign investor is in similar circumstances with investors from other countries.[70] Even as an MFN obligation clause aims to protect and treat investors from each country identically, methods parties might wish to adopt in resolving any consequential dispute are usually a critical challenge for oil and gas investments. This is because treaties may contain different dispute settlement provisions different from any dispute resolution mechanism investors have chosen in relevant host government contracts (HGCs) or associated agreements. On a more problematic note, a treaty may require that recourse be made to a host country's local court before bringing a claim. Today, no clarity exists regarding whether MFN obligations apply to a dispute resolution mechanism incorporated in a treaty. Expert analysis, however, reveals that relying on any investment settlement provisions in investment agreements by a host country and other nations has been more successful in most cases for MFN treatment.[71]

The decision to terminate may be contractual or constitutional. Typically, contracts such as BITs and MITs between relevant parties often provide for unilateral termination by a notice at any time or end-of-term termination. The Vienna Convention on the Law of Treaties (VCLT), article 54(b) provides for the termination of an international treaty at any time by mutual consent by parties who are signatories.[72]

[69] Maslov and Kichigina, op. cit. 2.
[70] John W Boscariol, 'Foreign Investment Protection Treaties: Opportunities in the Petroleum Industry' (2006) 44(1) ALR, 115-161.
[71] Boscariol, op. cit. 70.
[72] VCLT, art 54(b) (signed 23 May 1969 and effective from 27 January 1980).

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For the EU, a multilateral treaty among its 23 member countries is a good instructive termination route,[73] however, it does not seem to bring Russia into proximity of obligation. Most BITS also very often provide for fixed validity terms, usually between 10 to 16 years or more. They could also be open for renewal unless a party decides to terminate in line with a provided termination clause. There are expected outcomes of termination. Termination means no more obligations exist between relevant contracting parties. There might be a post-contract renegotiation in good faith, subject to what triggered termination and condition precedent for renegotiation.[74] But post-contract renegotiation is rarely provided in contracts. But, in any case, a breach or termination of energy contracts, especially long-term supply contracts is one way of invitation to an energy security threat.

The principle and practice of constitutionalism in most jurisdictions allows a country to disengage enemy countries or persons who have by despicable act or speech proved to be disloyal to such a country, or during any war in which the country is engaged, unlawfully traded with enemy countries, or been engaged in, or associated with any business carried on in a manner as to aid enemy countries in such a war, or unlawfully communicated with the enemy to the detriment of, or with intent to cause damage to the interest of such a country. This scenario also has the effect of unilateral contract termination. A good illustration is found in section 30 (a) (b) of Nigeria's Constitution.[75] Depending on each case of termination, a contestable issue in international and national laws could be one potential outcome. By such a constitutional provision, Russia or Ukraine can decide not to trade with any countries, which have aided either one of them in the war. For instance, Russia may lawfully decide not to sell its oil and gas to countries participating in the war or pointedly aiding Ukraine. More so, either Russia or

[73] EU, 'Agreement for the termination of Bilateral Investment Treaties between the member states of the European Union, SN/4656/2019/INIT' (2020) 169(29-5) Official Journal of the European Union, 1-41; Charbel A Moarbes, 'Agreement for the Termination of Bilateral Investment Treaties Between the Member States of the European Union' (2021) 60(1) International Legal Materials, 99-137.
[74] Nwedu, op. cit. 1.
[75] Constitution of the Federal Republic of Nigeria 1999, s 30 (a) (b).

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Ukraine could expropriate investments of nationals of each country within their jurisdiction. They may also revoke citizenship being held by persons from such countries.

5. Conclusion

This article has examined the legal and policy impact of the Russia-Ukraine war on energy security. The article maintains that the war potentially brings a new era to global energy geopolitics, at least, for reimagining the energy security concept. The energy security-wide implications the war poses are a testament to the growing consensus that the oil and gas industry is vulnerable to increasingly unpredictable risks. This calls for effective transitions aimed at energy diversification and massive investment in renewable energy, as a part of broader efforts to support equitable access to clean and affordable energy and mitigation of global climate change within the broader framework of the United Nations Sustainable Development Goals (SDGs).

The various sanctions on Russian oil and gas and Gazprom's decisions to cut gas supply to Europe are already generating a cavernous change in global trade flows and difficulties with clearing and trading Russian energy products. More so, steep fossil fuel prices and amplified post-pandemic inflation are already refueling economic challenges, and so deflating global post-pandemic recovery efforts. The potential for breach of energy supply contracts due to the war is most likely to trigger long-term disruptive supply. These cases have an impact on the choice of fuels and incomes of governments, businesses, and households, and can limit access to supplies. Therefore, any measures to completely ban Russian oil and gas will be catastrophic to global economies. The EU will need a gradual process to replace Russian oil and gas with alternatives from different countries.

Though Russia's invasion of Ukraine poses an energy security risk, it has important lessons for the EU member states and other countries across the world. Every form of (over) reliance on overseas energy

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importation breeds the most serious energy security concern and can be identified as a weakness in a country's energy regulatory framework. Thus, energy security is partly a function of energy law and policy. The EU requires a robust legal and policy framework, which promotes aggressive long-term domestic energy investment and production. The war will likely cause realignment in energy geopolitics globally, and some resource-rich continents, such as Africa will be well positioned to serve as a good destination for energy investment and supply hub for energy-importing countries.

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