

Introduction to the symposium

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The war in Ukraine, in addition to unspeakable human suffering, is also having important implications on a range of other areas, from energy prices to monetary stability and food security. The disruption of oil and gas flows resulting from the political fallout of the war is not a new phenomenon. In the past, war and insurrection in geopolitically significant countries of the Middle East and elsewhere have led to spikes in the price of oil, with significant economic implications for net consumer countries. What is new in the present context is that the disruption intervenes in what has been called a ‘critical decade’ for the efforts to curb climate change. The adverse consequences of human-driven climate change are profoundly affecting every single country on Earth, and they will get much worse within a matter of years and decades, not centuries or millennia.

Substantial efforts have been made to curb the cause of climate change, namely human emissions of greenhouse gases (GHGs) mainly from burning fossil fuels. Such efforts have taken a variety of forms, but in most cases, they involve policies to reduce energy consumption (eg by increasing efficiency) and to diversify energy supply away from fossil fuels (coal, oil, and gas) and into renewable energies. The gradual replacement of a fossil fuel-based economy with a low-carbon one is a necessary step in the response to climate change, given the rapidly decreasing ‘carbon budget’ humanity faces (the amount of carbon dioxide-equivalent GHGs that can still be put in the troposphere if the safe temperature threshold of the Paris Agreement is not to be crossed).

In the present context, the disruption of oil and gas flows generates a need to meet demand in the very short term, which can be immediately satisfied with renewable energies only in part. That, in turn, provides a rationale for additional reliance on fossil fuels sourced from countries other than Russia. At the same time, industry groups have used the opportunity to make a case for longer-term investment in upstream fossil fuels, particularly oil and gas exploration and extraction. For part of 2022, fossil fuel prices rose to record levels (in the case of natural gas), generating massive profits for producers of fossil fuels. Prices are now down again, but a worrying signal has been sent. In brief, armed conflict (in Ukraine today but possibly elsewhere in the future) can extend the life of fossil fuels and commit the world to a pathway inconsistent with the avoidance of catastrophic climate change. The Ukraine war thus unfolds at a ‘critical juncture’ in which the direction of travel set by low-carbon policies collides with blurred investment signals,

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with causally decisive implications for the success of energy transition over the short and long term.

An important part of this collision rests on the legal infrastructure of energy policy. Climate policies are presently not only coordinated by the umbrella offered by the Paris Agreement, but also by a range of other legal developments, from EU and domestic laws relating to renewables, efficiency, and transportation, to newly crafted agreements governing offshore wind or electricity. Conversely, the commitment and potential lock-in of new investment in upstream oil and gas also rests on a diverse array of rules conferring powers over energy resources and enabling investment, trade, and transit in such resources. From a range of angles, the contributions to this symposium investigate the relevance and operation of a complex array of laws and institutions in the context of tensions between two socio-technical regimes, one based on the continued reliance on fossil fuels and the other on their rapid replacement with renewable energies.

To frame this common investigation, it is necessary to explain how the entirety of international law has a bearing on energy governance in a manner that reflects the dynamism of an uncertain energy transition. The contributors to this issue have taken as their starting point a specific analytical framework,¹ although they have analysed their chosen topics with whichever methodology they deemed most appropriate. As the two guest editors, we open with an article that frames both the symposium and the field at large. This article introduces the core question of investigation, our common approach to that question, and the topics addressed by each of the 12 contributions. Hence, our framing article may be read as an extension of this brief introduction and a standalone contribution to the literature on energy and international law at this critical juncture.

We thank the Editors-in-Chief for inviting us to direct this issue a year ago, the 13 individual contributors whose articles were either solicited or otherwise submitted on a suitable topic, and the many anonymous reviewers who ensured the quality of the final product. Two book reviews appear at the end of this issue, which do not form part of our symposium. They address timely questions of economic governance and sovereign debt restructuring.

All in all, this symposium returns matters of global energy governance from the fringes to the centre of debates in international legal scholarship. We perceive this as a pressing need because, for too long, the international law of energy has inaccurately been understood by international lawyers as a narrow or technical subfield. In truth, this subfield must transform from a static picture of the law regulating conventional energy into a dynamic survey of the entire field of public international law, read through the plural lenses of energy in its physical and juridical forms. To map the international law of energy is critical for all international lawyers and others working in the field, given the choices we face as a world society and the profound implications if we fail to achieve the necessary energy transition.

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Guest Editors

¹ Jorge E Viñuales, *The International Law of Energy* (CUP 2022), chapter 1.