XLV POLISH YEARBOOK OF INTERNATIONAL LAW
2025
DOI 10.24425/PYIL.2026.3110
PL ISSN 0554-498X
e-ISSN 2957-1510

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THE *REBUS SIC STANTIBUS* CLAUSE AS AN "ANTIDOTE" TO THE SUNSET CLAUSE IN THE ENERGY CHARTER TREATY?

Abstract: *States Parties to the Energy Charter Treaty (ECT) risk encountering serious difficulties in transitioning from fossil fuels to green energy sources in order to better protect the environment and climate, as this would clearly be at odds with the ECT. Withdrawing from the ECT might not even solve the problem, since Art. 47(3) ECT contains a sunset clause requiring any withdrawing State to comply with the obligations to protect foreign investment in its economic system for 20 years after withdrawal. This article aims to contribute to the ongoing debate on whether, once other legal avenues have been ruled out, States can invoke the rule on change of circumstances as a last-resort option to terminate the ECT in its entirety, including the sunset clause in Art. 47(3) thereof. It concludes that this last-resort option is unlikely to be helpful. Indeed, under scrutiny, it seems that the condition of unforeseeability – which is required inter alia for both the customary rule on change of circumstances and Art. 62 of the Vienna Convention on the Law of Treaties to apply – cannot be met in this case.*

Keywords: Energy Charter Treaty, *rebus sic stantibus* clause, treaty termination, investment treaties, climate change

INTRODUCTION

States wishing to withdraw from the Energy Charter Treaty (ECT) would prefer to be able to do so without being obliged to abide by the withdrawal provisions in

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Art. 47 ECT, primarily due to the presence of a sunset clause in its para. 3. This would enable several problems to be overcome relatively quickly. One such problem is the compatibility of the ECT with the environmental and climate protection measures now being implemented or planned by many ECT States Parties, including the transition from fossil fuels[1] to green energy sources. This problem is the subject of an ongoing debate, with the economic, legal and political aspects being heatedly discussed.[2]

This article aims to inform this debate and clarify certain legal aspects thereof by assessing the last-resort option of invoking the rule on change of circumstances – traditionally known as the *rebus sic stantibus* clause – to terminate the entire ECT, including the sunset clause in its Art. 47(3). The most common idea is that in this case the change of circumstances would be materially constituted by the growing scientific and social international awareness of the link between the current environmental and climate crises and the use (and abuse) of fossil fuels, which in turn has led to the urgency and importance of transitioning to green energy sources.[3]

First of all, I will provide some background information on the ECT (section 1). Once the main alternatives to the withdrawal framework set out in Art. 47 ECT have been ruled out (section 2), I will attempt to clarify whether recourse to the rule on change of circumstances could be a viable way of achieving the objective of terminating the ECT in its entirety, an exercise that will require a preliminary discussion about the rebus sic stantibus clause. In particular, its content will be assessed, with a special focus on the conditions to be fulfilled for its application, and its customary nature will be determined, in order to overcome the objection that it can only be invoked by States Parties to the 1969 Vienna Convention on the Law of Treaties (VCLT), whose Art. 62 is precisely devoted to the rule on change of

[1] In this article, the terms "fossil fuels" and "hydrocarbons" are used interchangeably. However, for the sake of clarity, it should be noted that fossil fuels (coal, oil and gas) are energy sources derived from ancient organic matter, whereas hydrocarbons are chemical compounds made up of hydrogen and carbon. While most fossil fuels are hydrocarbons, some – such as coal – are not.

[2] *See e.g.* the open letter promoted by the University of Warwick and signed by over 100 academics, which was sent to the then UK Minister for Energy Policies: *Letter to Energy Secretary Grant Shapps Urging UK Government to Exit Energy Charter Treaty*, 9 February 2023, available at: http://warwick.ac.uk/fac/soc/law/research/centres/chrp/governance/energycharter. See also the similar *Open Letter from Climate Leaders and Scientists to Signatories of the Energy Charter Treaty*, dating back to 2020 and currently still open for signature at http://endfossilprotection.org (both accessed 31 March 2026).

[3] It has also been argued that the use of the *rebus sic stantibus* clause to terminate the ECT can be justified on the basis that a swift and substantial transition away from fossil fuels is now required to ensure that States can meet their obligations under the 2015 Paris Agreement on Climate Change. *See* E. Jackson, *The Energy Charter Treaty: Letting the Sun Set on Sunset Clauses*, 33(3) Review of European, Comparative & International Environmental Law 619 (2024). It must be noted, however, that the 2015 Paris Agreement contains no obligation expressly concerning fossil fuels.

circumstances (section 3). I will then address another possible objection and seek to establish whether the rule on change of circumstances also applies to the broad category of treaties containing provisions on termination or withdrawal. The ECT falls into this category because its Art. 47, before setting out the sunset clause in para. 3, lays down in paras. 1 and 2 the conditions and procedure for States Parties to exercise their right to withdraw (section 4). Once all of the preliminary issues have been dealt with, I will move on to verifying whether the change of circumstances concerning the ECT complies with the conditions laid down in the relevant rule (section 5). A doubt as to whether the specific condition of the unforeseeability of the change of circumstances is met in this case will be examined closely. If such a doubt proved to be well founded, even the last-resort option of invoking the change of circumstances would be unhelpful for States wishing to withdraw from the ECT in its entirety (section 6). The paper will end with some concluding remarks.

1. THE ECT, ITS GRADUAL COLLAPSE AND THE WITHDRAWAL PROVISIONS IN ITS ART. 47

The ECT was signed in Lisbon on 17 December 1994 and came into force on 16 April 1998. In brief, its purposes are to provide a multilateral framework for energy cooperation while promoting and supporting trade relations and foreign investment in the fossil fuels sector, as well as to facilitate the settlement of inter-State and investor-State disputes relating to fossil fuel investment. At the time the ECT was being negotiated, Western European States wanted to secure a supply of energy resources from Eastern European States. Conversely, the latter – particularly the States that had emerged from the dissolution of the Soviet Union – were keen to obtain a steady flow of much-needed investment.[4]

Over time, many non-European States have gradually acceded to the ECT. Additionally, the direction of investment flows has partly reversed. Last but not least, a number of circumstances relating to environmental and climate protection have changed. The one that mostly matters here, and that will be taken into account in the following pages, is the growing scientific and social international awareness that the excessive use of hydrocarbons is linked to environmental degradation and climate change. This has resulted in an urgent and important need to transition to green energy sources.

In 1994 it was clear to the negotiating States that environmental degradation and climate change were taking place. However, at first glance, it might seem plausible

[4] For more information about the ECT and for the ECT-related documents and news mentioned herein, please visit the official ECT website at www.energychartertreaty.org.

that they did not foresee the rapid and far-reaching consequences of these phenomena, and above all their link with the use of hydrocarbons. Indeed, the preamble to the ECT shows that the States Parties considered the measures set out within it to be consistent with the existing legal instruments for protecting the environment and the climate. In particular, in its penultimate paragraph, the ECT preamble recalls "the United Nations Framework Convention on Climate Change, the Convention on Long-Range Transboundary Air Pollution and its Protocols, and other international environmental agreements with energy-related aspects."

In subsequent years, in light of the increasing knowledge among scientists and societies of the link between the environmental and climate crises and the use of fossil fuels, the appropriateness of revising and modernising the ECT to make it more environmentally friendly became a subject of debate. Once it was clear that reconciling opposite views would be difficult due to resistance from some States – primarily Eastern European and non-European States – the debate shifted towards the idea of a mass withdrawal of the "environmentalist States" – primarily EU Member States (MSs) – from the ECT.[5]

The debate became more heated in 2018, when the Court of Justice of the European Union (CJEU) issued its landmark *Achmea* judgment and ruled that arbitration proceedings for the settlement of investment disputes established under investment treaties between EU MSs (intra-EU investment arbitration proceedings) were incompatible with EU law.[6] In an attempt to reorganise the treaty obligations of its MSs in the field of foreign investment, the EU inter alia started searching for the most effective strategy to enable them to withdraw from the ECT collectively and in a coordinated manner.[7]

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[5] It should be noted that, in the meantime, on 3 December 2024, after 15 rounds of negotiations, the Energy Charter Conference officially approved the text of the "modernised ECT", which aims to strengthen commitment to the energy transition and climate action, and reaffirms States' right to regulate areas such as climate change mitigation and adaptation. The modernised ECT has been provisionally applied since 3 September 2025, except in the many States that have submitted declarations opposing its provisional application. In particular, some EU MSs do not seem satisfied with the modernised ECT. It will enter into force once it has been ratified by at least three quarters of the ECT States Parties.

[6] Case C-284/16 *Slovakia v. Achmea BV* [2018] ECLI:EU:C:2018:158. In light of this judgment, in May 2020 the EU promoted the conclusion of the Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union. As its title suggests, the Agreement terminates this entire category of treaties. Its text is available at eur-lex.europa.eu/eli/agree_eums/2020/529/oj?locale=en. But that was not the end of the story. The following year, the CJEU delivered its even more significant *Komstroy* judgment: Case C-741/19 *Moldova v. Komstroy LLC* [2021] ECLI:EU:C:2021:655. Here, the EU judges explicitly referred to the ECT and clearly established that the arbitration clause in Art. 26 ECT cannot form the legal basis for initiating intra-EU investment arbitration proceedings.

[7] For a reasoned analysis of the various legal strategies that the EU has attempted to adopt, *see* L. Marotti, *L'Unione europea e le strategie di "disconnessione" dall'Energy Charter Treaty*, 106(1) Rivista di diritto internazionale 155 (2023).

However, Italy had already autonomously withdrawn from the ECT in 2016. Despite the EU's efforts, France, Germany and Poland followed suit in 2023; Luxembourg and Slovenia in 2024; and Denmark, the Netherlands, Portugal and Spain in 2025. Failing to coordinate its MSs, the EU had no choice but to announce its own withdrawal from the ECT on 27 June 2024, to take effect on 28 June 2025, alongside the withdrawal of EURATOM from the ECT.[8] During the writing of this article, the news was announced on the official ECT website that another EU MS – Lithuania – had submitted written notification of its decision to abandon the ECT on 7 August 2025, meaning that it will take effect on 8 August 2026. In the meantime, some non-EU MSs have also withdrawn from the ECT.[9]

As observed, Art. 47 ECT deals with withdrawal. Para. 1 states that, from the fifth year after the ECT enters into force, States Parties may withdraw simply by sending a notification to the Minister of Foreign Affairs of Portugal (the depositary). Para. 2 adds that withdrawal will take effect one year after the notification is received or on an alternative date if specified. But para. 3 contains a sunset clause, which clarifies that the ECT will still apply with regard to the withdrawing States' obligations to protect foreign investment already made in their economic system for 20 years after withdrawal. Foreign investors will consequently be entitled to take legal action against the withdrawing States in the event of any breach of their obligations during this period. As a matter of fact, the possibility of withdrawing from the ECT is acknowledged, but somewhat diluted – perhaps even too much – given that the withdrawing States would still be bound by the ECT for 20 years after withdrawal.[10]

The EU has recently tried to respond to this situation with the adoption of Decision (EU) 2025/1904 of the European Parliament and the Council of 10 September 2025 on the approval of the Agreement on the Interpretation and Application of the ECT. Under the terms of the Agreement, EU MSs shall interpret the ECT as lacking a legal basis for intra-EU investment arbitration proceedings. As a result, the Agreement also specifies that Art. 47(3) ECT will never extend to such proceedings

[8] *See* L. Pantaleo, *The EU's Withdrawal from the Energy Charter Treaty between Treaty Law and International Responsibility Issues*, 26(4) Journal of World Investment and Trade 981 (2025).

[9] Among the non-EU MSs, the United Kingdom withdrew on 27 April 2025. Russia and Australia had previously terminated the provisional application of the ECT on 30 July 2009 and 15 October 2021, respectively. By contrast, the provisional application of the ECT to Belarus ended on 24 June 2022, following a decision by the Energy Charter Conference in response to Belarus' support for Russia's invasion of Ukraine.

[10] A similar sunset clause to that in Art. 47(3) is contained in Art. 45(3)(b). The latter relates to the termination of the provisional application of the ECT. It has operated with regard to Australia and Russia, both of which only provisionally applied the ECT, while it cannot take effect for Belarus. As mentioned in the previous footnote, the provisional application of the ECT by Belarus ended due to a decision adopted by the Energy Charter Conference.

and could never have done so. In other words, the sunset clause contained therein will not have and could never have had any legal effect on intra-EU relations in the event of EU MSs withdrawing from the ECT.

The Agreement will likely make intra-EU investment relations more sensitive to environmental and climate issues. Nevertheless, it is not enough. It clearly cannot affect economic relations between EU MSs and investors from non-EU MSs, or vice versa. It is common knowledge that significant investment continues to flow into EU MSs under the ECT from investors in countries such as Azerbaijan, Japan, Kazakhstan, Türkiye or Ukraine, to name but a few, and vice versa.

2. POSSIBLE ALTERNATIVES TO THE WITHDRAWAL PROVISIONS IN ART. 47 ECT

To prevent ECT States Parties from remaining substantially bound by the ECT for 20 years after deciding to release themselves from their treaty obligations, which in turn would greatly delay their transitioning to green energy sources and pursuing effective environmental and climate protection policies, as well as expose them to the risk of multimillion-dollar claims brought by foreign investors, it would be better if the ECT could be terminated through legal avenues other than the withdrawal provisions in its Art. 47. This would avoid the application of the sunset clause contained in para. 3 thereof. However, the main alternative avenues, which can all be traced back to provisions in the 1969 VCLT, are not entirely convincing. I will now briefly try to explain why.

Firstly, it is difficult to imagine a State being able to withdraw only from the sunset clause in Art. 47(3) ECT while still continuing to be a party to the ECT, with the real and ultimate aim of withdrawing definitively from the ECT in its entirety after having shirked its obligations under the sunset clause. Indeed, this would not be in line with Art. 44 VCLT, which establishes the general principle of indivisibility of treaties, stipulating that any cause of invalidity, suspension or termination can only apply to a treaty in its entirety. It is true that Art. 44(3) VCLT exceptionally allows the grounds of invalidity, suspension or termination to relate to specific sections or provisions of a treaty. However, some conditions must be met. To begin with, the relevant sections or provisions must be separable from the rest of the treaty with regard to their implementation, which seems almost impossible, if not illogical, with reference to Art. 47(3) ECT. In addition, it must be apparent from the treaty, or otherwise established, that the invoking State's acceptance of the relevant sections or provisions was not an essential basis for the counterparties' consent to be bound by the same treaty as a whole. It can be assumed here that each State Party's acceptance of Art. 47(3) ECT was essential for the other States Parties

to express their consent to be bound by the ECT in its entirety. Neither the ECT text nor its *travaux préparatoires* provide evidence to the contrary. Moreover, it is highly unlikely that the States Parties would have agreed to be bound by the ECT in its entirety while accepting the possibility of a future significant imbalance, such as that resulting from one or more of them not being bound by Art. 47(3) anymore.[11]

Secondly, and reversing the factors, it seems equally implausible that a State would be able to invoke Art. 56(1) VCLT to terminate the "minimum treaty regime" brought about by the obligations still in force according to Art. 47(3) ECT after withdrawing from the ECT. Art. 56(1) VCLT provides that a treaty without provisions concerning termination or withdrawal may not be denounced. However, alongside this statement of principle, there are two exceptions. The first one is found in sub-paragraph (a), which clarifies that a treaty may nevertheless be subject to denunciation if it is established that the parties intended to admit such a possibility. As for the second exception, sub-paragraph (b) affirms that the right to denunciation may also stem from the nature of a treaty.[12] That said, Art. 56(1) VCLT only applies to treaties without termination or withdrawal clauses and this is not the case with the ECT, as it regulates the right of withdrawal in paras. 1 and 2 of its Art. 47, with the sunset clause in para. 3 completing the framework. In any event, Art. 47(3) performs a function that makes it inconceivable that the negotiating States originally envisioned the possibility of withdrawing from the "minimum treaty regime" laid down for a 20-year period following any withdrawal from the ECT, or that the nature of Art. 47(3) is per se that of a treaty provision permitting withdrawal therefrom.

Thirdly, and more importantly, the idea of "neutralising" the sunset clause in the ECT through the conclusion of inter se agreements has been widely recommended. Under Art. 41 VCLT, two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if the possibility of modification is provided for or not prohibited by the treaty. In the latter case, however, the modification is only possible if it does not affect the enjoyment of the other parties' rights or their performance of obligations under the treaty and if it does not relate to a provision from which derogation would be incompatible

[11] Under Art. 44(3) VCLT a third condition requires, albeit in somewhat unclear terms, that no injustices arise towards the counterparties from the fact that the invoking State continues to apply the remaining sections or provisions of the treaty. This condition seems to overlap with the second one. It could be reiterated that it is highly unlikely that the ECT States Parties would have accepted the possibility of a future significant imbalance among them, where the term "imbalance" may basically mean "injustice".

[12] Art. 56(2) contains the procedural indication that a party must give at least 12 months' advance notice of any intention to denounce or withdraw from a treaty on the basis of one of the two exceptions listed in para. 1.

with the effective execution of the object and purpose of the treaty as a whole. The ECT does not provide for the possibility of concluding inter se agreements. At the same time, it does not prohibit that possibility. As a result, the two aforementioned conditions apply. Therefore, the idea under scrutiny here appears to be legally challenging. Indeed, sunset clauses are generally considered necessary in order for parties to investment treaties to enjoy rights and perform obligations, and to contribute to the effective execution of these treaties' object and purpose. Moreover, for their part, arbitral tribunals have almost always seemed inclined to exclude the said idea, allowing for an extremely narrow margin for the inter se modifications of the ECT, which cannot be extended to the sunset clause.[13]

In light of the foregoing, as emphasised by Tibisay Morgandi and Lorand Bartels in their seminal article, invoking the rule on change of circumstances as a ground for terminating the ECT would then remain the last-resort option. In their opinion, this rule could "overwhelm" the entire ECT, including its sunset clause.[14]

3. THE CONTENT AND NATURE OF THE RULE ON CHANGE OF CIRCUMSTANCES

The rule on change of circumstances – i.e. the *rebus sic stantibus* clause – has always existed in international law and attracted the attention of scholars. It can be said to be coeval with the Westphalian model of international law. Nevertheless, its content is more precise today than in the past, when only its "core" existed. This precision has mainly been driven by State practice and *opinio* that have emerged over the last 50 years or so. I have already carried out an accurate legal and historical analysis of the said State practice and *opinio* in a recently published book.[15]

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[13] For further and recent analyses, *see* N. Braoudakis, R. Craveia, C. Baldon, *Neutralising the ECT Sunset Clause Inter Se*, 39(2) ICSID Review 347 (2024); S. Mayr, *How to Put an End to Intra-EU Investment Arbitration under the Energy Charter Treaty (Fast): Amendment, Withdrawal, Modification?*, 30(2) European Foreign Affairs Review 223 (2025); Pantaleo, *supra* note 8, pp. 984-990; Jackson, *supra* note 3, pp. 624–625. In addition, for a review of the case law of arbitral tribunals, which is however mainly devoted to the non-amendability of the ECT provisions on the arbitral settlement of disputes, *see* G. Lampo, *The Relationship between Intra-EU Investment Arbitration under the Energy Charter Treaty and the Lisbon Treaty in Light of Article 41 VCLT*, in: G. Pascale, S. Tonolo (eds.), *The Vienna Convention on the Law of Treaties. The Treaty on Treaties in Contemporary International Law*, ESI, Napoli: 2021.

[14] T. Morgandi, L. Bartels, *Exiting the Energy Charter Treaty under the Law of Treaties*, 34(1) King's Law Journal 1 (2023). For a very similar conclusion, *see also* Jackson, *supra* note 3, pp. 626–629. Meanwhile, many reports, documents and blogposts have appeared online discussing the potential role of the rule on change of circumstances in terminating the ECT in its entirety, including its sunset clause.

[15] For more details on State practice and *opinio* concerning the rule on change of circumstances, *see* G. Pascale, *Il mutamento delle circostanze nel diritto dei trattati*, ESI, Napoli: 2024. This section and the following one are essentially based on the results presented in that book.

That analysis has helped shed new light on the conditions to be met for the applicability of this rule. It can be submitted that a change of circumstances may cause the termination (or the suspension) of a treaty[16] or specific provisions within it, provided that the change: (i) relates to circumstances that each party considered essential when consenting to be bound by the treaty; (ii) is fundamental in the sense that it has caused a radical change in the scope of the obligations still to be performed, mostly in terms of their increased onerousness; (iii) has not occurred as a result of an unlawful act previously committed by the invoking State; and (iv) was not foreseeable at the time the treaty was concluded.

The review of State practice and *opinio* has also provided fresh precision and certainty as to the nature of the rule on change of circumstances. It can now be confirmed that the rule in question is definitely of a customary nature.[17] This outcome is evidenced above all by the frequency with which States have invoked a change of circumstances to terminate or suspend a treaty, taking care to prove compliance with the above-described conditions. The customary nature of the rule on change of circumstances is also shown by the many instances in which the counterparties did not deny that a change of circumstances could have caused the termination or suspension of a treaty, but instead raised objections related to the failure to fulfil a given condition for the effective operation of the rule.

Interestingly, even international jurisprudence has committed to the position that incorporates the rule on change of circumstances into customary international law. Notably, in its twin judgments on jurisdiction delivered in 1973 in the *Fisheries*

[16] The analysis of State practice and *opinio* reveals that a change of circumstances may affect all categories of treaties, including those that establish international organisations, those that allow the provisional application of other treaties and those that contain rules giving rise to obligations *erga omnes partes* (such as human rights treaties). The rule on change of circumstances may also be referred to other international legal acts with binding force, such as unilateral acts, declarations of acceptance of the compulsory jurisdiction of international courts and tribunals and acts of international organisations. However, this rule cannot apply to general international law, i.e. customs and general principles of law, or of course to political understandings. Finally, it must be acknowledged that a change of circumstances occurring after a treaty has been ratified but before it enters into force may prompt the relevant States to withdraw their ratifications or renegotiate the treaty text. Although all of the above aspects are very interesting, they will not be explored further as they are not central to the topic under discussion here.

[17] Historically, many scholars have referred to the rule on change of circumstances as having a treaty nature, i.e. an unwritten provision inherent in every treaty. This was essentially a *fictio iuris*. Notably, the main proponent of this position was Georg Jellinek, who took up some ideas previously developed by Alberico Gentili, while remaining faithful to the vision of international law advocated by Hegelian philosophy in the 19th century. The renowned author drew inspiration from the Latin maxim *conventio omnis intelligitur rebus sic stantibus* to propose the idea of the inherent presence of a *rebus sic stantibus* clause in every treaty, thereby coining a locution that would subsequently become widely used in legal scholarship. For a summary on this subject, *see* A. Vamvoukos, *Termination of Treaties in International Law. The Doctrines of Rebus Sic Stantibus and Desuetude*, Clarendon Press, Oxford: 1985, p. 17 ff.

Jurisdiction case, the International Court of Justice (ICJ) first recognised the existence of this customary rule.[18] This conviction was reiterated by that same Court 24 years later, in its 1997 judgment in the *Gabčíkovo-Nagymaros Project* case.[19] The following year, the Court of Justice of the then European Communities (CJEC) came to the same conclusion in its *Racke* judgment, which was issued in the context of a preliminary ruling procedure.[20]

It can be now suggested that the written formulation of the rule on change of circumstances in Art. 62 VCLT has influenced the practice and especially the *opinio* of States, as well as international jurisprudence.[21] As a result, today the customary rule on change of circumstances and Art. 62 VCLT seem to overlap in many respects – though not completely.[22]

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[18] *Fisheries Jurisdiction (United Kingdom v. Iceland; Federal Republic of Germany v Iceland)*, Judgments, 2 February 1973, ICJ Rep 1973, para. 36.

[19] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 25 September 1997, ICJ Rep 1997, para. 104.

[20] Case C-162/96 *A. Racke GmbH & Co. v. Hauptzollamt Mainz* [1998] ECLI:EU:C:1998:293, para. 24.

[21] Art. 62 VCLT reads as follows:

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

[22] As stated in the text, the customary rule on change of circumstances and Art. 62 VCLT seem to overlap in many respects, *though not completely*. It is incidentally observed later in this section that both the ICJ and the CJEC have also stressed that. However, the two courts did not clarify their affirmations. According to Pascale (*supra* note 15, pp. 337–365), three aspects differentiate the customary rule on change of circumstances from Article 62 VCLT. Firstly, although the ILC indicated that the term "circumstances" in Art. 62 VCLT should be interpreted as including both international and domestic circumstances, customary law appears to prevent treaties from being terminated based on a change of circumstances within the invoking State. Secondly, the prohibition of invoking a change of circumstances as a ground for terminating a treaty that establishes a boundary, which is set out in Art. 62(2)(a) VCLT, does not contribute to defining the content of the customary rule on change of circumstances. Thirdly, given that the procedure for generally asserting all causes of the invalidity, termination and suspension of treaties have been included in Arts. 65–68 VCLT, Art. 62 does not specifically provide for any such procedure. In contrast, the corresponding customary rule seems to dictate a procedure based on the interested State invoking the change of circumstances and the counterparties *acknowledging*, either expressly or tacitly,

It is true that States have rarely made explicit recourse to Art. 62 VCLT. Nonetheless, the conditions that States wishing to invoke a change of circumstances have usually abided by, and those that objecting States have usually relied on, largely correspond to the conditions set out in Art. 62 VCLT. Thus, since 1969, it is as if States have convinced themselves that the customary rule on change of circumstances corresponds to the treaty rule in Art. 62 VCLT.

This belief has undoubtedly been facilitated by the attitude taken by the ICJ, which may be considered a "promotional" attitude so to speak. As mentioned above, in its twin judgments in the *Fisheries Jurisdiction* case, significantly rendered in 1973 – i.e. four years after the adoption of the 1969 VCLT – the ICJ for the first time recognised the existence of the rule on change of circumstances in customary international law. It can now be added that the ICJ also indicated in those same judgments that Art. 62 VCLT represents, in many respects, the codification of this customary rule. It is peculiar that the ICJ neither searched for nor relied on State practice and *opinio* to substantiate its assertion. The ICJ only stated that

> [i]nternational law admits that a fundamental change in the circumstances which determined the parties to accept a treaty, if it has resulted in a radical transformation of the extent of the obligations imposed by it, may, under certain conditions, afford the party affected a ground for invoking the termination or suspension of the treaty. This principle, and the conditions and exceptions to which it is subject, have been embodied in Article 62 VCLT, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances.[23]

The ICJ confirmed this outcome in its 1997 *Gabčíkovo-Nagymaros Project* judgment. The aforementioned paragraph from the *Fisheries Jurisdiction* judgments was essentially copied verbatim.[24] The following year, the then CJEC, in a sort of dogmatic statement within its *Racke* judgment, reiterated as well that Art. 62 VCLT may, in many respects, be regarded as a codification of the customary rule on

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the termination effect of this change of circumstances, in order to avoid disputes. It is no coincidence that I use the word "acknowledge" instead of "consent". These are different words and have different legal meanings. Be that as it may, scrutinising procedural issues more in-depth here is of little use for the rest of the discussion, given that the application of the rule on change of circumstances to terminate the ECT is merely hypothetical. To verify the viability of this hypothesis, it is first necessary to establish whether all the conditions for applying the rule are met. Since, as stated in section 6, one of these conditions – that of unforeseeability – is not met, procedural issues can be confirmed once again to be of little relevance.

[23] *Fisheries Jurisdiction*, para. 36.

[24] *Gabčíkovo-Nagymaros Project*, para. 104.

termination of treaties due to changed circumstances, thereby establishing that it could be invoked even by international legal persons not bound by the VCLT.[25]

4. APPLICABILITY OF THE RULE ON CHANGE OF CIRCUMSTANCES IN THE PRESENCE OF TREATY PROVISIONS ON TERMINATION OR WITHDRAWAL, PARTICULARLY WITH REGARD TO INVESTMENT TREATIES

In the past, most scholars agreed that recourse to the rule on change of circumstances was hindered by any provisions in a treaty's text that aimed to establish a condition of termination, a final deadline or the power of withdrawal. They defended this position by arguing that the presence of such provisions in a treaty: (i) implied the establishment of such clear and precise limits for that treaty as to leave no room for other causes of termination;[26] (ii) required the unreserved acceptance of unforeseen risks, given that the parties had consciously chosen to regulate only certain risks;[27] (iii) indicated the willingness of the parties to exclusively follow a certain method to terminate the treaty;[28] and (iv) offered precautions similar to those underlying the rule on change of circumstances, and perhaps even better regulated and detailed.[29]

The International Law Commission (ILC) had initially considered these reasons to be acceptable. In Draft Articles 21-23, presented in the Second Report of the third Special Rapporteur on the Law of Treaties, Sir Gerald Fitzmaurice, the rule on change of circumstances was described as being capable of terminating only treaties intended to last indefinitely and lacking a termination or withdrawal provision.[30]

However, the fourth Special Rapporteur, Sir Humphrey Waldock, later proposed abandoning this perspective. This was also in light of data stemming from State practice. The ILC accepted his proposal. More generally, according to Waldock,

> when a treaty is expressly given a duration of ten, twenty, fifty or ninety-nine years, it cannot be excluded that a fundamental change of circumstances may occur which radically affects the

[25] *A. Racke GmbH & Co. v. Hauptzollamt Mainz*, para. 24. In this particular case, it was of interest for the CJEC to demonstrate that the European Communities, not being bound by the VCLT, could in any case invoke a change of circumstances to terminate a trade agreement previously concluded with Yugoslavia.

[26] M. de Taube, *L'inviolabilité des traités*, 32(2) Recueil des cours 295 (1930), p. 373.

[27] C. Dupuis, *Liberté des voies de communication internationales*, 2(1) Recueil des cours 129 (1924), p. 343; C. Dupuis, *Règles générales du droit de la paix*, 32(2) Recueil des cours 5 (1930), p. 84.

[28] D. Anzilotti, *Corso di diritto internazionale*, Athenaeum, Roma: 1928, p. 413.

[29] U Borsi, *Ragione di guerra e stato di necessità nel diritto internazionale*, 10(1) Rivista di diritto internazionale 157 (1916), p. 178.

[30] G. Fitzmaurice, *Second Report*, pp. 32–33 (text of Draft Articles 21–23) and p. 56 ff. (for commentaries).

> basis of the treaty obligations. The cataclysmic events of the present century show how radically circumstances may change within a period of only ten or twenty years. If the doctrine is put, as it was put by the previous Special Rapporteur, on the general ground of equity and justice, it is not evident why a distinction should be made between "perpetual" and "long term" treaties. The inference which he draws as to the intention of the parties to exclude earlier termination is perfectly legitimate, if the doctrine is regarded from the point of view of the "implied condition" theory; but it does not seem to be so, if the doctrine is regarded as an objective rule of law founded upon the equity and justice of the matter. Moreover, [...] practice does not altogether support the view that the doctrine is confined to "perpetual" treaties.[31]

Draft Article 59 (which would eventually correspond to Art. 62 VCLT) was finalised in 1966 without being limited to treaties that do not include termination or withdrawal provisions.[32] As confirmation, Art. 42(2) VCLT provides that a treaty may be terminated in accordance with both its provisions and the termination causes listed in the VCLT itself. Art. 42(2) therefore allows the rule on change of circumstances to operate independently of any termination or withdrawal provisions in the treaty.

Indeed, it is difficult to see how the application of the rule on change of circumstances with regard to a treaty could be prevented by the existence in that treaty of any provisions on termination or withdrawal.[33] In addition to what Special Rapporteur Waldock pointed out, it is possible to claim that treaty-based termination or withdrawal mechanisms should not necessarily be treated as *lex specialis* vis-à-vis the rule on change of circumstances, as they regulate different situations and rely on different rationales, despite their common ultimate objective. To confine oneself to the most obvious aspect, a change of circumstances occurs when exogenous events occur that are not based on the will of the States. By contrast, it is

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[31] H.M. Waldock, *Second Report*, pp. 83–84. Among the other ILC members, see in particular the opinions of M. Lachs and G. Tunkin, reproduced in 1 Yearbook of the International Law Commission (1963), respectively at p. 140 and p. 253. In line with Waldock's view, *see also* T.O. Elias, *The Modern Law of Treaties*, Oceana Publishing, Dobbs Ferry: 1974, p. 122, and G. Haraszti, *Treaties and the Fundamental Change of Circumstances*, 146(3) Recueil des cours 1 (1975), p. 71.

[32] See the commentary to Draft Article 59 in 2 Yearbook of the International Law Commission (1966), p. 259.

[33] O.J. Lissitzyn, *Treaties and Changed Circumstances (Rebus Sic Stantibus)*, 61(4) American Journal of International Law 895 (1967), p. 912, seems to come to the same conclusion. Furthermore, R.A. Müllerson, *The ABM Treaty: Changed Circumstances, Extraordinary Events, Supreme Interests, and International Law*, 50(3) International & Comparative Law Quarterly 509 (2001), p. 530, writes that "it may seem that in the presence of an expressly provided possibility of denunciation, references to the *clausula rebus sic stantibus* are superfluous. However, the latter has a different content and context of application. Express provisions providing for the possibility of the denunciation of a treaty do not exclude the use of another concept available for treaty termination – that of changed circumstances."

precisely the will of the States involved in treaty negotiations that leads to provisions on termination or withdrawal being included in the text of that treaty, as if they reflect an *ex ante* allocation of potential risks. Moreover, and more generally, as previously mentioned, most treaties today contain provisions on termination or withdrawal.[34] If these provisions were to prevent the application of the rule on change of circumstances, then this rule would have to be assigned very limited or purely residual functions.

In any case, it must be conceded that, from a probabilistic and statistical point of view, the chances of the rule on change of circumstances being invoked to terminate a treaty endowed with a termination or withdrawal provision are low. The conditions required for applying the rule on change of circumstances would be more difficult for States to fulfil than the conditions and procedures established by termination or withdrawal provisions, which are generally straightforward to be invoked and enforced, making them attractive to States looking to quickly abandon a treaty.[35]

Be that as it may, it is argued here that, in certain situations, States may benefit from invoking a change of circumstances. For example, imagine a case in which the future event coinciding with the condition of termination established in the treaty provision never occurs. Alternatively, consider a State that feels the need to withdraw before the date or period when the option of withdrawal can be implemented. It may also happen that the withdrawal procedure proves impracticable or takes too long for some reason. In short, it must be acknowledged that the rule on change of circumstances can sometimes represent a useful escape clause for States.

From this perspective, *the rebus sic stantibus clause* seems to offer a viable avenue particularly for terminating investment treaties, despite the withdrawal provisions they usually include.[36]

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[34] For more information, *see* J.A. Hill, *Aust's Modern Treaty Law and Practice*, Cambridge University Press, Cambridge: 2023, p. 287 ff. The most notable exceptions are some particularly solemn treaties, or treaties with such a broad scope that including a withdrawal clause would be inappropriate. Examples include the 1945 Charter of the United Nations, the 1958 Geneva Conventions on the Law of the Sea, the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1981 African Charter on Human and Peoples' Rights and the 1997 Convention on the Right to Non-navigational Use of International Watercourses.

[35] *See* D.F. Vagts, *Rebus Revisited: Changed Circumstances in Treaty Law*, 43(2) Columbia Journal of Transnational Law 459 (2005), p. 475, and T. Giegerich, *Article 62*, in: O. Dörr, K. Schmalenbach (eds.), *Vienna Convention on the Law of Treaties. A Commentary*, II ed., Springer, Berlin/Heidelberg: 2018, p. 1153.

[36] *See* O. Bayrak, *Economic Crises and the Fundamental Change of Circumstances in Investment Arbitration*, 35(1–2) ICSID Review 130 (2020), and M.M. Mbengue, *Article 62 of the VCLT. Fundamental Change of Circumstances*, in: A. Kulick, M. Waibel (eds.), *General International Law in International Investment Law. A Commentary*, Oxford University Press, Oxford: 2024, p. 233 ff.

These provisions are now almost always accompanied by sunset clauses. The latter can be considered complementary to the former, taking effect should a State decide to abandon an investment treaty. As mentioned above with specific regard to the ECT, sunset clauses typically stipulate that the withdrawing State's treaty obligations regarding the protection of foreign investment made in its economic system prior to withdrawal remain in force for a long period after withdrawal. This offers foreign investors guarantees of stability and predictability in respect of a return on their investment.[37]

In the presence of a sunset clause, the withdrawal from an investment treaty on the basis of the relevant treaty provisions essentially "freezes" the withdrawing State's participation in that treaty. The withdrawing State would then have to wait a long time before implementing any measures that could allegedly harm foreign investment and lead to a violation of the sunset clause. Such a violation would allow both the other States Parties and especially foreign investors to take legal action against the withdrawing State. This situation would not change even if the withdrawing State intended to adopt urgent and important measures that would benefit the whole international community and any human societies – i.e. measures concerning the fight against climate change or the protection of the environment – but which would allegedly harm the interests underlying foreign investment already made in its economic system.[38] The aforementioned events surrounding the ECT are very significant in this respect.

5. THE RULE ON CHANGE OF CIRCUMSTANCES AS A LAST-RESORT OPTION TO TERMINATE THE ETC WITHOUT ACTIVATING THE WITHDRAWAL PROVISIONS IN ITS ART. 47

In principle, one could concede that in the case under scrutiny there is a change of circumstances that is materially driven by the increasing scientific and social international awareness of the urgent and important need to combat environmental degradation and climate change, particularly by abandoning hydrocarbons – whose contribution to the current environmental and climate crises is very clear today – and transitioning to green energy sources. The idea is that, had the States been

[37] For more on sunset clauses in investment treaties and the consequent problems emerging when States Parties denounce these treaties, *see* T. Voon, A.D. Mitchell, *Denunciation, Termination and Survival: The Interplay of Treaty Law and International Investment Law*, 31(2) ICSID Review 413 (2016).

[38] For more on the problems arising from States withdrawing from treaties containing this type of clause, particularly problems concerning third parties, *see* M. Buscemi, L. Marotti, *Obblighi procedurali e conseguenze del recesso dai trattati: quale rilevanza della Convenzione di Vienna nella prassi recente?*, 102(4) Rivista di diritto internazionale 939 (2019), pp. 969–974.

aware in 1994 of the extreme damage to the environment and the climate caused by supporting trade in hydrocarbons and promoting investment in non-renewable energy, they would not have entered into the ECT, or at least they would have aligned its provisions with greater sensitivity to the environment and climate. This idea could meet *almost* all four of the conditions required for the application of the rule on change of circumstances listed in the first part of section 3.

Firstly, it can be submitted that the change here under consideration relates to circumstances that the ECT States Parties deemed essential for them at the time they consented to being bound by the ECT. The legal scholarship has shown that the circumstances essential for the conclusion of a treaty are those that represented the logical and historical prerequisite for it, to the extent that any change in them (including their possible cessation) would render that treaty devoid of any function, in accordance with the Latin maxim *cessante ratione legis cessat lex ipsa*. In other words, in order for the changed circumstances to qualify as essential, there must be a link between them and the purpose of the treaty.[39] As described in section 1, the purpose of the ECT was to promote and support investment and trade in the field of fossil fuels. Moreover, when the ECT was concluded, it was assumed that this purpose would be pursued stably, or thanks to the sunset clause certainly for at least 20 years after any State withdrew from the ECT. This is no longer valid. The clear awareness of the bond between hydrocarbons and environmental and climate degradation, and the measures that many ECT States Parties consequently wish or are required to adopt, affects the ECT's ability to stably support and promote investment and trade in the fossil fuels sector.

Secondly, it can be acknowledged that the change of circumstances concerning the ECT is a fundamental one. It can be inferred from an analysis of State practice and *opinio* that the fundamental character of a change of circumstances depends on the extent of the alteration in the scope of the treaty obligations still to be performed. As mentioned in section 3, the condition of fundamental character can be claimed to be fulfilled only if the change of circumstances has had the effect of *radically* altering the scope of the treaty obligations still to be performed,[40] mostly by making those obligations more onerous for one of the parties,[41] and thus causing

[39] *See* Fitzmaurice, *supra* note 30, p. 63. *See also* Giegerich, *supra* note 35, p. 1163, and Pascale, *supra* note 15, pp. 201–204.

[40] *See* F. Capotorti, *L'extinction et la suspension des traités*, 134(3) Recueil des cours 417 (1972), p. 543, who writes that "il faut que le changement […] soit 'fondamental', c'est-à-dire qu'il ait eu pour effet de transformer radicalement la portée des obligations qui restent à exécuter en vertu du traité".

[41] In any case, Giegerich, *supra* note 35, pp. 1164–1165, accurately points out that "the extent of obligations still to be performed can be radically transformed either directly or indirectly. Direct transformation means that the onerousness of the obligation has increased, whereas indirect transformation means that the value to be gained by further performance is diminished."

an imbalance between them.[42] With regard to the ECT, the starting point is the increased cost due to multimillion-dollar disputes brought against many ECT States Parties by foreign investors whose economic activities are or can allegedly be affected by the State's measures intended to abandon fossil fuels and transition to green energy sources in order to ultimately protect the environment and climate. In this sense, the change of circumstances at stake appears to be of a nature that has radically increased the onerousness of the obligations that States still have to perform under the ECT, and can therefore qualify as fundamental.

Thirdly, ECT States Parties may rely on the increasing awareness of the link between the current environmental and climate crises and the use of fossil fuels in order to invoke a change of circumstances and terminate the ECT, especially because it seems that none of them has previously caused it to occur through an unlawful act. One scholar suggested the view that, if a State Party to a treaty has caused a change of circumstances even without violating any international rule, that State cannot in any event invoke that change of circumstances to terminate that treaty.[43] If this were the case, then none of the ECT States Parties could invoke the change of circumstances in question, since they all contributed to its realisation to some extent. However, this view seems today contradicted by State practice. Furthermore, in the VCLT regime, it is clearly stated when lawful conduct by a State is to be considered "punishable", as for instance in the case of Art. 48(2), which affirms that error may not operate as a cause of relative invalidity of treaties if invoked by a State that has "contributed by its own conduct to the error".[44]

6. A DOUBT AS TO WHETHER THE CONDITION OF THE UNFORESEEABILITY OF THE CHANGE OF CIRCUMSTANCES IS MET WITH REGARD TO THE ECT

There is uncertainty concerning the fulfilment of the condition of unforeseeability required for the rule on change of circumstances to apply with regard to the ECT.

[42] Therefore, in the VCLT system, the adjective "fundamental", which is even found in the English title of Art. 62, should be read in conjunction with its para. 1(b), which specifies that a change of circumstances can only bring about the termination of a treaty if it has the effect of radically altering the scope of the treaty obligations that the States Parties still have to perform. In any case, it is not possible to agree with A. Hêche (*Les conditions d'application de la clausula rebus sic stantibus*, 47(1) Revue belge de droit international 322 (2014)), whose view is that the condition of the fundamental character of a change of circumstances is not provided for by the relevant customary rule, but only by Art. 62 VCLT.

[43] A. Poch de Caviedes, *De la clause 'rebus sic stantibus' à la clause de révision dans les conventions internationales*, 118(2) Recueil des cours 110 (1966), p. 184.

[44] For details, *see* Pascale, *supra* note 15, pp. 220–222.

According to that condition, a change of circumstances must be both unforeseen and unforeseeable. Therefore, a State cannot terminate a treaty due to a change of circumstances if that change was foreseen and regulated in the treaty itself, for example through a specific clause or even simply through general references to the potential change in the treaty's text or *travaux préparatoires*. It is also established that, if it were proven that a State had the means to reliably or statistically predict that a change of circumstances would occur and yet did not act accordingly, then that change shall be considered irrelevant, as it was foreseeable or – without much difference – implicitly foreseen but deemed by the concerned State as unable to affect its treaty obligations.[45]

As already stated, during the 1994 negotiations that led to the ECT, the States Parties were aware of the need to protect the environment and the climate, even though perhaps they did not fully understand the link between the use of fossil fuels and the damage to the environment and climate, and the resulting urgency and importance of transitioning to green energy sources. This lack of knowledge does not appear to be sufficient for the condition of unforeseeability to be met. On the contrary, it can be assumed that the change of circumstances here under consideration was both foreseen and foreseeable at that time.

Firstly, as stated in section 1, references to notable international treaties on environmental and climate protection can be found in the preamble of the ECT. These references prove that the negotiating States were aware, even if not in detail, that supporting and promoting trade and investment in the fossil fuels sector would somehow have an impact on the environment and climate. Secondly, the outcomes of scientific research concerning the urgency and importance of tackling environmental degradation and climate change, inter alia by means of abandoning fossil fuels, were most likely available by 1994. Suffice it to recall the reports published by the Intergovernmental Panel on Climate Change (IPCC) under the auspices of the United Nations during the 1990s. Although no explicit statement on the need to transition to green energy sources can be found in these reports, the IPCC did strongly advocate a significant shift away from fossil fuels. For example, in its First Assessment Report (1990), the IPCC confirmed that emissions from the combustion of fossil fuels were substantially increasing the concentration of greenhouse gases in the atmosphere, thereby causing warming. The Report warned that this would have significant impacts on natural and human systems, and emphasised the important need to urgently reduce emissions.[46]

[45] *Ibidem*, pp. 208–214.

[46] The First Assessment Report (1990) and all other IPCC reports can be found on the IPCC official website: www.ipcc.ch/reports (accessed 31 March 2026).

As a result, the reasoning proposed by the ECT Secretariat in a note published on the official ECT website on 3 November 2022 appears to be correct. In that note, the ECT Secretariat reminds ECT States Parties of the exceptional nature of the *rebus sic stantibus* clause and quotes a paragraph from the ICJ's 1997 *Gabčíkovo-Nagymaros Project* judgment. From this quotation one can infer that the ECT Secretariat also believes that the urgent and serious need for States to abandon fossil fuels in order to combat environmental degradation and climate change was not entirely unforeseen and/or unforeseeable in 1994.[47]

Indeed, in its judgment in the *Gabčíkovo-Nagymaros Project* case – with regard to the 1977 Treaty entered into by Czechoslovakia and Hungary for the construction of a system of locks along the Danube River – the ICJ stated that a change of circumstances must have been "completely unforeseen" (i.e. unforeseen and unforeseeable) in order to apply. The ICJ also added that new developments in environmental knowledge and environmental law could not be said to have been "completely unforeseen". It then proceeded to affirm that "the formulation of Arts. 15, 19 and 20, designed to accommodate change, made it possible for the parties to take account of such developments and to apply them when implementing those treaty provisions". In other words, in the Court's view, the references to vague obligations regarding respect for nature in those provisions of the 1977 Treaty made it clear that both Czechoslovakia and Hungary were aware of the foreseeability of the future formation of international norms concerning the protection of the environment. This awareness meant that the rule on change of circumstances, which Hungary had invoked in light of subsequent new rules of international environmental law being established, could not be applied to terminate the 1977 Treaty.[48]

CONCLUDING REMARKS

As things stand, a State wishing to withdraw from the ECT may not rely on the urgency and importance of shifting away from fossil fuels and transitioning to green energy sources in order to combat environmental degradation and climate change as valid grounds for invoking the rule on change of circumstances. Indeed, the condition of unforeseeability would not be met. This negative outcome is in line with those concerning the other legal avenues discussed in section 2 with regard to the termination of the ECT. They all seem to be dead ends.

[47] ECT Secretariat, *Sunset Clause (Article 47 of the ECT) in Relation to Article 62 of the Vienna Convention on the Law of Treaties (VCLT)*, 3 November 2022.

[48] *Gabčíkovo-Nagymaros Project*, para. 104.

More generally, although States are the masters of treaties, they cannot disregard the *pacta sunt servanda* rule, which famously is the *Grundnorm* of the entire law of treaties.[49] They must be also aware that the *rebus sic stantibus* clause is designed to act as an "antidote" to the latter rule more than to sunset clauses included in investment treaties. It is no coincidence that the *pacta sunt servanda* rule and the *rebus sic stantibus* clause are often referred to as two sides of the same coin, as if they were two aspects of the same rule. Consequently, the *rebus sic stantibus* clause must be invoked with caution, and great attention must be paid to all the conditions required for its application. Otherwise, the law of treaties as a whole would risk being seriously jeopardised.

To conclude, this article has contributed to the ongoing debate on the potential use of the rule on change of circumstances as a last-resort legal option to terminate the ECT, and has hopefully demonstrated why even this option must ultimately be ruled out, despite initially appearing sufficiently plausible to warrant further investigation. At the end of the day, States Parties wishing to abandon the ECT would have no choice but to rely on Art. 47 and, as a result, to accept the application of the sunset clause contained in it. The ECT States Parties wanted this when they negotiated and adopted the ECT, and now they must respect their own will. This also explains why several EU MSs decided to withdraw from the ECT autonomously and pursuant to Art. 47 ECT, despite the EU having spent several years searching for a coordinated withdrawal solution capable of overriding Art. 47 ECT.

[49] J. Klabbers, *A Moral Holiday: Withdrawal from the Energy Charter Treaty*, ESIL Reflections, 15 December 2022, available at: https://tinyurl.com/mwuum6kp (accessed 31 March 2026). This author notes that, however, from the States' perspective, *pacta sunt servanda*, but not all treaties deserve to last forever.

SPECIAL SECTION: "FROM EAST TO WEST: ADVANCING VICTIMS' RIGHTS IN A GLOBAL CONTEXT"