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**WHEN STABILITY BECOMES RISK:
REFRAMING STABILIZATION CLAUSES FOR ADOPTIVE REGULATION**

❖ Note ❖

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I. INTRODUCTION

In long-term resource extraction projects, governments commit, through stabilization clauses, not to alter the legal and regulatory frameworks governing an investment after the contract is signed.¹ These commitments reassure investors and lenders that the rules of the game will remain fixed. But what happens when those rules need to change? In practice, this promise of stability becomes problematic when regulatory conditions evolve.²

A recurring dilemma arises where governments introduce new environmental or fiscal regulations in response to evolving economic conditions, ecological risks, or international obligations,³ only to face contractual constraints that shield existing investments from those changes. In *Occidental Petroleum Corp. v. Ecuador*,⁴ for example, disputes emerged in the context of an oil concession where contractual protections, supported by stabilization commitments, limited the state's ability to

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¹ Sam Foster Halabi, *Efficient Contracting between Foreign Investors and Host States: Evidence from Stabilization Clauses*, 31 NW. J. INT'L L. & BUS. 261 (2011).

² Andrea Shemberg, *Investment Agreements and Human Rights: The Effects of Stabilization Clauses*, CORP. SOC. RESP. INITIATIVE WORKING PAPER NO. 42 (2008), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/workingpaper_42_shemberg.pdf.

³ Halabi, *supra* note 1, at 261.

⁴ Susan D. Franck, *Occidental Exploration & Production Co. v. Republic of Ecuador. Final Award*. London Court of International Arbitration Administered Case No. UN 3467, 99 AM. J. INT'L L. 675 (2005), https://digitalcommons.wcl.american.edu/facsch_lawrev/1979/.

recalibrate its regulatory and fiscal approach.⁵ Although the case turned on contract termination, it reflects a broader structural tension: legal frameworks designed to secure private investment may also restrict governments' ability to pursue regulatory objectives.⁶

This tension is particularly acute in environmentally sensitive sectors.⁷ As climate change accelerates ecological disruption⁸ and governments adopt stricter environmental and resource-management regulations, earlier contractual commitments may prevent those new standards from applying to existing projects.⁹ The result is the emergence of a 'dual regulatory regime', in which legacy investments operate under outdated legal frameworks while newer projects are subject to more stringent rules.¹⁰ The law begins to operate on two timelines at once. This fragmentation raises a fundamental question: should the law prioritize the protection of private investment expectations or the need for adaptive public regulation?

At the heart of this dilemma lies a deeper shortcoming in the current legal regime. Stabilization clauses are designed to reduce regulatory risk and enhance project "bankability,"¹¹ that is, the ability of a project to secure financing by assuring investors that legal and fiscal conditions will remain predictable. However, by insulating investments from regulatory change, these clauses undermine the very governance systems required to respond to systemic risks such as environmental degradation and climate change.¹² In securing stability for investors, the law may be sacrificing flexibility for governance. They reveal a structural imbalance: a legal framework that effectively secures private interests but struggles to accommodate evolving public priorities.¹³

This Note argues that rigid stabilization clauses reflect an outdated conception of regulatory risk¹⁴ and must be recalibrated to better align private investment

⁵ *International Centre for the Settlement of Investment Disputes in the Proceeding between Occidental Petroleum Corp. and the Republic of Ecuador*, ENCYCLOPEDIA OF BUSINESS IN TODAY'S WORLD (2009), <https://sk.sagepub.com/reference/businesstoday/n515.xml>.

⁶ Franck, *supra* note 4.

⁷ Lorenzo Cotula, *Investment Contracts and International Law: Charting a Research Agenda*, 31 EUR. J. INT. LAW 353 (2020), <https://academic.oup.com/ejil/article/31/1/353/5882066>.

⁸ Richard Allan P et al., *IPCC, 2021: Summary for Policymakers*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC) (2021), <https://www.ipcc.ch>.

⁹ Shemberg, *supra* note 2.

¹⁰ Cotula, *supra* note 7.

¹¹ Shemberg, *supra* note 2.

¹² Anthony J Casey & Anthony Niblett, *The Limits of Public Contract Law*, 85 LAW & CONTEMP. PROBS. 51 (2022).

¹³ Shemberg, *supra* note 2.

¹⁴ Cotula, *supra* note 7.

protection with the demands of public regulation. Drawing on U.S. contract law principle¹⁵ and emerging environmental, social, and governance (ESG) norms,¹⁶ this Note contends that long-term investment agreements should anticipate regulatory evolution rather than resist it.¹⁷ Part II provides background on stabilization clauses and their role in investment governance. Part III analyzes the legal and economic consequences of rigid stabilization in the context of environmental regulation. Part IV proposes reforms that better balance investor certainty with the need for adaptive regulatory frameworks.

II. BACKGROUND

A. *Stabilization Clauses: Definition and Purpose*

Stabilization clauses are contractual provisions commonly included in long-term investment agreements, particularly in resource-dependent sectors such as oil, gas, and mining.¹⁸ They protect investors from adverse changes in the legal or regulatory framework of the host state after the contract has been concluded.¹⁹ In their strongest form, often referred to as “freezing clauses,” stabilization provisions lock in the legal regime applicable at the time of contracting, preventing subsequent legislative or regulatory changes from applying to the investment.²⁰ More flexible variants, such as “economic equilibrium clauses,” permit regulatory change but require compensation or restoration of the project’s economic balance where such changes materially affect profitability.²¹

The purpose of these clauses is to mitigate regulatory risk and enhance investor confidence in environments perceived as politically or legally unstable.²² In capital-intensive industries characterized by high sunk costs and long investment horizons, investors face the risk that host states may alter fiscal or regulatory terms once investments become immobile: a dynamic often described as the “obsolescence

¹⁵ RESTATEMENT (SECOND) OF CONTRACTS § 178 (AM. L. INST. 1981) (codifies the balancing test for unenforceability on grounds of public policy).

¹⁶ Mónica Oliver Yébenes, *Climate Change, ESG Criteria and Recent Regulation: Challenges and Opportunities*, 14 EURASIAN ECON. REV. 87 (2024), <https://link.springer.com/10.1007/s40822-023-00251-x>.

¹⁷ Cotula, *supra* note 7.

¹⁸ Halabi, *supra* note 1.

¹⁹ Shemberg, *supra* note 2.

²⁰ Cotula, *supra* note 7.

²¹ Shemberg, *supra* note 2.

²² Halabi, *supra* note 1.

bargain.”²³ Stabilization clauses thus function as risk-allocation tools, shifting the burden of regulatory change from private investors to the host state.²⁴

B. *Stabilization in Resource-Dependent Economies*

The use of stabilization clauses is particularly prevalent in resource-dependent economies, where governments rely heavily on foreign direct investment to develop extractive industries.²⁵ In these contexts, stabilization provisions serve not only private interests but also broader public policy objectives, including attracting capital, promoting economic development, and signaling credibility to international markets.²⁶

Host states often treat stabilization protections as a necessary concession in competitive global investment markets.²⁷ Countries with limited institutional capacity, regulatory volatility, or perceived political risk often deploy such clauses to compensate for weaker governance structures and to reassure investors and lenders.²⁸ Stabilization clauses operate as substitutes for strong domestic legal systems, providing a contractual mechanism for securing investment where public institutions may be less trusted.²⁹

At the same time, the increasing prominence of ESG norms complicates this framework. Modern investment and financing practices increasingly assume that regulatory standards (particularly in environmental protection) will evolve over time.³⁰ Stabilization clauses that insulate investments from such evolution may therefore sit uneasily alongside emerging expectations that states will strengthen environmental and sustainability regulation.³¹

C. *Shortcomings of Stabilization Clauses*

Despite their functional role in facilitating investment, stabilization clauses present several structural shortcomings. Most notably, stabilization clauses treat regulatory change as exceptional rather than inherent to governance, failing to account for the dynamic nature of modern regulatory systems,³² particularly in areas such as environmental protection and climate governance.

²³ Shemberg, *supra* note 2.

²⁴ Halabi, *supra* note 1.

²⁵ Cotula, *supra* note 7.

²⁶ Shemberg, *supra* note 2.

²⁷ *Id.*

²⁸ Cotula, *supra* note 7.

²⁹ Shemberg, *supra* note 2.

³⁰ Oliver Yébenes, *supra* note 16.

³¹ *Id.*

³² Cotula, *supra* note 7.

Moreover, rigid stabilization provisions can create asymmetries in the application of law, allowing certain investments to operate under outdated regulatory regimes while others are subject to newer standards.³³ This can produce fragmentation within the same industry and limit the effectiveness of regulatory reforms.³⁴ Although these concerns are often acknowledged in the literature, they are typically framed as policy trade-offs rather than as fundamental tensions within the legal architecture of investment governance.³⁵

D. *Divergence from U.S. Contract Law Principles*

The logic underpinning stabilization clauses diverges in important respects from U.S. contract law principles. Under U.S. law, contracts are formed against the backdrop of an evolving regulatory environment.³⁶ U.S. contract law rejects the premise that legal conditions remain static.³⁷ In *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, the Supreme Court emphasized that contractual expectations are shaped by existing regulatory frameworks and that subsequent regulation in pursuit of legitimate public purposes does not necessarily constitute an impermissible impairment of contract.³⁸ Similarly, doctrines such as the public policy defense limit the enforceability of contractual provisions that conflict with important public interests, particularly where those interests are grounded in statutory or regulatory mandates.³⁹

The strength of the U.S. model lies in its ability to preserve contractual stability without sacrificing regulatory flexibility. By recognizing that contracts are formed within an evolving legal environment, U.S. law avoids the rigid allocation of regulatory risk that characterizes stabilization clauses. At the same time, doctrines such as the public policy defense ensure that private agreements remain subordinate to core public interests. This approach offers a more balanced framework – one that protects investor expectations while maintaining the state’s capacity to respond to changing economic, environmental, and social conditions.

E. *Why Not Rely on U.S.-Style Contract Principles?*

The divergence between stabilization practices and U.S. contract law principles raises an important question: why do resource-dependent states rely on stabilization

³³ *Id.*

³⁴ *Id.*

³⁵ Casey and Niblett, *supra* note 12.

³⁶ Robert G Hertel Jr, *Energy Reserves Group v. Kansas Power & Light Co.*, 103 S. Ct. 697 (1983), 62 WASH. U. L.Q. 179 (1984).

³⁷ Halabi, *supra* note 1.

³⁸ Jr, *supra* note 37.

³⁹ See RESTATEMENT (SECOND) OF CONTRACTS § 178, *supra* note 15.

clauses rather than simply applying general contract doctrines that already balance private and public interests? The answer lies in a combination of institutional, economic, and political considerations. In many resource-dependent economies, domestic legal systems may lack the credibility, predictability, or enforcement capacity necessary to reassure foreign investors.⁴⁰ Stabilization clauses thus serve as a form of contractual commitment device, allowing states to signal reliability in the absence of strong institutional guarantees.⁴¹

Additionally, governments may face immediate economic pressures to attract investment and generate revenue, leading them to prioritize short-term capital inflows over long-term regulatory flexibility.⁴² In such contexts, stabilization clauses function as tools of economic strategy, even where they constrain future policy space. At the same time, this reliance reflects an implicit trade-off: the more a state commits to insulating investors from regulatory change, the more it risks limiting its own capacity to respond to evolving public needs.⁴³ This trade-off becomes particularly pronounced in sectors where regulatory adaptation is essential, such as environmental protection and natural resource management.⁴⁴

Against this backdrop, stabilization clauses reveal a fundamental tension within investment governance: while they are designed to secure private investment by reducing regulatory uncertainty, they may simultaneously constrain the state's ability to pursue public regulatory objectives. The consequences of this tension, and the legal challenges it produces, are examined in the following section.

III. ANALYSIS

A. *Contracting Around Public Regulation*

At its core, the stabilization clause contracts around the state's regulatory authority.⁴⁵ By freezing the legal framework, stabilization clauses convert future regulatory change into either a non-applicable rule or a compensable event.⁴⁶ They reframe public regulation not as a sovereign function but as a contractual risk allocated between private parties.⁴⁷ This reframing creates a fundamental legal tension. Public law systems are premised on the idea that regulation evolves in response to changing social, economic, and environmental conditions.⁴⁸

⁴⁰ Halabi, *supra* note 1.

⁴¹ Shemberg, *supra* note 2.

⁴² *Id.*

⁴³ Cotula, *supra* note 7.

⁴⁴ *International Centre for the Settlement of Investment Disputes*, *supra* note 6.

⁴⁵ Halabi, *supra* note 1.

⁴⁶ Shemberg, *supra* note 2.

⁴⁷ Cotula, *supra* note 7.

⁴⁸ Jr, *supra* note 37.

Stabilization clauses, by contrast, embed the assumption that legal conditions can be fixed at a single point in time.⁴⁹ The result is a structural conflict between dynamic governance and static contractual ordering.⁵⁰ This is not merely a contractual issue; it is a structural reallocation of regulatory authority.

B. *The Public Policy Constraint and Limits of Enforceability*

This tension becomes legally significant when stabilization clauses conflict with doctrines that limit the enforceability of contracts against public policy. Under U.S. contract law, courts do not treat private agreements as absolute.⁵¹ Instead, contractual provisions may be invalidated where their enforcement would undermine important public interests.⁵² The Restatement (Second) of Contracts §178 provides that a term is unenforceable where the interest in enforcement is outweighed by a competing public policy.⁵³ In practice, this requires courts to balance private expectations against the strength and purpose of the regulatory framework at issue.⁵⁴ Stabilization clauses do not merely challenge this framework; they test its limits by preemptively insulating private agreements from regulatory oversight.⁵⁵ Where such clauses operate to exclude compliance with environmental or public-interest regulation, they risk falling within the category of agreements that courts may refuse to enforce.⁵⁶ The legal problem, therefore, is not merely theoretical: stabilization clauses test the outer limits of contractual autonomy in the face of non-waivable public interests.⁵⁷

C. *Regulatory Chill and Distortion of Legal Incentives*

Beyond questions of enforceability, stabilization clauses may produce what is often described as regulatory chill.⁵⁸ Where regulatory change triggers compensation obligations, governments may delay, dilute, or selectively apply new regulations to avoid liability.⁵⁹ This dynamic distorts the operation of law.

⁴⁹ Franck, *supra* note 4.

⁵⁰ Cotula, *supra* note 7.

⁵¹ Jr, *supra* note 37.

⁵² Walter Gellhorn, *Contracts and Public Policy*, 35 COLUM. L. REV. (1935).

⁵³ See THE RESTATEMENT (SECOND) OF CONTRACT § 178(1), *SUPRA* NOTE 16.

⁵⁴ See *Id.* at §178(2) & (3).

⁵⁵ Shemberg, *supra* note 3.

⁵⁶ David Adam Friedman, *Bring Order to Contracts Against Public Policy*, 39 FLA. ST. U. L. REV. 563 (2012).

⁵⁷ Clifford D Foster Jr, *United States Trust Co. v. New Jersey-State Promises and the Contract Clause: An Untimely Resurrection*, 1 SEATTLE U. L. REV. 299 (1978).

⁵⁸ Shemberg, *supra* note 2.

⁵⁹ Cotula, *supra* note 7.

Regulation no longer functions as a general and prospective system of rules. Instead, it becomes contingent on contractual exposure.⁶⁰ Stabilization clauses can transform public law into a fiscal liability mechanism, where the cost of regulation is internalized not as a matter of governance but as a contractual penalty.⁶¹ The legal implication is significant: regulatory authority becomes constrained not by constitutional or statutory limits, but by private contractual commitments.⁶² This inversion raises concerns about democratic legitimacy and the proper allocation of regulatory authority.⁶³

D. *Legal Fragmentation and the Emergence of Dual Regimes*

A further consequence of rigid stabilization is the fragmentation of legal regimes within the same sector.⁶⁴ Where older investments are protected by stabilization clauses and newer investments are subject to updated regulations, different legal standards apply concurrently to similarly situated actors.⁶⁵ This produces a dual regulatory regime,⁶⁶ in which compliance obligations depend not on the nature of the activity, but on the timing of the contract. Such fragmentation undermines rule-of-law values, including consistency, generality, and equal application.⁶⁷ It also creates enforcement challenges. Regulators must navigate a system in which certain actors are legally exempt from rules that apply to others,⁶⁸ weakening the overall effectiveness of regulatory frameworks, particularly in areas such as environmental protection, where uniform compliance is often necessary.⁶⁹ A system that applies different laws to identical activities risks undermining both regulatory coherence and legitimacy.

E. *Systemic Risk and the Limits of Private Ordering*

Finally, stabilization clauses reveal the limits of contract law as a tool for managing systemic risk.⁷⁰ As Anthony J. Casey and Anthony Niblett argue, private contracts are poorly suited to address risks that extend beyond bilateral

⁶⁰ Franck, *supra* note 4.

⁶¹ Shemberg, *supra* note 2.

⁶² Franck, *supra* note 4.

⁶³ Foster Jr, *supra* note 57.

⁶⁴ Cotula, *supra* note 7.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Casey and Niblett, *supra* note 12.

⁶⁸ Shemberg, *supra* note 2.

⁶⁹ Casey and Niblett, *supra* note 12.

⁷⁰ *Id.*

relationships, such as climate change or ecosystem collapse.⁷¹ By design, stabilization clauses operate at the level of individual transactions.⁷² Yet the risks associated with environmental degradation are collective, cumulative, and forward-looking.⁷³ Attempting to manage such risks through static contractual provisions results in a misalignment between the scale of the problem and the tool used to address it.⁷⁴ The legal consequence is a mismatch between private risk allocation and public regulatory need.⁷⁵ Stabilization clauses may successfully protect individual investments, but they can also undermine the broader regulatory systems required to manage systemic harm.⁷⁶

IV. RECOMMENDATION

A. *Reframing Stabilization: From Legal Freeze to Regulatory Compatibility*

If stabilization clauses are to remain viable tools of investment governance, their design must shift from preserving static legal frameworks to accommodating regulatory evolution.⁷⁷ The central problem is not the existence of stabilization clauses but the persistence of models that assume legal immutability in dynamic regulatory environments.⁷⁸ Future stabilization clauses should adopt a principle of regulatory compatibility, rather than legal insulation.⁷⁹ Instead of freezing applicable law or automatically triggering compensation, such clauses should explicitly recognize the legitimacy and inevitability of regulatory change,⁸⁰ particularly in areas such as environmental protection, public health, and resource governance, which are inherent features of long-term investment relationships.⁸¹

First, stabilization clauses should incorporate explicit environmental and climate carve-outs.⁸² These provisions would clarify that generally applicable environmental regulations, such as emissions standards, conservation measures, and fisheries controls, do not trigger stabilization remedies.⁸³ By distinguishing between arbitrary or discriminatory state action and bona fide public-interest

⁷¹ *Id.*

⁷² Oliver Yébenes, *supra* note 16.

⁷³ *Id.*

⁷⁴ K. K. Holsman et al., *Ecosystem-Based Fisheries Management Forestalls Climate-Driven Collapse*, 11 NAT. COMMUN. 4579 (2020), <https://www.nature.com/articles/s41467-020-18300-3>.

⁷⁵ Casey and Niblett, *supra* note 12.

⁷⁶ *Id.*

⁷⁷ Cotula, *supra* note 7.

⁷⁸ Holsman et al., *supra* note 74.

⁷⁹ Shemberg, *supra* note 2.

⁸⁰ Jr, *supra* note 37.

⁸¹ Holsman et al., *supra* note 74.

⁸² Shemberg, *supra* note 2.

⁸³ Halabi, *supra* note 1.

regulation,⁸⁴ carve-outs preserve investor protection while reducing regulatory chill.⁸⁵ They would also bring investment contracts into closer alignment with ESG norms, which increasingly treat regulatory transition as a foreseeable feature of long-term investment rather than an exceptional commercial disruption.⁸⁶

Second, stabilization clauses should adopt dynamic adjustment mechanisms rather than rigid freezing or automatic-compensation models.⁸⁷ Contracts can provide for structured regeneration, phased compliance, or shared-risk adjustments where regulatory change materially affects project economics.⁸⁸ Such arrangements better reflect the nature of long-term investment agreements as relational governance mechanisms rather than static exchanges. Because the parties cannot anticipate every legal, economic, or environmental development at the time of contracting, adaptive mechanisms allow them to manage uncertainty collaboratively instead of allocating virtually all future regulatory risk to the host state.⁸⁹

Third, stabilization clauses should expressly recognize the continuing force of public law constraints. Contractual protections should not be interpreted to displace regulatory powers grounded in public health, environmental protection, safety, or other core governmental responsibilities.⁹⁰

Incorporating this principle directly into contractual design would reduce conflict between stabilization provisions and doctrines such as the public policy defense under U.S. contract law.⁹¹ It would also enhance the legitimacy of stabilization clauses by positioning them within, rather than above, the legal systems in which they operate.⁹²

B. *Barriers to Reform and Implementation Challenges*

Implementation, however, will not be simple. Resource-dependent states compete for foreign capital and may fear that limiting stabilization protections will redirect investment toward jurisdictions offering stronger guarantees.⁹³ Stabilization provisions may also compensate for weak or unpredictable domestic institutions, making investors reluctant to surrender contractual provisions without

⁸⁴ Cotula, *supra* note 7.

⁸⁵ Shemberg, *supra* note 2.

⁸⁶ Oliver Yébenes, *supra* note 16.

⁸⁷ Shemberg, *supra* note 2.

⁸⁸ Casey and Niblett, *supra* note 12.

⁸⁹ *Id.*

⁹⁰ See RESTATEMENT (SECOND) OF CONTRACTS § 313, *supra* note 15.

⁹¹ Foster Jr, *supra* note 57.

⁹² Cotula, *supra* note 7.

⁹³ Halabi, *supra* note 1.

corresponding institutional reform.⁹⁴ Legacy contracts create an additional obstacle because existing stabilization commitments may require renegotiation or compensation before they can be altered.⁹⁵ Bargaining asymmetries between host states and multinational investors can further limit meaningful reform, particularly where states have less access to specialized legal and financial expertise.⁹⁶ Finally, stabilization clauses remain deeply embedded in project-financing structures, meaning that reform will require lenders and investors to accept regulatory change as a normal feature of long-term investment rather than an exceptional risk.⁹⁷ These barriers counsel gradual and carefully designed reform, not abandonment of the project. The objective should be to preserve the legitimate risk-management function of stabilization clauses while ensuring that contractual protection does not disable the regulatory flexibility necessary for effective public governance. Environmental carve-outs, adaptive adjustment mechanisms, stronger public-law safeguards, improved negotiating capacity, and evolving investor expectations provide a realistic path toward that balance.

V. CONCLUSION

Stabilization clauses perform an important commercial function: they reduce uncertainty in long-term investments characterized by substantial sunk costs and extended project horizons.⁹⁸ Yet their traditional reliance on legal immutability is increasingly difficult to reconcile with regulatory systems that must respond to changing environmental, economic, and social conditions.⁹⁹ When stabilization provisions insulate investments too completely from generally applicable regulation, they can constrain legitimate public authority, produce regulatory fragmentation, and shift the costs of necessary legal change onto the state.¹⁰⁰

This note has argued that these problems do not reveal a reason to reject stabilization clauses but a need to rethink their design. U.S. contract law illustrates that contractual certainty and regulatory flexibility need not be mutually exclusive: private agreements exist within an evolving legal framework and remain subject to public-policy limitations where overriding public interests are at stake.¹⁰¹ Investment governance can draw from that principle without abandoning the protections necessary to attract and finance capital-intensive projects. The future of stabilization clauses should therefore lie in regulatory compatibility rather than

⁹⁴ Shemberg, *supra* note 2.

⁹⁵ Casey and Niblett, *supra* note 12.

⁹⁶ Cotula, *supra* note 7.

⁹⁷ Casey and Niblett, *supra* note 12.

⁹⁸ Halabi, *supra* note 1.

⁹⁹ Cotula, *supra* note 7.

¹⁰⁰ Casey and Niblett, *supra* note 12.

¹⁰¹ Friedman, *supra* note 56.

regulatory immunity. Contracts that distinguish discriminatory state action from generally applicable regulation, accommodate foreseeable legal change, and preserve essential public-law authority can protect legitimate investor expectations without freezing governance in place.¹⁰² Such an approach recognizes that durable commercial relationships do not depend on the illusion that law will never change but on institutions and contractual arrangements capable of managing change when it occurs.

Ultimately, stability and adaptability are not opposing objectives. In an era of climate change, ecological stress, and increasingly complex regulatory obligations, the most resilient investment agreements will be those that provide investors with meaningful predictability while preserving the state's capacity to govern. Stabilization will remain commercially valuable only if it evolves from a mechanism for resisting legal change into one capable of accommodating lawful, foreseeable, and necessary regulatory development.¹⁰³

¹⁰² Shemberg, *supra* note 2.

¹⁰³ Cotula, *supra* note 7.