

**Evolution of energy markets &  
mechanisms of investment  
protection & stimulation: what is  
next to international law (if  
anything)**

**Dr. Andrey A. Konoplyanik,  
Consultant to the Board, Gazprombank,  
and  
Professor, Russian State Oil and Gas  
University,  
Moscow, Russia**

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# MATURE & GROWING ENERGY MARKETS ARE DIFFERENT => TO DISTINGUISH THEM

## GROWING MARKETS:

- Aim: to develop markets to mature stage = to tie together different segments of energy value chain = to create new energy infrastructure => investment stimuli for domestic & foreign investors regarding creation basic infrastructure
- Basic (most costly/risky) infrastructure is being/to be developed and pay-back periods are still ahead
- Creation of basic infrastructure => aimed to develop access to resources and markets = most costly/risky (pioneering) projects with longest pay-back periods (+ macroeconomic costs usually imputed to these projects)

## MATURE MARKETS:

- Aim: to improve their operational efficiency within existing infrastructure/established energy value chains => open & competitive markets, multiple choice & access to diversified infrastructure (both for producers/suppliers & consumers)
- Basic (most costly/risky) infrastructure has been already developed & pay-back periods are over
- Expansion (diversification) of existing basic infrastructure => aimed to provide multiple choice for market participants = less costly/risky projects with shorter pay-back periods

**=> Demand for different legal instruments at different stages of market development**

## INTERNATIONAL ENERGY LAW: WHOM TO PROTECT FIRST - TRADERS/SPECULATORS *OR* INVESTORS/PRODUCERS/HEDGERS?

**Competition rules** – most important for **mature** markets (?), since aimed mostly on suppliers-traders (speculators) who:

- work at “**paper** energy” markets
- interested in **liquid & volatile** market (**short-term**)
- make money from providing **financial services**, not energies (money=>money)
- create bubbles & financial crises (when “paper” value exceed too much “physical” value of the market)

**Investment rules** – most important for **growing** markets (?), since aimed mostly on suppliers-producers (hedgers) who:

- work at “**physical** energy” markets
- interested in **stable & predictable** market (**longer-term**)
- make money from providing **goods & non-financial services** to energy consumers (money=>goods=>money)

**Whom international law is aimed to protect first/more: financial speculators *or* suppliers of goods & services ?**

## THEN AND NOW: CHANGING ROLE OF FDI?

To develop its natural resources (projects) resource-owning state needs:

- **money/finance:** *then* – VIOC/FDI, *now* – NOC (both equity & debt + sovereign budget financing)
- **capital (technologies/innovations):** *then* – VIOC/FDI, *now* – NOC via OECD service companies
- **skilled labour:** *then* VIOC/FDI, *now* – NOC (domestic blue-collars)
- **managerial skills:** *then* VIOC/FDI, *now* – NOC (OECD-originated & domestic white-collars)
- Changing role of FDI !?

**New challenges?:** Diminishing role of traditional FDI in energy (OECD to non-OECD)? New FDI in energy are developing (non-OECD to OECD & to non-OECD)?

## INTERNATIONAL ENERGY LAW: CHANGING PRIORITIES OVER TIME (1)?

### Then:

- **Aim:** to continue develop fossil fuel energy economy =>
- access to resources of fossil fuels outside of OECD by FDI/IOC from OECD (“security of supplies”/SoS concept) =>
- international energy law reflects SoS concepts developed in OECD to protect FDI/VIOC from OECD in non-OECD => dominated by “Western” priorities, *but* =>

### Now (1):

- whether these FDI-supportive “Western”/OECD concepts incorporated in international law still acceptable for OECD states when they face capital-exporting intentions of non-OECD “Eastern” energy producers (NOC) to invest in OECD? =>
- protectionist measures in “open & competitive” OECD markets against FDI (NOC) from “Eastern” (non-OECD) energy producers?

**Changing role of FDI? => move away from open investment rules?**

## INTERNATIONAL ENERGY LAW: CHANGING PRIORITIES OVER TIME (2)?

### Now (2):

- **Aim:** to shift to non-fossil fuel energy economy =>
- Energy Efficiency & Climate Change =>
- new challenges & models for international energy law to reflect further transition *from* specific country/regional energy markets, united by cross-border flows of energy & investment, *to* global energy markets/market =>
- emphasis shifts from protection of individual companies of consumer states in international trade & investment (FDI) to creation of global instruments common & acceptable for all states & companies within cross-border energy value chains?

**Changing role of FDI? => changing priorities for international legal instruments? => international rule-making towards supra-national governance (global energy markets) vs. sovereign prerogative (state sovereignty on natural resources)?**