INTERECOLAW AND INTERNATIONAL ENERGY LAW: A SNAPSHOT AND DEVELOPMENT

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Abstract: The author considers legal features of the fragments of international law on regulation of environmental and energy relations. The concept, object (property, things), elements, matter (subject matter), method, sources (instruments) are among them. The goal – is to form as possible an integrated idea of each field of law under consideration. The study is relevant and sound for the practice, despite the change in structure of energy consumption in the world, due to the fact that elaborated rules on minimization of the energy sector’s negative impact on the environment and on energy provision will effectively serve to regulate corresponding international relations in future. The boundaries of the legal regulation between these and other branches of law are outlined. The difference of the systems of international and transnational law is noted. The internal elements and the types of correlations of the branches and fragments of law are named. For this purpose the areas of regulation within the international energy law are subdivided out by the objects. The opinion concerning that international law has wide circle of the actors is supported with reservations. The idea of interactions of forms and sources of law is depicted. The quantitative dimensions of the agreements are made by the matter (subject matter), the number of the parties and lineages (genealogy). It is concluded that there is an option to have international energy law considered as relatively independent branch of international law, mainly public and partially private.

Keywords: interecolaw, international environmental law, international law of the environment, international energy law, the rules (norms) and principles, the concept, object (property, things), matter (subject matter), elements, method, actors (subjects), sources of forms, forms of the sources (instruments), environmental and natural resource rules and principles, lineages.

INTRODUCTION

The forthcoming energy and environmental revolution\(^1\) justifies the interest in the study of emerging International Energy Law. Its consequences – are the changes in the structure of world energy. Certain types of resources will no longer be used as the main sources of energy,\(^2\) though the problem of negative impact on the environment limitation in the energy sector will remain.

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Sound issues of interrelation of interecolaw and international energy law are evident in their concepts, matters (subject matters), methods, sources (instruments). The branches under consideration appear as integrated aggregate branches of law, branches of science, educational disciplines, which, as Prof S.S. Alekseev wrote, may be called also as superbranches.\(^3\)

Prof K.A. Bekyashev classifies the international energy law as a "new" branch and names five other branches being at a similar stage of development: "the number of branches of international law is in the process of active development, for example, international labour law, international agrarian law, international energy law, international transport law, international intellectual property law, international nuclear law and others".\(^4\)

Programmes related to energy and law are included in the curricula of many universities around the world with increasing interest to the energy sector on the background. This is so thanks to the fact that the law – is one of the instruments of governance, environmental protection and improvement of economic predictability. Comparison allows us to observe the sides that might remain behind the scenes in case of simple consideration.

The creation of scientific understanding of the branches contributes to the development and effectiveness of their instruments and targeted, ultimately, at the improvement of legal protection of the environment and availability of energy. The scientists from many countries take part in this process. We propose a generalized view of the state of international legal regulation in these fields of activity, based on their works and the current data.

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The following lawyers have written some papers on energy law and legislation as a whole, as well as about environmental aspects of energy sector: M.M. Brinchuk, M.I. Vasilieva, A.P. Vershinin, O.A. Gorodov, A.I. Grishchenko, S.M. Ismailov, A.A. Kozhukhova, P.G. Lakhno, V.I. Oleshchenko, I.G. Pashkovskaya, V.F. Popondopulo, V.I. Salygin, S.S. Seliverstov, A.N. Khoroshilov, Yu.S. Shemshuchenko.

K.A. Bekyashev, Adrian J. Bradbrook (Australia), T.A. Vasilievich, A.N. Vylegzhanin, E.E. Vylegzhanina, V.V. Gavrilov, Yu.A. Ershov, I.S. Zhukova, V.Yu. Zamyatin, David Van Zandt (USA), Franz Jürgen Säcker (Germany), O.I. Chindibaliuc, S.A. Kornievich, Markus Krajewski (Germany), Wang Xi (China), Janet K. Levit (USA), Elli Louka (USA), Ronald B. Mitchell (USA), Eckard Rehbinder (Germany), Rosemary Lyster (Australia), Rachel Nathanson (USA), Richard L. Ottinger (USA), Patricia Park (USA), Juan Carlos Velazquez Elizarraras (Mexico), V.F. Yakovlev wrote on the international energy law.

One of the first scientists who wrote and edited monographs on international energy law were Catherine Redgwell (UK), Ernest E. Smith (USA), Martha M. Roggenkamp

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7 Popondopulo V.F. Energy law and energy legislation: general overview and trends of development // Pravovedenije. 2007. № 3. P. 3-12.


(Netherlands)\textsuperscript{11} – the authors, mentioned by Thomas W. Wälde (UK) and Rex J. Zedalis (USA).\textsuperscript{12} We refer to the works of these and the other authors in the text of the article.

THE CONCEPTS

The similarity of the legal complexes under consideration in the fact that they are aggregate branches, which are relatively independent integrated interdisciplinary groups of legal norms and principles.\textsuperscript{13}

Interecolaw – is an aggregate of norms and principles regulating the relations between its actors (subjects) in the field of environmental protection and its resources. interecolaw belongs to International Public Law and is divisible into two major parts: conservation (International Environmental Law), and natural resources (International Law of the Environment).

The definition of the concept has not changed significantly since the times of Alexander S. Timoshenko\textsuperscript{14} and how it was understood by V.A. Chichvarin\textsuperscript{15} and O.S. Kolbasov\textsuperscript{16} and

\begin{itemize}
\item \textsuperscript{14} Interecolaw is to be understood as the aggregate of international legal norms and principles, regulating the relations between its subjects with respect to protection of the environment against harmful impact and to rational (ecologically feasible) utilization of its components for securing the optimal life conditions for present and future generations – Quoted from: Nshimirimana Vital. International Environmental Law and Sustainable Development. Curriculum Development. – San José (Costa Rica): University for Peace, 2012. – P. 1.
\item \textsuperscript{16} Kolbasov O.S. International and law protection of the environment. – M.: Mezhdunarodnyje otnosheniya, 1982. – 237 p.
\end{itemize}
others. The novelty of the interecolaw term is in its emphasis on the existence of two tangible parts within the branch.

Corresponding member of the Academy of Sciences O.S. Kolbasov noted that "international environmental law has a higher [than international law of the environment] degree of regulatory consolidation and, therefore, consolidation of educational substance".

Environmental (conservation) Law is represented by: the UNFCCC, CBD, CITES, "Ramsar", "Espoo", "Aarhus," Convention on the Protection and Use of Transboundary Watercourses and International Lakes, "Bonn" (CMS), "Bern", "Basel", OSPAR, "Stockholm" on POPs, the majority of the principles, and, on the other hand, Natural Resources Law is


represented by a section on the seabed area of the UN Convention on the Law of the Sea\textsuperscript{19} – on the regime of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, bilateral agreements on cooperation in the field of fisheries and few (or weakly consolidated and studied) agreements on some other matters (subject matters).

International law reflects reality, which is likely that the exploitation of natural resources – sovereign right of the states. International natural resources agreements have limited number of the parties to them, limited by time and space of action, there is neither global nor regional among them. The issues of conservation (environmental) – the issues of the properties of the environment and its characteristics – such as biodiversity, clearness – are common to all and comprehensive global conventions are devoted to regulation of these issues. Indeed these acts are studied primarily in the course of the Environmental Law and in the programmes of the International Environmental Law, not raw agreements.

The opinion that the norms of energy law are originated "in the process of economic, investment and regulatory activities" is expressed during creation of a definition of a concept of energy law.\textsuperscript{20}

\textit{Per analogia} it is stated in the variant of the definition of the international energy law concept that the principles and norms of this branch regulate "interstate relations in the energy sector, namely the relations in the course of economic, investment, and regulatory activities".\textsuperscript{21}

The authors of the definitions jointly underline that the activity is connected with "exploration, extraction, production, processing, storage, transportation, distribution, trade and

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\textsuperscript{20} Seliverstov S.S. To the issue of energy law concept // Energy Law. 2008. №1 (10). P. 57.

\textsuperscript{21} Kozhukhova A.A. To the issue of development of international energy law as aggregate branch // Mitna Sprava. 2009. № 4 (64). P. 90; Zhukova I.S. On international energy law as branch of international law // Vestnik of Orenburg State University. 2010 (February) № 2 (108). P. 49-50.
\end{flushright}
consumption...". It seems that the norms and principles of International Energy and Energy Law may come not only "in the course of economic, investment and regulatory activities", moreover the authors point out themselves, to which processes energy relations are connected.

Indeed, the relations in the field of energy sector are connected to, for instance, such as the following processes (and "relations on"): exploration, extraction, production, processing, storage, transportation, distribution, trade and consumption. The list goes on. This path is more grateful than an attempt to justify the possibility of the sub-branches of the international energy law, its legal institutes, and special systems of legal rules governing energy relations. Energy relations are also linked to saving of energy resources, environmental impact assessment, monitoring (inspection) of energy facilities, the economic mechanism (including investments in energy sector, taxes and other charges), scientific researches, and international cooperation. It is not possible to list everything what is connected to a complex branch of law in the frames of its definition, because the relations are developed, and the amount of relations regulated within certain branches increases.

The mentioning, for example, of "investment activity" in the definition of international energy law concepts, is made in Russia on the background that way back "in the early 1990s, there was a rapid and significant shift of investment resources from machinery-production to fuel and economic system of the country, which led to drastic changes in the structure of investments".22

The definition under consideration is as follows:

The international energy law – is a branch of public international law, which principles and norms are regulating inter-state relations in the energy sector, namely the relations appearing

in the process of economic, investment and regulatory activities of public law actors, connected to exploration, extraction, production, processing, storage, transportation, distribution, trade and consumption of energy resources.\textsuperscript{23}

So, the wording about the processes during which the international energy law is developed is understood as a desire to show a special relation to economic (business), investment law and legal regimes (branches of law) that provide the personal rights and impose legal duties (corresponding to regulatory activity). The volume of the implied branches which are divided by the matter (subject matter) and by the regulatory function of law will inevitably overlap. And it remains uncertain from the definition, which branches exactly perform a regulatory function (civil, economic, labour, etc.), it was supposed to emphasize the special relation to.

The international economic (business) and investment law are two of many branches which are related to international energy law. The differences between them are deep. The dominant legal regime of business and investment activity – is gaining profit, it is a purpose in itself, and the result, while the matter (subject matter) of the international energy law – is international energy relations, energy provision.

The notion of the processes of "birth" of the rules may create an impression that the energy law includes three types of rules and conditionally divided into three parts, which norms differ in their genesis. The actual existence of such parts, their normative volumes and other conditions which allow to have mentioning limited by them (just them), will become apparent only on a sufficient level of the branch theory development. The perfection of the definition suffers from this.

\textsuperscript{23} Zhukova I.S. On international energy law as branch of international law // Vestnik of Orenburg State University. 2010 (February) № 2 (108). P. 49-50.
In case the references to the processes of "birth" is meant to indicate the derivative nature of the international energy law in relation to them, then by the same reasons such a reference is ambiguous.

In this connection, the words "in the course of economic, investment and regulatory activity" are unnecessary for the construction of the definition.

The concept of international energy law is also defined, with an emphasis of the importance of the interests proportionality, as – an aggregate of norms and principles regulating the relations between the actors (subjects) of International Law in the field of energy sphere by taking into account the interests of producers, consumers of energy resources, as well as those of transit countries with a purpose of sustainable development.\(^{24}\)

Particular cases are named in another definition: "this branch of International Law, includes itself the principles and norms of law applied by states for the use and sale of energy resources, as well as in the settlement of disputes relating to the development of new energy sources and their use for peaceful purposes".\(^{25}\)

Our version of the definition is slightly lapidary.

The International Energy Law (as a branch of law) – is an aggregate of norms and principles regulating the relations between its subjects in the field of energy sector. The international energy law contains elements of International Public and Private International Law, and is divisible into parts by type of energy industries and energy sources. Its sub-branches and legal institutes are under development.


The legal complex, conditionally called the International Energy Environmental Law (interenergoecolaw), may become a part of it. In particular, Prof Franz Jürgen Säcker referred to environmentally responsible energy consumption as the basic of the Energy Law, stressing that in the aspect of preventive measures on protection of the environment and conservation of the Earth for future generations, the energy consumption faces with increasingly narrow limits.26 Other lawyers do like that quite often.27 Environmentally responsible handling of energy – is the principle which creates a substantive (subject matter) basis for interenergoecolaw. Certain similarity of environmental and energy relations is reflected in the long-term (from 1990 to now) management of some government functions within their scope in the hands of a single body, as it is, for example, in France (see on the ADEME Agency’s website more than a 100 of available publications).28 These relations are formed around the objects which are only partially and not constantly the same, that makes sound their separate regulation also.

THE OBJECTS (PROPERTY, THINGS)

The objects of legal relations may be things, works, services, information, results of creative activity, intangible goods.29

Both aggregates of legal norms and principles, called interecolaw and international energy law have multiple objects. Environment, its resources and properties – are the objects of


intercolaw and are related as the original and derivative to the energy, power and energy services\textsuperscript{30} – the objects of international energy law.

The object of the interecolaw may be described shortly as the environment. The objects of the interecolaw are the kinds of elements and types of components of the environment,\textsuperscript{31} natural resources, as well as certain types of resources. Prof S.V. Vinogradov has attributed to the objects of the interecolaw "mainly those natural objects and resources which are the heritage of the whole community or several countries", including "World ocean and its natural resources, atmospheric air, flora and fauna, unique natural complexes, near-Earth space, as well as a part of the fresh water resources, genetic fund of the Earth" and others.\textsuperscript{32} This includes also soil, other organisms, the ozone layer, as well as the properties of the environment, for example, cleanness, favourability, biodiversity and others.

The objects of the interecolaw act as the objects of protection and use, while the objects of international energy law as the objects of consumption and provision.

The object of international energy law may be described briefly as "everything that is needed for energy provision" (things, works, services, information, results of creative activity, intangible goods). According to scientists’ opinion, the objects of international energy law are energy,\textsuperscript{33} energy resources (oil, gas, coal, etc.),\textsuperscript{34} energy sources, energy carriers, energy sector


\textsuperscript{33} \textit{Belitskaya A.} 70 ers of Dr of Law, Prof Anatoliy Grigorievich Bykov will turn on the 25\textsuperscript{th} of February 2008
facilities (power plants, the fuel and energy complex, linear objects, pipelines), the energy system, radioactive waste and other objects. Numerous "local objects" in our opinion may also be potentially included into the circle of the objects of international energy law: power installations, power cables, transformers, devices of uninterruptible power supply, other technical devices and software products (for example, programs disabling inactive devices) and technologies designed to provide energy and its economy, which use might be regulated by the International Law. At the first glance, a transformer or an engine of specific design cannot be the objects of International Law. But, provided unprecedented performance, the transfer of such advanced devices and programs into the public domain and legal incentives for their voluntary use, obviously, will serve pro bono publico and expedient.


37 The authors of the monograph give a voice for recognition of waste as an object of energy law, notwithstanding jurisprudence of the Federal Administrative Court and the prevailing opinion (BverwGE 85, 54, 61 – Gorleben; BverwGE 100, 1, 10 – Gorleben; Näser 2009:18; Haedrich 1986, § 9b Nos. 21-31; contra: Breuer 1984:36ff, 53-54), according to them «the continuation of underground investigations did not require a planning permission under atomic energy law even if parts of the pits can be used later for the repository» – Christian Streffer, Carl Friedrich Gethmann, Georg Kamp, Wolfgang Kröger, Eckard Rehbinder, Ortwin Renn, Klaus-Jürgen Röhlig. Radioactive Waste: Technical and Normative Aspects of Its Disposal. – Berlin: Springer-Verlag Berlin Heidelberg, 2011. – P. 308; Legal regulation of solid household waste handling is also confirmed; waste is considered as "free" energy carrier, because household waste – is renewable carbonaceous energy raw material for fuel energy – See: Vukolova T.V., Choltyan L.N. Commentary to Art. 7 // Commentary to Federal law of the Russian Federation of the 10th of January 2002 № 7-FZ "On environmental protection" (as of 01.11.2010) / Edited by Dr of Law, Prof O.L. Dubovic [Electronic publication]. System ConsultantPlus.
THE MATTERS (SUBJECT MATTERS)

The subject matters (genus and species of social relations) are also multiple objects. The subject responds to the questions "Why?", and "For what purpose?". The subject matter of legal regulation is an aggregate homogeneous in quality social relations, which are regulated by the rules relating to that or another branch of law. The subject matter of the interecolaw – is international environmental relations (conservation and resources). The subject matter of the international energy law – is international energy relations. International and legal regulation of environmental relations is aimed at protection of the environment and rational management of its resources. International and legal regulation of energy relations is aimed at energy provision. The matter of international energy law may also be understood through the functionality of this branch as "the protection of common [energy – note by EW] interests of the international community in order to maintain global energy order".

For differentiation of environmental and energy relations, we refer to the opinion of prominent scientists, whose views may be expanded to international law, despite the fact that they consider domestic legal system.

Prof A.K. Golichenkov rightly points to a danger of a broad interpretation of environmental law, where it would include also the relations arising in the process of material production and, in particular, the relations connected with extraction and processing of natural resources.

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40 Golichenkov A. K. Problems of environmental, land law and legislation in contemporary conditions (review of the words of the participants of scientific and practical conference “Sofrino-4”), P. 40. – Quoted from: Kalinin I.B. Problems of natural resources law formation // Legal problems of Russian state strengthening. Ч. 5 / Edited by V.F. Volovich. – Tomsk: Tomsk State University Publishers, 2000. – P. 202-206. URL:
Prof F.H. (F.I.) Adikhanov outlines the following frontier: "the relations arising in connection with the activities of enterprises and organisations at these sites (agriculture, forestry, use of chemicals in agriculture and forestry, etc.) are not the matters of land, water, forest and other natural resource sub-branches of law correspondingly. Such relations either not regulated by law or governed by other branches the law".  

It is confirmed on the samples from international treaties of Russia, that the matter of the international energy law includes relations addressed to such areas as: joint exploration, research and development of the fields of energy resources, the joint construction of infrastructure in the energy industry; joint operation of energy branch facilities, transport of energy resources, economic and trade cooperation in the field of energy, regulation of energy markets, cooperation in various branches of energy, renewable energy sources use, environmental protection in energy sector, rational use of natural resources in energy sector.

There are also eloquent metaphoric descriptions of the matter: "International energy law embodies a matter of keen interest that affects the daily lives of citizens in developing and developed countries worldwide". The Dean of the School of Law at the Northwestern University (1995-2010), Prof David Van Zandt, additionally outlines a wide range of relations between International Energy Law and social well-being "among numerous other effects, international energy law influences gas prices, wages, employment rates and domestic market regulations". In this case the idea goes on the objects of the science of international energy law and other sciences.


42 Zhukova I.S. On international energy law as branch of international law // Vestnik of Orenburg State University. 2010 (February) № 2 (108). P. 50-51.

THE CORRELATIONS BETWEEN THE BRANCHES OF LAW

The fragments of law (special legal aggregates of norms and/or principles) being compared with each other and with other fragments of law exhibit different types of correlations. The correlations depend on the classification of the branches, on the way of combination of the matter, the object, method. Vividly appear four types of correlations: genetic (primary/derivative), hierarchical (general/special), overlap (joint/different), cross-system.

The first type of correlation – is genetic. Interecolaw genetically connected to environmental law and international law, while international energy law – with the energy and international economic (business) law. In the first case, both "parents" refers to a public law. In the second – they refer to the public and the private. In both cases, they represent “internal” state legal system and the system of International Law. In these correlations, primary/derivative are obvious.

The second type of correlation – is hierarchical (general/particular). Not entire branches but their parts are correlated in this type of correlation. Indeed, the second type of correlation demonstrates the similarity of the branches in the object and the matter. This type of correlation has the branches attributed to the same family of legal branches. Profiling branch of law stands as common in relation to the "sub-branches", which are particular.

As long ago as Alexandre Kiss and Dinah Shelton, have noted the rules of the 1959 Antarctic Treaty, three 1958 conventions on the Law of the Sea, the 1967 Treaty on Principles


46 Rare exclusions, when at this type of correlation correlate the whole branches will be considered below.
Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, they have concluded that "the first elements emerged of an international code for the protection of the environment".47

"Common" principles of "general" branch extend their action on the "particular" branches as *jus cogens* and *ergo omnes* of General International Law apply to all branches of International Law. In case certain relations are not regulated in the frames of particular (special) branch, then the norms of common (aggregate) branch are applied.

The "borderline" environmental and natural resources norms and principles of the other emerging branches, including the international space law, international law on protection of atmospheric air, international law of the sea, international water law, international mining law, international land law, international forestry law – are the components of the interecolaw.

One cannot say, for example, that the International Law of the Sea is entirely contained in interecolaw. At the same time a part of the norms of International Law of the Sea is equally owned by interecolaw and International Law of the Sea. This special part is a component of interecolaw. The object, matter, and, basically, the method coincide. In particular, Professors Anthony D'Amato and Kirsten Engel have noted that pollution of the marine environment – the most developed of all branches of international environmental law (as we would say, an institute).48


Further, let us to talk about special aggregates of legal norms and principles (about the components) of international energy law.

Prof Hartmut Weyer draws attention to the fact that the use of renewable sources of energy – is an international task, which cannot be considered under an angle of a single country point of view.49

P.G. Lakhno has wrote that the relations in the sphere of alternative energy sources use need a proper legal regulation,50 that applies also to international energy relations. The scientist does not exclude an approach to oil and gas legislation as to a sub-branch of Energy Law.51 The object-matter principle of subdivision of the particular from the general to identify the relations of large fragments of law *per analogia* with interecolaw seems to be most convincing.

Over time, we may consider as promising elements of International Energy Law, the parts of young, developing legal aggregates (and standards) connected to its object and matter, which relate to it as a particular to general, International Atomic Law, International Oil and Gas Law (*lex petrolia*), International Hydropower Law, International Law of Thermal Energy (its objects are: coal, oil, peat, oil shale), International Bio-Energy Law, and, in the future, International Law of Renewable Energy Sources, Solar Energy International Law, International Wind Law and others.


International relations arising from the use of geothermal energy, tidal energy, ocean thermal energy, synthetic fuels, hydrogen,\(^{52}\) and “small” energy in the case of international legal regulation will be attributed to international energy law by criteria of the matter.

The regulation of the corresponding relations is necessary since it allows increasing of overall efficiency and effectiveness of the use of best available technologies and more rigorous requirements, regardless whether it is carried out by the states or private companies taking into account state standards. For example, in the United States, it is expected to save 1.5 billion dollars annually through an agreement, drafted and signed by 15 providers and manufacturers\(^ {53} \) – Voluntary Agreement for Ongoing Improvement to the Energy Efficiency of Set-Top Boxes of the 6th of December 2012\(^ {54} \) (in accordance with Art. 14.1 entered into force on 01.01.2013).

The third type of correlation – is the type of overlap, when also not entire branches but their parts are correlated (partially joint / partially different). The basic for this type of correlation is commonality of the object and the partial similarity of the matter. It differs from the correlation general/particular (the second type) by the fact that compared branches have no genus–differentia subsumption unity.

There was a position expressed in a theory, that "the aggregation does not involve the "doubling" of the norms branch ownership", that the norms of the other branches cannot be


included into the main branches of law.\textsuperscript{55} However, we share flexible approach, according to which aggregate by their matter norms may refer to several branches at the same time. The law is not some static structure, it is developed, thus not only norms and principles, but also entire institutes may "migrate" and have "borderline character", which is exhibited itself in the form of norms and principles reception, whose original ancient systems of law no longer exist. However, we recognize the difference between formal norms (article, clause, point of an agreement), and the norm of law (conceivable norm), which is, for example, that conceivable norm is polymorphic and can be encountered in one or another form in the agreements which are attributable to a number of branches of law.

The main branches of law are independent of the aggregate branches by major matter of the relations and method (a combination of the ways to regulate relations). However, a part of norms may be referred to both the main and aggregate branches of law. These norms have an additional matter, which coincides with the major subject matter of aggregate branches. The object of relations governed by these norms, by contrast (differing from the matter) for main branches is one of many while for the aggregate branches it is a major object.

For example, the Law of Treaties, International Humanitarian Law, Law of International Responsibility, International Investment Law, in relation to interecolaw are independent, but some of their norms apply to interecolaw. These are the norms on conclusion of interecolegal agreements, on the protection of the environment in times of armed conflict, the norms on liability for environmental offences, about environmental investments.

\footnotesize{\textsuperscript{55} Abdulaev M.I., Komarov S.A. Problems of the theory of state and law : coursebook. – SPb.: Piter, 2003. – P. 363.}
The aggregates of norms related to environmental relations, of such common branches of International Law, as the Law of International Organisations, International Law of Human Rights and others are also included by interecolaw.

International energy law has similar correlation to the interecolaw, International Transport Law, International Trade Law, International Investment Law. The norms on environmental protection in the energy sector, on the extraction of energy resources, on the transportation of energy resources, on trade in energy, on investments in the energy sector are related to the international energy law and these branches respectively.

The first and the third type of the correlation with the international energy law is shown by the branches of the "third queue": International Energy Investment Law, International Law of Energy and Raw Materials.

The fourth type of correlation – is cross-system. Fragments of law, sanctioned by the various systems of actors are compared. Internal law of an organisation (local norms), internal law of a state, transnational law are not related to International Law. Accordingly Transnational Environmental Law and interecolaw – are different systems. Transnational Energy Law, in distinction from the international energy law operates in a non-state dimension. Contact between the branches with this type of correlation may be observed only when regulations, agreements of one system are specifically designed to influence the other system, for implementation of its norms.


In conclusion of this section of the article it should be noted that to grasp the essence of the matter structure of the International Law – is not an easy task, it may be solved by a broad interdisciplinary collective of publicists who share opinio juris, but, in any case, "it is hard not to think about international law in a way that doesn’t invoke some idea of structure or system".  

THE METHODS

The method of interecolaw – is interecolegal (international and environmental law). It is a combination of different ways of regulation of the relations based on the method of General International Law – the agreement of the wills of the parties (consent). It has a coordinating nature. It has the same key elements as the common method of international and law regulation:

- identification the circle of actors and their legal status;
- setting of the borders of regulated relations, the scope of international law;
- creation of legal norms that generate the rights and duties of the actors, i.e. international legal relations;
- elaboration of the measures of legal defence (remedies), legal means of compliance ensuring with the norms of international law", and others.

In particular, the actors (subjects) of interecolaw may use the following ways of influence on international environmental relations: implementation, supervision, coordination, prohibition, injunction, agreement, prior notice, advice, observation, veto, "bons offices" and others.


59 Naming is like with terms “civil and law method” – in civil law; “criminal and law method” – in criminal law.

Active use of the method of interecolaw may take the following forms: consensus, negotiations, coordination of the activity, recognition, legitimating, acclamation, the trial, and others.

The share of the "soft" and hybrid norms in interecolaw exceeds legally binding. Therefore, the attempts to enforce interecolaw in imperative manner in general will not reach the main goal. Enforcement impact of directive (imperative, mandatory), subordinate character may and should be applied within the individual the most legally formed and recognized norms of interecolaw. Regulation via interecolegal method may have an autonomous (dispositive, non-mandatory) self-regulatory character. The action of interecolaw in certain cases, such as compensation of damage may be expanded on the actors (subjects) which are not parties to the agreement, though the consent of the parties mainly required for the dispute settlement between them.

The method of international energy law (international energy and law) also lies in the combination of different ways of regulation of the relations, based on the method of General International Law – the agreement of the wills of the parties (consent). It has dispositive, voluntary character to a greater extent than the method of interecolaw.

Actors of international energy law express the will to establish relations (enter into an agreement, commit other actions). However, the applicants’ application may be enough for the dispute settlement by international judiciary as it is in a dispute settlement mechanism of the GATT/WTO,\textsuperscript{61} which also permits retaliatory measures if the respondent (defendant) refuses to fulfil the recommendations of the WTO Dispute Settlement Body.\textsuperscript{62}


\textsuperscript{62} Bown Chad P., Ruta Michele. The Economics of Permissible WTO Retaliation / Staff Working Paper ERSD-
THE SUBJECTS (ACTORS)

President of the International Court of Justice (2006-2009) Rosalyn Higgins supports the view that non-state actors can act as participants in the process of international decision-making.63

It is noted in one of the editions of the principal treatise of the largest European publicist L. Oppenheim (1858-1919), that "although the normal subjects of international law are the states, they may consider natural and other persons, as directly vested with the international rights and duties and to that extent as the subjects of international law".64

Prof Thomas W. Wälde names among the actors of the international energy law organisations of business, non-governmental organisations, multinational companies, professional associations, and even religious forces.65

"There are a lot of formations, from states and international intergovernmental organizations to multinational corporations and individuals. All these formations, the participants are involved in activities in the international arena. Such participation may be common, broad, affecting many international issues, or restricted to certain questions. After all, there are areas in which the addition of states and international intergovernmental organizations, operate and other participants – international non-governmental organizations, and individuals. International

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human rights law, interecolaw, international humanitarian law may be named among these areas.\textsuperscript{66}

The concept of participation as a way to analyze the activities of non-state actors entirely meets the principles set out in the International Court of Justice Advisory Opinion on compensation for damage suffered in the service of the United Nations in 1949, since these principles are based on the possibility of the development of the international legal system and new demands of the international community and the requirements of international life. Thus, during the application of the concept of participation the non-state actor is no longer a "subject", it becomes a "participant" in the international scene and acquires certain international legal status, which also can be called conditionally "participatory status".\textsuperscript{67}

"This status provides non-state actors to have a limited right of \textit{locus standi} (the opportunity to participate in the process in the international judiciary institution) or be \textit{amicus curiae} (give pieces of advice to international judicial institution on certain issues), certain rights and duties.

The concept of participation is particularly important in the energy sector, and international energy law. Non-state actors (transnational corporations, international non-governmental organisations, legal persons) quite often have rights, secured and protected by International Law. There are a lot of such rights; their array extends from property rights and the right to a fair trial to the right to adequate compensation in case of expropriation or nationalization. Furthermore, natural and legal persons have the right to file claims against the states to international judicial institutions (European Court of Human Rights, International


Centre for Settlement of Investment Disputes, during the resolution of disputes according to the ECT). Certainly, it must be borne in mind that the state allows to the non-state actor to file a claim against it to international judicial institution by ratifying of relevant multilateral or bilateral investment treaty and/or through a contract between the state and the natural/legal person”.\(^{68}\)

US scientists treated relatively small fraction of associations of citizens at the local level, which are combined into transnational networks as subjects that affect climate policy.\(^{69}\)

We note here that the range of actors of the interecolaw and international energy law is not limited to the composition of the classical subjects of International Law, and we are not intended to give a detailed classification of them right now.

However, it is important to draw attention to the fact, that not all norms which are created, for example, by business circles on a common matter with interecolaw and international energy law, but only a part of them will be classified as accordingly related to interecolaw and international energy law. Critical conditions – are composition of the parties to the agreement and the composition of the international organisation founders. If one of the parties of regulated international relations is the state or intergovernmental international organisation – then the norms of the agreement is a part of the branches in question.

The examples which address environmental relations of the branch of interecolaw with «unusual» composition of the subjects – are many treaties from the group of the "other" (non-multi/non-bilateral) of the International environmental agreements database.\(^{70}\) Prof Ronald B.


\(^{70}\) See: Mitchell Ronald B. The International Environmental Agreements (IEA) Database Project: Contents and Usage // Ecology: Synthesis of Natural Sciences, Technology and Humanities: the proceedings of the III rd All-Russian Scientific and Practical Forum (Saratov, the 10-12\(^{\text{th}}\) of October 2012) and of the School of interecolaw (Saratov, 11-12\(^{\text{th}}\) of October 2012) / [Ed. A.V. Ivanov, I.A. Yashkov, E.A. Wystorobets et all]; Yuriy A Gagarin
Mitchell defines that the "other" group as interecolegal which "includes environmental agreements between governments and international organizations or non-state actors [subjects – note by EW], rather than 2 or more governments " (see main web-page of the database).\(^71\)

An example of energy agreement from the Database of international environmental agreements – 1975 Agreement between the International Energy Agency and the Government of the Kingdom of Norway Concerning the participation of the Government of the Kingdom of Norway in the Work of the Agency, the first article of which imposes an obligation on the Government to take a decision on additional supplies of oil in in case of emergency involving serious shortage.\(^72\)

An example of the agreement between state-owned enterprises – Partnership Agreement between the company Eskom [South Africa] and the French energy company [EDF] on cooperation between them, which is constantly expanding from the time of signing.\(^73\) For example, in 2011 they have signed a Memorandum of Understanding on the establishment of the Energy Research and Production Institute Eskom (EPPEI, ESKOM Power Plant Engineering Institute), established to teach South African engineers in thermal power and renewable energy sources.\(^74\) Both companies are state-owned.

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Certain provisions of the production sharing agreements between the states and transnational corporations (PSA), host country agreements (HGA), including the Host Government Agreement Between and Among the Government of the Azerbaijan Republic and the participants of the Main Export Pipeline Project of 2000 (17 October) and other types of energy-related agreements are included into international energy law.75

In the case when neither states nor international intergovernmental organisations are the parties to the relations, such relations and norms governing them belong to transnational legal system ("non-state") or intra-organisational law. Internal state legal systems, international legal system and the system of transnational law – are different systems.

Self-regulation in the field of environmental relations in the field of energy relations, which is carried out by TNCs, global trade organisations, global lenders – is their corporate law; it is aimed at protection of their interests.76 The meaning of the concept of transnational law, according to a prominent publicist V.M. Shumilov, is that the actors themselves produce norms of behaviour, which are beyond the scope of internal law and covered neither by any of internal [of the state] nor international law.77

According to the Prof of the University of Dundee S.V. Vinogradov the feature of the regulatory environmental protection in international energy companies activity is the existence of a fairly advanced internal (corporate) segment. Corporate legal regulation of the environmental


dimension of energy companies activity includes both target components and the requirements of a number of common industry standards. Finally, Professor has noted that the oil industry itself, and especially the International Association of Oil and Gas Producers, are developing their own international standards, which are widely applied by individual companies.

An example of environmental relations settlement in the field of Transnational Environmental Law – is the 1991 Agreement between Costa Rican NGO INBio and the U.S. company Merck concerning exclusive on the study and priority for patenting of innovations in exchange for support of state science and on the receipt of royalties from commercialized innovations by the government.

Ahnakar agreement or As-Is Agreement also known as agreement of "seven sisters" of 17.09.1928 (Ahnakar Castle, Scotland) – an example of cartel agreement in the field of transnational energy law. It was devised by the leaders of seven oil companies – the predecessors of BP, Shell, Chevron, ExxonMobil.

Corporate law, as well as both contracts mentioned in the last turn belong neither to interecolaw, nor to international energy law.


THE SOURCES (INSTRUMENTS)

The basic sources of interecolaw and international energy law – are legal norms and legal principles. The form is a particular case of the source appearance within a particular group of sources of law. The same source (source of forms, fontes jus naturae gentium) may be coined in many forms; and one form (form of sources) may reflect different sources. One norm or rule (source of forms) may be included in the texts of various international treaties. International agreement (form of sources) includes several norms. Defining the sources of law, we often talk about forms of sources. Indeed, if we seek to characterize sufficiently large fragment of law, it is impossible to talk about specific norms and principles, to list all of them. So we have to talk about large forms of sources – about treaties, agreements and other forms of sources, which include a variety of norms governing similar relations. As a result, an agreement, contract, other forms of sources, which are also referred to as instruments, are conditionally taken as the sources.

At present, there are almost no branches of law considered self-sufficient, since in some way their systems adopt fully or partially separate legal institutes of allied or other related branches.

The above idea expressed by Prof Yu.E. Vinokurov is reflected on the web page of the University of Florida: "international energy law is not a self-contained regime within public international law, it closely interrelates with general international law, international environmental law and international economic law, and partly shares the same legal sources".

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81 For instance, customary law (jus consuetudinis) or natural law (jus naturae) may be embodied in treaty, directive, standard, while treaty, directive or standard may include in their tern peremptory law (jus cogens), common law (jus commune), particular law (jus singulare) special law (jus speciale).


The Database of international environmental agreements of Ronald B. Mitchell as of the
5th of July 2013 includes 3011 agreements and modifications, including 297 in the field of
energy (79 multilateral, 197 bilateral, 21 others). This data on agreements in the field of
energy is summarized by Ronald B. Mitchell in 61 lineages (genealogical groups), and only 29 of them
are not fully apply to international nuclear law: the African Energy Commission, Civil Liability
Bunker Oil Pollution, Nordic Oil Pollution, North Sea Oil, International Energy Program, Energy
Charter, and others. There are only 10 lineages concerning hydropower.

It is indicative that Prof Mitchell classifies energy agreements as interecolaw. The above
mentioned database is the most detailed of known to us, so afterwards we will focus solely on
quantitative assessments of international energy agreements.

One of the first treaties of international energy law known to us today is the 1923 (09.12)
Geneva Convention Relating to the Development of Hydraulic Power Affecting More Than One
State, made between Austria, Belgium, the British Empire (with New Zealand), Bulgaria, Chile,
Denmark, the Free City of Danzig, France, Greece, Hungary, Italy, Lithuania, Poland, Kingdom
of the Serbs, Croats And Slovenes, Siam and Uruguay.84

Article 3 provides that if a Contracting State desires to carry out operations for the
development of hydraulic power, partly on its own territory and partly on the territory of another
Contracting State or involving alterations on the territory of another Contracting State, the States
concerned shall enter into negotiations with a view to the conclusion of agreements which will
allow such operations to be executed. Article 6 lists the issues which must be addressed in the
agreements, amongst other things:

84 Convention Relating to the Development of Hydraulic Power Affecting More Than One State, signed in
Geneva 09.12.1923, entered into force 30.06.1925 // 36 L.N.T.S. 75. URL:
http://iea.uoregon.edu/pages/view_treaty.php?t=1923-DevelopmentHydraulicPower.EN.txt&par=view_treaty_html
(15.07.2013).
(A) General conditions for the establishment, upkeep and operation of the works;

(B) Equitable contributions by the States concerned towards the expenses, risks, damage and charges of every kind incurred as a result of the construction and operation of the works, as well as for meeting the cost of upkeep;

(C) The settlement of questions of financial co-operation;

(D) The methods for exercising technical control and securing public safety;

(E) The protection of sites;

(F) The regulation of the flow of water;

(G) The protection of the interests of third parties;

(H) The method of settling disputes regarding the interpretation or application of the agreements.

According to Rachel Nathanson (expressed gratitude to Professors Jonathan C. Carlson and Maya Steinitz),\(^\text{85}\) the most significant sources of international energy law – are bilateral investment treaties (BITs),\(^\text{86}\) in which two countries agree to provide particular rights and remedies to the other's investors. According to the same author the number of BITs has risen from “a bare handful” in the mid-1970s\(^\text{87}\) to about 400 in the 1980s,\(^\text{88}\) over 700 in the mid-1990s, 2181 at the end of 2002,\(^\text{89}\) and 2750 in 2010.\(^\text{90}\)


A similar view of the role of investment treaties shares Thomas Wälde, who notes that international energy law comprises modern efforts at creating a legal foundation for the global economy, in particular through multilateral economic treaties on investment. Professor also places trade agreements of the GATT / WTO to international energy law.91

Faolex database as of June 2013 has 205 international agreements on cooperation in the field of energy, including 4 concerning hydropower, 36 on oil and gas, 47 on nuclear energy; 118 on general and not identified specific issues.

In its broadest sense of the sources of international energy law described by Prof Thomas W. Wälde: "International energy law is not only, as in a state-centric classical perception, the public international law determined by the list of sources in Art 38 (1) of the ICJ statute. It also comprises the lex mercatoria of international commercial practice developed specifically for transactions in the energy industries and, perhaps, also comparative administrative law, or emerging common state practice of regulating the energy industries".92

It is possible to agree with Professor if we mean the sources of the science of international energy law. However, it is difficult to consider comparative administrative law or common state practice as the sources of the branch of international law, since the branch of science has been named and the practice referred to relates to the regulation of internal state relations.

Speaking about protection of the environment during development of hydrocarbons on the shelf, Prof S.V. Vinogradov described the following forms of sources of international energy law, or as he formulated it the "basic documents of the international regime for operating


activities", which contain provisions relating to the regulation of energy issues, particularly those related to the extraction and transportation of oil and gas:93 the UN Convention on the Law of the Sea, "MARPOL" (applied to drilling platforms),94 the OSPAR,95 the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation,96 protocols on the development of oil and gas in the Mediterranean Sea and the Persian Gulf,97 protocols on disaster management for the Black sea, for the Caspian the sea.98

The European Energy Charter99 and the Energy Charter Treaty (ECT) became the first universal international instruments which allow international community to begin close to the stage of legal problems collective solutions to ensure energy security and the effective functioning of the energy markets.100

However, "mainly consumers are the countries which treat the ECT graciously. The majority of the producer-countries ... have serious concerns about participation in it".101

97 Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency of 16.02.1976; Protocol Concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency to the Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment From Pollution of 24.04.1978.
101 Doe D., Nappert S., Popov A. Russia and Treaty to Energy Charter: common interests or irreconcilable
A similar opinion was expressed by D.S. Boklan, who confirms that the 1994 Energy Charter Treaty is aimed at protecting the rights of the importers, introduces the idea of elaboration of uniform principles for the regulation of international energy relations and legal consolidation, both at the international level and at the state level of economic mechanisms encouraging operators of international energy relations, taking measures to prevent environmental damage.102

Noticeable place among the sources of international energy law is occupied by the regional multilateral normative documents. In the course of preparation for the meeting of the leaders of the "Group of eight" in 2006, the participants had mentioned103 directives on integrated pollution prevention and control (IPPC)104 and on the control of major-accident hazards involving dangerous substances (Seveso II).105 Aforementioned directives, however, primarily relate to interecolaw.


The international energy law includes EU instruments, such as Gas Directive, Electricity Directive, the regulation on access to gas networks, the regulation on access to electricity networks, the regulation on the agency for cooperation of regulatory bodies.\(^{106}\)

The guidelines produced by intergovernmental organizations are related to international energy law (to its "soft" part). In the words of Thomas Wälde UNEP has stepped into the middle of non-conventional international energy law evolution by authoritative international and internal corporate guidelines.\(^{107}\)

According to Prof S.V. Vinogradov "soft law" ("the basic documents of the international regime for operating activities", which contain provisions relating to the regulation of energy relations, in particular related to the production and transportation of oil and gas) includes various UNEP guidelines, operational directives of the World Bank, without observance of which it is not possible to get a large loan, international standards, particularly international standard ISO 14001.\(^{108}\) It is obvious that intra-organisational documents are not documents of International Law. Model contract is rather a document of International Law.


Association of International Petroleum Negotiators (AIPN), in particular, has developed about 20 model contracts, several of which are translated into Russian.\(^{109}\)

Now we will briefly touch upon such source of forms, as a doctrine, which is one of the ideal sources, which are not left without attention in practice. Renegotiation clauses are inserted in many contracts. Renegotiations generally can be squared with national and international laws, although with some contrary voices. For example, Abba Kolo and Thomas Wälder argue that the spirit of the contract may be more important than the actual written text. They acknowledge that in principle: “[t]he philosophy behind renegotiation is that the contractual relationship is more important than the formal contract document itself and that parties will make all efforts to let this relationship survive if and to the extent that it is in their interest to let the relationship survive – and sometimes send a signal to the outside world over the ‘reasonableness’ of the government or company in dealing with its partners on a long-term basis of mutual benefit and trust”.\(^{110}\)

Interecolaw and international energy law as research and educational disciplines have more extensive subject matters and more divergent methods in comparison with the relevant branch legal aggregates, branches of law. Naturally, there is greater number of sources in their framework.

We would mention as an example of thematic variety of the curriculum one out of many foreign educational programmes – Programme of International Energy Law, prepared by

\(^{109}\) Association AIPN was mentioned in the paper: Merkushova O.V. Civil and law regulation of commercial activity of transnational subjects in the sphere of subsurface management : Synopsis of thesis. ... Dr of Law (candidate). 12.00.03; Sc. head. N.V. Stupakov. – M.: Tax Academy of the Russian Federation of the Minfin Rossii, 2012. P. 4.

doctoral student of the Institute of European and International Economic Law at the University of Bern Tetyana Payosova, designed for 26 lectures.\textsuperscript{111} The programme includes sections about the law, markets, security, actors, principles, investment, regional agreements and BITs, trade, WTO rules, climate change, OPEC, the ECT, transit, dispute resolution, environment, nuclear power production, efficiency, and reduction of the impact, human rights. Emerging institutional framework of bilateral and multilateral energy diplomacy,\textsuperscript{112} and diverse sources, including allied to the energy law programmes may be interesting as cognitive sources.\textsuperscript{113}

OUTCOMES

On the basis of this study it is possible to summarize that the development of interecolaw and international energy law is characterized by the following features.

The research of international energy law at the beginning of the XXI century has gained a property of strong tradition; the institutionalization of the branch is reflected in the publication of specialized legal literature, and especially in the active introduction of the courses to the curricula of many universities.

Scientific recognition of the integrated aggregate nature of the branches under question is expanding, which allows one to shift gradually from fragmented consideration of their parts to the formation of a system view of them as a whole, which includes legally dividable components.


The features, which make multiple meanings, sometimes, are included into the definitions of the concepts. Hence, it seems appropriate to limit ourselves in formulation of the branches’ definitions by their name and indicating matter or matters of the relations, which are regulated under the corresponding branch. The specifications of larger aggregates of law to which it referred to and of its subjects (actors) are important indications for the concept of a branch.

The authors prefer a combination of concise definition of the subject matter and verbose description of its appearances the more branch of law is developed. The matter is considered as multiple concept that answers the questions "Why?", "For what purpose?".

The object of the relations regulated within the branch is referred to as multiple concept. The concept of the object for the branches under consideration is not limited to things. The properties (qualities), processes, works, services, information, results of creative activity, intangible goods connected to their matter are recognized as the objects of the relations regulated within their scope.

Conventional classification of the branches and institutes of international law does not exist.114 The development of relations and fragmentation of international law is going on. New legal aggregates are integrated. Systemic understanding of the integrated aggregate branches and their correlations with the other branches is gradually developed through the efforts of many scientists.

Theoretical study of the method of the branches under consideration has not yet been extended to the level of special research works. The growing of knowledge and development of the method we associate with empirical research of the practices, including the judiciary.

The circle of the actors of international relations depends on the development of relations between states and non-state actors and their will; the trend of its expansion has acquired sustainable character.

The scientific community is increasingly strengthened in the opinion that the number of the sources of international law (in particular, interecolaw and international energy law) includes not only the forms provided in Art. 38 of the Statute of the International Court of Justice and other instruments on the law applicable by the courts, since directly applicable sources are not enough for the interpretation, for the rulemaking.

A key role in the development of the branches of law belongs to systematisation of the forms of sources, after which the incorporation and codification are possible. This role is played by the databases. Currently, according to the databases, the number of forms of interecolaw sources estimated about 3000, international energy law from 200-300 to 3000.

The transition of aggregate branches to the basic is long-lasting and possible provided they meet certain criteria. Both considered branches have necessary prerequisites, meet the criteria: the dominant legal regimes (expressed functional characteristics), which absorb and assimilate new elements gradually moving to a new qualitative state; profiling role in relation to the branches of their legal family (play and have the potential to play in time); broad opportunities of codified normative documents creating.

The legal regimes embody the way to advance to the desired social impact. For interecolaw this is the regime of negative impact limitation, conservation and restoration of natural state and the regime of natural resources management. They are targeted at maintaining

of a favourable environment for the present and future generations. The dominant legal regime of international energy law – is a regime of energy security. Its aim viewed as – energy provision.

Profiling role is reflected in the creation of legal aggregates based on the unity of the object and alliance of the subject matter.

Codified regulations are approved on the level of the states; theoretical developments, incorporation of norms do not stop which create the conditions of elaboration and adoption of international instruments of high degree of complexity, covering major part of the subject matter of the branches of law.

In the future society of dignity and equal opportunities the leading role in the regulation of relations will be executed by international energy law and interecolaw.