

**D.S. Smagulova<sup>1</sup>** , **A.K. Jangabulova<sup>1</sup>** , **N.M. Remi<sup>3</sup>** , **A. Zhanalieva<sup>3</sup>** 

<sup>1</sup>Al-Farabi Kazakh National University, Kazakhstan, Almaty,  
e-mail: smagulova.dana1@kaznu.kz, Arailym.Dzhangabulova@kaznu.kz

<sup>2</sup>Universidad de Cádiz is an autonomous community in southern Spain Andalusia,  
Spain, Cadiz, e-mail: michei.remi@usa.es

<sup>3</sup>Karaganda economic University of Kazpotrebsoyuz,  
Kazakhstan, Karaganda, e-mail: Rasuli-77@mail.ru

## ENERGY SECURITY AS A LEGAL CATEGORY

The article analyzes the practical approach to the concept of “energy security”. Based on the study of the concept of energy policy of countries that are importers, exporters and countries through which energy resources transit, an attempt is made to identify common approaches to the content of this concept at the present stage. Highlighting that the common denominator of practical approaches is availability, safety and price, the author comes to the conclusion about the complex nature of this phenomenon, which depends on many criteria. At the same time, according to the author, the problem of energy security is one of the most important areas of modern theory and practice of economic, social and military security. The author concludes that energy policy largely determines the issues of domestic and foreign policy of most countries of the world and thus is the subject of dialogue.

The analysis of the current international legislation has shown the absence of a single formulation of the concept under study, which is based, in our opinion, on the difference of approaches and the versatility of its content. At the same time, the authors point to the need for scientific analysis of this concept from the legal point of view, which is justified by the need for constant regulatory support of the conditions necessary to ensure energy security in the country and in the world.

**Key words:** security, law, energy, security, identity, individual, legal entity.

Д.С. Смагулова<sup>1</sup>, А.К. Джангабулова<sup>1</sup>, Н.М. Реми<sup>2</sup>, А. Жаналиева<sup>3</sup>

<sup>1</sup>Әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.,  
e-mail: smagulova.dana1@kaznu.kz, Arailym.Dzhangabulova@kaznu.kz

<sup>2</sup>Испанияның автономдық бірлестігі Андалусиядағы Кадис университеті,  
Испания, Кадис қ., e-mail: michei.remi@usa.es

<sup>3</sup>Қазтұтынуодағы Қарағанды экономикалық университеті,  
Қазақстан, Шымкент қ., e-mail: Rasuli-77@mail.ru

### Энергетикалық қауіпсіздік құқықтық санат ретінде

Мақалада практикалық көзқарас ұғымына «энергетикалық қауіпсіздік» талдау жүргізіледі. Импорттаушылар, экспорттаушылар және энергия ресурстары транзиті жүзеге асырылатын елдер болып табылатын елдердің энергетикалық саясаты тұжырымдамасын зерттеу негізінде осы ұғымның қазіргі кезеңдегі мазмұнына бірыңғай көзқарастарды бөлуге әрекет жасалады. Практикалық тәсілдердің жалпы белгісі болуы, қауіпсіздігі және бағасы болып табылатындығын көрсете отырып, автор көптеген критерийлерге байланысты осы құбылыстың кешенді сипаты туралы қорытындыға келеді. Сонымен қатар, автордың пікірінше, энергетикалық қауіпсіздік мәселесі – бұл экономикалық, қоғамдық және әскери қауіпсіздіктің қазіргі заманғы теориясы мен тәжірибесінің маңызды бағыттарының бірі. Автор энергетикалық саясат көп жағдайда әлемнің көптеген елдерінің ішкі және сыртқы саясаты мәселелерін алдын ала анықтайды және сол арқылы диалог пәні болып табылады деген қорытындыға келеді.

Қолданыстағы халықаралық заңнаманы талдау зерттелетін ұғымның бірыңғай тұжырымдамасының болмауын көрсетті, бұл біздің ойымызша, тәсілдердің айырмашылықтары мен оның мазмұнының көп қырлылығына негізделген. Бұл ретте авторлар осы ұғымды құқықтық тұрғыдан ғылыми талдаудың қажеттілігін көрсетеді, бұл елде және әлемде энергетикалық қауіпсіздікті қамтамасыз ету үшін қажетті шарттарды тұрақты нормативтік сүйемелдеудің қажеттілігіне негізделген.

**Түйін сөздер:** қауіпсіздік, құқық, энергия, қамсыздандыру, тұлға, жеке тұлға, заңды тұлға.

Д.С. Смагулова<sup>1</sup>, А.К. Джангабулова<sup>1</sup>, Н.М. Реми<sup>2</sup>, А. Жаналиева<sup>3</sup>

<sup>1</sup>Казахский национальный университет им. аль-Фараби, Казахстан, г. Алматы,  
e-mail: smagulova.dana1@kaznu.kz, Arailym.Dzhangabulova@kaznu.kz

<sup>2</sup>Университет Кадиса автономного сообщества Испании Андалусия,  
Испания, г. Кадис, e-mail: michei.remi@usa.es

<sup>3</sup>Карагандинский экономический университет Казпотребсоюза,  
Казахстан, г. Караганда, e-mail: Rasuli-77@mail.ru

### Энергетическая безопасность как правовая категория

В статье проводится анализ практического подхода к понятию «энергетическая безопасность». На основе исследования концепции энергетической политики стран, являющихся импортёрами, экспортёрами и странами, через которые осуществляется транзит энергоресурсов, делается попытка выделить единые подходы к содержанию данного понятия на современном этапе. Выделяя, что общим знаменателем практических подходов является наличие, безопасность и цена, автор приходит к выводу о комплексном характере данного явления, которое зависит от многих критериев. Вместе с тем, по мнению автора, проблема энергетической безопасности – это одно из важнейших направлений современной теории и практики экономической, общественной и военной безопасности. Автор приходит к выводу о том, что энергетическая политика во многом предопределяет вопросы внутренней и внешней политики большинства стран мира и тем самым является предметом диалога.

Анализ действующего международного законодательства показал отсутствие единой формулировки исследуемого понятия, что основано, на наш взгляд, на различии подходов и многогранности его содержания. При этом авторы указывают на необходимость научного анализа данного понятия именно с правовой точки зрения, что обосновано необходимостью постоянного нормативного сопровождения условий, необходимых для обеспечения энергетической безопасности в стране и в мире.

**Ключевые слова:** безопасность, право, энергия, обеспечение, личность, физическое лицо, юридическое лицо.

### Introduction

Energy security issues are one of the determinative that shape internal and external affairs of any state in the world. To a great extent the presence or absence of energy resources determines the role of a country in the world.

At the same time, is there a single, so to say, global approach to the concept of “energy security”?

Aspiration to find a unified approach to this institution is justified by the desire to form and implement international standards in various areas of the economy, environmental management, etc. Thus, according to INOGATE, “Standards enable access to markets and build trust, ensure good practice, increase competitiveness, protect consumers, improve efficiency and reduce risk. They enable technology transfer among countries. Standards should work together with the policies and regulations of companies, countries and regions. Where they are incompatible, consensus-building is essential to adopt and accept standards.

1. The lack of harmonisation of codes and practices in the electricity and gas sector are major obstacles to the convergence of energy markets between the EU and INOGATE Partner

Countries (PCs).” (<http://www.inogate.org/thematic/5?lang=ru>).

However, the analysis of international documents showed the lack of a single conceptual framework, which is mostly justified by the different positions of the countries. These positions are mainly determined by national strategies and concepts in the energy sector of the economy, designed for short and long periods. Accordingly, to determine the approach to this concept, an analysis of the program documents of countries is necessary. It should be noted that all states are included in the energy turnover process as a supplier or as a consumer, and someone as an intermediate (in this case, a transit).

The role of the energy sector in the viability of any state is undeniable. The presence of energy is the main guarantee of life of any person, society, and the state as a whole. Accordingly, programs and plans for the development of the energy sector are an integral part of economic development.

Examination of a number of states energy sector development government programs shows that almost all are focused on “pursuing a new energy strategy focused on energy security” (Fiscal 2005 Annual Energy Report 2006, 5).

Multi-country analysis of a series of studies and legislative acts shows that there are different

approaches toward the definition. Accordingly, there is an urgent need to analyze various approaches in this definition and its essence. This need is especially relevant for Kazakhstan due to the fact that, on the one hand, we are an exporter of many types of energy resources (oil, gas, uranium, etc.), but at the same time we have certain problems with some types of energy, for example, with hydro resources. We strive to resolve energy security issues by forming new, previously unused energy facilities, such as the construction of a nuclear power plant. In addition, analytical statistics show that the state budget is largely determined by the volume and cost of energy. In this regard, the year of 2020 is indicative, when a sharp drop in oil prices (from 55 to below \$ 20 per barrel) exposed the state budget by more than 20% (<https://kursiv.kz/news/ekonomika/2020-03/skolko-poteryaet-kazakhstanskiy-byudzhet-iz-za-padeniya-cen-na-neft>), and then a drop below negative for the first time in history (<https://www.bloomberg.com/energy>).

### Main part

As the practice of recent years has already shown, the concept of “energy policy” is increasingly becoming part of the political vocabulary in which energy security has begun to play a key role.

World practice shows that each country depending on its specifics has developed its own approach to the concept of “energy security” in the global energy order.

The Energy Charter Secretariat, when defining the term “energy security”, came to the conclusion that three main positions of countries should be distinguished, dividing them into importing countries, exporting countries and transit countries (<https://kursiv.kz/news/ekonomika/2020-03/skolko-poteryaet-kazakhstanskiy-byudzhet-iz-za-padeniya-cen-na-neft>). At the same time, it should be noted a significant difference in the approaches of these countries, which is obvious in the light of the interests of these three categories of countries.

Thus, importing countries are primarily interested in the stability of supplies and in price of. The vital interest is caused by the so-called “energy poverty”, the lack of the ability to generate the required amount of electricity themselves or the complete (insufficient) lack of own energy resources (gas, oil shale, oil, etc.). Some countries, unfortunately single ones, are developing the latest technologies (Sweden, Norway), but that does not solve the whole bunch of problems, which obliges them to import certain types of energy resources.

At the same time, the vast majority of countries continue to remain in the position of importers and represent the so-called “predictable demand”. So, “The long-term energy supply security strategy of the European Union should be aimed at ensuring the welfare of its citizens and the proper functioning of the economy, the continuous physical availability of energy products in the market, at a price that is affordable for all consumers (private and industrial), while respecting environmental problems and the desire for sustainable development” (<https://www.bloomberg.com/energy>).

According to analysts, the strategy is aimed at the following aspects: improving the security of energy supplies; ensuring the competitiveness of the European economy on the basis of affordable energy; sustainable development of its own energy system; pursuing an effective environmental policy ([https://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/International\\_Energy\\_Security\\_2015\\_en.pdf](https://www.energycharter.org/fileadmin/DocumentsMedia/Thematic/International_Energy_Security_2015_en.pdf)).

No less interesting is the approach of Japan and China, which are highly dependent on energy imports, but their concepts are mainly focused on the policy of “domestic proposals and efficient use” ([http://ec.europa.eu/energy/strategies/2006/2006\\_03\\_green\\_paper\\_energy\\_en.htm\[n4\]](http://ec.europa.eu/energy/strategies/2006/2006_03_green_paper_energy_en.htm[n4])), as well as “mutually beneficial international cooperation”. Both countries understand that for them energy security is, first of all, “provides the necessary amount of energy for such areas as people’s lives, economic and social activities and national defense at an affordable price” (Aland 2013).

Accordingly, ensuring constant access to energy resources is one of the most important tasks for the domestic and foreign policies of energy-dependent countries. Dialogue or resolving issues in a position of strength is their choice, which in many respects predetermines the correlation in the world. An example is the position of China itself on the issues of sharing transboundary waters, such rivers as the Irtysh, Ili, Kara Ili, Tekes and others. China’s interest in using the waters of these rivers does not allow neighboring countries (Kazakhstan, Kyrgyzstan, Russia) to use these waters to the necessary extent for the construction and efficient use of a hydroelectric power station (<http://investing.businessweek.com/research/stocks/snapshot/snapshot.asp?capId-875781>) and thereby creates a tense situation in the region.

At the same time, most countries pursue a policy of good-neighbor dialogue and are interested in long-term and mutually beneficial agreements. It is these countries that are interested in the formation

and detailed regulation of energy trade and supply issues by international law, in the conclusion of long-term agreements and the introduction of “pricing formulas”.

The attitude of the exporting countries deserves special attention, since it is they that, to a certain extent, dictate the situation on the global energy market.

Despite of energy sources available for export, countries face a huge number of risks and challenges. And this is primarily due to market instability, instability and dependence of energy prices, lower demand for certain carriers (gas, coal) or its seasonality, the safety of energy carriers themselves (their depletion, efficiency, physical integrity, etc.). Accordingly, the main priority for them is security of supply and, first of all, market stability, as well as for importing countries, the price of energy resources.

For many countries, including Kazakhstan, the danger is also that the economies of these countries, to a greater or lesser extent, depend on the energy sector. No less interesting is the fact that these countries recognize that a material interest in the export of energy resources can lead (leads) to a weak supply of domestic resources with energy resources (price increases, physical shortages). Accordingly, these countries are also forced to constantly analyze the situation in the domestic and foreign markets, thereby forming short-term and long-term prospects (policies) in the market. But the most important, in our opinion, is the military and political security of the country, which is a constant source of interest from the entire international community or individual powers. There are many examples of the last decade, when the presence of oil fields is its root causes military conflicts and warriors (Iran, Iraq, Syria, etc.).

In addition, exporting countries are guided by forecasts that “World demand for black gold will begin to fall already in the 2030s. The peak will be in 2025, after which the market’s appetites will decline mainly due to the transition to alternative sources – natural gas, wind generation, nuclear and hydropower” (Kang 2007). Accordingly, this situation “encourages” exporting countries to take various measures, including military-political ones.

The need to maintain a market position leads to the need to combine efforts, which is also used as a powerful political force. Thus, the position of OPEC + countries in 2018 led to the fact that the global market was faced with a shortage of oil: extracting from the bowels of the earth 94.7 million barrels

per day, the world burned 5.5 percent more – 99.8 million.

This is due to the artificial limitation of production by OPEC countries – to maintain reasonable prices. While the reverse example was vividly demonstrated in the spring of 2020, when the “oil union” of the United States and the UAE allowed to stabilize oil prices, which collapsed due to the collapse of the OPEC + deal to reduce production. At the same time, such “games” cause significant damage to the internal policies of the countries themselves.

So, according to an expert on energy and the Middle East in the Council on Foreign Relations, “We hope that the American oil industry has avoided the worst case scenario. ... There will still be bankruptcies, but now fears that there will be a massive destruction of the industry can now be put aside, because the worst in the price war has passed. What happened in recent days can support industry in which nearly 10 million Americans work directly or indirectly. The growth in US production in recent years has reduced dependence on foreign oil and lowered gas pump prices for consumers” (<https://www.nytimes.com/2020/04/11/business/energy-environment/russia-saudi-arabia-us-oil-coronavirus.html>).

Anyway importing countries are also dependent on the foreign policy of countries – the main producers of energy resources, which also requires constant analysis of the situation in order to protect their own interests.

An equally important aspect of energy security is the environmental situation in a country or region. Resources mining is one of the most important reasons for reducing natural resources, disturbing the natural balance, etc., which is reflected in the directions of the global environmental movement and requires adequate measures from the extractive industry and, accordingly, is reflected in the energy policy of exporting countries.

Accordingly, as well as for importing countries, exporters are interested in supply stability and satisfactory pricing policy.

The question of the availability of demand from time to time arises in the market. So shale reduced gas demand meanwhile and invariably affected pricing policy. But failure of the replacement also dramatically affected the price of energy. However, the most indicative, in our opinion, is the situation with the pandemic, which minimized oil demand. But this is a force majeure situation that did not have precedents and, accordingly, legal protection. But here the basic economical law appeared: the lack of demand leads to a crisis of production.

The third type of countries interested in energy supplies are transit countries. Transit security is one of the most important conditions for stability and the actual implementation of supply contracts. The presence of various risks and their elimination becomes an important task of the transit countries, which are also an important part of the supply agreement that obtain a certain margin.

For a number of countries, such as Austria, Holland, Singapore, Ukraine, Belarus, Turkey, transit of energy resources is an important source of replenishment of the state budget. Accordingly, significant efforts are being made to ensure the safety and stability of the operation of land, sea, and sometimes air movement of resources.

The geopolitical location of such countries allows them to be a direct participant in trade relations and have access to energy on favorable terms.

At the same time, the analysis of documents regarding the energy security of a number of transit countries showed that they recognize themselves more likely as importing countries. Thus, Turkey, in its Strategic Plan for 2018-2022, positions itself as an importer country and calls for diversification and efficiency, while declaring that it seeks to contribute to the energy security of Europe. However, an exact definition of itself as a transit country has not been given, nor has it been stated that Turkey intends to ensure the safety of energy transit ([http://sp.metu.edu.tr/system/files/odtu\\_sp\\_2018\\_02\\_08.pdf](http://sp.metu.edu.tr/system/files/odtu_sp_2018_02_08.pdf)). Meanwhile Azerbaijan oil is delivered through Turkey, which strengthens the strategic importance in the region.

Ukraine adheres to approximately the same tactics, and the Strategy for Energy Security of Ukraine until 2035 defines the following goal: “meeting the needs of society and the economy in fuel and energy resources in a technically reliable, safe, cost-effective and environmentally acceptable way to ensure the improvement of society’s living conditions”, while declaring the diversification of the economy and “reducing the dependence of the energy sector of Ukraine on Russia” (<https://businessforecast.by/partners/publication/jenergeticheskaja-strategija-ukrainy-na-2/>), while saying nothing about the fact that Ukraine is globally and mainly seen as a country providing transit of Russian oil and gas to Europe.

At the same time, politicians are aware that “recent trends show that the number of challenges in energy security is growing, this can especially be seen in the example of Russia’s attempts to deprive Ukraine of its transit potential, in particular by involving the construction of a new cross-border

infrastructure bypassing Ukraine. The preservation of transit under such conditions is an important guarantee of limiting the influence of the aggressor in case of escalation of the conflict” (<https://www.uatom.org/ru/2019/07/12/energeticheskaya-strategiya-2030-vs-2035-pochemu-nevypolnena-pervaya-i-budet-li-vypolnena-vtoraya.html>).

For Kazakhstan, located at the crossroads of Europe and Asia, such a geopolitical position is a valuable strategic resource that allows to integrate economy into the global economic system. According to experts, “Transit potential is a powerful tool for realizing the country’s capabilities to provide and maintain international transport flows between different regions. ... Promising directions for the implementation of the transit potential for Kazakhstan: through Russia to the EU countries; to China, Japan, countries of Southeast Asia; through the countries of Central Asia and the Caucasus to Iran and Turkey” (Myrzakhmetova 2015, 123).

Accordingly, Kazakhstan should also consider itself as a transit country, and thereby take upon itself obligations to ensure the security of transit of energy resources.

The analysis made above concerning approaches to the concept of energy security shows that the content of this term is different depending on the economic interests of the country. In general, countries are united by the desire to ensure the import and export of certain types of energy, energy transit through the territory of neighboring and third states, the cost and volumes of various types of energy in foreign markets.

Consistent approach to various aspects of energy security as applied in the European Union is of special attention.

Green book of the EU “European Strategy for sustainable, competitive and reliable power industry” published by the European Commission and represented at the meeting of the European Council in March 2006 being long-term program for energy policy development of the EU defines that the EU is moving forward to provide energy security and stability by the following:

- improving the security of energy supplies;
- ensuring the competitiveness of the European economy based on affordable energy;
- Sustainable development of its own energy system;
- conducting an effective environmental policy ([http://europa.eu/legislation\\_summaries/energy/european\\_energy\\_policy/l27062\\_en.htm](http://europa.eu/legislation_summaries/energy/european_energy_policy/l27062_en.htm)).

These contributed to the adoption of a number of important changes in the EU that was implement-

ed in a number of documents of a regulatory and legislative nature.

This practice, initiated by the EU, has been spreading through clarification and implementation of new standards in the energy industry, amending existing technical regulations and developing new secondary legislation.

The European Union claims to “develop a formula for energy security both at the regional and global levels” through “finding an adequate balance between ensuring reliable supplies for consumers-importers and reliable demand for producers-exporters of energy” (Gudkov 2006).

So the attempts to form a common position are also made by specialized international organizations. Thus, the main provisions and mechanisms are developed within the framework of the International Energy Agency, OPEC, and regional organizations such as NAFTA and APEC. However, they are making efforts to indicate the concept for the interests of the member countries of these organizations.

The G8 countries adopted the Declaration of “Global Energy Security” where global energy security should be interpreted as “ensuring a stable and uninterrupted supply of energy resources for all countries of the world at prices acceptable to both consumers and producers of these resources, with minimal damage to the environment” in order to ensure sustainable socio-economic development of the world community” (Global energy security 2006). This definition is an effort to cover the so-called “general interest”. The definition is almost the one and only attempt to unite interests.

All countries agree that the main priority of energy security is to meet the needs of society and the economy in fuel and energy resources in a reliable, safe, cost-effective and environmentally acceptable way to ensure the improvement of the living conditions of individuals, society and the state. One way or another, each state seeks to establish certain conditions for the stability of production and supply, that is, the stability of partnerships on mutually beneficial conditions. An ideal option for each country is to create conditions for energy independence – a goal that everyone strives for, regardless of geopolitical location, availability of mineral resources, etc.

This largely determines the development of the energy sector of the economy, which tends to move away from dependence on the availability of natural resources.

In this regard, the conditions of sustainable development of the energy complex are identified, which include:

– ensuring acceptable quality, required volume and affordability of various types of energy in all regions of the country for all consumer groups for the forecast period, which is an indicator and a guarantee of the country’s energy security;

– achieving and maintaining the required level of provision with primary and final energy with a significant change in internal and / or external conditions, which characterizes the energy independence and energy stability of the country;

– ensuring the level of energy consumption not lower than the social minimum in critical and emergency situations” (Elibaeva, 2011, 50).

And for countries with energy resources the following remains relevant:

– world level of efficiency in the extraction, conversion, transportation and use of fuel and energy resources;

– Reduction of energy facilities impact on environment to a level that ensures self-healing or restoration with a help of special technologies;

– achieving the optimal technological and technical structure of the energy system with forecasted energy requirements;

– achieving a high level of interchangeability of energy resources with the joint functioning of various energy supply systems” (Elibaeva, 2011:50).

At the same time, the events of recent months (winter-spring) 2020 have shown that “oil diplomacy” plays a huge role in the process of ensuring energy security. The agreement between the main players in the oil market represents a certain core of stability in the global economy, while disagreements have led to serious economic consequences, thereby deepen the global economic crisis.

However, this argument and indicator of energy security as well are largely predetermined by such indicators as supply and demand.

The lack of demand caused by the global energy pandemic has also dramatically affected prices in the same way as a fact that sharp decline in oil production will cause prices to rise.

Accordingly, energy security is certain system of relations and condition and development of which is influenced by various factors on national and international level

The importance that energy security plays for the interests of the individual, society and the state as of the main object indicates that it should be considered as an important component of national security.

The classical division of national security into economic, military, informational, environmental and political, in our opinion, is abstract. So the is-

sues of energy supply to a greater or lesser degree affect the condition of all the above-mentioned components of national security. The scientists of the Copenhagen Institute for the Study of World Problems come to the same conclusion, pointing out that “all five sectors are closely interconnected, and energy security is in a number of them at the same time” (Buzan, 2009).

Here need to be agreed with the opinion of Khukhlyndin L.M. and Chizha A.M. that “the presence or absence of energy resources and electricity affects all spheres of life at each level of national security. In this sense, energy security is becoming a comprehensive phenomenon, the degree of importance of which varies depending on a particular sector of the economy, agriculture or services” (Khukhlyndin, 2013).

In this regard, energy security issues are becoming issues that are included in the fundamental documents on national security of many countries, for example, the EU, the Russian Federation, the USA and many others. In all these documents, energy security issues are mainly based on the availability of the required amount of energy resources, including ways to ensure them.

According to a number of scientists, energy security can be considered as a separate component that includes several levels: military energy security; “... meeting the needs for energy resources and electric power of all services of the state (health care, education, transport, emergency, etc.); energy security, which is of paramount importance for the economic sphere” (Cornell, 2013).

However, all three components of the so-called “independence”, in our opinion, are very arbitrary, since they are again based on availability and price. This in turn brings us back to the conditions of ensuring all components of national security.

Recur to the issue of legal consolidation of the concept of “energy security”, it should be said that national acts do not contain a special interpretation of the concept of “energy security”. But it is energy security that runs through the content of national concepts and strategies.

In our opinion, these concepts can be revised under the influence of recent events. Oil diplomacy must reach a new level. The main concept of the energy policy of the countries around the world should be ensuring coordination of the policies of industrialized countries in oil supplies, stimulating cooperation in the field of energy policy, and preventing the future use of oil as an instrument of political pressure.

### Outcomes

Energy security is a complex, multifaceted concept (phenomenon) that depends and at the same time determines many factors of national and international politics and at the same time is the subject of political dialogue;

The energy policy and, above all, the energy security policy largely determines the issues of domestic and foreign policy of most countries of the world;

The concept of energy security is expanding and no longer includes only availability and pricing policy, but also environmental, social, infrastructural issues and other support;

The lack of a single formulation of the studied concept, which is based, in our opinion, on the difference in approaches and the versatility of its content. Moreover, the need for a scientific analysis of this concept from a legal point of view is seen which is justified by the need for constant regulatory support of the conditions necessary to ensure energy security in the country and in the world.

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