

How could obligation chain be structured along cross-border gas supply for gas security ?

3-tier legal interactions

Huong Hoàng, Polina Lemenkova

Research aims:

- *to measure* components and linkages of legal obligations undertaken by the actors involving cross-border gas supply chain
- *to investigate* possibility to establish a legal structure for promoting security of gas supply chain
- *to examine* consequences of gas supply chain for government and companies
- *to analyze* legal structures (international-domestic-contract law): **entitlement** vs. **state responsibility** as requirements for functioning/enforcing obligation chain

Research problems:

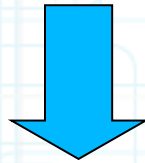
- Forecast: natural **gas will increase demand** at global average of nearly 2%/year by 2035:
 - and its convenience in consumption
 - economical and environmental efficiency
 - natural gas remains a preferred choice in many applications with high consumption
- Gas reserve is **highly unevenly distributed**:
 - ca $\frac{3}{4}$ deposited: Middle East & Eurasia
 - 54% of total estimated: Russia, Iran & Qatar
- Large consumers in Asia & Europe are **insufficient** or **lack of domestic gas** to meet their demand

Gas Market Situation: Pros & Cons

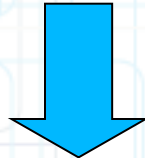
- + : Cross-border trade plays important role in “supply-demand” relationships of unevenly distributed resources
- + : Long-term contracts remain important for viable investment of a gas value chain
- - : Cross-border trade doesn't always guarantee the security of supply (adequate volume when and where it is needed at affordable price)
- - : Long-term contracts limit the availability of uncommitted volume for market to balance demand-supply

Demand-Supply Imbalance: Triggers and Consequences

Rigidity of dedicated and network bound **infrastructures**



Limited **swing capacity**



The market responsiveness becomes **inhibited (less flexible)**



Imbalance of demand-supply relationships, e.g.: by tight supply:

- market price are driven upward

(when affordability aspect of supply security is ignored)

- market price cannot still attract demanded gas volume

(because of relative concentration of the producers/suppliers)

Government's Role in Gas Sector for Sustainable Supply Flow

The government's involvement helps to **regulate** uncertainties and difficulties that go beyond the guarantee of gas market:

- a) Requirement of **timely supply-demand** balancing (e.g. in short notice):
 - **distance** between production and consumption locations of the infrastructures.
 - **infrastructure** capacity and constraints
- a) Uncertainties related to **volume availability**
- b) Affordable **price**

Government's Role in Gas Sector: Domestic Affairs

- **formulating & monitoring** domestic framework with clarified objectives and responsibilities of the market players
- **licensing** scheme & **legal** framework under law rules
- **controlling** operations of the companies and local market
- **facilitating** gas inflow
- **influencing** company's operations through obligations or restrictions
- **stimulating** companies to promote company's presence and performance of particular business activities

Possible Disadvantages and Negative Consequences of Governmental Participation

- **Dependance:** Cooperation agreement depend on diplomatic attitude and goodwill of the governments
- **Instabilities:** Cooperation agreements have no obligatory effect
- **Uncertainties:** It may contain uncertainties
- **Unpredictability:** It may be waived or failure in achieving expectations or practical yields

Government's Role in Gas Sector: International Affairs

International:

- aims at **general strategies/policies** of energy security
- **securing supply** of overseas gas
- **indirect involvement** of the governments: *'many large gas contracts have been closed in the context of bilateral meetings between government leaders'*
- creating **multilateral agreements**
- **mitigating trade barriers**,
- **supporting cross-border activities** among participating countries (*e.g. stipulation of free transit principle in GATT/WTO agreement or in Energy Charter Treaty*)

Multilateral Agreements: Advantages & Drawbacks

- Multilateral agreements (M.A.), e.g. *Energy Charter Treaty*, provide general cooperation frameworks with more favorable conditions for participating members.
- However, M.A. could not enforce the entities or trade activities and may only be considered as ‘**facilitation of trade**’.
- Overseas gas supplies may be **constrained** to destine timely to the right location at affordable price with adequate volume, especially in case of scarcity or shortage.

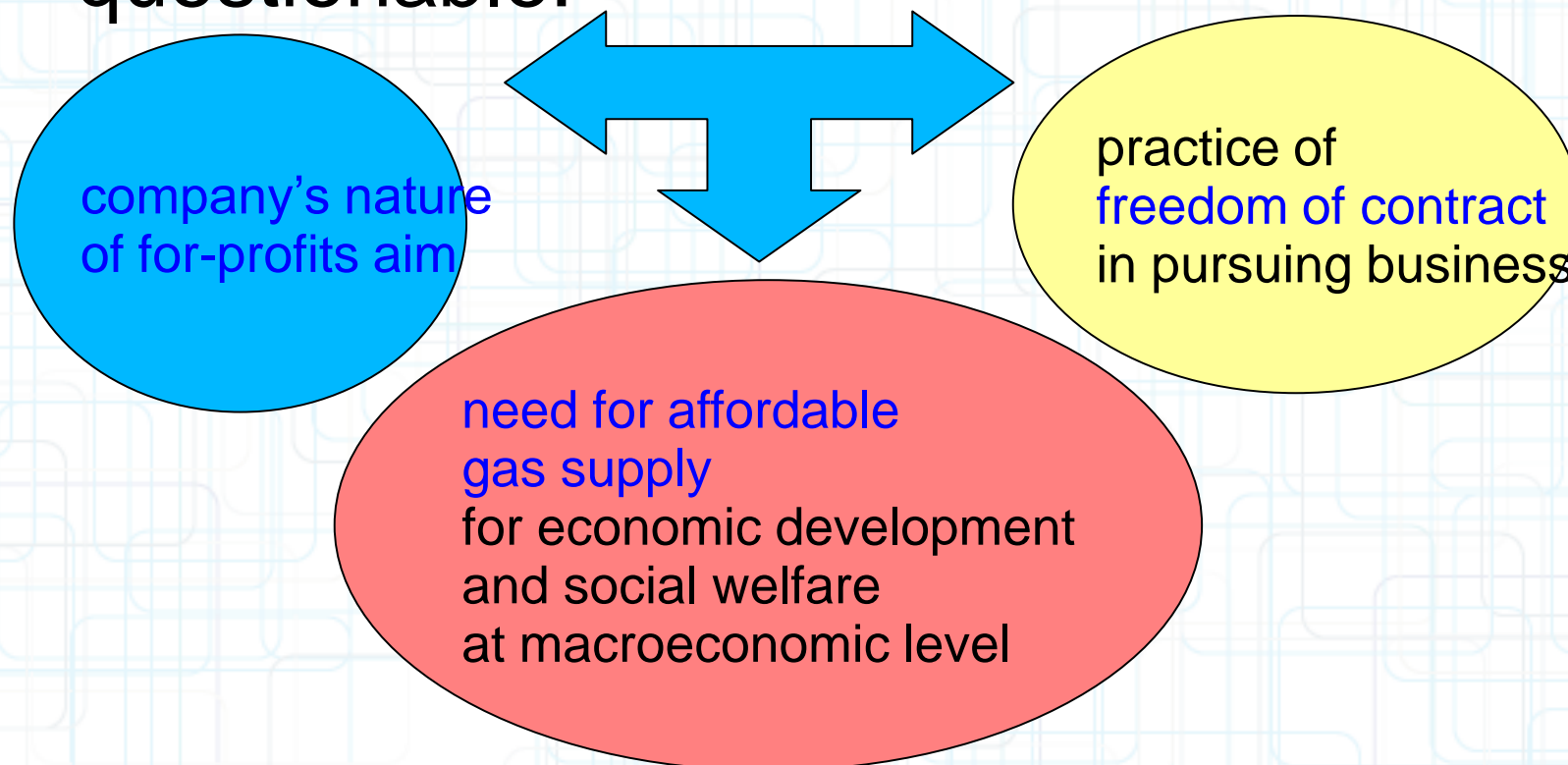
Government's Role in Gas Sector: Diplomatic Affairs

- **interference in market** & cooperation relation with other countries within bilateral & multilateral agreements
- **strengthening** bilateral relationships
- **participating** in multilateral agreements
- **engaging in diplomatic agreements** in cooperative spirit
- **obtaining certainties** of the supply source
- **facilitating operations** of the companies



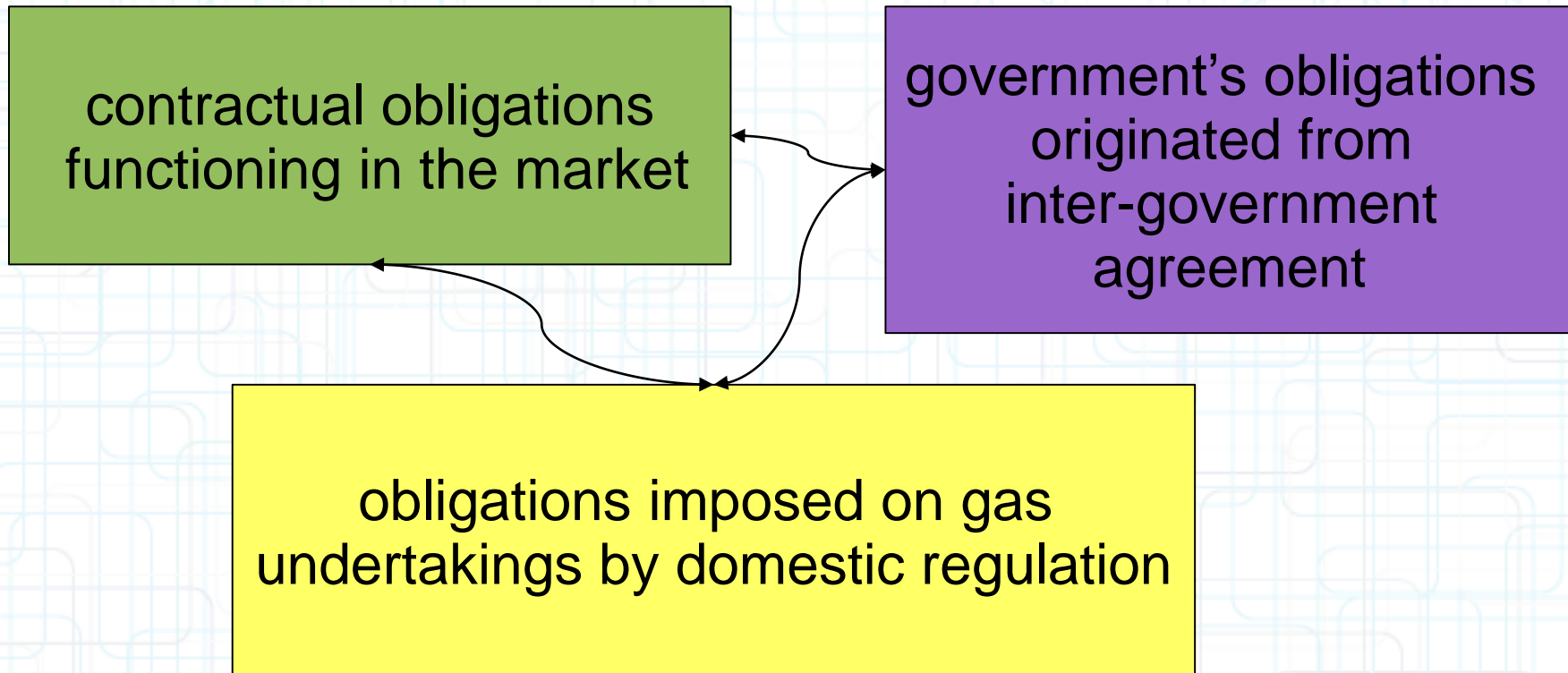
Government's Participation in Gas Sector: Drawbacks

The government's capability of enforcing an independent company to perform any obligations at any time remains questionable:



Current mechanism of Overseas Gas Supply (O.G.S.)

...consists in an operational frame with combination of:



Problem statement

...however, this scheme has serious drawbacks:

- Current mechanism of O.G.S. has **limitations in guaranteeing supply security** for importing country.
- Gas market is **constrained** in delivering adequate volume at affordable price to the right place on time
- **Impossibility of the importing government in directly controlling** overseas gas supply source due to **sovereignty** of the producing country
- **Ineffective managing/sustaining** cross-border gas supply flow

Limitations and Challenges

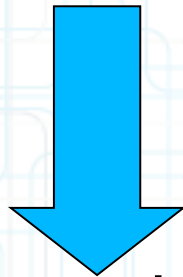
Managing/sustaining cross-border gas supply flow has difficulties for the importing country.

These include:

- **lack of enforcing power** over independent company's operation
- **Impossibility in directly controlling** overseas gas supply source, the explanation of which is attached to sovereignty of the producing country
- **no direct control of access** to infrastructure capacity along gas chain

Long-term Goal

The government is ultimately responsible for gas supply security of the country



Therefore, the main question is:

- **satisfying both availability and affordability** dimensions in securing overseas gas flow, which is currently not easy for importing government
- **creating legal obligation chain** along cross-border countries that guarantees **availability and affordability** of gas supply

The Hypothesis

- Targets of the test: dynamic dimensions of **availability** and **affordability**.
- The scenarios of **excess and shortage** of gas supply (volume and infrastructure capacity) are applied for testing **rights and obligations** of the actors involved.
- Producing/exporting country covers expensive supply and cheap supply (due to geological conditions and technology requirements).
- 2 types of consuming/importing countries: *'rich consumer with little supply shortage'* and *'poor consumer in high demand for gas'* (levels of economic development & social welfare)
- Measure: *gas volume, infrastructure capacity, distance, timing, price & company's flexibility.*

Research methodology

Conceptual analysis to look into the elements and interactions of legal obligations in

three tiers of the relationship:

- (i) **government** vs **government** in international law
- (ii) **government** vs **company** in domestic law
- (iii) **company** vs **company** in contract law

Research techniques

Assuming and performing the obligations implies aspect of actors' expectations.



- **Examining** consequences for the government and the company.
- **Investigating** legal structure (international-domestic-contract law): **entitlement** vs. **state responsibility** as requirements for functioning/enforcing obligation chain
- **Exploring** documentary database
- **Clarifying** the concepts

The end.

Thank you for attention !

Questions ?