



OCCASIONAL PAPER SERIES

**TOWARDS A COOPERATIVE
FRAMEWORK FOR A CHINA-
CENTRAL ASIA ENERGY
TRANSIT COMMUNITY**

HAN WANG

ENERGY CHARTER SECRETARIAT
KNOWLEDGE CENTRE
2016

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ABSTRACT

Energy Cooperation between China and Central Asian countries is underpinned by strong economic rationale and institutional foundations. China should promote the establishment of a China-Central Asia energy community, particularly an energy transit community, in light of China's recent advocacy of the "One Belt One Road" scheme. Due to the complexity of energy transit cooperation in the multi-stakeholder, multi-level and multi-policy dimensions, legal issues in energy transit regulation are intertwined with political, economic and social issues at both the inter- and intra-national level. The proposed China-Central Asia Energy Transit Community (CCAETC) should be oriented by energy security policy, combining both legal and political principles and supporting open and inclusive regionalism. This paper proposes several approaches to achieve this: the CCAETC could be promoted by using an existing framework, such as the multilateral transit framework established under the Energy Charter Treaty; or, with the establishment of a new framework, a Silk Road Energy Belt covering the whole of Eurasia could be incrementally constructed based on Energy Charter principles.

Key words: *Energy Transit, China-Central Asia Energy Transit Community, Energy Charter, Geopolitics, Energy Security, One Belt One Road*

Introduction¹

The cooperation and economic foundations between China and Central Asia are extensive and sound, and urgency for policy cooperation in energy transit can be seen. At present, transit projects between China and Central Asia include the China-Kazakhstan oil pipelines, China-Kazakhstan gas pipelines (the second phase of the China-Central Asia gas pipelines), and the China-Central Asia gas pipelines. The 340 kilometre Kazakhstan-China crude pipeline is Kazakhstan's first pipeline directly connected to China without passing through any third country. It is connected to the Alashankou-Dushanzi Crude Oil Pipeline on the Chinese side. The China-Kazakhstan crude pipeline has three phases: the first phase was finished in 2003 and is connected with the Alashankou-Dushanzi crude pipeline in China. The China-Kazakhstan gas pipeline is built by CNPC, with a length of 1475 kilometres in total. There are two phases, and the first phase was finished in 2012.²

The China-Central Asia Gas Pipeline is the most important line for importing energy to China and falls into four sub-pipelines: lines A, B, C and D. The project starts in Turkmenistan, goes through Uzbekistan and Kazakhstan, and finally connects with the second phase of China's West-to-East Pipeline project in Xinjiang.³ Lines A and B were inaugurated in 2009 and 2010. They were installed in parallel, with a length of 1,833 kilometres from Samandepo, Turkmenistan to the Chinese border at Khorgos. Line C was completed at the end of 2013 and was inaugurated in May 2014. It was constructed along the same route as lines A and B, with a total length of 1,830 km. The designed capacity is 25 bcm annually, of which Turkmenistan will supply 10 bcm, Uzbekistan 10 bcm and Kazakhstan 5 bcm. The construction of Line D started in December 2014, and will be completed in 2016. Line D follows a different route compared to lines A, B and C. It will pump gas from fields in eastern Turkmenistan through Uzbekistan, Tajikistan and Kyrgyzstan to the Chinese border.⁴

¹ This publication was prepared by Han Wang, during her secondment from the National Energy Administration of China, at the Energy Charter Secretariat. The author was helped by Peng Wang, PhD candidate at Xi'an Jiaotong University, who wrote the initial draft, and Runjia Wang, student at Heilongjiang University, who helped with the English version. The paper also benefited from the advice and contributions of colleagues at the Energy Charter Secretariat: Alejandro Carballo Leyda, Denis Westerhof, Kanat Botbaev, Marat Terterov, Steivan Defilla, and it was edited by Ben McPherson.

² WANG Zhuwei, China, Central Asia and the Relevance of the Energy Charter Treaty, occasional paper, Energy Charter, 2014

³ China-Turkmenistan Cooperation to Build an International Sample of Energy Cooperation, Economic Information Daily, 2011/11/28, <http://www.chinanews.com/ny/2011/11-28/3489529.shtml>.

⁴ WANG Zhuwei, China, Central Asia and the Relevance of the Energy Charter Treaty, occasional paper, Energy Charter, 2014



The development of an energy transit legal framework in Central Asia is behind regional economic cooperation, and a legal framework is needed in the policy sense. A common energy transit legal framework has not yet been developed, despite the emergence of wide energy transit cooperation among China and neighbouring countries. The intergovernmental agreements between China and Central Asian countries are mostly for specific projects and in the form of MOUs, which are not legally binding, and have low protections. Those BITs between China and Central Asia countries are set from the angle of capital input countries, and thus provide poor protections for investors in unstable situations.

Central Asian countries enjoy good policy cooperation with China. The feasibility of building an energy transit legal framework in this region is high. They are all close geographically, and thus able to take part in common projects, and there are wide cooperation demands for economic development and regional security. Besides, Central Asia is the core region of the Chinese initiative "One Belt One Road".

This research paper is about energy transit issues, and analyses the main policy logic behind disputes and the corresponding settlement mechanism. Based on these, the concept of a new China-Central Asia Energy Transit Community is discussed, as well as the backing mechanism and the rule design philosophy.

The first part discusses classification of disputes based on dispute initiation and conduction mechanisms, and describes a economic-social-political gradient map of energy transit disputes. **The second part** discusses energy dispute settlement mechanisms, according to the research on different types of energy transit disputes, and in consideration of the advantages of local remedies, diplomatic negotiation, meditation and international arbitration. According to this, **the third part** argues that China should promote the construction of a new China-Central Asia Energy Transit Community (CCAETC), energy security orientated, that combines legal rules and political principles and open regionalism. In the short term, China should promote this 'CCAETC' under a multilateral transit framework established under the International Energy Charter or the Energy Charter Treaty, if such instrument is being delivered by the Energy Charter constituency in the near future. In the long term, a new institutional framework can be created within the Energy Charter legal framework.

I. Challenges faced in energy transit cooperation

1. Characteristics of energy transit cooperation

(1) High economic and political risks of energy cooperation

Energy issues have their specific characteristics. **From an economic view**, the exploration, exploitation, transit and processing of energy resources is capital intensive. The capital investment is high and return period long, thus the economic risks of investment are high. **From a political view**, energy supply is vital to the national economic lifeline and steady operation of a national economy, thus energy issues have high political sensitivity. Every country pays great political attention to their energy projects, and screen energy investments. The high political sensitivity of energy problems can make energy projects subject to political negotiation, and that leads to great influence on commercial operation of energy investments from the political sense. Thus, energy investments have characteristics of both high economical and political risk.

This high economic and political risk of energy investments means that high thresholds and pre-screening of projects are used. The above difficulties of energy projects make them difficult to appeal to private investment. The political sensitivity and risk means that the settlement of energy investment disputes usually needs support from government and even diplomatic mediators. Therefore, economic cooperation in energy has the characteristics of a lack of private investment, more government control, and usually an increased role of SOEs (State-Owned Enterprises) in energy investment.⁵

The investment risks are clearly reflected in Central Asia. **In terms of economics**, Central Asia's development is lacklustre, private investments are not sufficient, and investment in energy comes mainly from SOEs. Among all foreign direct investors, China is the largest.⁶ Furthermore, post- economic crisis, price fluctuations in the

⁵ International Crises Group, Central Asia Issue in China, Asia Report, 244th issue, 2013/02/27, page 11.

⁶ In 2013, China is the second largest export trade partner (a share of 17.1%, after Italy's 18.4%), the second largest import partner (16.8%, after Russia's 36.2%) and the fourth largest investment stock country of Kazakhstan (5,670 million dollars). Since 2011, China has been the largest in the four large trade partners of Turkmenistan. At the end of 2013, Chinese investment stock in Turkmenistan is 253 million dollars. In 2013, China is the second largest trade partner of Uzbekistan (after Russia) and the investment stock is 198 million dollars. At the end of 2013, China is the third largest trade partner of Kyrgyzstan, with investment stock of 866 million dollars. At the end of 2013, China is the third largest export trade partner of Tajikistan (12.9%, after Russia's 19.4% and Kazakhstan's 13.5%). Chinese investment stock in Tajikistan is 599 million dollars. Trade and investment statistics between China and Central Asia can be found in the report "Guidelines for the Country (Region) of Foreign Investment Cooperation" from MOFOM, Kazakhstan in page 39 and 42, Turkmenistan in page 20-23, Uzbekistan

international energy market influence the stability of Central Asia's energy supply. **In terms of politics**, Central Asia's geopolitical situation is complicated and energy cooperation has high political sensitivity. Internally, security situations, international and national separatism, and political and religious extremism are all factors that threaten Central Asia's regional stability. Terrorism is also a threat to energy cooperation. Externally, Russia sees Central Asia as its backyard, and the United States keeps a military presence in the region, primarily directed at the Taliban and al-Qaeda.⁷ The bilateral relationships between major countries such as China-America, China-Russia and China-India deeply influence the political and economic process in Central Asia, and they are a challenge for China-Central Asia energy cooperation that cannot be ignored.

(2) High complexity of energy transit regulation cooperation

Energy transit regulation has high complexity because it requires consistent and dynamic multilateral cooperation. Energy transit regulation cooperation involves many stakeholders such as energy export countries, transit countries and import countries, enterprises and local communities, **that shows it as being characteristically multi-party**. These **multi-sided characteristics** are shown in how energy transit regulation cooperation is manifested as legal cooperation at different levels, and is also closely connected to the political, economic and social affairs of the countries involved. Finally, energy transit regulation laws are **multi-level** and have origins in both International Law and Domestic Law.

In energy transit regulation, the core interests of related stakeholders are different, and have a high degree of asymmetry. On the national level, energy transit is a mutual cooperative relationship among export countries, transit countries, import countries and even countries with potential cooperation. **Import countries** have already invested a lot in energy export and transit countries, and want a stable supply of energy products. Thus, once they have made an investment and signed a contract, import countries undertake the highest risk and have the most concern over stable energy transit. Compared to them, **transit countries** do not have as much interest in maintaining energy transit pipelines, unless they can benefit from energy transit projects. **Export countries** and their enterprises pay more attention to the stable export and influx of foreign capital, while the local communities of resource countries retain concerns about whether energy exploitation and investment can bring them

in page 20-22, Kyrgyzstan in page 21-23, Tajikistan in page 27-29, http://www.fdi.gov.cn/1800000121_10000033_8.html.

⁷ WANG Haiyan, Energy Cooperation of SCO Member Countries : Trend and Issues, Russian Studies, 3rd issue, 2010.

benefit. **Potential and existing cooperation countries** are in a competitive position, with possible competition formed among importing countries for their support.

In energy transit regulation, legal problems, political problems, economic problems and social problems are all intertwined. Although energy transit regulation cooperation appears primarily as an intra- and inter-country legal issue, it actually reflects the political, social and economical problems of energy exploitation and transit. Firstly, energy transit cooperation is a series of economic issues of purchasing and supplying of energy trade, investment, transit, pricing and maintenance. Therefore, the main content of energy transit regulation cooperation is about access conditions, the price of supply, and Non-Discrimination treatment. Secondly, because of the political sensitivity of energy problems, energy cooperation relies on a sound political relationship among countries and is deeply influenced by regional geographical relationships. Those geographical relationships could be of a military, culture, anti-terrorist, race, or territorial nature, not directly related to energy, but perhaps influence the realities of energy cooperation. Finally, upstream energy transit projects involve energy exploitation, and downstream involve municipal infrastructure such as electricity, chemical processing, and gas which are of wide social involvement. It is also closely related to the benefits of local communities along the line of energy transit projects, influencing social issues such as local employment, environment protection, corporate governance and even government governance (such as corruption, bribery and transnational crimes).

There are two levels of frameworks that exist in energy transit regulation, International Law and Domestic Law. International transit laws originated from both International Law and Domestic Law. There is no unified energy transit legal system in the world, yet.⁸ The fifth part of "The United Nations Convention on The Law of the Sea", 1982, stipulated submarine pipeline activity rules, the tenth part regarded the land pipeline transit system;⁹ and the "Energy Charter Treaty", 1994, contains particular energy transit articles and makes a Principle of Non-Interference clear.¹⁰

⁸ YANG Zewei, Some International Law Issues on Energy Pipeline Transit, Journal of Jinan University, 5th issue, 2007.

⁹ Article 19, Paragraph 1 of The United Nations Convention on the Law of the Sea stipulates: "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state..." Subparagraph H under article 2 stipulates the situations related to cross-border pipelines that exclude freedom of transit, which is when serious pollution contrary to the Convention is made, coastal counties can take reasonable measures to pipeline issues.

¹⁰ The Principle of Non-Interference is formulated for those transit interruptions which are not caused by pipeline transit itself. Article 7, paragraph 6 of Energy Charter Treaty stipulated in detail that "A Contracting Party through whose Area Energy Materials and Products transit shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products...". This principle of the Energy Charter Treaty is legitimate theoretically, but in practice, some states and experts believe it

However, the negotiations of an energy transit protocol under this article have not been concluded because of a divergence between Russia and EU.¹¹

The GATT (General Agreement on Tariffs and Trade) also applies to energy trade, thus energy transit disputes related to trade are applied to the dispute settlement mechanism under WTO.¹² There are also some countries who have signed inter-governmental agreements or treaties on energy transit, such as the America and Canada transnational pipeline agreement in 1977, and the Britain and Ireland agreement on gas pipeline transit in 1993. As for the practical rules of International Law, the Principle of Freedom of Transit,¹³ Principle of Non-Discrimination,¹⁴ and the Principle of Non-Interference are the most common principles that govern energy transit.¹⁵

The Trade, Investment and Energy Legal Relationship between China and Central Asia

Countries in Central Asia	Date of signing the Energy Charter Treaty	WTO status	Date of signing Bilateral Investment Agreement with China
Kazakhstan	17/12/1994	Observer	10/08/1992
Kyrgyzstan	17/12/1994	20/12/1998	14/05/1992
Tajikistan	17/12/1994	2/03/2013	09/03/1993
Turkmenistan	17/12/1994	None	21/11/1992
Uzbekistan	05/04/1995	Observer	13/03/1992, 19/04/2011

is too idealized. In real international energy transit, energy pipelines are regarded as a tool for political games among countries. There is often political conflict behind energy disputes and the Principle of Non-Interference ignores the influence of politics on countries' energy policy and decisions, to some extent.

¹¹ The dispute settlement article in existing protocols is the ad hoc arbitration in article 27, paragraph 3 of Energy Charter Treaty. In 2003 the Energy Charter released the Inter-Governmental Model Agreement on Cross-Border Pipelines (IGA).

¹² The principle of Non-Discrimination is the most normal and basic principle in International Law. WTO regards the principle of Non-Discrimination, principle of Market Opening and principle of Promoting Fair Competition as three basic principles. Pipeline transit that comes from or goes to other contracting countries should not be limited or delayed unnecessarily. The tariff, transit tax and other transit fees should apply to the principle of Non-Discrimination. Furthermore, some countries stipulate in domestic laws that the operator of an energy pipeline cannot engage in energy trade business and should offer service for downstream energy consumers according to the principle of Non-Discrimination.

¹³ The principle of Transit Freedom is similar to the wayleave and easement in domestic law and freedom of navigation in international law. In the energy sector, it is reflected on that when pipeline transit crosses other countries' territories, the benefit of the transit country shall not be damaged.

¹⁴ The Principle of Non-Discrimination can be reflected as principle of national treatment, most-favored-nation treatment and reciprocal treatment.

¹⁵ YANG Zewei, Some International Law Issues on Energy Pipeline Transit, Journal of Jinan University, 5th issue, 2007, 49-51.

Take the International Legal framework of energy transit between China and Central Asia as an example. Firstly, China has signed inter-governmental agreements with Central Asia and Russia,¹⁶ but these agreements have not distinguished any type of dispute and negotiation is the only way for settlement.¹⁷ Related enterprises have also signed commercial cooperation agreements.¹⁸ Secondly, WTO mechanisms apply to energy trade, which includes energy transit, but Kazakhstan, Turkmenistan and Uzbekistan, China's energy import origin countries, have not joined the WTO. Thirdly, bilateral investment agreements signed between China and Central Asia countries are in very early stage, with a low degree of protection, and the arbitration mechanism only applies to those disputes (including energy investment disputes) related to the amount of compensation levied. Fourthly, although Central Asia countries are all constituents of the Energy Charter, China has not signed the Energy Charter Treaty, thus the transit article and dispute settlement mechanism under the Energy Charter Treaty do not apply to energy transit disputes between China and Central Asia countries.

The Domestic Law of countries who have energy projects is also an important legal origin governing energy projects' operation. For example, Kazakhstan has enacted energy laws such as the "Oil Law", "Investment Law", "Underground Resource and Underground Resource Utilization Law" and "Natural Gas Law".¹⁹ China enacted laws and regulations such as "Rules for the implementation of the regulations for the protection of power facilities" (1992), "Oil and Gas Pipeline Protection Ordinance" (2001), and "Oil and Gas Pipeline Protection Law" (2010) successively.

¹⁶ The intergovernmental agreements on energy issues signed between China and Central Asia include the "Agreement on Cooperation in the Field of Oil and Gas", "Agreement on China and Kazakhstan Natural Gas Pipeline Construction and Operation" and "Agreement on Avoidance of Double Taxation" signed by China and Kazakhstan; "General Agreement on Implementation of Chinese Natural Gas Pipeline Project and Turkmenistan Natural Gas Sales to China", "The Joint Statement on Further Consolidate and Develop Friendly Cooperation Relations Between China and Turkmenistan" signed by China and Turkmenistan; "Agreement Between People's Republic of China and Uzbekistan on the Construction and Operation of Sino-Uzbekistan Natural Gas Pipeline" signed by China and Uzbekistan, etc.

¹⁷ LIN Chao, Research on the Dispute Settlement Mechanism of Energy Transit, Liaoning University master degree thesis, 2014.

¹⁸ For example, the "Agreement on Basic Principle of Sino-Kazakhstan Natural Gas Pipeline Construction and Operation", "Agreement on Basic Principle of Crude Pipeline Construction from Atasu in Republic Kazakhstan to Alashankou in People's Republic of China" signed by China National Petroleum Corporation (CNPC) and Kazakhstan National Petroleum and Natural Gas Corporation, "Agreement on Principle of Sino-Uzbekistan Natural Gas Pipeline Construction and Operation" signed by CNPC and Uzbekistan National Oil and Gas Company, etc. However, what should be excluded are the related cooperation agreements signed by enterprises and the country of related transit projects, such as "Agreement on Basic Principle of Sino-Turkmenistan Natural Gas Pipeline Construction" signed by CNPC and Turkmenistan Ministry of Oil and Gas Industry and Mineral Resource. LIU Zaihui, Some Legal Issues on China and Central Asia Energy Cooperation, Xinjiang Social Science, 2nd issue, 2009.

¹⁹ For detailed analysis see LIU Zaihui, Some Legal Issues on China and Central Asia Energy Cooperation, Xinjiang Social Science, 2nd issue, 2009.

2. Summary of the types of energy transit disputes

Energy transit issues have complicated characteristics that are multi-party and multi-level, thus energy transit disputes have various forms involving different parties, different content, different origins and different effects. For example, regarding dispute parties, possible energy transit disputes include: inter-government disputes; disputes between government and enterprises; disputes between investors and host countries; disputes among enterprises; and disputes between enterprises and local communities. Regarding content, possible energy transit disputes may include: trade disputes, such as disputes on quantity, quality, price, methods of payment and delivery of goods; investment disputes, such as disputes on investment contracts implementation and the process of energy exploration; and environment disputes.

This paper gives particular emphasis to the origins, influences and effects of energy transit disputes. Summarizing energy transit disputes from the perspective of origin can make one comprehend the producing mechanism and transmission logic. Looking at energy transit disputes with regard to their effects can help in analysing political, economic and social repercussions, and thus can provide guidance towards energy transit dispute regulation cooperation and dispute settlement mechanisms. This also makes the principles of problem-orientated cooperation clear.

(1) The various origins of energy transit disputes

The origins of possible energy disputes include: disputes caused by politics, such as geopolitical factors like territory, race, history, religion and so on; disputes caused by economics, such as agreement-implementation issues induced by price fluctuations of energy resources or products, market principles, access discrimination, price discriminate of energy transit market; disputes caused by technical reasons, such as technical pipeline problems or emergent stoppage of energy transit facilities; disputes caused by environmental reasons, such as emergent environmental incidents, long term damage and pollution of the local environment; disputes caused by local community interests, such as employment and interest protection of a local community; and security disputes caused by accidents, planned crimes and terrorist attacks.

Disputes caused by political reasons

Disputes caused by political reasons at home and abroad are the main obstructive factors troubling energy cooperation. China and Central Asia have extensive common interests in regional security and national unity, as turbulence in Central Asia

influences not only trade and investment between China and Central Asia, but also stability of Northwest China.²⁰ At the domestic level, Central Asian countries are in a period of social transition, with economic development that is not stable enough and domestic groups that have conflicting interests. For example, the Color Revolution happened in Kyrgyzstan in 2010,²¹ and conflicts between Kyrgyz and Uzbeks have influenced China's investment and trade in the region.²² At the international level, the geopolitical environment in Central Asia is complicated, with great powers such as America and Russia retaining considerable strategic influence. It is worth mentioning that China and Russia have cooperation as well as competition in the region; although both sides have notable cooperation in regional security, their competition in the economic and energy fields is also notable. For example, China and Russia lack effective coordination in gas imports and have both signed gas purchase contracts with Turkmenistan. In 2008, Russia raised the gas price unilaterally, and also increased a gas transit tax.²³

Disputes caused by economic reasons

Energy cooperation is firstly an economic cooperation project. Due to changes in the market environment, parties may develop disagreements on conditions that have been already reached, such as energy transit prices, the quality and quantity of the products, or accessory conditions. A typical situation is when energy export countries demand a raise of transit prices because of price fluctuations in the energy market, capital shortages caused by economic crises, or a worsening economic situation. Another reason that cannot be ignored is change in the domestic regulation system, which causes regulation environment changes, such as Non-Discrimination treatment in energy markets or rules for market access. These can trigger disputes in energy trade and investment, breach of contract, etc.

²⁰ Deputy Foreign Minister CHENG Guoping pointed out in Shanghai Cooperation Organization Summit that the peace and stability of Central Asia is related to the core interest of China, as well as being in the interest of SCO member countries. The Ministry of Foreign Affairs will not allow such unrest as in West Asia and North Africa to happen in Central Asia. 2012/02/08, <http://news.sina.com.cn/c/2012-06-08/053924556861.shtml>.

²¹ Oliver Brauner, Protection for Chinese Citizens in Kyrgyzstan—Evacuation in 2010, *International Politics Quarterly*, 2nd issue, 2013, 30-35.

²² International Crises Group, *Central Asia Issues in China*, Asia Report, 244th issue, 2013/02/27, page 11.

²³ LEI Lin, WANG Weiran, International Symposium on "The Form of Central Asia Power Balance and Development of Shanghai Cooperation Organization", *Journal of Xinjiang University*, 4th issue, 2010. PANG Changwei, CHU Zhaohai, Analysis of Turkmenistan Natural Gas Export Diversification Policies and Decision-making Mechanism, *Russian Studies*, 6th issue, 2009.

Disputes caused by technical reasons

Energy pipeline technology refers mainly to standardised, required engineering indicators for oil, gas and coal transit pipelines. These include, for example, how the diameter of a pipeline decides energy volume, the actual pressure bearing ability decides pipeline security, and the route and the techniques decides the loss of energy transit. Disputes caused by technical reasons mainly involve transit stoppage due to issues during engineering construction and maintenance and operation of energy transit.

Disputes caused by local community protection

Energy projects normally happen between foreign investors and host country government or state-owned enterprises, and do not directly involve local communities. Governments and state-owned enterprises always pay excessive attention to relationships with local governments in their foreign policy and overseas operations, but less attention to relationships with local communities. Differences in economic development of Central Asia countries are big, there are conflicts between different regions and communities, and the benefit that different communities get from Chinese investment varies. In addition, there are also problems of government corruption and multinational corporation crime, as well as the xenophobic nationalism of Central Asian people towards Chinese investment.²⁴ Thus, during turbulent periods, China's investment security cannot be ensured consistently.

Disputes caused by environmental issues

The relationship between energy pipelines and the environment appears mainly in the form of earth or ocean pollution caused by leakage, the influence of construction on the flora and fauna, and the potential influence of pipelines on the environment, such as pollution of underground water. The ecosystem of Central Asia countries and northwest China is fragile, thus the environment problems should not be ignored. In energy cooperation, the harmony between energy pipelines and environment should be adequately valued by all countries at the same time.

²⁴ International Crises Group, Central Asia Issues in China, Asia Report, 244th issue, 2013/02/27, page 14-15.

Security disputes caused by non-traditional security incidents

Non-traditional security incidents, such as terrorism and multinational crime, are a challenge that troubles the stability of Central Asia.²⁵ At the founding of the SCO, the “Shanghai convention for combating Terrorists, Separatism and Extremism” was signed,²⁶ which makes combating these three forces a main mission of this organization. After that, further safety-oriented agreements, such as the “SCO Convention against Terrorism”, “Anti-drug Cooperation Agreement” and “Joint Agreement of crime-fighting” were signed. Crime and terrorism related to oil may all directly influence energy transit security in the future.

(2) The complicated influence of energy transit disputes

A proper solution for energy transit disputes relies on coordinating multiple dimensions of influence. In regard to the influence and effects of disputes, complicated energy transit disputes have economic, political and social dimensions. At the national level, disputes caused by economic and technical reasons mainly influence the economic cooperation relationships of related countries, and thus belong to economic dimension of energy transit. Disputes caused political reasons and accidents will mainly influence the political relationships of related countries, or the political dimension of energy transit, and, finally, disputes caused by environmental reasons and protection of local community interests will mainly influence the social governing of those local communities along an energy transit route, and thus belong to the social dimension of energy transit. What is worth noticing is that political issues in energy transit are sometimes fraudulent, and may show up in the form of economic or social issues.

Beginning with the influence and effects of energy transit issues, and considering the occurrence and transmission mechanism, we can arrive at problem-oriented energy cooperation principles: economic issues should follow market principles, encouraging free competition in markets and autonomy of will; political issues should respect the sovereign equality of every country and jump start political consultation; and,

²⁵ SUN Zhuangzhi, The Hot Issues and Trend Analysis of Security in Central Asia, Journal of Xinjiang Normal University, 2nd issue, 2011. (The author summarizes hot issues that influence the security situation of Central Asia: political unrest in Kyrgyzstan, the extremist forces and transnational crime issues in Central Asia, resource conflicts among Central Asia countries, the border conflict of Fergana, complicated competition among main powers, etc.)

²⁶ Republic Kazakhstan, People’s Republic of China, Republic Kyrgyzstan, Russian Federation, Republic Tajikistan and Republic Uzbekistan have signed “The Shanghai Convention for Combating Terrorists, Separatism and Extremism”, 2001/06/15.

regarding social issues, the internal affairs of every country should be respected and sustainable development sparkplugged.

The social influence of economic issues is not significant, and is easy to segregate from political issues, thus it can be settled according to market principles and with legalised dispute settlement mechanisms. For example, considering economic issues, we should encourage enterprises to incorporate commercial arbitration articles in contracts and encourage countries to allow private investors to have legalised dispute settlement mechanisms, such as investment arbitration, in international investment agreements, domestic law, or investment contracts. Considering the settlement mechanisms of disputes triggered by technical reasons, we should encourage the establishment of regular communication mechanisms among the technology departments of related countries, enhance construction quality of energy pipelines to avoid pipeline accidents caused by technical issues; promote technical cooperation between private enterprises and state-owned enterprises; and formulate united oil and gas pipeline safety evaluation criteria and implement compulsive safety assessments.

The dominant logic of political issues is the geopolitical competition between related countries, and energy transit disputes are only a medium or tool of this competition. Thus a proper mediation mechanism should be introduced to ensure transit safety. Furthermore, countries should focus on building a mechanism for pipeline transit information and accident sharing to ensure energy transit security cooperation. Further steps could include enhancing real time monitoring of a given pipeline in associated countries; building up a emergency response mechanism in order to locate accident areas quickly, thereby reducing associated economic loss; enhancing cooperation in combating transnational crimes, and strengthening cooperation in combating terrorists, separatism and extremism; and, finally, related countries can also enact domestic pipeline protection laws.

Social issues are closely related to local governance systems and local community protections, so, in dispute settlement, the balance of all parties' benefits should be considered and local remedies should be the priority choice, further supplemented by political negotiation between related countries. In addition, Chinese enterprises investing overseas should enhance corporate governance and responsibility, increase input in local employment, community construction and communal facilities, and endeavour to benefit all stakeholders with energy development. Furthermore, in pipeline construction and operation, all countries should pay full attention to the importance of environmental issues, and execute environment impact assessments,

establish emergency plans for pipeline leakage, and set up and complete a legal system of energy pipeline pollution responsibility.

This section discusses problem-orientated institution construction principles, and defines three basic cooperation principles in energy transit disputes:

1. economic-related problems, which are mainly settled through market principles;
2. social problems, mainly settled by local remedies;
3. political problems, mainly settled by inter-state diplomatic channels.

These three principles form an energy disputes framework, from economy to society to politics. In the next section, we will discuss Central Asian multi-element energy transit disputes settlements, combined with study of energy transit dispute categorization, and with the comparative institutional advantages of international laws, domestic laws and diplomacy studies.

II. Dispute settlement mechanisms

1. The policy option of dispute settlement mechanisms

Energy transit disputes are a special issue in international goods transportation. For a country, available dispute settlement mechanisms include early warning mechanisms, host countries' local remedies, diplomatic negotiation, mediation, international arbitration, and international judicial adjudication.

(1) Early warning mechanisms

The Early Warning Mechanism is a mechanism under the Energy Charter which can provide for a non-binding framework aimed at preventing and overcoming emergency situations related to the transit and supply of energy products through cross-border grids and pipelines. Its methodology includes exchange of information and responses to requests for information, consultations, confirmation of information and monitoring, risk evaluation, and recommendations for action in view of an emergency situation or the threat of an emergency situation.

(2) Local remedies

The local country remedy system is the default settlement mechanism of international energy disputes in the countries where energy transit disputes occurred. Energy transit disputes should be settled by local judicial institutions, unless otherwise stated by other international treaties or relevant contracts. Notably, some

energy transit disputes are of high social and political sensitivity, and handling by host countries themselves is advisable.

However, the malpractices of domestic law systems cannot be ignored: it is hard for foreign investors to trust domestic law systems, for the operation of the law system of a country is not very transparent to another contracting country. It is difficult for a contracting country to observe and judge whether another country is fulfilling obligations of related international treaties through the practice of domestic law. In other words, if the law system of a country has high transparency or if two countries have a low cost of observing each other, there will probably be some applicability of domestic regulation systems.

For example, article 25 of China's "Rules of land oil exploitation of foreign cooperation" stipulates that if parties under a contract for land-based oil resource exploitation are in dispute, they should settle it by negotiation or mediation, and if negotiation or mediation does not work, they can submit it to Chinese arbitral institutions or other arbitral institutions according to the contract or written arbitration agreement. Article 50 of "The Law of Oil and Gas Resources" of Turkmenistan stipulates that all other disputes, including those between subcontractors, legal persons and Turkmenistan citizens, will be settled by a judicial institution authorised by Turkmenistan unless otherwise stipulated. "The Law of Investment" of Kazakhstan also stipulates that investment disputes can be settled by a Kazakhstan court according to international treaties and existing laws through, or by, the international arbitral court stipulated by the agreement signed by both sides.²⁷

(3) Diplomatic negotiation

The most general and efficient way of international energy dispute resolution is that sovereign states' governments proceed with diplomatic negotiation and mediation directly. This is because energy is of fundamental national interest and security. A very typical example in practice is the 2009 gas dispute between Russia and Ukraine. Russia closed the gas pipeline supplying gas to European through Ukraine because of the gas trade dispute between the two countries, and this action had a serious impact on the gas supply of European countries. Such a contentious dispute can only be resolved by the negotiation of Russia and related countries.

Comparatively, diplomatic negotiation is more flexible when launched, and requires no prior agreements. Once related countries reach an agreement, all parties in the

²⁷ LIU Zaihui, Some Legal Issues on China and Central Asia Energy Cooperation, Xinjiang Social Science, 2nd issue, 2009.

dispute normally abide by it automatically. Of course, diplomatic negotiation launched by a given country has high political sensitivity, and it probably influences the overall diplomatic situation between the two countries. Therefore, diplomatic negotiation has limited functionality when the two countries have a close political relationship, or the home country is weak. In this situation, sometimes diplomatic efforts cannot reach a result even though they have been launched. Therefore, in general, diplomatic negotiation can only be regarded as the first step of reaching a peace settlement in energy disputes. It interacts with mediation and international arbitration, and its application will wind down with the deepening of systematism and legislation of international dispute resolution.

(4) Conciliation

The biggest difference between conciliation and diplomatic negotiation is third-party involvement. Diplomatic negotiation is between directly involved countries; conciliation means that a third-party (country or international organization) brings the involved countries together for negotiation. Third-party involvement changes the assessment and calculations of each side, and enlarges the possibility of dispute reconciliation. The success of conciliation depends largely on the strength and goodwill of the third-party: only when the third-party is powerful and has strong policy initiatives can conciliation be done effectively.

A conciliation mechanism is provided under Energy Charter Article 7. Detailed Conciliation Rules for Transit Disputes were decided upon at the annual conference of the Energy Charter in 2015, and includes: Notification of a dispute, Appointment of conciliator, Resignation, Death or incapacity of conciliator, Disqualification of conciliator, Objections to competence, Conduct of Conciliation Proceedings, Representation and assistance, Witnesses and experts, Administrative assistance, Co-operation of parties with the conciliator, Proposals for settlement of the dispute, Agreement by the parties, Recommendation/Decision of the conciliator, Termination of conciliation proceedings, etc.

(5) International judgment and international arbitration

Energy transit disputes can also be resolved by international judgment and international arbitration. Article 297 of the "United Nations Convention on The Law of The Sea" stipulates that "when [a] dispute occurred in regard to the free use of the rights specified in article 58 of navigation, overflight or laying submarine cables and pipelines of contracting parties, dispute resolution mechanism including international court judgment under the Convention should be applied." Similarly, the Energy Charter Treaty also provides an international arbitration mechanism: if there is

dispute between the investor and the host country where the investment project located, the investor can file an arbitration toward the host country in an international arbitral institution defined in the treaty (Article 26); and disputes between Contracting parties can apply arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL)(Article 27).

There are many advantages of solving energy transit disputes through international arbitration, and it has become an important way of solving international commercial disputes. The rules that international arbitration offer are mature and established, and it supplies a platform for solving disputes peacefully. Typical arbitral institutions include the "ICC Court of Arbitration" (ICCCA), "Arbitration Institution of The Stockholm Chamber of Commerce", "London Court of International Arbitration" (LCIA), and the "Hong Kong International Arbitration Centre" (HKIAC). Compared to domestic remedies, international arbitration has high neutrality and a good international reputation. Dispute parties can, to a certain extent, control the dispute solving process by appointing arbitrators. However, it is necessary to clarify that solving energy transit disputes through international adjudication or international arbitration needs a consensus among related States, before or after the dispute occurs.²⁸

2. Establishment of a multivariant dispute settlement mechanism

Comparing the four dispute settlement mechanisms, local remedies can balance the benefits of stakeholders, including local communities, and is suitable to settle energy transit disputes which have more social impact. Diplomatic negotiation and mediation can offer more control over dispute settlement to relevant countries. International arbitration and international adjudication have more legalised dispute settlement mechanisms, and thus their stipulations have high determinacy, high neutrality, and high international reputation, and they are suitable to settle energy disputes which embody the principles of the market economy.

Starting from the effects of energy transit influence, and considering the comparative advantages and functions of different dispute solving mechanisms, we can categorise the different energy dispute solving mechanisms: economic issues should be solved by international arbitration or adjudication; political issues should be solved by diplomatic negotiation or mediation among relevant countries; and social issues should be solved by local remedy.

²⁸ LIU Zaihui, Some Legal Issues on China and Central Asia Energy Cooperation, Xinjiang Social Science, 2nd issue, 2009.

All of these dispute settlement mechanisms are not exclusive; on the contrary, a multilayer and variably-focused energy transit dispute settlement system can meet the policy demands of different parties, and promote the systematic peaceful settlement of energy disputes. By using diplomatic negotiation and mediation as the prepositive procedure for international arbitration and judgment, we can screen out the simple disputes, saving time and money for relevant parties, and offer international arbitration as the last remedy method for those intricate disputes. Meanwhile, one can exclude the disputes of great social impact from international arbitration and leave them to a host country's local remedy.

For example, the Energy Charter Treaty sets up multi-dispute settlement mechanisms for energy transit problems. Firstly, the Treaty encourages contracting parties to settle disputes in a friendly manner, by diplomacy and negotiation (Article 27(1)). Secondly, for energy transit disputes, the Treaty stipulates a mediation mechanism in which conciliators appointed by the Secretary General can facilitate all parties of the dispute to compromise, and can decide provisional measures (including customs duties and other transit conditions) (Article 7(7)). Thirdly, the Treaty's inter-state dispute settlement mechanism, also called inter-state arbitration, applies to energy transit disputes (Article 27(2)). Fourthly, the scope of energy transit disputes is extensive, and probably overlaps with some energy investment disputes.

The Treaty also stipulates investor-state dispute settlement mechanisms, under which private investors can submit investment disputes against host countries to international arbitral tribunal (Article 26(1)), including investment contract disputes (Article 10(1)). Theoretically, investors may file substantial international transit disputes to international arbitral tribunals, and, practically, there are many investment arbitral cases about gas pipeline construction,²⁹ oil storage projects,³⁰ oil transit,³¹ and long-term energy transit contracts.³²

²⁹ Nabucco Gas Pipeline International GmbH in Liqu. v. Turkey, ICSID Case No. ARB/15/26.

³⁰ Mamidoil Jetoil Greek Petroleum Products Societe Anonyme S.A. (Greek) v. Albania, ICSID Case No. ARB/11/24.

³¹ Aktau Petrol Ticaret A.Ş. and Som Petrol Ticaret A.Ş. v. Kazakhstan, ICSID Case No. ARB/15/8.

³² ALPIQ v. Romania, ICSID Case No. ABR/14/28. Cem Uzan v. Republic of Turkey, SCC Arbitration.

III. The policy suggestion of establishing a Central Asia energy transit community

1. Establishing the general framework

Energy cooperation between China and Central Asia countries is based on good foundations³³ and complementary economic structures. China's advantages in technology, experience and market structure, coupled with the abundant resource endowment of Central Asia countries, gives both parties extensive space to cooperate. Therefore, the establishment of a Central Asia energy community should be considered. A proposed form could be the "China-Central Asia Energy Transit Community" (CCAETC).³⁴

The establishment of CCAETC should be energy security oriented, and of mutual benefit to balance the interests of producing, consuming and transit countries. The security of energy supply is vital to China,³⁵ and it is also crucial to ensure the sustainable conduct of energy transit cooperation. There are multiple meanings of energy supply security: firstly, it can promote the stable cooperation between energy import and export countries; secondly, it can ensure the legislation and de-politicisation of energy supply cooperation, and reduce the influence of non-commercial factors on energy cooperation; thirdly, it can set plans for environmental problems caused by energy transit and for the benefit protection problems of communities along the pipeline, as well as enhance the transparency and tolerance of energy transit cooperation and reduce energy transit accidents; and, fourthly, set flexible price adjustment mechanisms, to reduce the influence of price fluctuations for all cooperative parties.³⁶ For example, the China-Central Asia Gas Pipeline is an open multilateral cooperation project, not an exclusive one, and the cooperation involves not only enterprises of five relevant countries, but has also attracted Russian and American enterprises to participate in the pipeline project's technical cooperation and gas field development.

The development of CCAETC should apply a combination of legal rules and political principles. Energy issues have high political sensitivity, therefore, international energy cooperation should utilise the legal rules of high stability and the political principles

³³ QIANG Xiaoyun, Future of SCO Multilateral Cooperation—Pipeline Cooperation Prospect, Journal of Shanghai Business School, 2nd issue, 2010.

³⁴ YANG Zewei, A Preliminary Study on the Legal Framework of Northeast Asia Energy Community, Legal Science, 4th issue, 2006.

³⁵ YANG Zewei, Chinese Energy Security Issues : Challenge and Response, World Economics and Politics, 8th issue, 2008.

³⁶ LIU Zaihui, Some Legal Issues on China and Central Asia Energy Cooperation, Xinjiang Social Science, 2nd issue, 2009.

of high flexibility, and insist on the combination of the two. **Regarding political principles**, mutual political trust between China and Central Asia countries should be enhanced and a new international energy order should be set up.³⁷ **Regarding legal rules**, based on specific energy projects, the particular and specific rights and obligations of all parties should be stipulated as clearly as possible, offering essential legal norms for all parties' activity, facilitating trade and investment, and supplying multi-settlement mechanisms for energy dispute settlement. The CCAETC should establish a multi-layered dispute settlement system: diplomatic and political solutions being the first choice, with multilateral mechanisms an important approach, and legal methods being the last assurance.³⁸

CCAETC should insist on open regionalism.³⁹ Firstly, CCAETC should welcome countries out of the region to join the China-Central Asia cooperation framework to reduce the negative impact of power relations on their relations with China and Central Asia.⁴⁰ Secondly, China-Central Asia energy cooperation should be based on inclusivity, one that benefits all stakeholders, not only participating countries, but also domestic private groups such as local enterprises, surrounding communities, etc. China-Central Asia cooperation has two leading policies, regional security and energy supply. Indeed, the two policies can be harmonised—the key is that Chinese energy projects should not only maintain stable energy supplies going to China, but also must benefit local communities, promote local economic development, nation reconciliation and region cooperation, and maintain the stability of Central Asia. Theoretically, it is possible to promote the perfection and stability of Central Asia conflict management mechanisms through economic cooperation, as well as reconcile political and national tension through economic development.⁴¹

2. Institutional support

There are two possible ways to set up the CCAETC - through existing legal frameworks, or the establishment of completely new ones.

Option 1 – Establishing the CCAETC within existing frameworks

³⁷ YANG Zewei, *The Change of International Energy Order: The Role of International Law and the Character of China*, *Oriental Law*, 4th issue, 2013, 86.

³⁸ YANG Zewei, *Dispute Settlement Mechanism of Energy Pipeline Transit*, *Legal Science*, 12th issue, 2007, 90-91.

³⁹ <http://www.chinanews.com/gn/2015/03-28/7166241.shtml>

⁴⁰ The geopolitics of Central Asia are complicated and China, Russia and U.S. all have influence. LEI Lin, WANG Weiran, *International Symposium on "The Form of Central Asia Power Balance and Development of Shanghai Cooperation Organization"*, *Journal of Xinjiang University*, 4th issue, 2010.

⁴¹ Bernardaud Mariani, *The Interest and Role of China in Central Asia*, *SAFEWORLD Policy Brief*, October 2013, page 4.

The Energy Charter Treaty and its legally binding transit provisions could be seen as a basis for the institutional framework of the CCAETC. The five countries of Central Asia are all contracting parties of the Energy Charter Treaty. China joined the process as an observer by signing and adopting the International Energy Charter at the ministerial conference in The Hague in May 2015. During this conference, China explicitly expressed its interest regarding the transit negotiation under the ECT, and to promote energy cooperation with Central Asian states.

As a follow up to this statement, the National Energy Administration of China hosted the third international meeting of experts on reliable and stable transit of energy in November 2015 in Beijing in cooperation with the Energy Charter Secretariat (ECS) and the Government of Turkmenistan. This meeting was organised under the initiative of Turkmenistan, that, along with other 72 UN members, co-sponsored the UN General Assembly adopted Resolution 67/263 on "Reliable and stable transit of energy and its role in ensuring sustainable development and international cooperation". Under this resolution, the Government of Turkmenistan committed to host an international meeting of experts to discuss ways to secure reliable and stable transit of energy in the context of sustainable development. The Government of Turkmenistan and the ECS have jointly organised three international meetings with the aim to discuss the modalities of establishing a multilateral instrument on transit of energy resources.

This activity is relevant to the ongoing Energy Charter modernisation process. In 2015 the ECS undertook a comprehensive review of the implementation of ECT transit provisions, subject to the decision of the Energy Charter Conference in 2014. As a result of this review, the constituency of the Energy Charter expressed its readiness to start negotiations on a Framework Agreement on Energy Transit on a multilateral basis. In 2016 the Secretariat will prepare necessary grounds for such negotiations. Thus, it is expected that these two processes will merge into one under the Energy Charter Process in 2017 under the Chairmanship of Turkmenistan in the Energy Charter Conference.

As a comprehensive international organization with a core business of energy governance, the Energy Charter's legal framework, which includes energy investment, trade, transit, efficiency, etc. is complete in many areas. It would have to be complemented, however, regarding Transit. If based on the Energy Charter, the proposed CCAETC would be easier to establish, and have better system openness toward other countries and regions in the future. Thus, in this paper, we suggest that China should consider accession to the Energy Charter with active participation in its modernization process. Additional benefits of accession to the Energy Charter Treaty

would be a well-developed multilateral investment protection system, which is critically important in light of the significant Chinese investments into the energy systems of Central Asia.

The challenges of the above arrangement are related to the multilateral nature of negotiations within the Energy Charter framework, so the negotiation of the ECT transit agreement can be very difficult, but once finished, the protection scope of energy transit would be enlarged greatly. Another potential problem with the Energy Charter is, however, that its Contracting Parties are not necessarily ready to deliver a complement protocol on Transit in the near future. This was the case with the Energy Charter Transit Protocol, which was negotiated in 2000s, but failed.

Option 2 – New institutional framework for the CCAETC

Aside from the Energy Charter Process, it would also be possible to form a brand new institutional framework, still based on ECT principles. As mentioned above, the Energy Charter Treaty is a mature legal framework, and its unique function in energy transit enables it to become an ideal legal framework for new transit cooperation entities, if the CCAETC is being completed in appropriate manner.

As China is strongly propelling the initiative of “One Belt One Road”, another option is to establish a new institutional framework, which could be called the “Silk Road Energy Belt”.⁴² **First, on the strategic level**, the international energy market is complex and varied, and world energy consumption is shifting from developed countries to emerging economies. Their consumption proportion and their influence in the new world energy order is mis-matched, and they need to shift roles from being passive rule takers to being international energy rule makers or public products providers. Therefore, the “Silk Road Energy Belt” construction is conducive to emerging economies’ participation in enacting new energy technical standards, trade rules, and management systems, and to their striving for a leading role in international energy governance.

Second, on the policy level, the “Silk Road Energy Belt” construction accords with the direction of the “One Belt One Road” initiative, so it would be easier to get China to have more commitment in CCAETC. **Third, on the economic level**, China’s advantage in infrastructure construction, energy development, and manufacturing industry can be combined with Central Asia’s resource endowment. Infrastructure

⁴² LIU Zhizhong, Research on the Construction of China- Central Asia Free Trade Area, Northeast Asia Forum, 1st issue, 2014.

cooperation and energy resource development could become an integrating point for related parties,⁴³ making it a win-win project.

Of course, as a brand new institution, the “Silk Road Energy Belt” would undoubtedly need quite a lot of political and economic investment, and would need to be simultaneously propelled with the general framework of “One Belt One Road”. Besides, it is also necessary to tamp the economical and political basis of the “Silk Road Energy Belt” construction, to jump start cooperation, for mutual benefit and win-win results, and to enhance the attraction of the “Silk Road Energy Belt” development to target countries.

Taking into account political feasibility and institutional advantage, in the short term, it should be considered to use the legal framework of the Energy Charter as a basis on which to design and generalise the institutional framework and detailed rules of the Central Asia energy community. However, in case of successful modernisation of the Energy Charter, it has the potential to boost the Silk Road Energy Belt strategy to cover Eurasia and beyond.

3. Principles of rule design

Proceeding from the policy influence of dispute, and considering political feasibility, social acceptability and economic rationality, this research points out that CCAETC development should follow the three rule design principle of gradual cooperation, tolerant cooperation, and legal cooperation.

In consideration of the political influence of energy disputes and political feasibility, CCAETC should be designed follow the **gradual cooperation principle**, which means that rule design should consider the balance of entity rules and program rules, and the balance of legal rules and political declarations. This would promote Central Asia Transit Community development from a political declaration to legal rules, and from non-institutionalised cooperation to institutionalised cooperation.

For example, we can consider establishing bilateral or multilateral energy cooperation promoting organization based on a definite energy project, and establish a multi-disciplinary joint conference mechanism⁴⁴ that could propel definite and pragmatic rule negotiation in fields that have high potential of joint national

⁴³ LIU Zhizhong, Research on the Construction of China- Central Asia Free Trade Area, Northeast Asia Forum, 1st issue, 2014.

⁴⁴ Linda Jakobson & Dean Knox, New Foreign Policy Actors in China, SIPRI Policy Paper, 26 September, 2010. LI Wei, SUN Yi, Understanding China’s Economic Diplomacy, Foreign Affairs Review, 4th issue, 2010. CHANG Lulu, CHEN Zhimin, The Movement of Attractive Economic Power in China’s Diplomacy, Foreign Affairs Review, 3rd issue, 2014.

benefit, and sound cooperation basis. Furthermore, political declarations in fields that have a big difference in opinion could be boosted, and establishing an institutional organization, such as a work group, to propel the negotiations of legal rules could be considered. Finally, parties must pay attention to present and potential partners' various benefits and policy demands, develop multiform bilateral and multilateral cooperation through flexible and pragmatic means, reduce the geopolitical anxiety of related countries, and endeavour to attract more countries to accept and participate in the CCAETC.

In consideration of the social influence of energy disputes and their social acceptability, the CCAETC should be designed follow the **tolerant cooperation principle**, which means that rule design should realise the balance between stakeholders' rights and interests as much as possible, and bring relevant national governments, enterprises, and local communities into the process of rule design and dispute settlement. For example, we can consider establishing cooperation and dialogue mechanisms between governments, enterprises, and society; enhance the transparency of rule design, institution running and dispute settlement, and issue relevant information to the public regularly; and construct regional transportation information early warning and coordination mechanisms,⁴⁵ which improve the response speed to transit accidents and reduce energy transit security risk and potential losses.

In consideration of the economic influence of energy disputes and the economic rationality, the CCAETC should be designed to follow the **legal cooperation principle**, which means that rule design should focus on offering clear, beforehand rules to market participants, reduce transaction costs for energy market participants, and enhance competitiveness and the negotiation ability of all parties of the Central Asia Community in the international energy market. For example, in CCAETC development, we may consider setting up Central Asia region energy pricing mechanisms, establish prospective pricing mechanisms and a supporting system, encourage member states to proceed towards long and stable cooperation,⁴⁶ reduce cutthroat competition between regional countries, and enhance regional countries' influence in the international energy market.⁴⁷ Furthermore, we could establish coordination mechanisms for energy demand, supply and transit; encourage member states to coordinate in the aspects of pricing, transit access conditions and technical

⁴⁵ WANG Haiyan, Energy Cooperation of SCO Member Countries: Trend and Issues, Russian Studies, 3rd issue, 2010.

⁴⁶ WANG Haiyan, Energy Cooperation of SCO Member Countries: Trend and Issues, Russian Studies, 3rd issue, 2010.

⁴⁷ LEI Lin, WANG Weiran, International Symposium on "The Form of Central Asia Power Balance and Development of Shanghai Cooperation Organization", Journal of Xinjiang University, 4th issue, 2010.

standards; encourage every side to integrate international energy transit with domestic transit systems, forming a polybasic transit system;⁴⁸ ensure the priority supply to member countries;⁴⁹ establish a regional technology trading platform and intellectual property protection system; and promote integrative development of energy resources' "up-middle-down streams", shortening the conversion period from resources and technology to economic benefits.⁵⁰

IV. Conclusion

The economic and political risk of regional energy cooperation is high, the causes of energy disputes are various, and its influence is complex. Energy transit regulation cooperation involves various stakeholders internationally and domestically, with legal issues that interweave together with political issues, economic issues and social issues. The economic problems related to energy transit should mainly be settled by international arbitration and international judgment; the political problems should mainly be settled by diplomatic negotiation or mediation between relevant countries; and the social problems should mainly be settled by local remedy; thus, all kinds of dispute settlement mechanisms combine together, and form a multi-layer, polybasic energy transit dispute settlement system, which can systematically promote the peaceful settlement of energy disputes.

China and Central Asia countries have close energy cooperation, high economic complementarity, and a good cooperation basis, which should be further institutionalised through establishment of a "China Central Asia Energy Transit Community" (CCAETC). CCAETC should be energy security oriented, insist on mutual benefits and win-win results, combine legal rules with political principles, and focus on open regionalism. In the short run, it could rely on a multilateral transit framework established under the Energy Charter Treaty. China should play an active role in the negotiation process of the multilateral framework agreement initiated by the Energy Charter constituency in order to benefit from its provision, if such an instrument is being delivered in the near future. In the long run, China may propel development of

⁴⁸ Some experts propel to build a regional transportation cooperation mechanism, and the Six Countries of SCO are always try to promote the signing of "Agreement on the Facilitation of International Road Transport Among the SCO Members". After six rounds of negotiations, all countries have reached agreement in 18 articles out of 28 of the draft. See "The Great Potential of Transportation Cooperation in SCO" . <http://www.eaforum-xa.com/jiaobohui/view.asp?types=zhxw&id=334>

⁴⁹ WANG Haiyan, Energy Cooperation of SCO Member Countries: Trend and Issues, Russian Studies, 3rd issue, 2010.

⁵⁰ WANG Haiyan, Energy Cooperation of SCO Member Countries: Trend and Issues, Russian Studies, 3rd issue, 2010.

the “Silk Road Energy Belt” that covers Eurasia; and establish CCAETC based on political feasibility, social acceptability, and economic rationality, following design rules of gradual cooperation, tolerance cooperation, and legal cooperation.

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