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LEGAL ASPECTS OF ENERGY COOPERATION OF THE SHANGHAI COOPERATION ORGANIZATION MEMBER STATES

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Abstract. Energy is the main area of cooperation among the member states of the Shanghai Cooperation Organization (SCO). From project cooperation to "Energy Cooperation Club" agreements, the member states' desire to jointly build energy cooperation has achieved certain results. The existing SCO energy cooperation takes the form of declarations, agreements, statements, meeting minutes and memorandums of understanding, as well as principle provisions that lack clear responsibilities in treaties. It is soft at the level of international law, and it does not fully constitute a comprehensive legal cooperation mechanism. The laws of each member state lack stability and uniformity, and existing treaties do not have corresponding mechanisms to ensure the implementation of dispute settlement solutions. There is also a lack of interest coordination mechanisms accepted by member states, making it difficult to meet the needs of current and future SCO energy cooperation. In the future, only by giving full play to the role of the "Energy Cooperation Club" and establishing a comprehensive and effective legal mechanism for energy cooperation, including energy cooperation information sharing mechanism, energy cooperation environmental protection legal mechanism and energy dispute settlement mechanism can we fundamentally solve the problems in mutual energy cooperation. To strengthen the reciprocity, stability and standardization of cooperation, to create conditions and opportunities for energy cooperation among member states.

Keywords: Shanghai Cooperation Organization, energy cooperation, legal system, Energy club, Energy dispute settlement mechanism.

ПРАВОВЫЕ АСПЕКТЫ ЭНЕРГЕТИЧЕСКОГО СОТРУДНИЧЕСТВА ГОСУДАРСТВ-ЧЛЕНОВ ШАНХАЙСКОЙ ОРГАНИЗАЦИИ СОТРУДНИЧЕСТВА

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Аннотация. Энергетика является основной сферой сотрудничества государств-членов Шанхайской организации сотрудничества (ШОС). От проектного сотрудничества до соглашений «Клуба энергетического сотрудничества» стремление государств-членов совместно строить энергетическое сотрудничество достигло определенных результатов. Существующее энергетическое сотрудничество ШОС принимает форму деклараций, соглашений, заявлений, протоколов встреч и меморандумов о взаимопонимании, а также принципиальных положений, в которых отсутствуют четкие обязательства

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в договорах. Он мягок на уровне международного права и не представляет собой в полной мере всеобъемлющий механизм правового сотрудничества. Законодательствам каждого государства-члена не хватает стабильности и единообразия, а существующие договоры не имеют соответствующих механизмов, обеспечивающих реализацию решений по разрешению споров. Существует также отсутствие механизмов координации интересов, принятых государствами-членами, что затрудняет удовлетворение потребностей текущего и будущего энергетического сотрудничества ШОС. В будущем, только если в полной мере использовать роль «Клуба энергетического сотрудничества» и создать всеобъемлющий и эффективный правовой механизм для энергетического сотрудничества, включая механизм обмена информацией об энергетическом сотрудничестве, правовой механизм энергетического сотрудничества по охране окружающей среды и механизм разрешения энергетических споров, можно мы принципиально решаем проблемы взаимного энергетического сотрудничества. Укрепить взаимность, стабильность и стандартизацию сотрудничества, создать условия и возможности для энергетического сотрудничества между государствами-членами.

Ключевые слова: Шанхайская организация сотрудничества, энергетическое сотрудничество, правовая система, энергетический клуб, механизм урегулирования энергетических споров.

ШАНХАЙ ЫНТЫМАҚТАСТЫҚ ҰЙЫМЫНА МҮШЕ МЕМЛЕКЕТТЕРДІҢ ЭНЕРГЕТИКАЛЫҚ ЫНТЫМАҚТАСТЫҒЫНЫҢ ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ

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Аннотация. Энергетика Шанхай ынтымақтастық ұйымына (ШЫҰ) мүше-мемлекеттер арасындағы ынтымақтастықтың негізгі саласы энергетика болып табылады. Жобалық кооперациядан бастап «Энергетикалық ынтымақтастық клубы» келісімдеріне дейін мүше мемлекеттердің энергетикалық ынтымақтастықты бірлесіп құруға деген ұмтылысы белгілі нәтижелерге қол жеткізді. ШЫҰ энергетикалық ынтымақтастығы декларациялар, келісімдер, мәлімдемелер, отырыс хаттамалары және өзара түсіністік туралы меморандумдар, сондай-ақ шарттарда нақты жауапкершіліктері жоқ принципті ережелер түрінде болады. Ол халықаралық құқық деңгейінде жұмсақ және толық құқықтық ынтымақтастық механизмін құра алмайды. Әрбір мүше мемлекеттің заңдарында тұрақтылық пен біркелкілік жоқ, ал қолданыстағы шарттарда дауларды реттеу шешімдерін жүзеге асыруды қамтамасыз ететін тиісті тетіктер жоқ. Сондай-ақ мүше мемлекеттер қабылдаған мүдделерді үйлестіру тетіктерінің жоқтығы ШЫҰ-ның қазіргі және болашақтағы энергетикалық ынтымақтастығы қажеттіліктерін қанағаттандыруды қиындатады. Болашақта «Энергия ынтымақтастығы клубының» рөлін толық орындау және энергетика саласындағы ынтымақтастықтың ақпарат алмасу механизмін, энергетикалық ынтымақтастықты қоршаған ортаны қорғаудың құқықтық тетігін және энергетикалық дауларды реттеу механизмін қоса алғанда, энергетикалық ынтымақтастықтың кешенді және тиімді құқықтық тетігін құру арқылы ғана мүмкін болады. біз өзара энергетикалық ынтымақтастықтағы мәселелерді түбегейлі шешеміз. Ынтымақтастықтың өзаралығын, тұрақтылығын және стандарттауын нығайту, мүше мемлекеттер арасында энергетикалық ынтымақтастық үшін жағдайлар мен мүмкіндіктер жасау.

Түйінді сөздер: Шанхай Ынтымақтастық Ұйымы, энергетикалық ынтымақтастық, құқықтық жүйе, энергетикалық клуб, энергетикалық дауларды реттеу тетігі.

Introduction

The SCO is an international intergovernmental regional organization. The region where the SCO is located has abundant energy resources and a rapidly and steadily growing energy consumption market. Strengthening regional energy cooperation is of great importance to the economic development of the Shanghai Cooperation Organization countries and has an important impact on world and regional energy security. On July 4, 2023, Kazakhstan President Kassym-Jomart Tokayev called for strengthening energy cooperation within the Shanghai Cooperation Organization at a meeting of the SCO Heads of State Council and stated that Kazakhstan is ready to host a SCO energy conference, and proposed developing a "joint energy strategy" for the organization next year. Energy cooperation is not only an important connection point for economic cooperation among SCO member states, but also an important way to enhance the vitality and cohesion of the SCO. Therefore, establishing an effectively operating legal mechanism for energy cooperation and an energy dispute settlement mechanism can give full play to the energy complementary advantages of member states, strengthen organizational energy cooperation within the legal framework, and promote the organic formation of common interests in energy cooperation among SCO member states.

Methodology and literature

In the process of writing the article, the methods of historical analysis, literature analysis and comparative legal. The main purpose is to analyze the current difficulties in the legal protection of energy cooperation of the SCO through relevant documents, laws and regulations, so as to find an effective legal mechanism to solve the conflicts and contradictions in the process of energy cooperation and protect the common interests of energy cooperation among the SCO member states.

The article uses a series of important documents of the SCO, including the

declaration, agreements, statements, meeting minutes and memorandum of understanding. Most scholars and professionals have studied the legal mechanism of the SCO energy cooperation from a regional and multilateral perspective, which provides a reference and basis for this study. This paper also studies the laws of the SCO member states, and this comparative analysis is to find more effective legal ways for energy cooperation among the member states under the SCO framework.

Results and Discussion

Fundamentals of Legal Practice. The energy cooperation of the Shanghai Cooperation Organization is in a stage of steady progress, providing a practical basis for establishing an effective legal mechanism for energy cooperation and an energy dispute settlement mechanism.

China-Kazakhstan bilateral cooperation. In September 2001, the governments of China and Kazakhstan signed the Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on the Avoidance of Double Taxation and the Prevention of Tax Evasion on Income². In October 2002, the "Memorandum of Understanding on Cooperation in Geology, Minerals and Energy between the Ministry of Land and Resources of the People's Republic of China and the Ministry of Energy and Minerals of the Republic of Kazakhstan" was signed³. In December 2006, the "Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Customs Supervision of Energy Transport through the China-Kazakhstan Border Pipeline" was signed. In the same month, the Cooperation Strategy between the People's Republic of China and the Republic of Kazakhstan was signed⁴. It also mentioned that the two sides will support the economic entities of the two countries in implementing china-Kazakhstan crude oil pipeline and natural gas pipeline construction projects, expand cooperation in oil and gas exploration and development, and carry out cooperation in oil

² *The Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on the avoidance of double taxation and the prevention of tax evasion with respect to income, signed in September, 2001.* – URL: http://studysco.euroasia.cssn.cn/shzl/zywj/201309/t20130906_406498.html. (date of acces:10.10.2023)

³ *The "Memorandum of Understanding on Cooperation in Geology, Minerals and Energy between the Ministry of Land and Resources of the People's Republic of China and the Ministry of Energy and Minerals of the Republic of Kazakhstan" signed in October, 2002.* – URL: <http://treaty.mfa.gov.cn/web/detail1.jsp?objid=1531876863623>. (date of acces:10.10.2023)

⁴ *The Cooperation Strategy between the People's Republic of China and the Republic of Kazakhstan in the 21st Century, 2002.* – URL: http://studysco.euroasia.cssn.cn/shzl/zywj/201309/t20130913_415701.html. (date of acces:10.10.2023)

and gas processing, establishment of new power energy facilities and transmission of electricity to third country markets⁵. In April 2009, the "Memorandum of Understanding between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Package Cooperation in the Energy and Loan Fields" was signed⁶. These agreements are treaties between countries, have legal effect between the signatory countries, and are regulated by international treaty law [1].

After China proposed the policy of "jointly building the Silk Road Economic Belt with innovative cooperation models" in 2013, energy cooperation between China and Kazakhstan has developed by leaps and bounds, and the legal systems of the two countries in energy cooperation have also been continuously improved. In October 2023, under the witness of Kazakh President Tokayev, China National Petroleum Corporation and Kazakhstan signed a series of cooperation agreements. The two parties agreed to extend the No. 76 oil contract of the Aktobe Project and deepen oil and gas cooperation in Kazakhstan, and signed a memorandum of understanding on the development of renewable energy, deepening exchanges between the two parties in the fields of the entire oil and gas industry chain and new energy, and expanding green and low-carbon, etc. Practical cooperation. The agreements between these enterprises directly stipulate the rights and obligations of both parties, reflect the specific results of energy cooperation among the member states of the Shanghai Cooperation Organization, and are the specific implementation of inter-governmental bilateral treaties.

Cooperation with other member states. Kazakhstan and Russia signed a long-term energy cooperation agreement in 2002. In December 2012, China and Russia signed the "Memorandum of Understanding between the

National Energy Administration of the People's Republic of China and the Ministry of Energy of the Russian Federation on Cooperation in Energy Market Situation Assessment"⁷. These are also the most important practical explorations in building a legal mechanism for energy cooperation under the SCO framework.

Multilateral Energy Cooperation Treaty. On September 14, 2001, the prime ministers of the SCO member states signed the "Memorandum between the governments of the SCO member states on the basic objectives and directions of regional economic cooperation and the launch of the process of trade and investment facilitation"⁸. In June 2002, the SCO signed the "Shanghai Cooperation Organization Charter"⁹. This programmatic legal document promotes regional economic cooperation and global economic cooperation in legal form, and the provisions on energy cooperation have become the legal basis for multilateral energy cooperation. Prime Minister's Summits in 2003 and subsequent years will emphasize the importance of energy cooperation and put it at the top of priority cooperation. In early 2006, a special inter-country working group aimed at promoting energy cooperation among member states was formally established. In August 2007, the SCO Heads of State Summit proposed the concept of "energy mechanism" and established the principle of openness for cooperation. In October 2008, the "Protocol on the Exchange of Customs Energy Supervision Information among Member States of the Shanghai Cooperation Organization" was signed¹⁰. These documents form various "roadmaps" for deepening economic cooperation, especially energy cooperation, and provide a legal and institutional framework for regional energy cooperation.

Energy Cooperative Club. On December 7, 2013, some member states of the Shanghai

⁵ The "Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Customs Supervision of Energy Transport through the China-Kazakhstan Border Pipeline" signed in December, 2006. – URL: <http://treaty.mfa.gov.cn/web/detail1.jsp?objid=1626057426737>. (date of acces:10.10.2023)

⁶ The Memorandum of Understanding between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on Package Cooperation in the Energy and Loan Fields, signed in April, 2009. – URL: <http://treaty.mfa.gov.cn/web/detail1.jsp?objid=1531876926687>. (date of acces:10.10.2023)

⁷ The Memorandum of Understanding between the National Energy Administration of the People's Republic of China and the Ministry of Energy of the Russian Federation on Cooperation in Energy Market Situation Assessment, signed in December, 2012. – URL: <http://treaty.mfa.gov.cn/web/detail1.jsp?objid=1531877004571>. (date of acces:10.10.2023)

⁸ The Memorandum between the Governments of the SCO Member States on the Basic Objectives and Directions of Regional Economic Cooperation and the Initiation of the Trade and Investment Facilitation Process, Signed in September, 2001. – URL: http://studysco.euroasia.cssn.cn/shzl/zyw/201308/t20130830_398343.html. (date of acces:11.10.2023)

⁹ The Charter of the Shanghai Cooperation Organization, 2002. – URL: http://studysco.euroasia.cssn.cn/shzl/zyw/201309/t20130924_424796.html. (date of acces:12.10.2023)

¹⁰ The "Protocol on the Exchange of Customs Energy Supervision Information among Member States of the Shanghai Cooperation Organization" signed in October, 2008. – URL: <http://treaty.mfa.gov.cn/web/detail1.jsp?objid=1531875999802>. (date of acces:10.10.2023)

Cooperation Organization, as well as the organizations observer states and partner states reached an agreement on the formation of an energy club.¹¹ The memorandum was signed by representatives of Afghanistan, Belarus, Kazakhstan, China, Mongolia, India, Tajikistan, Turkey, Sri Lanka and Russia. The Energy Club helps business representatives and leaders of the above countries discuss issues in the energy field.

Dilemmas of legal enforcement. Existing legal documents are softly binding at the level of international law. Energy cooperation among SCO member states mainly takes the form of declarations, agreements, statements, meeting minutes and memorandums of understanding, as well as principle provisions in treaties that lack clear responsibilities. For example, Article 22 of the Shanghai Cooperation Organization Charter stipulates: "If disputes or differences arise in the interpretation or application of this Charter, the member states will resolve them through consultation and negotiation"¹². The SCO member Energy Club is a non-governmental consultative body, and its decisions are not mandatory for SCO member states, but are only suggestions¹³.

The instability of relevant laws in member states. The progress of energy cooperation among SCO member states is positively correlated with the stability of member states domestic legislation or joint participation in international law. However, the relevant laws have undergone major changes. For example, Kazakhstan revised the Law on Underground Resources and Utilization of Underground Resources three times in 2004, 2005 and 2007. In December 2009, Kazakhstan promoted the implementation of "Kazakhstan Content" through legislative means, and the accompanying "Law on Underground Resources and Utilization of Underground Resources" was revised [2]. Uzbekistan has also revised relevant tax items in its tax law, and Tajikistan has also revised its energy laws. The continuous modification and addition of laws have added variables to previously signed energy cooperation agreements and created obstacles for energy cooperation among member states.

In the SCO energy cooperation, the legal mechanism for multilateral cooperation has

not yet been established. Bilateral cooperation still occupies a dominant position relative to multilateral cooperation. Except for the Central Asian energy pipeline system, which passes through the territories of several countries, there is little active multilateral cooperation. In the long run, this will be detrimental to improving the efficiency of energy cooperation under the SCO framework, and there is an urgent need to establish a more effective legal mechanism for energy cooperation.

There is no complete dispute resolution mechanism. The types of disputes stipulated in the SCO Charter are only disputes arising from the interpretation and application of the Charter. Disputes can only be resolved through consultation or negotiation. There are no provisions on procedural issues such as the validity of consultation or negotiation agreements. This is It is difficult to effectively resolve complex disputes among member states [3].

The energy cooperation ecological and environmental protection mechanism needs to be improved. The development and utilization of energy sources can easily cause significant damage to the ecological environment and endanger regional ecological security. SCO member states are all faced with conflicts and dilemmas between economic development and environmental governance during their development process. The environmental protection legal system is immature and environmental legal standards vary widely. There are currently laws, mainly including the Environmental Protection Law promulgated by China in 1989, the Energy Conservation Law passed in 1997, and revised in 2018. However, they are macro-level guidance regulations and are not very operable in practice. In 1997, Kazakhstan promulgated and implemented the Environmental Protection Law. In 2009, the Environmental Protection Law was revised. Some of the outdated provisions are no longer applicable to the current environmental pollution problems caused by the development and utilization of energy.

Legal development advice. At present, the energy situation is complex, there are such as energy crisis, energy security, environmental pollution, energy disputes and other problems. There is an urgent need to give full play to the

¹¹ The SCO member states have reached an agreement to form an energy club. – URL: http://studysco.euroasia.cssn.cn/shzl/jmhz/201406/t20140623_1222927.html. (date of acces:12.10.2023)

¹² The Charter of the Shanghai Cooperation Organization, 2002. – URL: http://studysco.euroasia.cssn.cn/shzl/zywj/201308/t20130829_397892.html. (date of acces:12.10.2023)

¹³ The Kazakhstan 2050 Strategy. – URL: https://www.akorda.kz/en/official_documents/strategies_and_programs (date of acces:11.10.2023)

role of the SCO in promoting regional economic cooperation and economic globalization, opposing trade protectionism, striving to eliminate trade barriers within the SCO region, and promoting the docking of development strategies, energy trade, and legal services among member states. Framework docking to ensure and promote better and faster regional development. Therefore, the consensus reached by the consensus of the SCO member states to establish a fair, just and reasonable legal mechanism for energy cooperation, not only strengthens the internal cohesion of the SCO, but also provides a strong guarantee for energy cooperation among the member states, so as to achieve equality, mutual benefit and common development.

Establish a legal mechanisms for regional energy and multilateral cooperation. Based on bilateral cooperation, we promote the establishment of a legal mechanism for multilateral cooperation in energy in the SCO region and move towards integrated energy cooperation. We must jointly uphold true multilateralism, firmly safeguard the international order based on international law, and promote the common values of all mankind. Promote fair and effective international cooperation, strengthen energy cooperation among member states, and achieve sustainable regional economic development. Therefore, it is necessary to establish a legal mechanism for energy community cooperation within the SCO framework, including the following recommendations.

Give full play to the role of the SCO club. On the basis of following the relevant basic principles of international energy law, such as energy principles, energy security principles, and energy sustainable development principles, we should build an energy supply and demand emergency mechanism and an energy information sharing mechanism.

Establish an energy cooperation information sharing mechanism. Information sharing is an important condition for SCO energy cooperation, and improving the level of international communications connectivity is the guarantee for smooth SCO information channels. Faced with challenges such as incomplete information, information asymmetry, low-quality information, and fragmentation, the SCO must strengthen information infrastructure and work together to create a cross-regional, all-round, and open interconnected energy information exchange and sharing platform. The energy information database promotes the effective

realization of SCO energy cooperation through an energy information sharing mechanism [4].

Establish a legal mechanism for energy cooperation and environmental protection. Energy production and consumption are always related to environmental issues. Environmental issues have now become a common concern of the international community and will affect the future development trend of the SCO energy cooperation legal mechanism. Therefore, it is necessary to jointly establish an environmental impact assessment system, build a scientific, orderly, and standardized SCO energy ecological and environmental protection mechanism, achieve the common goals of low-carbon economy and green development, and establish a good international image of the SCO.

Improve the legal dispute settlement mechanism for energy cooperation among member states. The dispute settlement mechanism is an important institutional guarantee for deepening cooperation and an important part of the SCO legal framework for energy cooperation. Energy cooperation may lead to more economic disputes between transnational economic entities. Due to the lack of familiarity and distrust between the parties to the dispute with each other's national legal system, legal environment and judicial system, or other reasons, the existing dispute resolution methods are not enough to meet the needs of transnational economic dispute resolution in the region. Therefore, it is especially necessary to establish a more complete dispute settlement mechanism under the SCO framework in accordance with the principles of fairness, rationality and balanced interests. Through the construction and improvement of the dispute settlement mechanism, It will create a stable, safe and predictable transnational energy investment environment for SCO energy cooperation.

Learn from the Energy Charter Treaty and the European Union (EU)'s legal system for energy cooperation. The Energy Charter Treaty includes legal systems in energy investment, energy trade, energy transportation, energy efficiency, energy and environment, as well as dispute settlement mechanisms in various fields, providing a normative environment for energy cooperation for member states. In particular, the trade-related dispute settlement mechanism adopts the legislative method of "World Trade Organization (WTO) reference". When at least one dispute is not a member of the GATT, a dispute resolution mechanism based on the General Agreement on Tariffs

and Trade (GATT) / WTO expert group model is adopted. If the dispute affects the trade affairs, the dispute party should first reach a dispute settlement plan through effective consultation. If the parties to the dispute fail to settle the dispute through consultation, good offices or mediation within the prescribed time, either party may submit to the Secretariat a written application containing the substance and provisions of the dispute, which shall be submitted to the General Assembly of the Charter and the States Parties. The final report adopted by the Charter Assembly is binding on the Parties. In addition, the legal system of EU energy cooperation is also worth learning. Although the EU for international organizations, but is different from the general international organization, the EU has a relatively complete and independent legal system, its effectiveness is higher than the member internal law, domestic law shall not conflict with the EU legislation, its organization system to sharing, legal system, decentralization and checks and balances.

Conclusions

The member states of the SCO are complementary in their energy aspects and have broad prospects for energy cooperation. The signing of bilateral or multilateral cooperation treaties on energy cooperation represented by China, Russia, and Kazakhstan was made under the framework of the SCO to build a legal mechanism for energy cooperation. The

most important practical exploration provides a practical basis for the improvement of the SCO energy cooperation legal mechanism. However, since bilateral cooperation in the SCO energy cooperation still occupies a dominant position relative to multilateral cooperation, the legal mechanism for multilateral cooperation has not yet been established. Existing legal documents are softly binding at the level of international law and do not have a complete dispute settlement mechanism. The instability of relevant laws in member states. The environmental protection legal system is immature. These have brought obstacles to energy cooperation among member states, thus restricting the comprehensive, in-depth and sustainable development of energy cooperation. The construction of legal mechanisms is an important link in future development. The SCO must take effective steps to make effective measures to promote the construction of a legal mechanism for energy cooperation as soon as possible and establish rules and standards for energy cooperation. The SCO should give full play to the role of the SCO club and establish regional energy multilateral cooperation legal mechanisms, legal dispute settlement mechanisms, energy cooperation information sharing mechanisms, and environmental protection legal mechanisms on the basis of bilateral cooperation to promote the effective development of SCO energy cooperation. Jointly build the SCO Energy Cooperation Community.

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