

UDC 34

Legal basis for Sino-Russian co-operation and arctic energy development

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Abstract

Sino-Russian Arctic energy cooperation and development is a key move to promote Sino-Russian friendship and cooperation and to achieve mutual benefit. Sino-Russian Arctic energy cooperation and development will help Russia break through the financial difficulties and technical problems of Arctic energy exploration and development and gradually form an emerging segment of Russia's energy export market. At the same time, it can also meet China's energy demand and enhance China's right to participate in the governance of the Arctic Commons. In order to maximize the value of Sino-Russian Arctic energy development as a whole, an all-round, multi-dimensional, and strongly relevant legal guarantee system for Arctic energy development should be established, combining international conventions, regional multilateral agreements, bilateral energy development agreements, and domestic special legal systems. Research methods in this article: formal and logical interpretation, systematic and comparative analysis.

For citation

Wan Xue (2024) Legal basis for Sino-Russian co-operation and arctic energy development. *Voprosy rossiiskogo i mezhdunarodnogo prava* [Matters of Russian and International Law], 14 (9A), pp. 406-416.

Keywords

Arctic, Sino-Russian Cooperation, Energy Development, Legal Basis.

Introduction

The Arctic region is an ice sheet and tundra centered on the Earth's North Pole, encompassing the Arctic Ocean and its islands, the North American continent, and the northern fringes of the Eurasian continent. It has a geographic area of approximately 8.2 million square kilometers. According to data provided by the United States National Geological Survey, the Arctic has oil reserves of about 90 billion barrels, natural gas reserves of about 166.9 billion cubic meters, and liquefied natural gas reserves of about 44 billion barrels. The accelerated melting of Arctic sea ice and the continuous maturation of oil and gas extraction technology have made the value of energy development in the Arctic region increasingly apparent. China's rapid economic growth and the lack of oil and gas reserves in its energy mix have led to a continued reliance on energy imports, but with the political turmoil in the Middle East and the unpredictability of the international economic situation, there is an urgent need to open up diversified energy import channels in order to transfer the existing energy dilemma.

Russia is a major player in Arctic energy development and utilization, as well as a long-term trade partner with China. Restricted by the European and American diplomatic blockade and economic sanctions, Russia's Arctic energy development urgently needs foreign capital injection and technical support. China has the triple cooperation advantages of technology, capital, and demand, which can provide Russia with high-level technology and capital support and also solve the crisis of overcapacity of oil and gas resources in Russia, making it the best partner for Russia's Arctic energy development. Academics on Sino-Russian Arctic energy cooperation and development mainly focus on the theoretical analysis of the economic and political value of energy cooperation and development and seldom involve the field of legal systems. Without the legal system's guarantee, the strategic picture of Sino-Russian energy cooperation and development is like a castle in the air. A fair and reasonable legal system must underpin the energy cooperation between the two countries, and their respective interests must find their roots in a unified legal framework.

Based on the real needs of Sino-Russian Arctic energy cooperation and development, the author carefully looks at the legal risks of Sino-Russian Arctic energy cooperation, shows the flaws in the current legal system from different angles, and suggests perfect solutions for the flaws. The goal is to get the academic community to pay more attention to the legal protection system of Sino-Russian Arctic energy cooperation and research.

Sino-Russian arctic energy cooperation has increasingly highlighted legal difficulties

To cope with unknown legal risks, a complete legal system is needed, and Sino-Russian Arctic energy cooperation urgently needs a complete legal system to solve the many legal risks faced in the process of energy development. However, the construction of the current legal system for Arctic energy development is still at a preliminary stage, and the lack of representation and the number of relevant laws in the Arctic region have led to its insufficiency to become a systematic rule for solving disputes between China and Russia on energy cooperation. Its main deficiencies are manifested in the following three aspects:

1. Insufficient Exclusivity of International Conventions on Arctic Energy Development The United Nations Convention on the Law of the Sea (UNCLOS), concluded in 1982, is recognized as the Magna Carta of the Law of the Sea that will influence the world in the 21st century, with irreplaceable coverage of the area, the number of contracting parties, and its impact on all kinds of marine activities. To date,

Arctic activities have been largely regulated by the United Nations Convention on the Law of the Sea. Although the United Nations Convention on the Law of the Sea has a very high degree of authority and mandatory effect, its application in the Arctic region has the following two main shortcomings.

Firstly, there is a lack of special provisions. The resource storage and ecological environment of the Arctic Sea have their own special characteristics. The United Nations Convention on the Law of the Sea is not a special law for the Arctic region, and the special provisions of the Arctic region are less and more focused on the protection of the Arctic environment. What is of direct relevance to the Arctic region is reflected only in Article 234, which clearly stipulates that coastal states have the right to enact and enforce non-discriminatory laws and regulations to prevent, reduce, and control marine pollution from vessels in the exclusive economic zone, i.e., coastal states are allowed to exercise more jurisdictional control over the ice-covered area within 200 nautical miles of the coastal state. The United Nations Convention on the Law of the Sea, however, does not make clear provisions on the division of competence between states in the Arctic region and the settlement of disputes over the development of Arctic energy, among other special issues.

Secondly, the division of Arctic energy rights is ambiguous. The outer continental shelf of the Arctic is rich in oil and natural gas resources, and since the United Nations Convention on the Law of the Sea stipulates that all countries have the priority right to develop the resources on the outer continental shelf, the sovereignty of the outer continental shelf has become the key to the game of the Arctic countries in the current energy crisis. The United Nations Convention on the Law of the Sea stipulates that the delimitation of the outer continental shelf beyond 200 nautical miles shall be resolved by agreement between the States concerned. In terms of sovereignty determination, this institutional provision, which leaves room for interpretation, is very likely to cause sovereignty disputes between countries. In order to safeguard their national interests, the Arctic States have relied on this rule to define the delimitation in a way that is most favorable to their national interests. For example, as early as 2001, Russia submitted an application to the Commission on the Limits of the Continental Shelf (CLCS) in an attempt to extend its outer continental shelf to the Lomonosov Ridge in the central Arctic Ocean, which is rich in oil and gas resources. However, the Commission on the Limits of the Continental Shelf rejected the application on the grounds of 'insufficient evidence', and since then, Russia has not given up its preparatory work for the relevant survey. Norway and Denmark also submitted applications for the outer continental shelf to the CLCS in 2006 and 2009, and at the same time, the United States, Canada, and other Arctic countries are also stepping up exploration of the outer continental shelf. As far as China and Russia's participation in Arctic energy development is concerned, the establishment of the outer continental shelf boundary in the Arctic Ocean is a prerequisite for energy cooperation between China and Russia in the Arctic. However, under the current circumstances, the delineation of the outer continental shelf has long exceeded the scope of legal regulation and has become a game of energy interests for Arctic countries. This will lead to a conflict over the energy sovereignty of the Arctic countries, which will hinder the smooth progress of Sino-Russian Arctic energy cooperation and development.

2. Institutional Gaps Exist in Current Regional Multilateral Agreements. Two of the most influential multilateral agreements in the Arctic region, the Treaty of Spitsbergen and the Ilulissat Declaration, both lack regulation in the area of Arctic energy development. 18 countries, including the United Kingdom, France, the United States, Denmark, Italy, and Japan, signed the Treaty of Spitsbergen, a hard-law multilateral agreement. Undoubtedly, the Spitsbergen Treaty is the most important legal norm for solving the Arctic issue, and its content involves the legal issues of resource development, scientific research, and sovereignty. However, the Spitsbergen Treaty is too narrow in

scope, as it primarily addresses the dispute over the Svalbard archipelago, which covers an area of 61,229,000 square kilometers. The Spitsbergen Treaty did not provide a proper solution to the conflicts over resource exploitation and sovereignty over energy resources. The five Arctic countries, Russia, Denmark, the United States, Norway, and Canada, formulated the Ilulissat Declaration at a ministerial meeting, primarily stipulating the Arctic region's sovereignty, the management of the Arctic Ocean, environmental protection, and scientific cooperation. However, like the Treaty of Spitsbergen, the agreement lacks provisions on Arctic energy development. The Arctic has developed a number of regional agreements in addition to these two treaties. However, there are still two problems with the Arctic regional legal system:

Firstly, there is a lack of specialized regional agreements on energy development in the Arctic. In recent years, a number of Arctic regional agreements have lacked a focus on the direction of energy development in the Arctic. For example, the legally binding Arctic Sea and Air Search and Rescue Co-operation Agreement, adopted in May 2011, was developed with the goal of constructing a legal normative and institutional framework for the Arctic Sea and Air Search and Rescue System, whereas the Agreement on Strengthening International Scientific Co-operation in the Arctic, signed on May 11, 2017, aims to break down barriers to scientific research and exploration and promote the development of a scientific and technological system in the Arctic. The Agreement on Strengthening International Scientific Co-operation in the Arctic aims to remove barriers to scientific research and exploration, foster scientific cooperation in the Arctic region, and regulate three primary aspects of scientific research: pollution control and environmental protection. These agreements demonstrate that the overall direction of existing regional agreements does not include Arctic energy development, nor does the regulation of energy development form part of the regional governance process. While Arctic energy development is a goal of Arctic scientific research cooperation, it also impacts the foundation of Arctic ecological and environmental governance. From a long-term perspective, it should take the form of legal documents that reinforce the norms and constraints on various activities related to Arctic energy development.

Secondly, there is a lack of hard-law multilateral agreements on Arctic energy development. Hard-law rules are legally binding and can maximize the ability of the parties to fulfil their obligations. Arctic energy has now become the focus of the Arctic interest competition. Based on the need to balance the interests of all countries and resolve energy disputes, Arctic energy development needs to rely on hard-law agreements for control. As hard law is legally binding on the contracting parties, a violation of hard law can lead to negative legal consequences, such as state responsibility. At the same time, the negotiation, conclusion, and entry into force of hard law rules are subject to strict approval procedures and a lengthy consultation process compared to soft law rules. In order to avoid bearing higher default costs and save contracting time, countries will mostly avoid agreeing to hard-law rules when participating in the formulation of regional multilateral agreements. Currently, three aspects dominate regional multilateral agreements with mandatory binding force: air and sea search and rescue, marine oil pollution prevention and treatment, and scientific research and study. However, the field of Arctic energy cooperation and development remains outside the scope of regional hard law norms. The weak binding effect of regional multilateral agreements on Arctic energy development means that China and Russia will not have any solid ways to settle disagreements when they work together on energy issues. This will make them rely too much on political and diplomatic channels for energy disputes, which will make energy cooperation less stable. At the same time, due to the absence of regional multilateral agreements on energy cooperation, China and Russia are very prone to disagreements on issues related to the distribution of benefits, assumption of responsibility, technology exports, and other issues of vital

interest to both sides.

3. Inadequacies at The Constructive Level in China's Energy Investment Legal System. The legal system for energy investment will be improved, providing legal protection for Chinese enterprises to participate in outbound energy investment and cooperation. In recent years, the scale of China's foreign energy investment has been expanding, but the construction of China's energy investment legal system has not kept pace with China's foreign energy investment. China now has four separate energy laws, namely the *Renewable Energy Law of the People's Republic of China*, the *Energy Conservation Law of the People's Republic of China*, the *Electricity Law of the People's Republic of China*, and the *Coal Law of the People's Republic of China*, as well as more than 70 governmental rules and local regulations. Overall, China's energy legal system is maturing. However, China has yet to form an independent legal document on energy investment, and the four separate laws mentioned above are less involved in regulating energy investment activities. The absence of a legal mechanism for energy investment means that Chinese enterprises' activities in Sino-Russian Arctic energy cooperation and development lack the institutional support of domestic laws. China's existing legal system for energy investment is deficient in three main ways:

Firstly, foreign energy investment projects often involve the interests of cooperation between countries, and the investing enterprises are usually large-scale enterprises with state-owned capital injections. The existing legal system for foreign energy investment is primarily in the form of departmental regulations and administrative provisions, which are fragmented, have low legal effect, and are poorly operable. Its actual binding effect cannot match China-Russia Arctic energy cooperation's national will. Simultaneously, the ineffectiveness of the regulatory documents on foreign energy investment could potentially reinforce arbitrary modifications to the related legal norms, thereby impeding the long-term and continuous implementation of these norms.

Secondly, the existing legal norms on foreign energy investment lack the provisions of the special legal system for Sino-Russian Arctic energy cooperation and development. The development of Sino-Russian Arctic energy is not only a crucial component of the 'Silk Road on Ice' strategy, but it also serves as a crucial safeguard for the national energy security strategy. Compared to general foreign energy investment activities, the Arctic energy development presents a more evident energy value, a more complex natural environment, and a more challenging development process, necessitating the implementation of special legal provisions. The absence of domestic legal norms for outbound energy investment will increase Chinese enterprises' unknown investment risks. At the same time, the lack of legal norms for outbound energy investment will also make Chinese investment enterprises rely excessively on diplomatic and political channels to resolve disputes over Arctic energy cooperation.

Finally, the unsoundness of the regulatory mechanism for energy development exacerbates the imperfections of the legal system for outbound energy investment. China's main participants in Arctic energy development are usually large enterprises and organizations with state capital injections, including Chinese National Petroleum Corp. (CNPC), Sino Petroleum Corp. (Sinopec), and the Silk Road Fund. These companies have strong capital and advanced technical facilities and can afford the upfront capital investment and advanced technical support for Arctic energy cooperation projects. However, state-owned enterprises are less flexible and less competitive than their private counterparts. The regulatory mechanism is an important tool for regulating enterprises' production activities and avoiding legal risks. Inadequate regulatory mechanisms will make the inflexibility and weak competitiveness of SOEs stand out in Arctic energy cooperation, which will become one of the important factors hindering the smooth progress of China's Arctic energy cooperation.

The Path to Solving the Current Legal Dilemma in Sino-Russian Arctic Energy Cooperation

Given the intensifying competition for Arctic interests, China can leverage the rational construction of a legal system and order as a powerful tool to mitigate extraterritorial legal risks and overcome legal systemic challenges. Only a fair and orderly legal system can guarantee the economic interests of Sino-Russian Arctic energy cooperation and the valuable implications of Sino-Russian diplomatic relations. Drawing from the previously mentioned theoretical analysis of the legal barriers to Sino-Russian Arctic energy cooperation, the author posits that the enhancement of the legal system for energy cooperation and development should encompass the following four dimensions:

- 1) Creation of a Specialized International Convention for the Arctic. The Arctic region should create a geographically exclusive Arctic Treaty. The *Antarctic Treaty*, which provides an authoritative legal basis for all kinds of governance activities in the region, has long dominated the Antarctic region's legal framework. Both the Arctic and the Antarctic experience extreme climates and share a high degree of similarity in their ecological environments and resource reserves. However, due to historical and geographical factors, the Arctic region faces more difficulties and obstacles in constructing legislation for an exclusive international convention than the Antarctic region. The demilitarization of the Antarctic region has been in place for a long time, and any country's control over the Arctic is a matter of national security for the United States, Russia, and other countries, indicating that the region has been heavily militarized since the World War II. The policies of various stakeholder countries, motivated by profit-making, further complicate the division of energy rights in the Arctic region, and Russia's incursion into the region in 2007 exacerbated the conflict. To reduce Arctic disputes and resolve the dispute over energy ownership in the Arctic, authoritative international organizations such as the United Nations, the International Maritime Organization, and the Arctic Council should consult with the Arctic countries and stakeholder states, overcome existing obstacles, and draw upon the spirit and value of the Antarctic Treaty's legislation to create an Arctic Treaty capable of resolving Arctic-specific issues.

The legislative mandate and purpose of the Arctic Treaty established institutional constraints on human activities in the Arctic. Its fundamental purpose should be to balance the contradiction between mankind's irrational desire to exploit the ecological environment and the limited restoration capacity of the Arctic region so as to maximize the output of benefits from the Arctic region over its entire ecological cycle. Therefore, the Arctic Treaty needs to formulate unified environmental protection standards for energy development as a means of restraining the uncontrolled energy development activities of Arctic countries in the Arctic region. Uniform environmental protection standards will enable countries to be more targeted in the process of energy technology research and development and, at the same time, reduce the confusion of judicial application in cases of environmental infringement in Arctic energy development.

Legislative content should regulate Arctic activities in terms of scientific research, international scientific cooperation, exercise of jurisdiction, passage through shipping lanes, delimitation of sovereignty, and energy development. The Arctic Treaty should specify the conditions for the division of the continental shelves of the Arctic countries and the various types of resources thereon, to ensure the orderly development of energy resources in the Arctic. Based on the principles of fairness and impartiality, it should conduct a marine survey of the continental shelf area on the seabed of the Arctic Ocean, break through the overlapping disputes over the continental shelf area left over from the United

Nations Convention on the Law of the Sea, and formulate a reasonable way of dividing the Arctic continental shelf area so as to solve the energy sovereignty disputes among Arctic countries in the Arctic Ocean region.

It is undeniable that the formulation of the Arctic Treaty will face significant challenges from all interested parties. The formulation of the Arctic Treaty should not only take into account the interests of the Arctic countries, but also pay attention to the maintenance of the Arctic ecological environment and the convergence with the United Nations Convention on the Law of the Sea. However, it is worth affirming that the promulgation of the Arctic Treaty will alleviate the problem of fragmentation of the existing legal norms in the Arctic region, promote the orderly development of energy, and also escort Sino-Russian Arctic energy cooperation and development.

2) Establishing a regional multilateral agreement that combines the characteristics of both hard law and soft law. In order to meet the needs of the legal system of Arctic energy development and to ensure the smooth progress of Sino-Russian energy cooperation, the construction of the Arctic energy development regional agreement is imperative. The lack of legal protection for Arctic energy development will easily lead to problems such as energy sovereignty, environmental pollution, and the deterioration of relations between the two countries. The Arctic Council, as an authoritative international organization dedicated to Arctic affairs, plays an important role in Arctic ecological environment protection, navigation channel passage, and resource exploitation. Since its inception, the organisation has taken the lead in concluding a number of regional multilateral agreements and has made important contributions to the protection of the Arctic ecological environment and the safety and security of maritime personnel's lives. As an official observers of the Arctic Council, China and Russia, as members with a high level of discourse, should leverage the Arctic Council's platform to facilitate the conclusion of a regional multilateral legal agreement on Arctic energy development. This agreement should be led by the Arctic Council, with participation from Arctic countries and stakeholder countries. A multilateral agreement on Arctic energy development should have both 'hard law' and 'soft law' attributes. The hard law norms should constrain and regulate the rules for the delineation of energy sovereignty, specific standards for environmental protection, the settlement of disputes over energy development, and other matters of great interest to Arctic energy development, as the hard law multilateral agreement has the legal characteristic of mandatory binding on the energy development activities of all countries. Compared to hard law legal norms, soft law offers a more gentle approach to resolving conflicts. It can be formulated more quickly, allowing for more flexibility in the content of the provisions. Additionally, soft law is characterized by its negotiability, multilateral agreements based on soft-law in the Arctic will provide an alternative for countries that urgently need to rely on international norms in their energy development processes but are unable to form mandatory bilateral agreements in a short period of time. Therefore, an Arctic regional agreement should establish a mix of soft and hard law, promoting the construction of hard law through the implementation of soft law. This will be conducive to maintaining the smooth development of Arctic energy cooperation and development to the greatest extent possible and reducing unnecessary disputes among countries in the course of energy cooperation and development.

3) Formulating Bilateral Binding Legal Agreements on Energy Development. The Sino-Russian energy development plan includes the Pechora LNG and Shtokman LNG projects, and China and Russia have developed the Arctic LNG project in the Yamal-Nenets Area. As Sino-Russian

Arctic energy development deepens, the scope of Sino-Russian energy cooperation gradually expands from Russian territory to the Arctic highlands. Agreements signed between governments are an important legal foundation for Sino-Russian energy cooperation and can serve as the most convenient and direct basis for bilateral dispute resolution. China and Russia have signed a series of bilateral agreements on friendship and cooperation, such as the Treaty on Good-Neighbourly Relations, Friendship, and Cooperation between the People's Republic of China and the Russian Federation and the Sino-Russian Joint Declaration on the New Stage of the Comprehensive Strategic Collaborative Partnership, which have established a good start for Sino-Russian Arctic energy cooperation and development. However, to date, China and Russia have yet to work out a substantially binding bilateral agreement, which will hinder the process of Sino-Russian Arctic energy cooperation. So, the two governments should talk and consult with each other in order to make sure that Arctic energy cooperation and development go smoothly. They should also get to work right away on making a bilateral agreement on Arctic energy cooperation and development that is legally binding and can be used by both countries. Bilateral agreements on Arctic energy cooperation should begin with four aspects: stabilization of energy trading prices, unification of environmental protection standards, agreement on dispute settlement, and establishment of supervisory bodies.

First of all, the price of oil and natural gas in the international market is unstable and easily affected by national economic and political factors. The Sino-Russian Arctic energy cooperation and development involve significant investment and long-term income activities, and the fluctuations in energy prices can disrupt the normal operation of energy transactions. Therefore, the bilateral agreement should stipulate the energy trading price within a reasonable trading range and set up a reasonable consultation mechanism to mediate when there is a substantial change in the energy price in the international market.

Secondly, the harsh environment of the Arctic region severely limits its ability to self-repair once it sustains damage. Based on the interests of all mankind and the need for sustainable development, China and Russia should set up high environmental standards for oil development and stipulate the types and technical requirements of oil extraction equipment provided by the two sides so as to ensure the safety of energy extraction and avoid environmental accidents such as oil and gas leakage.

Furthermore, the interests involved in energy cooperation and development between the two countries are very complex, and disputes are inevitable as the process progresses. The two sides should agree on the dispute settlement method to ensure the smooth development of energy cooperation. The resolution of the Sino-Russian Arctic energy conflict primarily relies on political diplomacy. However, this method, lacking institutional constraints, is highly unstable. Therefore, the development of a diverse dispute resolution mechanism will be the direction of the dispute resolution process. We can divide dispute settlement measures into three levels: political diplomacy, mediation and negotiation, and arbitration. These levels not only prevent a single method of dispute settlement from deteriorating diplomatic relations between the two countries, but also offer a reasonable institutional choice space for bilateral dispute settlement.

Finally, China and Russia should jointly create a monitoring mechanism for energy cooperation. Chinese and Russian energy experts and diplomatic representatives, divided into trade and investment, transport, energy security, and other departments, should compose supervisory bodies. The supervisory body is responsible for formulating uniform criteria to identify collective activities and individual behaviors suspected of violating these criteria, providing specific guidance to the unit's personnel, and, if necessary, submitting written opinions to the competent authorities of both governments.

Conclusion

Russia's positive response to China's Ice Silk Road initiative and its invitation to China to participate in the Arctic energy development cooperation is a strategic choice made by Russia against the backdrop of international political tension and insufficient funds, which is both an opportunity and a challenge for China. In order to maximize China's energy investment interests in Sino-Russian Arctic energy cooperation and development, it is crucial to establish a complete legal protection mechanism. Based on this, China should actively promote the establishment of international conventions and regional multilateral agreements on Arctic energy, hold consultations with Russia on various matters related to Arctic energy cooperation, conclude special bilateral agreements on energy cooperation as soon as possible, and optimise China's legal system for energy investment. A complete legal system will be conducive to the smooth progress of Sino-Russian Arctic energy cooperation and, at the same time, minimise the legal risks of China's capital investment and technology exports and safeguard the safety of China's foreign energy investment.

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Правовая основа китайско-российского сотрудничества и развития арктической энергетики

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Аннотация

Китайско-российское энергетическое сотрудничество и развитие Арктики – это ключевой шаг в укреплении дружественных отношений между Россией и Китаем и достижении взаимной выгоды. Китайско-российское сотрудничество и развитие арктической энергетики поможет России преодолеть финансовые трудности и технические проблемы, связанные с разведкой и освоением арктической энергии, и постепенно сформировать новый сегмент российского рынка экспорта энергоносителей. В то же время оно может удовлетворить энергетический спрос Китая и укрепить его право на участие в управлении арктическими сообществами. Чтобы максимизировать ценность китайско-российского энергетического развития Арктики в целом, необходимо создать всестороннюю, многомерную и актуальную систему правовых гарантий для энергетического развития Арктики, сочетающую международные конвенции, региональные многосторонние соглашения, двусторонние соглашения о развитии энергетики и внутренние специальные правовые системы. Методами исследования послужили формально-логическая интерпретация, систематический и сравнительный анализ.

Для цитирования в научных исследованиях

Вань Сюэ. Legal basis for Sino-Russian co-operation and arctic energy development // Вопросы российского и международного права. 2024. Том 14. № 9А. С. 406-416.

Ключевые слова

Арктика, китайско-российское сотрудничество, развитие энергетики, правовая основа.

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