

INTERNATIONAL ENERGY NEGOTIATIONS: PRODUCTION  
SHARING CONTRACT PROCESS AND CROSS BORDER PIPELINE  
BARGAINING

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## **ABSTRACT**

### **INTERNATIONAL ENERGY NEGOTIATIONS: PRODUCTION SHARING CONTRACT PROCESS AND CROSS BORDER PIPELINE BARGAINING**

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This study analyzes the impacts of process, culture and biases over the international energy negotiations. Analysis involves two different categories which negotiations involving producing state vs. IOC and producing state vs. IOC and states. Kazakhstan's Kashagan oil field development is chosen as contractual process example, whereas Baku-Tbilisi-Ceyhan pipeline project analyzed as a pipeline bargaining situation. Contrary to the scholars who argue that geopolitical factors are very decisive in international energy negotiations, this thesis argues that geopolitical factors are influential only in those international negotiations which involve politically motivated state actors and in other energy negotiations technical, financial, ecological and cultural factors are more decisive due to the lack of intense state involvement. In fact, along with the cultural and biases influences, the technical characteristics of project and type of actors involved have impact over the process of international energy negotiations.

**Keywords:** Negotiation, Energy, Pipeline Bargaining, Oil Negotiations, Contract Negotiation

## ÖZ

### ULUSLARARASI ENERJİ MÜZAKERELERİ: ÜRETİM- PAYLAŞIM ANLAŞMALARİ SÜRECİ VE SINIR ÖTESİ BORU HATTI PAZARLIKLARI

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Bu çalışma, süreç, kültür ve önyargıların uluslararası enerji müzakereleri üzerindeki etkilerini incelemektedir. Analiz, devlete karşı uluslararası petrol şirketlerini içeren ve devlete karşı uluslararası petrol şirketleri ile birlikte devletleri içeren müzakerelerini iki farklı kategoriden oluşur. Kazakistan'ın Kaşagan petrol sahası gelişimi sözleşme süreç örneği olarak seçilmiştir, Bakü-Tiflis-Ceyhan boru hattı projesi ise boru hattı pazarlık durumu olarak analiz edilmiştir. Jeopolitik faktörlerin uluslararası enerji müzakerelerinde çok belirleyici olduğunu savunan bilim adamlarının aksine, bu tez jeopolitik faktörlerin sadece siyasi olarak motive olmuş devlet aktörlerinin yoğun olarak dahil olduğu müzakerelerde etkili olduğunu fakat diğer enerji müzakerelerinde teknik, finansal, ekolojik ve kültürel faktörlerin daha etkili olduğunu savunuyor. Aslında, kültürel ve önyargılar etkileriyle birlikte, projenin teknik özellikleri ve dahil olan aktörlerin türü, uluslararası enerji müzakereleri sürecini etkilemektedir.

**Anahtar kelimeler:** Müzakere, Enerji, Boru Hattı Pazarlığı, Petrol Müzakereleri, Sözleşme Müzakeresi

*To My Family, Dear Friends, and To the Love of My Life...*

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## **LIST OF ABBREVIATIONS**

<b>IOC/IOCs</b>	International Oil Company/ Companies
<b>NOC/NOCs</b>	National Oil Company/ Companies
<b>IR</b>	International Relations
<b>TP/TPs</b>	Turning Point/ Points
<b>OBM</b>	Obsolescing Bargaining Model
<b>PSA/PSAs</b>	Production Sharing Agreement/ Agreements
<b>BTC</b>	Baku- Tbilisi- Ceyhan
<b>RAMCO</b>	UK Independent oil company
<b>BP</b>	British Petroleum
<b>ACG</b>	Azeri-Chirag Deepwater Gunashli
<b>ENI</b>	Ente Nazionale Idrocarburi
<b>KCS</b>	Kazakh Caspi Shelf
<b>OKIOC</b>	Offshore Kazakhstan International Operating Company
<b>Agip KCO</b>	Agip Kazakhstan North Caspian Operating Company
<b>FIMPR</b>	Finish, Improve, Maintain, Preserve, Re-start
<b>US</b>	United States
<b>UN</b>	United Nations

# CHAPTER 1

## INTRODUCTION

In international relations, one of the main determinants or/and drivers is the natural resources that countries have and related geo-political realm of the international order. In this domain, of course, states are not the only actors but also private companies are very dominant since they have the technical ability to locate, extract and develop the natural sources that states have and also financial capital in investing to such projects. Even though states usually have national oil companies (NOCs), NOCs typically do not have the financial and technical capabilities at the same time in order to carry out such operations. The trade between states and IOCs are not limited with extracting the oil and gas but also transporting the commodity is another type of a project in which states and IOCs interact. The interaction between these actors is dominated by negotiations over technical, environmental, financial, geopolitics and other issues in different levels. As a main variable that affect the outcome of any project depends on the issues that are subject to negotiation. This study takes negotiation as a process in which culture and behavioral approaches are also influential. Two cases from the region of Caspian Sea are selected in order to illustrate how international negotiations are taking place in contractual relations between states and IOCs and; how state dominated pipeline negotiations are characterized.

### **1.1 Scope and Objective**

The primary objective of this thesis is to explore and describe how international energy negotiations are characterized in interaction with different actors. In this respect, the thesis seeks to investigate two different cases in which different types of actors are dominant. Accordingly, what kind of factors are influential in the process of international energy negotiations when the dominant actors are changed will tried to be explored.

More specifically, the research question of this thesis is: do geopolitical considerations influence international energy negotiations in similar ways in all types of international energy negotiations? In order to answer such a question, two different cases from Kazakhstan and Azerbaijan is chosen, in which negotiations on exploration and development of Kashagan oil field and Baku- Tblisi- Ceyhan pipeline project transporting crude oil are examined. In terms of production sharing contract process, also the period of implementation of the agreement have a significant role in this study since the negotiations on different aspects are continuing. Pipeline projects are also implemented with a contractual base; however, the course of negotiations is not shaped accordingly. Therefore, this thesis examines the pipeline project bargaining not under a contractual process but as a more independent process since mostly negotiations take place before the agreement is signed and implementation phase is less complicated and more straightforward.

The state-based approach of this paper limits the examining the downstream negotiations which typically do not involve states since it is mainly about making oil a product (refining) and marketing this product. Vertically integrated companies carry such operations and states only get its take from an agreement (government's take determined by PSAs) but do not involve in the negotiations within the company even it is a NOC.

## **1.2 Literature Review**

The literature on the negotiation from various disciplines such as International Relations, Social Psychology and Psychology are the examined in the thesis. Moreover, the scope of the thesis is not limited only with literature on negotiation but also specific studies on energy negotiations are analyzed in the study. Negotiation literature is examined in detailed in the chapter 2 of Conceptual Framework, while the sector-specific approaches are reviewed in the chapter 3 with assessing the role and power of the actors involved in the negotiations. In this section, the literature which takes the geopolitics as the main determinant that influence an

outcome of any energy negotiation will be reviewed and the major works of the literatures this study utilizes will be introduced.

The term geopolitics takes its roots from back in mid 19<sup>th</sup> century when Alfred Thayer Mahan had analyzed the significance of a sea power of nations to the foreign policy making and objectives of a state<sup>1</sup>. The choice of geographically advantageous locations in order to control the sea was much of a military approach; however, modifying the concept of geopolitics to the study of international relations were mostly influenced by Henry Kissinger's<sup>2</sup> and Zbigniew Brzezinski's<sup>3</sup> books. Both of their analysis has a conclusion of that the geopolitical influence of the US in Eurasia must be continues to the contrary of who argues that cold war was ended and Russia's intentions of become a global player is disappeared. The base theories of the study of geopolitics are classic and structural realism which take the power as the main variable to analyze the international relations. In terms of the energy geopolitics<sup>4</sup>, analyses are based on the trade<sup>5</sup> and transportation<sup>6</sup> of energy commodities such as oil and gas from the same perspective but also emphasizing the role of the resources to those power

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<sup>1</sup> Mahan, A. T. (2013). *"The influence of sea power upon history, 1660-1783"*. Read Books Ltd.

<sup>2</sup> Kissinger, H. (1994). *"Diplomacy"*. Simon and Schuster.

<sup>3</sup> Brzezinski, Z. (1997). *"The grand chessboard: American primacy and its geopolitical imperatives"*. New York: Collins.

<sup>4</sup> Mostly dominated with the country specific studies such as Tekin, A., & Walterova, I. (2007). *"Turkey's geopolitical role: the energy angle"*. Middle East Policy, 14(1), pp. 84-94.

<sup>5</sup> Verma, S. K. (2007). *"Energy geopolitics and Iran–Pakistan–India gas pipeline"*. Energy Policy, 35(6), pp. 3280-3301.

<sup>6</sup> Bradshaw, M. J. (2009). *"The geopolitics of global energy security"*. Geography Compass, 3(5), 1920-1937. Also see; Correlje, A., & Van der Linde, C. (2006). *"Energy supply security and geopolitics: A European perspective"*. Energy policy, 34(5), pp. 532-543.

based relations. There are also some studies that analyzes the energy geopolitics from an institutional perspective<sup>7</sup> while some scholars<sup>8</sup> combine the geopolitics with taking market forces into account.

What is missing in the literature of energy related analysis is that the role of the negotiations itself and cultural influences on the process. Obsolescing Bargaining Model (OBM) developed by Vernon<sup>9</sup> which proposes a theory of oil-sector based negotiations is one of the most influential works to the studies of energy negotiations. OBM's main assumption is that the relative bargaining power of the actors are changing. The model claims that when states search for investment and technical support of the big oil companies the relative bargaining power of the multinational corporations are higher since they are in the seat of making a decision where to invest. However; once an agreement is signed and investment is made, states try to get more shares with renegotiating the terms of the agreement due to the fact that multinational corporations have already committed to high fix costs that cannot be withdrawn. Therefore, states get to the position in which they hold the higher relative bargaining power with using its regulatory tools to pressure the multinational corporations. With critically evaluating Vernon's OBM, there are some scholars who analyzes the negotiations in both exploration and developments activities such as Vivoda<sup>10</sup> and in pipeline

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<sup>7</sup> Westphal, K. (2006). "*Energy policy between multilateral governance and geopolitics: whither Europe?*". *Internationale Politik und Gesellschaft*, 4(2006), pp. 44-62. Also see; Marketos, T. N. (2008). "*China's Energy Geopolitics: The Shanghai Cooperation Organization and Central Asia*". Routledge.

<sup>8</sup> Youngs, R. (2007). "*Europe's external energy policy: between geopolitics and the market*". CEPS Working Document No. 278/November 2007

<sup>9</sup> Vernon, Raymond. (1981) "*Sovereignty at bay ten years after*". *International organization* 35.3. pp. 517-529.

<sup>10</sup> Vivoda, Vlado. (2008). "*The return of the obsolescing bargain and the decline of Big Oil: A study of bargaining in the contemporary oil industry*". VDM Verlag Dr. Müller.

negotiations Omonbude's work<sup>11</sup> are partially filling the gap, however, their emphasis is not purely on the process itself and their analysis does not contain any element of cultural studies. Therefore, this study focuses on the issue of energy negotiations by combining different literatures such as theory of process analysis and cultural influences on the negotiation. In doing so, Druckman's process analysis concept of Turning Points (TPs)<sup>12</sup>, Raiffa's classification<sup>13</sup> on the different cognitive elements involve in the negotiations and Gelfand's<sup>14</sup> categorization of cultural influences on the negotiations such as collectivist vs. individualist are major conceptual works this thesis utilizes. They will be reviewed in detail in the next chapter. This study critically evaluates different studies on energy negotiations and combines different literatures from different disciplines in order to explore a more comprehensive perspective to the study of international energy negotiations.

### 1.3 Methodology

This thesis is a desk research in which both secondary and primary sources are utilized from both online databases and library archives. In terms of secondary sources; academic journals, academic books, views of experts, library sources are analyzed and referred both in conceptual and case analysis parts of the thesis. In the case analyses, primary sources of statistics

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<sup>11</sup> Omonbude, E. (2016). *Cross-border oil and gas pipelines and the role of the transit country: economics, challenges and solutions*. Springer.

<sup>12</sup> Druckman, Daniel. (1986). "Stages, Turning Points, and Crises: Negotiating Military Base Rights, Spain and the United States". *The Journal of Conflict Resolution*, Vol. 30, No. 2.

<sup>13</sup> Raiffa, H. (1982). *The art and science of negotiation*. Cambridge, MA: Belknap.

<sup>14</sup> Gelfand, M. J., and A. Realo. (1999). "Individualist-collectivism and accountability in intergroup negotiations". *Journal of Applied Psychology*, 84. pp. 721-736. Also see: Gelfand, M. J., and S. Christakopoulou. (1999). "Culture and negotiator cognition: Judgment accuracy and negotiation processes in individualistic and collectivistic cultures". *Organization Behavior and Human Decision Processes*, 79. pp. 248-269.

from various organizations such as UN, BP and GreenPeace are used along with newspaper articles and official statements. With the aid of such sources, the thesis uses case study methodology in order to answer the question and construct an argument. The cases are chosen from the same region of Caspian due to eliminating different cultural influences that cannot be measured. Additionally, in the light of the current production data<sup>15</sup>, oil importing countries will continue to depend on the Middle East and the United States as the primary source of oil supply until 2028. Economically, considering the prospective supply decreases that will arise by the shorter production lifespan of the US shale oil fields and the decreasing production of mature Middle Eastern basins, this situation is most likely to bring supply bottlenecks to the oil market, which eventually increases the importance of delivering the product from different basins such as Caspian. The Caspian Basin is located in northwest Asia, at the center of fossil energy reserves in the region between Azerbaijan, Iran, Kazakhstan, Russia, and Turkmenistan. The Russian Federation and Iran together with Azerbaijan, Kazakhstan, Turkmenistan, and Uzbekistan are among the major energy producers of the Caspian region, and altogether, these countries own 17.8% of the world's proven oil reserves which corresponds 302.1 thousand million barrels<sup>16</sup>. In terms of the reason why these cases are chosen, firstly taking two different types of negotiations from the same region and from two newly independent Soviet Republics implies to a cultural similarity and similar perception towards oil and gas commodities (which is mostly seen as a quick path to economic development) between the countries which enables to make the analysis imply to the international negotiations. Secondly, culture may influence the negotiations or/and outcome of a

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<sup>15</sup> U.S. Energy Information Administration. (2018). “*Annual Energy Outlook 2018: With Projections to 2050*”. Accessed in 22.12.2018: <https://www.eia.gov/outlooks/aeo/pdf/AEO2018.pdf>

<sup>16</sup> British Petroleum Company. (2018). “*BP statistical review of world energy 2018*”. British Petroleum Company. pg. 12



negotiation differently in different regions/continents and the shared beliefs or common values of a region may have a path in influencing the negotiations. Therefore, choosing two cases from same region both reflects common cultural, historical and perceptual background in the one hand, and represent similar economic and institutional characteristics. In order to imply the results of this study to the international oil and gas negotiations and diversify the field with studies on different regions will make the literature grow further.

In analyzing the cases, an interdisciplinary approach was developed with combining different literatures in examining international energy negotiation issues. Regarding with using the inter-disciplinary approach, concepts of the process' content analysis ought to be combined with the cultural and behavioral literatures of negotiations and with related models such as OBM which provide the sector based and oil specific issues between IOCs or multinational corporations and producing states. There are two reasons to construct such a theoretical framework to analyze the negotiations of the sector. Firstly, even though content analyses offer concepts and many variables on the process, it is incapable of explaining some specific sector-based influences and mostly incapable of explaining the role of the culture, communication, geopolitical and individual behaviors. At the same time, it is useful to bear in mind that the core of the negotiation process can be grabbed best by using related content analysis concepts such as TPs. Secondly, the combination of these literatures can potentially give the broadest perspective possible in analyzing the hydrocarbon sector negotiations since the specifics and dynamics of the sector can be understood best by using relative models. In order to examine how oil and gas producer states involve in the international negotiations, the categorization of the types of negotiations are presented above as non-state actor dominated and state dominated. Specifically, state dominated international energy negotiations mostly concentrate on the pipeline negotiations that involve transit states. However; in the non-state actor

dominated negotiations, usually there is one side (could be a NOC) that represents the state (or several institutions represent same interests) and the other side represent IOCs (or multiple IOCs represent the same interests) in contract negotiations. However, on transit pipeline negotiations interests vary typically in three different direction which represent an IOC, a host country and a transit country. With combining two separate but compatible literatures, each case study will be investigated under two sub-sections:

- (1) background information on the producing country and identifying TPs within the chronological events,
- (2) assessing the cultural and biases impacts

In the analysis, this paper will focus on the indicators of the producing country. While identifying the TPs, the common factors that affect the negotiations process will be analyzed. In evaluating the cultural proximity and impacts of the behaviors of the negotiators on the negotiation process, the Hofstede's<sup>17</sup> model of national cultures will be utilized along with the literatures reviewed in the conceptual framework. In comparing and measuring the cultures according to the model; the relationship between power/authority and society, individualistic and collectivist structures, and uncertainty avoidance<sup>18</sup> will be taken as the main determinants.

#### **1.4 Argument**

The argument of this thesis is that contrary to the scholars who argue that geopolitical factors are very decisive in international energy negotiations, this thesis argues that geopolitical factors are influential only in those international negotiations which involve politically motivated state actors and in other energy negotiations technical, financial, ecological and cultural

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<sup>17</sup> Hofstede, G. H. (1984). *Culture's consequences: International differences in work-related values*. Thousand Oaks: SAGE Publications. Also see: Hofstede, G. H. (2001). *Culture consequences: Comparing values, behaviors, institutions, and organizations across nations (2nd ed.)*. Thousand Oaks: Sage Publications.

<sup>18</sup> A concept that defines how nations perceive uncertainty as a threat or how comfortable they are with the uncertainty of the unstructured situations. The cultures with high degree of uncertainty avoidance are likely to impose strict rules in order to secure themselves from uncertainty which also makes them to guard against change.

factors are more decisive due to the lack of intense state involvement. As also explained in the previous sections, how the research question is answered will be further explained by stating the organization of the thesis.

### **1.5 Organization of Thesis**

In the chapter 2, the theory of international negotiation is explained and the related literature is reviewed. Firstly, the chapter deals with the relation between International Relations (IR) and negotiation. More specifically, classical theories of realism and liberalism in IR are tried to be related with how would the theories approach 'negotiation'. Afterwards, the international negotiation theory is explained with reviewing the literature. A special emphasis is put on the process approach to negotiation and a concept of Turning Points (TPs) developed by Daniel Druckman. TPs are utilized not in terms of a specific process of negotiation such as in peace talk between two teams of different countries, but instead the process of negotiation is taken as a longer process in oil and gas negotiations due to the nature of the process. In oil and gas negotiations between states (and/or NOCs) and IOCs, TPs still occur but not during the negotiation conferences but the afterwards of meetings or events (such as environmental concerns, financial issues and so on). Therefore, the 'process' is taken not as a conference but a whole series of events occur between the times of first interaction until the realization of projects. Moreover, since the transparency is a key issue in oil and gas negotiations, there is no available data on what are specifically parties' verbal behaviors are. Therefore, coding schemes to conduct an empirical study is not impossible in analyzing such negotiations. However, with the bargaining positions of the parties, conditions of agreements signed and the statements of the parties on the issues, some analysis is possible. Additionally, cultural influences and possible biases of the parties are also other variable in analyzing the issues. That is why, chapter 2 also reviews the literature on the cultural and biases perception approaches to the negotiation.

Chapter 3 identifies the bargaining positions and powers of the states (and

NOCs) and IOCs in oil and gas negotiations. The obsolescing bargaining model (OBM) developed by Raymond Vernon which gives a pattern of interaction between IOCs and states in which once the investment made by IOC the relative bargaining power shifts from IOC to state and therefore, states try to make use of a situation with re-negotiating or trying to make better deals with IOCs. Additionally, a brief history of oil and gas industry is provided in order to give a clue about how the general bargaining positions of the parties are identified in negotiations. The interests of the parties involved in such negotiations are also underlined in the last subsection of the chapter.

In chapter 4, negotiations between a producer state, and IOC or a group of IOCs are examined under contractual relations and fiscal systems established by such agreements such as production sharing agreements (PSAs). In the extraction oil and gas and developing a field to produce the commodities are typically carried out by a group of companies within a consortium (which also may also include a NOC). The consortium companies, except NOC, represent a profit oriented interests whereas the state on the other part represent different interests more than making a profit such as environmental issues, political conditions economic development of the country and so on. After introducing dynamics of such relations and negotiations, with Kashagan Field case study this chapter shows that the negotiations that are not involve intensive state involvement are dominated by the issues of environmental concerns, role of investment and technical details. The conflict between the parties are concentrated on these issues which might be caused by cultural differences and biases observed to be playing an enhancing role. Accordingly, in this type of negotiations also the assumptions of OBM apply.

Chapter 5 deals with cross-border pipeline bargaining. In trans-border pipeline negotiations; transit states, IOCs, producing state and a final destination country represent different interests. Moreover, in the chapter,

the dynamics and economics of the pipeline bargaining is analyzed with a special emphasis on the role of the transit state/s. With a case illustration of BTC, the intense state involvement (producer state, transit state/s, final destination state and third party) dominated the course of the negotiations in terms of geopolitics. In the case study, it is illustrated that no conflict of interests was emphasized or dominated the course of negotiations. It may be due to the cultural proximity of the countries and the historical well-defined relations.

In the conclusion chapter, the argument and the issues analyzed are summarized and additional insights gained during the research on the topic is provided.

## **CHAPTER 2**

### **CONCEPTUAL FRAMEWORK**

#### **2.1 Introduction**

Negotiations are part of everyday life and at the same time, it is one of the pillars of how nations have been developing relations, reaching on an agreement or taking strategic positions in case of a failed negotiations. Negotiations may be in variety of forms such as structured and unstructured or simple and complex. Everyday negotiations can be classified as unstructured and simple form of negotiation such as buying a second-hand car. When someone interacts with a car owner who wants to sell his/her car, usually conversation is developing spontaneously and reaches to a quick conclusion in which price is the main issue whether parties agreed or not. However, when the actor is (unit of analysis) changed from a person to a state or private company (together can be classified as an organization); the content, structure, complexity, duration of the negotiation along with the variables that have an impact on the outcomes are changing as well.

In this chapter, the literatures related with the negotiations will be examined. Firstly, the relevance of International Relations (IR) classic theories and negotiation is discussed. Afterwards, negotiation as a ‘process’ is examined and the concept of Turning Points is explained. Moreover, the literature on relations between culture, biases and negotiation are presented. This chapter also defines the literatures that needs to be combined in order to analyze the energy negotiations as explained in the introduction chapter. Therefore, the reviews in this chapter implies to a comprehensive framework and further debated in the chapter 3 with oil and gas specific negotiation literature and the roles of the actors.

## 2.2 Negotiation and International Relations (IR)

In International Relations (IR), even though basic or classical theories usually do not mention negotiation at all, or do not use it as a concept in analyzing the issues of IR; their main assumptions and perspectives can tell us how they would consider the negotiation concept. From a classical realist perspective; international relations are shaped mainly by the exercise of power in order to get what is desired, which is in the own interest of an actor<sup>19</sup>.

Moreover, structural realists<sup>20</sup> claim that the system of international order itself leads to a conflict since while a state is becoming more powerful, it threatens other states' power and decrease naturally their relative power. Therefore, it is inevitable fact that conflict will always arise. When we consider negotiation in terms of preventing a conflict and/or solving disputes via mediation, for realists it would be nothing more than pointless effort. However, it can be tool and process that powerful will always dominate and use what is desired in the interest of itself. In other words, it can be used as a tool of power maximization. On the other hand, liberal accounts focus more on the ways of cooperation via establishing a dialogue that can as well contain 'negotiation' or 'bargaining' within itself. In IR, the concept of negotiation is mostly utilized in peace and conflict resolution studies which is dominated by liberal accounts<sup>21</sup>. For liberals, negotiation

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<sup>19</sup> The theory of classical realism in IR is mainly based on the works of Machiavelli and Thomas Hobbes. Please see: Machiavelli, Niccolo. (1940) "*The Prince and Discourses On the First Decade of Titus Livius*." New York: The Modern Library. and; Hobbes, Thomas, and J. C. A. Gaskin. (1998). "*Leviathan*". Oxford: Oxford University Press.

<sup>20</sup> First formulated in Waltz, Kenneth N. (2010). "Theory of international politics". Waveland Press. Later also subdivided as offensive and defensive realism by Mearsheimer, John J. (2001). "*The tragedy of great power politics*". WW Norton & Company.

<sup>21</sup> The theory originated by Kant, Immanuel. (2003). "*To perpetual peace: A philosophical sketch*". Hackett Publishing. and also see Armitage, David. (2004). "*John Locke, Carolina, and the two treatises of government*." Political Theory 32.5. pp. 602-627.; Locke, John. (1988). "*Two treatises of government*" ed. Peter Laslett. Cambridge. The theory then formulated by Keohane, Robert O., and Joseph S. Nye. (1977). "*Power and*

would be a tool to reach a “win-win” situation achieved via cooperation, however, in classical studies there is no mention of a negotiation or bargaining concept’s influence in achieving such an end. However, the last four decades, negotiation studies have been rapidly developed and taken as a main concept in analyzing state relations. Some international negotiation theorists such as Druckman points out the fact that international negotiations serve to the pre-formulated interests of states and these are the main forums in which states define or re-define their relations<sup>22</sup>. Also, consequences and results of international negotiations may make states to re-consider the policy options which might be contrary to the previous ones. The literature on international negotiation theory purely focuses on the essences of negotiation and how it can generally affect the relations of states. Moreover, as an interdisciplinary literature, different influences on the negotiation such as psychological, cultural, structural and etc. have been discussed by many scholars which will be addressed and discussed in coming sections. More specifically, studies of international negotiations have mostly concentrated on the examining of the *process* and traditionally by using content analysis technique<sup>23</sup> (we can talk more about how this technique is utilized?). The next sub-sections will analyze how and with which concepts the process is defined in the literature of international negotiations along with the major influences on the process.

### **2.3 Process of Negotiation and Turning Points**

Approaches to the negotiations as a ‘*process*’ vary within itself not only in terms of taking different variables as the central concept of the analysis but

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*interdependence*”. ; Keohane, R.O. (2002). “*Power and Governance in a Partially Globalized World*”. London: Routledge. and also see; Keohane, R.O. & Nye, J.S. (1997). “*Interdependence in World Politics*.” In Crane, G.T. & Amawi, A., *The Theoretical evolution of international political economy: a reader*. New York: Oxford University Press.

<sup>22</sup> Druckman (1986), pg. 328

<sup>23</sup> Harris, Karen L. (1996). “*Content analysis in negotiation research: A review and guide*.” *Behavior Research Methods, Instruments, & Computers*. Vol. 28 No.3 pp. 458-467.



also as signifying the different stages of the process. While some scholars seek to analyze a larger process<sup>24</sup>, some of them are focusing on the pre-negotiation phase<sup>25</sup> but not typically post-negotiation phase of implementation<sup>26</sup>. Pre-negotiations is significant for two main reasons according to Saunders which are: (1) the pre-request of the making decision to negotiate is what starts the process, and knowing how to trigger such a decision or what can provide parties to sit on the negotiation table, and (2) use of psychology, anthropology and other disciplines in negotiation studies should also be utilized which is defined as significant “*important to world peace to redouble efforts to apply those insights to the moments in which decisions on confrontation versus negotiation are made*”<sup>27</sup>. Furthermore, Saunders divides the negotiation into five stages which are: (1) “*defining the problem*”<sup>28</sup> and claims that negotiation is defined as the common effort to solve a specific shared problem so that defining the problem becomes crucial, (2) “*producing a commitment to a negotiated settlement*”<sup>29</sup>, which

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<sup>24</sup> For example, analyzing the preparation phase please see: Korobkin, Russell. (2009). “*Negotiation Theory and Strategy*”. Second edition. New York: Wolters Kluwer Law & Business.

<sup>25</sup> Saunders, Harold H. (1985). “*We need a larger theory of negotiation: The importance of pre-negotiating phases.*” *Negotiation journal* 1.3. pp. 249-262.

<sup>26</sup> The literature mostly focuses on the implementation of environmental negotiations, please see; Skjærseth, Jon Birger, Olav Schram Stokke, and Jørgen Wettstad. (2006). “*Soft law, hard law, and effective implementation of international environmental norms*”. *Global Environmental Politics* 6.3. pp. 104-120. ; Pittel, Karen, and Dirk TG Rübhelke. (2008). “*Climate policy and ancillary benefits: A survey and integration into the modelling of international negotiations on climate change*”. *Ecological Economics* 68.1-2. pp. 210-220. and also see; Adler, Nancy J., Richard Brahm, and John L. Graham. (1992). “*Strategy implementation: A comparison of face-to-face negotiations in the peoples republic of China and the United States*”. *Strategic Management Journal* 13.6. pp. 449-466.

<sup>27</sup> Saunders, pg. 250

<sup>28</sup> Saunders, pg. 255

<sup>29</sup> Saunders pg. 257

means whether that the proposed negotiation will be better than the present condition, (3) “*arranging a negotiation*”<sup>30</sup> which is another negotiation about how to negotiate, (4) “*the actual negotiation*”<sup>31</sup> and (5) is the “*implementation*”<sup>32</sup>.

In terms of the significance of the pre-negotiation phase, there are also other studies that focus on the dynamics to start a negotiation. Readiness theory<sup>33</sup> is the revised model of basic ripeness theory<sup>34</sup> by Pruitt<sup>35</sup>. In its basic assumption, the theory requires two pre-conditions to negotiation take place. First of them is the existence of a deadlock that damages both sides. Second is the jointly perceived solution to the problem. It must be noted that even though these two factors are required to enter into a negotiation, they are not sufficient. One of the hypothesis of the readiness theory is that “*the greater a party’s readiness, the more likely it will be to propose negotiation or to agree to negotiation if proposed*”<sup>36</sup>. Motivation and optimism as the two pre-requests, also have their own characteristics. In terms of the motivations

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<sup>30</sup> Saunders pg. 260

<sup>31</sup> Saunders pg. 261

<sup>32</sup> Ibid

<sup>33</sup> Please see for the application of the theory to a case: Pruitt, Dean G. (2007). “*Readiness theory and the Northern Ireland conflict.*” *American Behavioral Scientist* 50.11 pp. 1520-1541.

<sup>34</sup> Zartman, I. W. (1989). “*Ripe for resolution: Conflict resolution in Africa*” (2nd ed.). New York: Oxford. ; Zartman, I. W. (2000). “*Ripeness: The hurting stale- mate and beyond*”. In P. C. Stern & D. Druckman (Eds.), *Conflict resolution after the Cold War* (pp. 225–250). Washington, DC: National Academy Press.

<sup>35</sup> Pruitt, Dean G. (2015). “*The evolution of readiness theory*”. *Handbook of International Negotiation*. Springer, Cham. pp. 123-138.

<sup>36</sup> Pruitt (2015), pg. 126

of the parties, Pruitt defines four main antecedents<sup>37</sup> which are: (1) the perception of the not winning the conflict or as a more motivating factor that is being lost, (2) awareness of the cost related with the conflict, (3) the risks involved in continuing the conflict, and (4) involvement of the third party to pressure end the conflict is the final source of the motivation for the parties in conflict. The other source of the readiness, optimism can be provided by the assumption of the opposite side is willing to make concessions, and work on this parallel which the idea originated from the Kelman's<sup>38</sup> work on working trust. Second source of the optimism can be defined as the validness of the opposing negotiators. The belief on the made promises or concessions should be received as certain in negotiation process. Pruitt exemplifies the factor as pointing out that

*during the Oslo pre-negotiation period, Israel tested Abu Ala's influence back home and he passed that test, showing that he was a valid spokesperson. This contributed to Israeli optimism in negotiating with him*<sup>39</sup>.

Korobkin (2009) defines negotiation as:

*an interactive communication process by which two or more parties who lack identical interests attempt to coordinate their behavior or allocate scarce resources in a way that will make them both better off than they could be if they were to act alone*<sup>40</sup>.

In the core of the definition, Korobkin takes negotiations as a process and implies that the outcome is dependent on the process itself. In terms of actors, his definition suggests that the interests or stakes must be different in

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<sup>37</sup> Ibid

<sup>38</sup> Kelman, H. C. (1997). "Some determinants of the Oslo breakthrough". *International Negotiation*, 2. pp. 183–194.

<sup>39</sup> Pruitt, pg. 127

<sup>40</sup> Korobkin, Russell. (2009). "Negotiation Theory and Strategy". *Second edition*. New York: Wolters Kluwer Law & Business. pg.1

order to construct the process. In his framework, he divides the negotiation process to four main particular stages which are: (1) preparation, (2) information exchange, (3) agreement proposal, and (4) resolution. At the beginning, the process starts with the internal preparation in which actors involve with determining:

*(a) what he desires to achieve from the negotiation, (b) what is the relative importance of his various desires, and (c) what would be a minimally acceptable agreement (which in turn requires the negotiator to identify the consequences of failing to reach an agreement)*<sup>41</sup>.

Accordingly, the external preparation is determining the same issues for the opponent. On the final step of preparation (*synthesis*), a negotiator tries to find out what kind of an agreement would be acceptable for both sides. In the second stage of the process, parties exchange the information and they move to the third stage in which agreement is proposed. With first offers and counter offers, they reach to a final stage of resolution in which there are two options of reaching to an agreement or to an impasse.

The process analysis of negotiation has traditionally been studied by using content analysis methodology in which different coding schemes have been used. The existing literature on the variables of the outcome is mostly shaped by the application of these coding schemes based on the verbal behavior or written statements of negotiators. According to Druckman, two types influences have an impact on the negotiation process which are *facilitating effects* and *interferences*. While facilitating effects “*promotes coordination and move negotiation through turning points*”<sup>42</sup>, interferences are leading “*to stalemates and crisis, delaying the progress toward an agreement*”<sup>43</sup>. Another distinction about the variables is the one made regarding to international negotiations which are *contextual* (external

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<sup>41</sup> Korobkin, pg.6

<sup>42</sup> Druckman (1986), pg.336

<sup>43</sup> Ibid

events) and *bureaucratic* (inter-agency coordination) influences. The role of the negotiator is also emphasized as well in the negotiations. According to Druckman, actors of negotiation involve in two main types of activities which are *monitoring* and *strategizing*. In his early case study of Spain- US Military Base Rights, he uses a coding scheme in which *hard* and *soft* verbal behaviors are coded with the hope that there is a “*patterns of interactions between negotiating teams*”<sup>44</sup>.

Negotiation process is considered as the most significant factor in shaping an agreement. However, it does not mean that negotiation process is immune from other variables that have an impact on the process itself. Exploring the dynamics and variables on the process has attracted much of an attention from scholars. Daniel Druckman’s concept of ‘*turning points*’ (also referred as departures) is drawn as a general conclusion on how negotiation process is influenced by crises and impasse. Druckman is one of the most influential scholars who uses all possible analytical tools and levels of analysis available in order to explore and analyze the dynamics of international negotiation processes. Furthermore, he proposes theoretical framework in which turning points (TPs), crises, stages and activities (of a negotiator) are the central concept in the negotiation processes. Druckman (1986) claims that for a successful negotiation; first of all, “*conceptual problems must be resolved before bargaining on details*”<sup>45</sup>. Druckman takes negotiation as a progressive process in which TPs and crises are benchmarks for five different stages. Even though these stages can be found in every negotiation, the time length of every stage can vary from case to case. He identifies five main stages which are: (1) agenda debate, (2) search for guiding principles, (3) defining the issues, (4) bargaining for favorable concession exchanges and (5) search for implementing the details. In order

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<sup>44</sup> Druckman (1986), pg.337

<sup>45</sup> Druckman (1986), pg.330

to pass from one stage to another, a turning point is necessary as Druckman argues. He identifies two different types of TPs which are impasse and crisis. Impasse refers to a point where no progress is made which leads to a new stage in forms of sudden progress or with returning to stability. However, crises can be seen as threat to talks which usually does not come up with a new stage. As a precondition to passing to a new stage, stability is the key event and Druckman claims that “*new stage occurs during the stability after the recovery*”<sup>46</sup>. However, recovery from the crises does not signal any new stages but rather soften the process with returning to impasse. Furthermore, Druckman<sup>47</sup> identifies three types of precipitants that trigger departures (turning points) which are: (1) *procedural* which is a type of trigger mechanism that is fed by the change in the format or structure of the negotiations, (2) substantive precipitants that occurs when there are new ideas and concepts, and (3) external precipitants which occurs outside of the negotiations such as change in a policy or leader in one of the parties or any third-party intervention to the talks. When these independent variables trigger a departure, the turning point here becomes a reaction to the precipitants in the form of accept or reject. In a case of any reactions, the process leads to a consequence which can be an agreement (de-escalatory) or impasses (escalatory).

Besides these influences, which can be both facilitating or interferences, behaviors of the parties in form of verbal communication also affects the process. Verbal behavior of the parties might be in form of threat, commitments, promises or convenient arguments. The basic distinction between facilitating and interference influences is that, while facilitating affects “*promote coordination and move negotiation through turning points*

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<sup>46</sup> Druckman. 1986, pg.333

<sup>47</sup> Druckman, Daniel. (2004). "*Departures in negotiation: Extensions and new directions*". Negotiation Journal 20.2. pg. 185-186.

to an agreement”<sup>48</sup>, interferences may cause to stalemates and crisis which delays the progress toward an agreement. In terms of how verbal behavior of the parties can be facilitating or interference towards the progress to the agreement, there are several studies<sup>49</sup>. The coding of the verbal behavior of the parties with the categorization of ‘hard’ and ‘soft’ can be used to “probe the fundamental patterns of the interaction between negotiating teams”<sup>50</sup>. However, it is important to note that, behavioral studies of negotiation are a distinct field of study that is more related with the discipline of psychology and social psychology. The next sub-section deals with the related behavioral literature on negotiation.

## 2.4 Culture and Negotiation

Other than the process analysis studies<sup>51</sup>, some studies<sup>52</sup> focused on the cognitive aspect of the negotiation. Raiffa<sup>53</sup> showed some prescription from

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<sup>48</sup> Druckman (1986), pg.336

<sup>49</sup> Please see: Mcgrath, J. E. and J. W. JULIAN (1963) "*Interaction process and task outcome in experimentally-created negotiation groups.*" J. of Psych. Studies 14. pp. 117-138.; Walcott, C. and P. T. Hopmann (1975) "*Interaction analysis and bargaining behavior.*" Experimental Study of Politics 4, 1. pp. 1-19. and; Walcott, C. And P. T. Hopmann (1978) "*Interaction analysis and bargaining behavior,*" in R. T. Golembiewski (ed.) *The Small Group in Political Science: The Last Two Decades of Development.* Athens: Univ. of Georgia Press. pp. 251-261

<sup>50</sup> Druckman (1986), pg.337

<sup>51</sup> Pioneered by Pruitt, D. G. (1981). "*Negotiation behavior*". New York: Academic Press.; Kelley, H. H. (1966). "*A classroom study of dilemmas in interpersonal negotiations*". In K. Archibald (Ed.), *Strategic intervention and conflict* (pp. 49–73). Berkeley, CA: University of California, Institute of International Studies. ; Druckman, D. (1968). "*Ethnocentrism in the inter-nation simulation*". *Journal of Conflict Resolution*, 12, 45–68. and; Morley, I., and G. M. Stephenson. (1977). "*The social psychology of bargaining*". London: Allen and Unwin.

<sup>52</sup> Bazerman, M. H., and M. A. Neale. (1982). "*Improving negotiation effectiveness under final offer arbitration: The role of selection and training*". *Journal of Applied Psychology*, 67.pp. 543–548.

<sup>53</sup> Raiffa, H. (1982). "*The art and science of negotiation*". Cambridge, MA: Belknap.

the rational perspective along with how negotiators tend to act from a behavioral perspective. The cognitive negotiation studies can be identified under four main categorizations<sup>54</sup> of biases which are: (1) cognitive biases, (2) social perception biases, (3) motivational biases, and (4) emotional biases.

In cognitive biased approach the main claim is that decision makers or negotiators have a misperception about the involved risks and values. Rationality in economic sense can be modeled with the maximization of utility concept<sup>55</sup>, however, while maximizing the utility, biases on risks and values can lead to misperception. In evaluating such issues, some studies use cognitive maps<sup>56</sup> or cognitive mental models<sup>57</sup>. Relatively, accordance with the models, negotiators would try to use the knowledge structure that had been constructed socially and norm based before, when they face a new situation. In negotiation studies, these interactions of biases and

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<sup>54</sup> Thompson, Leigh; Neal, Margaret and; Sinaceur, Marwan. (2004). "*The evolution of cognition and biases in negotiation research: An examination of cognition, social perception, motivation, and emotion.*" The handbook of negotiation and culture. Stanford Business Books. pp. 7-44.

<sup>55</sup> Please see: von Neumann, J., and O. Morgenstern. (1953). "*Theory of games and economic behavior*". Princeton, NJ: Princeton University Press.

<sup>56</sup> Please see: Gilovich, T. (1981). "*Seeing the past in the present: The effect of associations to familiar events on judgments and decisions*". Journal of Personality and Social Psychology, 40, pp.797–808. and; Higgins, E. T., Rholes, W. S., and C. R. Jones. (1977). "*Category accessibility and impression formation*". Journal of Experimental Social Psychology, 13(2), pp. 141– 154.

<sup>57</sup> Please see: Evans, J. S. (1993). "*The cognitive psychology of reasoning: An introduction*". Quarterly Journal of Experimental Psychology: Human Experimental Psychology Special Issue: The Cognitive Psychology of Reasoning, 46, pp. 561–567. ; Johnson-Laird, P. N. (1983). "*Mental models*". Cambridge, MA: Harvard University Press. and; Tabossi, P., Bell, V. A., and P. N. Johnson-Laird. (1999). "*Mental models in deductive, modal, and probabilistic reasoning*". In G. Rickheit and C. Habel (Eds.), *Mental models in discourse processing and reasoning* (pp. 299–331). Amsterdam, the Netherlands: Elsevier.



socialization were explored later<sup>58</sup>. It is argued that “*these knowledge structures (schema, maps, and models) operate in a top-down fashion to direct information processing, including attention, categorization, and retrieval*”<sup>59</sup>. Differently from cognitive bias approach, social perception bias studies<sup>60</sup> take judgment of social objects, events and people as the main variable on decision making process since the biases are in nature interpersonal and they are rooted with how people perceive the social situations and entities. In negotiation studies of the bias of negotiator, social psychology studies on the person perception<sup>61</sup> has been utilized. Furthermore “*the research on attributional processes is the keystone of the social perception approach, perhaps as a result of its grounding in the psychological principles of cognition*”<sup>62</sup>. However, in terms of the motivations and goals of the negotiators, this approach cannot contribute any accounts. Motivational biases appear when there are goals and needs and contrary to the social perceptions, motivational type of a perceptions can get initiated by the social goals but not inherently. One of the key attribution to the negotiation studies of this approach is the cooperative behaviors of the negotiators. When negotiators assume that the interaction

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<sup>58</sup> Please see; Arrow, K. J., Mnookin, R. H., Ross, L., Tversky, A., and R. Wilson, Eds. (1995). “*Barriers to conflict resolution*”. New York: Norton.

<sup>59</sup> Thompson, and etall. pg.9

<sup>60</sup> Please see; Thompson, L., Peterson, E., and L. Kray. (1995). *Social context in negotiation: An information-processing perspective*. In R. Kramer and D. Messick (Eds.), *Negotiation as a social process* (pp. 5–36). Thousand Oaks, CA: Sage. and; Thompson, L., and R. Hastie. (1990). “*Social perception in negotiation*”. *Organizational Behavior and Human Decision Processes*, 47. pp. 98–123.

<sup>61</sup> Please see; Asch, S. E. (1946). “*Forming impressions of personality*”. *Journal of Abnormal and Social Psychology*, 41, pp. 1230–1240.; Heider, F. (1958). “*The psychology of interpersonal relations*”. New York: Wiley. And; Kelley, H. H. (1967). “*Attribution theory in social psychology*”. *Nebraska Symposium on Motivation*, 15. Lincoln: University of Nebraska Press. pp. 192–238.

<sup>62</sup> Thompson and etall (2004). pg.21-22

with the other party will persistently continue<sup>63</sup>, or they are oriented in the basis of social values and communistic approaches<sup>64</sup>; they become to be more likely to set cooperative goal that prioritize the collective values.

The influence of emotional biases on the negotiations is another research area. The misperceptions related to the emotions that have divergences towards the feelings, actions or judgements made in the different stages of the negotiations<sup>65</sup>. There three main misperceptions about the feelings involved in negotiations which are:

*(1) inaccuracy in terms of judging and reading emotions in others and oneself; (2) faulty beliefs about the duration of emotional states; and (3) faulty beliefs about the causal effects of emotion on behavior*<sup>66</sup>.

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<sup>63</sup> Please see: Axelrod, R. (1984). *"The evolution of cooperation"*. New York: Basic Books.; Ben-Yoav, O., and D. G. Pruitt. (1984). *"Resistance to yielding and the expectation of cooperative future interaction in negotiation"*. Journal of Experimental Social Psychology, 20. pp. 323– 353; Heide, J. B., and A. Miner. (1992). *"The shadow of the future: Effects of anticipated interaction and frequency of contact on buyer–seller cooperation"*. Academy of Management Journal, 35.pp. 265–291; and Mannix, E. A. (1994). *"Will we meet again? The effects of power, distribution norms, and the scope of future interaction in small group negotiation"*. International Journal of Conflict Management, 5.pp. 343–368.

<sup>64</sup> Please see: De Dreu, C. K. W., and T. Boles. (1998). *"Share and share alike or winner take all? The influence of social value orientation upon choice and recall of negotiation heuristics"*. Organizational Behavior and Human Decision Processes, 76. pp. 253–276.; Dittloff, S. A., and K. L. Harris. (1996). *"A contingency approach to understanding negotiator behavior as a function of world mindedness and expected future interaction"*. Journal of Psychology, 130(1). pp. 59–70. ; Halpern, J. J. (1994). *"The effect of friendship on personal business transactions"*. Journal of Conflict Resolution, 38. pp. 647–664. ; Halpern, J. J. (1996). *"The effect of friendship on decisions: Field studies of real estate transactions"*. Human Relations, 49. pp. 1519–1547. ; Shah, P. P., and K. A. Jehn. (1993). *"Do friends perform better than acquaintances: The interaction of friendship, conflict, and task"*. Group Decision and Negotiation, 2. pp. 149–166. and; Thompson, L., and T. DeHarpport. (1998). *"Relationships, goal incompatibility, and communal orientation in negotiations"*. Basic and Applied Social Psychology, 20(1). pp. 33–44.

<sup>65</sup> Please see: Thompson, L., Medvec, V. H., Seiden, V., and S. Kopelman. (2001). *"Poker face, smiley face, and rant and rave: Myths and realities about emotion in negotiation"*. In M. Hogg and S. Tindale (Eds.), Blackwell handbook in social psychology: Vol. 3. Group processes. Oxford, England: Blackwell. pp. 139–163 and; Thompson, L., Nadler, J., and P. Kim. (1999). *"Some like it hot: The case for the emotional negotiator"*. In L. Thompson, J. Levine, and D. Messick (Eds.), Shared cognition in organizations: The management of knowledge. Hillsdale, NJ: Erlbaum. pp. 139–161

<sup>66</sup> Thompson and etall. (2004). pg.27

While people have insufficient control over their feelings or emotions<sup>67</sup>, they also have very limited ability to predict why people feel certain emotions<sup>68</sup> and how intense they are feeling it<sup>69</sup>. Moreover, people are too self-assertive<sup>70</sup> about understanding the emotions of the others in terms of what they feel, and often think that others can understand what emotions you go through.

When two interdependent parties try to solve their conflict, and go into a negotiation process; the exchange of information about the goals, motivations or strategies reveal in the form of communication. According to Adair and Brett<sup>71</sup>, communication is inherently cultural. Culture also significantly influences the beliefs and cognitions about the negotiation such as framing a deep-rooted continuous relationship or signing an agreement on a desired outcome. While individuals have different personalities, nations or groups of people have their own cultures. Culture can be defined as “*shared beliefs, attitudes, norms, and behaviors, and the group’s social, political, economic, and religious institutional structures*”<sup>72</sup>. There is a

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<sup>67</sup> Please see: Loewenstein, G. F., and D. Schkade. (1999). “*Wouldn’t it be nice? Predicting future feelings*”. In D. Kahneman and E. Diener (Eds.), *Well-being: The foundations of hedonic psychology*. New York: Russell Sage Foundation. pp. 85–105

<sup>68</sup> Ekman, Paul, Wallace V. Friesen, and Ronald C. Simons. (1985). “*Is the startle reaction an emotion?*”. *Journal of personality and social psychology* 49.5. pp. 1416.

<sup>69</sup> Keltner, D., and R. J. Robinson. (1993). “*Imagined ideological differences in conflict escalation and resolution*”. *International Journal of Conflict Management*, 4. pp. 249–262.

<sup>70</sup> Dunning, D., Griffin, D. W., Miljokovic, J. D., and L. Ross. (1990). “*The overconfidence effect in social prediction*”. *Journal of Personality and Social Psychology*, 58. pp. 568–581.

<sup>71</sup> Adair, Wendi Lyn, and Jeanne M. Brett. (2004) “*Culture and negotiation processes*.” *The handbook of negotiation and culture*. pg. 158.

<sup>72</sup> Ibid

reward and sanction based approach of the institutions within the group since they have culture as an ideology in their nature<sup>73</sup>. As culture and communication is interrelated concepts; people belonging to different cultures usually define or conceptualize the negotiation differently, as suggested by several scholars<sup>74</sup>. As negotiation is mainly about the distribution of the resources among the parties involved. The distribution of the resources in negotiations can be in form of an integrative one (win-win) or it can be distributive one (win-lose) which favors one party more than the other. There are some conceptualizations about the individualistic cultures (Western cultures) and collectivist cultures (Eastern cultures) in their behaviors, perceptions and communications in negotiations. To give an example, the analysis on the impacts of accountability on the negotiations<sup>75</sup> suggest that it caused to frame the negotiations in cooperative basis for collectivist negotiators, while it causes the individualistic negotiators to behave competitively. Another empirical study by Gelfand and Christakopoulou<sup>76</sup> claim that while the U.S negotiators (characterized as belonging to individualistic culture) tend to focus more on themselves and make self-enhancing statements while the Greeks were approaching to the

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<sup>73</sup> Please see: Lytle, A. L., Brett, J. M., Barsness, Z. I., Tinsely, C. H., and M. Janssens. (1995). "A paradigm for confirmatory cross-cultural research in organizational behavior". In L.L. Cummings and B.M. Staw (Eds.), *Research in organizational behavior*. Greenwich, CT: JAI Press. pp. 167–214. and; Brett, J. M. (2001). *Negotiating globally: How to negotiate deals, resolve disputes, and make decisions across cultural boundaries*". San Francisco: Jossey-Bass.

<sup>74</sup> Please see: Pinkley, R. L. (1990). "Dimensions of conflict frame: Disputant interpretations of conflict". *Journal of Applied Psychology*, 75. pp. 117–126. and; Gelfand, M. J., Nishii, L. H., Holcombe, K. M., Dyer, N., Ohbuchi, K. I., and M. Fukuno. (2001). "Cultural influences on cognitive representations of conflict: Interpretations of conflict episodes in the U.S. and Japan". *Journal of Applied Psychology*. 86. pp. 1059–1074.

<sup>75</sup> Gelfand, M. J., and A. Realo. (1999). "Individualist–collectivism and accountability in intergroup negotiations". *Journal of Applied Psychology*, 84. pp. 721–736.

<sup>76</sup> Gelfand, M. J., and S. Christakopoulou. (1999). "Culture and negotiator cognition: Judgment accuracy and negotiation processes in individualistic and collectivistic cultures". *Organization Behavior and Human Decision Processes*, 79. pp. 248–269.

negotiations in more collectivist way (putting more empathize on the both sides). Moreover, according to Graham<sup>77</sup>, collectivist negotiators (in his case, Japanese) are indicating less threats or commands than individualistic U.S negotiators. Another distinction between two cultures is about the low and high context communication types<sup>78</sup>. Low context communication means to be less dependent on the context while making a statement but focus on the actual words and actions (individualistic cultures tend to use more), on the other hand, high context communication (used more by collectivist cultures such as China and Japan) is more “*indirect and requires considerable familiarity with the cultural meaning conveyed by various contexts*”<sup>79</sup>. Another difference is pointed out with an empirical word by Drake<sup>80</sup> which is that individualist negotiators (Americans) were making statements that rely on the logic, reasoning and analytical thinking, while collectivist negotiators (Taiwanese) were using statements related with the relationships and social roles.

Other than communication, culture and emotions are also interrelated phenomena. They bring another type of categorization between cultures

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<sup>77</sup> Graham, J. L., Evenko, L. I., and M. N. Rajan. (1992). “*An empirical comparison of Soviet and American business negotiations*”. *Journal of International Business Studies*. pp. 387–418.

<sup>78</sup> Please see: Gibson, C. B. (1998). “*Do you hear what I hear: A model for reconciling intercultural communication difficulties arising from cognitive styles and cultural values*”. In P. C. Earley and M. Erez (Eds.), *New perspectives on international industrial/organizational psychology*. San Francisco: New Lexington. pp. 335–362; Hall, E. T. (1976). “*Beyond culture*”. Garden City, NY: Anchor.; Harris, P. R., and R. T. Moran. (1991). “*Managing cultural differences*”. Houston, TX: Gulf. and; Ting-Toomey, S. (1985). “*Toward a theory of conflict and culture*”. In W. B. Gudykunst, L. P. Stewart, and S. Ting-Toomey (Eds.), *Communication, culture, and organizational processes*. Vol. 9. Sage: Newbury Park, CA. pp. 71–86

<sup>79</sup> Adair, and etall pg. 161-162

<sup>80</sup> Drake, L. (1995). “*Negotiation styles in intercultural communication*”. *International Journal of Conflict Management*, 6. pp. 72–90.

different than individualistic and collectivist. Distinctions between cultures can be made conceptualized under the elements of objective, subjective or both<sup>81</sup>. Economic and political settings in a culture or differences in religion or language can be classified as objective elements. However, the clues, or beliefs of a specific culture indicates a subjective element. Especially the subjective elements play crucial role in the negotiations. Kumar argues that “*cultural distance is more likely to produce negative affective states prior to negotiation than cultural closeness*”<sup>82</sup>. Furthermore, he defines the cultural distance with taking subjective elements of values and beliefs as the central variables. According to Triandis<sup>83</sup>, when parties perceive the other party as dissimilar, this situation prevails a lack of attraction. Furthermore, dissimilar subjective elements in the different cultures also hardens the process of negotiation in finding a common ground since making references in context hardens as well and creates a perception of that the opposite individual does not belong in-group. Moreover, Kumar points out that

*cultural distance also lessens the opportunities for rewarding interaction in intercultural settings, as negotiators with conflicting beliefs and values may enter the negotiation expecting the situation to be difficult*<sup>84</sup>

The values of equality, fairness, equality and need can be referred as differently in various cultures<sup>85</sup>. While in individualistic society settings,

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<sup>81</sup> Triandis, H. C., Kurowski, L. L., and M. J. Gelfand. (1994). “*Workplace diversity*”. In H. C. Triandis, M. D. Dunnette, and L. M. Hough (Eds.), *Handbook of industrial and organizational psychology*. Vol 4. Palo Alto, CA, Consulting Psychologists. pp. 769–827

<sup>82</sup> Kumar, Rajesh. (2004). “*Culture and emotions in intercultural negotiations: An overview*.” *Handbook of negotiation and culture*. pg. 98.

<sup>83</sup> Triandis, Harry C. (1967). “*Interpersonal relations in international organizations*.” *Organizational Behavior and Human Performance* 2.1. pp. 26-55.

<sup>84</sup> Kumar, pg. 98.

<sup>85</sup> Deutsch, M. (1975). “*Equity, equality, and need: What determines which value will be used as the basis for distributive justice?*” *Journal of Social Issues*, 31. pp. 137–149.

‘equity’ norm is more dominant; the norms of ‘equality’ and ‘need’ are more common in collectivist cultures<sup>86</sup>.

## **2.5 Conclusion**

The conceptual framework of the thesis is based on this chapter with analyzing the different literatures on negotiation. The process itself as a significant variable and the impact of the culture and bias to the process is examined. Additionally, the importance of the pre-negotiation phase is also analyzed since turning points concept can also refer to such phases of preparation in oil and gas sectors as well. The content presented in this chapter will be used to analyze the cases in chapters 4 and 5 in determining the critical points in chronological events and the role of culture to the negotiations. Moreover, the multi-disciplinary approach of this thesis will be further strengthened in the upcoming chapter with introducing oil and gas based approaches to the negotiation while defining the actors and the relative bargaining power of those actors in the oil and gas sector.

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<sup>86</sup> Triandis, Harry C. (2018). *Individualism and collectivism*. Routledge.

## CHAPTER 3

### ACTORS AND THEIR INTERESTS IN INTERNATIONAL ENERGY NEGOTIATIONS

#### 3.1 Introduction

In this chapter, actors' interests and the related models that explain such phenomenon will be covered. Firstly, this chapter deals with the actors' bargaining power with a specific emphasis on the relations between states and multinational corporations. The major work analyzed in the first section, Vernon's Obsolescing Bargaining Model (OBM), is the main theoretical study related with this chapter. As one of the most significant source of energy oil is the main commodity to be subject to international negotiations. Therefore, a brief history on the development of international oil negotiations is introduced. Furthermore, the interests of the state and non-state actors in energy negotiations are defined including international oil companies (IOCs) and national oil companies (NOCs). States are also categorized as net-importer and net-exporter of energy commodities.

#### 3.2 Actors' Bargaining Power and OBM

In terms of tendencies of the actors in the simplest sense, Vivoda points out that the main aim of the firms is "*ongoing search for, and sustainability of, economic rents*"<sup>87</sup>. When it comes to a state, Globerman and Shapiro argue that governments' main objective is to try to redirect the economic rent retrieved from a foreign investment to domestic production<sup>88</sup>. Therefore,

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<sup>87</sup> Vivoda, Vlado. (2011). "*Bargaining model for the international oil industry.*" *Business and Politics* 13.4. pg.1

<sup>88</sup> Globerman, Steven, and Daniel Shapiro. "*Canadian government policies toward inward foreign direct investment*". No. 24. Gouvernement du Canada-Industry Canada, 1998.



one of the main issues identified in the literature is the division of the rent between two actors which is seen as the major conflicting interest. Furthermore, bargaining process is the main dynamic that determines the division of the rent between actors. Vivoda takes a liberal perspective on the issue and claims that “*bargaining between the oil companies and host governments is positive sum, as the objectives of the two sets of actors are never exclusively conflicting*”<sup>89</sup>.

Some studies (such as Fagre and Wells Jr.<sup>90</sup>; and Kim<sup>91</sup>) argue that bargaining power of multi-national corporations (MNCs) tends to be lower when there is high competition in an industry. In a market condition in which more than one MNC can provide the needed services and goods, governments’ relative bargaining power increases since it can play one firm to another in order to get the closest price or share that is desired.

Kim’s study is concentrated on the role of the competition in the bargaining process and it is argued that “*the more intense the competition, the weaker the bargaining power of multinationals vis-à-vis that of host governments*”<sup>92</sup>. In some studies, such as Poytner<sup>93</sup>, Lecraw<sup>94</sup> or Fagre and

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<sup>89</sup> Vivoda (2011), pg.1

<sup>90</sup> Fagre, Nathan and Wells Jr., Louis T. (1982). “*Bargaining Power of Multinations and Host Governments*”. *Journal of International Business Studies*, Vol. 13, No. 2, pp. 9-23.

<sup>91</sup> Kim, W. Chan. (1988). “*The Effects of Competition and Corporate Political Responsiveness on Multinational Bargaining Power*”. *Strategic Management Journal*, Vol. 9, No. 3, pp. 289-295.

<sup>92</sup> Kim, W. Chan, pg. 289

<sup>93</sup> Poynter, T. A. (1982) ‘*Government intervention in less developed countries: the experience of multinational companies*’, *Journal of International Business Studies*. pp. 9-25.

Wells<sup>95</sup>; the relative bargaining power of MNEs and HCs is defined accordingly to the corporate economic advantages such as the level of a MNEs' *“global market access, technology, export intensity, product diversity, and product differentiation”*<sup>96</sup>. Lecraw argues that the overall size of a MNE (its amount of total assets) can be a strong source in bargaining power; however, it can be weakened by host countries with playing one major firm to another<sup>97</sup>. Also for developing countries with high rates of economic growth and rapid development in its industries, MNEs would be more enthusiastic about investment which increases the bargaining power of the host countries<sup>98</sup>.

In terms of global market access, Fagre and Wells' study on US firms bargaining power in Latin America suggest that:

*fundamental to the strategy of some multinational enterprises is an ability to rationalize production on a global scale and a capacity to acquire and utilize sophisticated knowledge of foreign markets*<sup>99</sup>.

More specifically, Fagre and Wells take the *equity ownership* as a main determinant of bargaining power and claim that *“ideally, the bargain would be measured by all terms of the arrangement that affect ownership, control,*

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<sup>94</sup> Lewcraw, D. J. (1984) 'Bargaining power, ownership and profitability of subsidiaries of transnational corporations in developing countries', Journal of International Business Studies. pp. 27-43.

<sup>95</sup> Fagre, N. and L. T. Wells, pp. 9-24.

<sup>96</sup> Kim, W. Chan, pg. 289

<sup>97</sup> Lewcraw, pg.30

<sup>98</sup> Gomes-Casseres, Benjamin. (1990). *“Firm Ownership Preferences and Host Government Restrictions: An Integrated Approach”*. Journal of International Business Studies, 21(1): pp. 1-22.

<sup>99</sup> Fagre, N. and L. T. Wells, Jr., pg. 13

*and the allocation of economic benefits”*<sup>100</sup>. Moreover, when host governments negotiate with MNEs one of the main goals of the governments is to protect the local ownership which arose from political motivations and thus *“investment regulations typically emphasize joint venture requirements”*<sup>101</sup>.

Another variable, which can have an effect bargaining outcome between MNEs and host governments, emphasized by scholars such as Swingle<sup>102</sup>, Kotler<sup>103</sup> and Poyntner<sup>104</sup> is the degree of responsiveness provided by MNEs. The responsiveness refers to the MNEs ability to

*convince host governments that they exercise management practices which are responsive to the needs of host nations (e.g. local employment, job training and education for host nationals) may obtain a favorable bargaining outcome*<sup>105</sup>.

Early studies on bargaining power of multinationals and host government do not put much emphasize on the other possible variables that can have enormous influence over the outcome of a negotiation. Fagre and Well states that, for example, *“there is no attempt to measure other possibly important variables: negotiating skills, home government support, side*

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<sup>100</sup> Fagre, N. and L. T. Wells, Jr., pg.9

<sup>101</sup> Fagre, N. and L. T. Wells, Jr., pg.10

<sup>102</sup> Swingle, P. (1970). *“The Structure of Conflict”*. Academic Press, New York.

<sup>103</sup> Kotler, P. (1986) 'Megamarketing', Harvard Business Review, pp. 117-124.

<sup>104</sup> Poynter, T. A. (1978) 'Multinational enterprises and political risk in less developed countries: an analysis of the corporate determinants of host country intervention'. Ph.D. dissertation, London Graduate School of Business Studies, London.

<sup>105</sup> Kim, W. Chan., pg. 290

*payments, regional economic groupings, and so on*"<sup>106</sup>. Except these significant variables there is lack of study which investigates what can be vital to the outcome, the process itself.

Ramamurti investigates the shift in MNC host country relations in 1990s which become more cooperation oriented rather than conflictual with deploying two-tier multi party bargaining analysis. Traditional bargaining models take the bargaining power of the actors directly as the determinants of the negotiation's outcome. As an alternative to the traditional bargaining models, he claims that now the relations cannot be shaped by static two-party negotiations but rather includes two tier negotiation processes<sup>107</sup>. While tier-1 negotiations take place bilaterally or through institutions such as IMF and produce "*macro rules or principles governing FDI, anchored in bilateral or multilateral agreements*"<sup>108</sup>; they draw a general framework for tier-2 bargaining which are the micro negotiations between MNEs and governments. Furthermore, it is claimed that

*industrialized countries have used tier-1 bargaining to weaken the hand of host governments in tier-2 bargaining, while strengthening that of their MNCs, and that they have been more successful at doing this in some countries and sectors than in others*<sup>109</sup>.

The literature on the international negotiations can be mainly divided into two broad categories and perspectives. While game theory solutions pioneered by Nash<sup>110</sup> are offering an outcome analysis with taking the

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<sup>106</sup> Fagre, N. and L. T. Wells, Jr., pg.9

<sup>107</sup> Ramamurti, Ravi. (2001). "*The obsolescing 'bargaining model'? MNC-host developing country relations revisited.*" *Journal of International Business Studies* 32.1. pp. 23-39.

<sup>108</sup> Ramamurti, pg.24

<sup>109</sup> Ibid

<sup>110</sup> Nash, J. (1953). '*Two Person Cooperative Games*', *Econometrica* 21, pp. 128-140. Also see: Roth, A. E. (1978). '*The Nash Solution and the Utility of Bargaining*', *Econometrica*

actor's choices as a main determinant and purely focus on the outcome<sup>111</sup>, the process analysis is the other branch. Outcome analysis, therefore, assumes that the actors are perfectly rational with the goal in mind to minimize its loss while maximizing its utility. Also, it is assumed that each actor has the complete information on the other side's choices and possible strategies. As mentioned in the Chapter 2, international process negotiation analysis is mostly utilized in peace studies based on the content analysis techniques which provide to this study with valuable concepts. In the literature, the most mentioned and utilized theory is Obsolescing Bargain Model (OBM) in analyzing the dynamics that shape host country- MNC bargaining and intra-governmental bargaining processes in pipeline politics.

Vernon's<sup>112</sup> theory of OBM is originally stands for the defining situation in which power shifts from MNC to the host government once the investment is made. In its core, OBM takes the relative bargaining power as the main identifier of the relative gains which means the actor with more resources with less constraint can have the advantage in relative gains from bargaining. Before investment is made by MNCs, they have the options to invest in several different countries while governments try to attract the investment. In this situation, relative bargaining power of a MNC is higher, however, after the investment is made, bargain obsolesces and host

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46, pp. 587–594. and; Roth, A.E. (1979). 'An Impossibility Result concerning *N*-Person Bargaining Games', International Journal of Game Theory 8(3), September, pp. 129–132

<sup>111</sup> For the game theoretic solutions to pipeline politics please see; Zweifel, Peter; Krey, Boris; and Schirillo, Sandro. (2009). "Russian gas to western Europe: a game-theoretic analysis". The Journal of Energy Markets 2.4: pg. 3; Hubert, Franz, and Ikonnikova, Svetlana. (2005). "International institutions and Russian gas exports to western Europe". Humboldt-Universität zu Berlin. ; Hubert, Franz, and Suleymanova, Irina. (2009). "Baltic Sea Pipeline: The Profits Will Be Distributed Differently." Weekly Report 5.12: pg. 84. and; Hubert, Franz, and Cobanli, Onur. (2015) "Pipeline power: a case study of strategic network investments". Review of Network Economics 14.2. pp. 75-110.

<sup>112</sup> Vernon, Raymond. (1981) "Sovereignty at bay ten years after". International organization 35.3. pp. 517-529.

countries get less dependent in terms of resources on MNCs due to technological developments or/and economic developments. Another factor that obsolesce the relative bargaining power is that

*the longer the MNC is in the host country, and the more profitable the investment is, the more likely it is that the government's perception of the benefit–cost ratio offered by the MNC will worsen*<sup>113</sup>.

As argued by Stevens<sup>114</sup>, OBM model is incapable of explaining oil and gas pipeline bargaining processes since the very high fixed costs and low operating costs, contrast with usual MNC- host country investment relations, are the main characteristics of the investment. However, according to Omonbude, involvement of the transit country to the equation has some implications for OBM since “*the transit country can continue to increase its demands so long as the pipeline continues to meet its operating costs*”<sup>115</sup>. Additionally, since a pipeline is inflexible, any disruption can result in great costs which give a higher relative bargaining power to transit country.

According to Eden, Lenway and Schuler, most of the business scholars think that obsolescing bargain model has become incapable of explaining contemporary oil industry bargaining processes. However, their argument is based on the idea to “revitalize” OBM with re-conceptualizing it as political bargaining model (PBM)<sup>116</sup>. One of the reasons why OBM model cannot explain the contemporary oil industry bargaining dynamics is that the MNE

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<sup>113</sup> Omonbude, E. (2016). “*Cross-border oil and gas pipelines and the role of the transit country: economics, challenges and solutions*”. Springer. pg. 4

<sup>114</sup> Stevens, P. (1996). ‘*A History of Transit Pipelines in the Middle East: Lessons for the Future*’. CEPMLP Seminar Paper: SP23, University of Dundee.

<sup>115</sup> Omonbude, pg. 4

<sup>116</sup> Eden, Lorraine, Stefanie Lenway, and Douglas A. Schuler. (2004). “*From the obsolescing bargain to the political bargaining model*.” *International Business & Government Relations in the 21st Century*” Workshop, Phoenix, January. Vol. 5. pg.2

and HC relations are seen as cooperative rather than conflictual by scholar such as Dunning<sup>117</sup>, Stopford<sup>118</sup> and Luo<sup>119</sup>. Even though relations can be defined as, governments have to

*take into account the interests of other stakeholders (e.g., consumers, labor groups, nongovernmental organizations) and commitments (e.g., membership in international organizations, bilateral and regional accords) so that, in practice, MNEs must bargain for favorable public policies*<sup>120</sup>.

In terms of relative and absolute gains of the actors, OBM model assumes that the interests of actors are conflictual but it is not a barrier before the absolute gains but rather it mainly affects the relative gains of MNCs and HCs where the relative bargaining power of the actors determine their relative gains from the outcome of the bargaining process. In terms of distribution of the outcome or result of a bargaining;

*absolute gains can be interpreted as how closely each party comes to achieving its first best goals; relative gains by comparing the two parties' success rates. The OBM literature suggests that the outcome should favor the party with the stronger resources, higher issue salience, weaker constraints and greater coercive power*<sup>121</sup>.

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<sup>117</sup> Dunning, John. (1993). "Governments and multinational enterprises: From confrontation to cooperation?" In Lorraine Eden and Evan Potter (eds.), *Multinationals in the Global Political Economy*. London: Macmillan.

<sup>118</sup> Stopford, John M. (1994). "The growing interdependence between transnational corporations and governments". *Transnational Corporations* 3: 53-76.

<sup>119</sup> Luo, Yadong. (2001). "Toward a cooperative view of MNC-host government relations: Building blocks and performance implications". *Journal of International Business Studies* 32: 401-19.

<sup>120</sup> Eden, Lorraine, Stefanie Lenway, and Douglas A. Schuler. (2004). "From the obsolescing bargain to the political bargaining model." *International Business & Government Relations in the 21st Century* Workshop, Phoenix, January. Vol. 5. pg.2

<sup>121</sup> Eden, Lorraine, Stefanie Lenway, and Douglas A. Schuler, pg.3

However, the very first pre-condition to gain an absolute gain from a negotiation is to get ability to enter the negotiation and sometimes it can be challenging somehow. When there is an industry in which rapid innovation is the main characteristic and high technology firms are the main actors, such as upstream oil industry, the governments' bargaining power tend to be weaker since they need the help of the firm in order to initialize or develop the industry<sup>122</sup>.

As an addition to the OBM, Vivoda develops a model in which politics is the main factor that shapes the oil industry. Furthermore, Vivoda argues that even though the oil markets are highly politicized, the influence of the economics cannot be ignored but rather the actions of the governments and conditions of the market are affecting each other<sup>123</sup>. The major actors in the oil industry are states, international oil companies (IOCs), and national oil companies (NOCs). NOCs usually have aligned interest with the state whatever the state is importing or exporting the oil. Vivoda divides the states into two categories in which there are net exporters and net importers since “*some countries, such as the U.S., China, Russia, Canada, and Mexico, are in top ten of both consumer and producer categories*”<sup>124</sup>. These countries also are organized under some organizations such as OPEC or IEA.

### **3.3 Brief History of International Oil Negotiations**

The relation between a state and an international oil company is not a stable phenomenon but the interests and relative balance of power of the actors can change accordingly to the market conditions of the time period. Vivoda

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<sup>122</sup> Fagre, N. and L. T. Wells, Jr, pg.11

<sup>123</sup> Vivoda, Vlado. (2008). “*The return of the obsolescing bargain and the decline of Big Oil: A study of bargaining in the contemporary oil industry*”. VDM Verlag Dr. Müller.

<sup>124</sup> Vivoda (2008), pg. 15



argues that some periods such as between 1970s-1980s can be categorized as ‘conflicting’ period in which “*there was a high degree of disharmony between actors with incompatible interests, and host states and NOCs were dominant*”<sup>125</sup>. However, between 1980s to late 1990s can be defined as ‘cooperative’ because states’ and IOCs’ interests were more compatible. Another categorization of time periods in relations of states and IOCs are the relative powers of the actors in bargaining. While 70s and 80s is referred to more dominant position of states vice versa IOCs, 80s and 90s are considered as the times in which IOCs were relatively more powerful in the bargaining process. In terms of oil and gas industry negotiations, a chronological categorization is provided by Igweonwu<sup>126</sup> which divides it into three time periods which are: (1) the hegemony phase between 1901-1957, (2) the direct response phase between 1957- 1966, and finally (3) the tactic agreement phase between the years 1966-1979.

The hegemony phase was mainly dominated by the international oil companies in which long-term concessions have been given by producer countries. The role of the state was very limited on the operations. Igweonwu claims that states “*exercised no real voice in either the management or conduct of petroleum operations or the profits that accrued from the said operations, except the receipt of royalties*”<sup>127</sup>. More specifically, in the Middle East the relative power of the IOCs was absolute and their production was determined accordingly to their sale volumes. The

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<sup>125</sup>Vivoda, Vlado. (2009). “*Resource Nationalism, Bargaining and International Oil Companies: Challenges and Change in the New Millennium*”. *New Political Economy*, 14:4, pg. 517

<sup>126</sup> Igweonwu, I. C. (1988). “*A theoretical perspective on negotiations, with reference to the international oil industry*”. *OPEC review*, 12(2), 177-197.

<sup>127</sup> Igweonwu, I. C., pg. 184

phase can be defined as the power and dependency relations which was dominated by the oil companies and naturally most beneficial to them.

After the establishment of OPEC, the hegemony phase was crumbled and a new phase had started. The direct response phase was more interaction based and the relations of the states and IOCs changed the form from dependency to the “*exchange relationship of buyer and seller, each trying to ‘maximize’ his gain and, of course, ‘minimize’ his loss*”<sup>128</sup>. Joint ventures in concession regimes started to take place and strengthen the role of the state with providing them more control over the operations. First production sharing agreements (PSAs) were signed as well at the end of this phase and some service contracts also became a feature of the phase which will be discussed in the next section in detail.

The final phase of the tactic agreement is also divided into two categories. The first sub-phase was between 1966-1973 which starts with first PSA’s entering into forces and ends with 1973 oil crisis. PSAs were critical turning point in the shift of bargaining position to the state and diminishing the roles of the oil companies. The interdependent and relatively smaller oil companies also took advantage from the change with taking more risks. The detailed discussion on the role of different oil companies will be further discussed in the next section. To sum up; in the first part of the tactic agreement phase, “*the major emphasis was on direct control over the development and production strategy of oil reserves*”<sup>129</sup>. IOCs started to become regular contractor of who takes the risk or/and shares the risk via joint ventures. Especially 1973 oil crisis illustrated how states became dominant on influencing the industry and the relevance of OPEC country’s policies remarked the first part of the phase. It was further illustrated by the

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<sup>128</sup> Igweonwu, I. C., pg. 188

<sup>129</sup> Igweonwu, I. C. , pg. 189

second oil shock in 1979 which illustrates even the domestic developments in a producing country can have a great impact on the global economy, in this case Iranian Revolution.

The second part of the tactic agreement phase was between the years 1973-1979. The increased control over the industry and relative power of the producing countries vice versa IOCs had continued. Igweonwu underlines that

*as governments, or their sub-units, increasingly became part of the global economic and commercial domain, they continued to claim and enjoy immunity for their activities, even in a competitive environment*<sup>130</sup>.

Nationalization of oil companies and control over the price of oil had completely shifted side from IOCs to states clearly in this phase. Therefore, the phase further can be described as the politicization of the oil industry and the response of the IOCs was in the general sense was the accommodating both needs and considerations of the producer countries.

In the next sub-sections, the roles and the interests of the actors in the hydrocarbon sectors are discussed. Besides comprehensive literature review, the categorization of the actors and their interests are mainly borrowed from Vivoda's extensive analysis on the oil industry<sup>131</sup>. Oil industry can be defined as mixed actor model in which each of them can have aligned interests, however, the condition of cooperation depends on whether there is ground rules for an agreement or not<sup>132</sup>. Furthermore, oil companies, importing and exporting states, do not necessarily have consistent and compatible interests. This is valid especially before signing the contract since both states and IOCs want share of profit as much as

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<sup>130</sup> Ibid

<sup>131</sup> Vivoda (2008)

<sup>132</sup> Vivoda (2008), pg. 27

possible. According to Johnston, if contracts “*efficiently and appropriately crafted, there should be substantial alignment or mutuality of interests*”<sup>133</sup>. In general, for both parties, there are four main areas of concerns which are (1) division of profits, (2) government guaranteed share of revenue, (3) keeping costs down, and (4) maximum efficient rate.

### 3.4 States

First of all, as Johnston states, every country has different objectives and conditions<sup>134</sup>. The first widest division is whether they are oil importing country or an exporter. However, importer and exporter division is not a clear cut as it seems since some countries might be on the tops of both lists such as U.S. Therefore, net-importer and net-exporter of oil is clearer definition for dividing states into two categories in oil industry. For net oil exporting countries, the main interest is to ensure the “*proper returns on the exploitation of oil resources for the state by the means of maximisation of gains from exports of crude oil or refined products*”<sup>135</sup>. Therefore, the moderate increases in the oil price can positively influence oil exporting countries<sup>136</sup>. Diversification of export destinations is also one of the vital interests for these states when it comes to exporting the hydrocarbons. Additionally, except exporting the hydrocarbons, those states have to consider the domestic use of the hydrocarbons as well. Moreover, Vivoda explains that the interests of an exporting state can

*range from security of supply on the domestic market; health; safety; welfare and environmental interests; the conservation of oil resources*

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<sup>133</sup> Johnston, Daniel. (2003). “*International exploration economics, risk, and contract analysis*”. PennWell Books. pg. 137

<sup>134</sup> Johnston (2003), pg. 134

<sup>135</sup> Vivoda (2008), pg. 16

<sup>136</sup> Also see Bentham, R. (1988). “*Legal Status of State Petroleum Companies*” in Nicky Beredjick and Thomas W. Wälde (eds.), *Petroleum Investment Policies in Developing Countries*. London: Graham & Trotman.

*for future needs; the training and employment of local labour in the oil industry*<sup>137</sup>.

For net oil importing countries, sustaining energy security; which can be defined as the availability of the uninterrupted supply of hydrocarbons at affordable/reasonable and, if possible stable price, is the main objective<sup>138</sup>. In order to achieve the security, importing countries usually use diversification of the exports as a main strategy and

*developing competitive domestic production of oil or of any substitute products; assisting state-owned or private oil companies with headquarters in that particular country in their overseas ventures; and by engaging in demand-management by reducing domestic oil consumption*<sup>139</sup>.

However, exporting countries need the energy security as well in terms of its ability to sell its resources at an acceptable and in stable price without being subject to be replaced anytime by another exporting country. Therefore, hydrocarbon exporting countries try to diversify the customers as much as possible in order not to be in a vulnerable position to the single buyer or market.

Besides being a net-importer or- net-exporter; *“the political, religious, and cultural foundation of a country can have a substantial influence on the way business is conducted”*<sup>140</sup>. According Johnston most of the governments only desire a fair contract which *“market can bear”* and nothing more.

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<sup>137</sup> Vivoda (2008), pg. 16

<sup>138</sup>The definition of energy security is analyzed in wider contexts which include environmental concerns and suitability of the energy source as well, however, here the term is only used under the framework of exporting and importing hydrocarbons. Also see Zuhayr Mikdashi. (1976). *“The International Politics of Natural Resources”*. Ithaca, N.Y.: Cornell University Press.

<sup>139</sup> Vivoda (2008), pg. 20

<sup>140</sup> Johnston (2003), pg.135

### 3.5 Non-State Actors

International oil companies (IOCs) are the other major actors besides oil exporting and importing countries. IOCs have been considered as very significant actors by many scholars (such as Falola and Genova<sup>141</sup>, Turner<sup>142</sup>, Sampson<sup>143</sup>, Grant<sup>144</sup>, Antill and Arnott<sup>145</sup>, Hartshorn<sup>146</sup>; and Luciani<sup>147</sup>) and they are analyzed as the main determiner actor in the industry. Vivoda classifies IOCs under two categories which are *majors* and *independents*<sup>148</sup>. The terms majors refer to the big oil companies vertically integrated and take place in exploration, transportation and marketing of the hydrocarbons, also known as up-stream, mid-stream and down-stream. According to Vivoda, six IOCs are referred as the majors which are “*Exxon Mobil, Chevron, BP, Royal Dutch/Shell, Total, and Conoco Phillips*”<sup>149</sup>.

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<sup>141</sup> Falola, Toyin, and Genova, Ann. (2005). “*The politics of the global oil industry: an introduction*”. Greenwood Publishing Group.

<sup>142</sup> Turner, Louis. (1976) “*The Oil Majors in World Politics*”. International Affairs, vol. 52, no. 3, pp. 368-80.

<sup>143</sup> Sampson, Anthony. (1975). “*The seven sisters: The great oil companies and the world they shaped*”. New York: Viking Press.

<sup>144</sup> Grant, Robert M.. (1991). “*The Oil Companies in Transition, 1970-1987*”. Milano: Franco Angeli.

<sup>145</sup> Antill, Nick and Arnott, Robert. (2002). “*Oil Company Crisis: Managing Structure, Profitability and Growth*” Oxford: Oxford Institute for Energy Studies.

<sup>146</sup> Hartshorn, Jack E., (1962). “*Oil Companies and Governments*”. London: Faber and Faber.

<sup>147</sup> Luciani, Giacomo. (1984). “*The Oil Companies and the Arab World*”. New York: St. Martin’s Press.

<sup>148</sup> Vivoda (2008), pg. 22

<sup>149</sup> Vivoda (2008), pg. 23

These majors together control the worldwide 13% of oil production, 21% of the refining and 35% of the sales of oil products<sup>150</sup>. The significance of the majors to the international economy is illustrated by Vivoda by stating that the majors “*have often been more powerful than some states, as their revenues were regularly higher than those of many small and medium sized states*”<sup>151</sup>. The independents, on the other hand, try to provide more favorable conditions for the host-state and with typically taking higher risks in exploration. Another difference between the majors and independents is that the independents cannot be extensive as majors and relatively not vertically integrated as much as majors.

The three main interests of the IOCs are identified “*before and after they established operations in a particular host state*”<sup>152</sup>. In order to increase the market value of their company, IOCs firstly interested in booking the reserves with contracts (might be in forms of production sharing agreements, joint ventures or concession agreements<sup>153</sup> which will be extensively discuss in the next chapter) allowing them to do so. Furthermore, IOCs usually looks for higher profit margins with

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<sup>150</sup> Parra, Francisco. (2004). “*Oil politics: A modern history of petroleum*”. IB Tauris, pg.329.

<sup>151</sup> Vivoda (2008), pg. 23

<sup>152</sup> Vivoda (2008), pg. 24

<sup>153</sup> For a detailed discussion please see: Al-Attar, Abdulaziz and Alomair, Osamah. (2005). “*Evaluation of Upstream Petroleum Agreements and Exploration and Production Costs*”. OPEC Review, 29:4. O’Brien, Roderick. (1977). “*South China Sea Oil: Two Problems of Ownership and Development*”. The Institute of Southeast Asian Studies. Occasional Paper, no. 47. Kaiser, Mark J. and Pulsipher, Allan G. (2004). “*Fiscal System Analysis: Concessionary and Contractual Systems Used in Offshore Petroleum Arrangements*”. U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico OCS Region.

*investing and risking their capital, and they are usually high-risk takers. In some cases, they lose their capital, for example, when they drill a dry well.‘ However, in some cases they will find large and hugely profitable fields<sup>154</sup>.*

The final consideration of IOCs in investing or taking risk in a foreign country is the predictability of the country’s taxes and regulations since they are the main risk takers in terms of financial means in which they cannot control, IOCs try to at least predict and control political risks. Therefore, in terms of the predictability, IOCs can prefer to invest and take risks in more democratic environments and where rule of law is respected, however, they can take bigger risks in more autocratic countries and look for higher profits.

Even though national oil companies (NOCs) act on the behalf of the state’s interests, they ought to be categorized under the non-state actor due to their separate institutional framework and some degree of independence. Establishing a national oil company<sup>155</sup> and nationalization of oil industry in many oil-exporting countries had been considered as the stressing of independence. For Vivoda, “*the main reasons for formation of NOCs are revenue collection, preservation of sovereignty, and ideology*”<sup>156</sup>. It has been used as an instrument to carry all oil-related activities in a country in technical and commercial means which increases the government’s bargaining position visa-versa IOCs. Therefore, unsurprisingly the domestic and international interests of the host countries and NOCs have been

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<sup>154</sup> Vivoda (2008), pg. 24

<sup>155</sup> For detailed discussion on the role of the NOCs please see: Bentham, Richard W., and William GR Smith. (1986). “*State Petroleum Corporations: Corporate Forms, Powers and Control: a Report Compiled for the United Nations Organisation*”. Centre for Petroleum and Mineral Law Studies, University of Dundee.; and also see Vrankel, Paul H. (1978). “*The rationale of national oil companies.*” OPEC Review 2.3: pp. 46-51.

<sup>156</sup> Vivoda (2008), pg. 25



overlapping. NOCs are usually takes place in joint ventures of exploration activities and; both represents states as one of its institutions and try to increase its expertise. In some countries NOCs has to be the majority stakeholder in a project and responsible for arranging any PSAs. Furthermore, as Vivoda underlines:

*in many oil-producing countries, the NOC, operating as the government's agent, determines or biases entry, particularly through the administration of PSAs or through serving as a contractor with private IOCs. Domestic distribution of oil products, albeit below cost, is reserved for the NOC<sup>157</sup>.*

The main obstacles that NOCs typically face is “*lack of capital, and the lack of managerial and technological expertise*”<sup>158</sup>. Furthermore, as a company under the control of the state, NOCs are characterized by policies of the states

*which includes setting targets and industry rules, and by developing institutions, which hold the NOC responsible for its performance. Usually, NOCs are not consulted on key oil policy decisions, for example on those related to OPEC politics and policy<sup>159</sup>.*

In 1990s, a wave of privatization of NOCs has started with the transition of former Soviet economies to the market based economies<sup>160</sup>. This transition has also paved the way to open the oil industry to private investments<sup>161</sup>. The trend of resource nationalism of 1970s has been weakened by 80s and

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<sup>157</sup> Vivoda (2008), pg. 26

<sup>158</sup> Vivoda (2008), pg. 25

<sup>159</sup> Vivoda (2008), pg. 26

<sup>160</sup> Vivoda (2008), pg. 27

<sup>161</sup> Stiglitz, Joseph E. (1995). “*Whither Socialism*”. Cambridge: MIT Press, 1995. pp. 171-96. Also see: Hartshorn, Jack Ernest. (1993). “*Oil trade: politics and prospects*”. Cambridge University Press.

90s. Vivoda points out that “*in line with general trends and with low oil prices in the 1990s various oil-exporting states offered relatively attractive deals to the major Western IOCs*”<sup>162</sup>. Also, low oil prices had an impact on the bargaining between IOCs and host countries during late 80s and 90s because the interests of the states have shifted from being nationalistic about their resources to the being in need of investment. Moreover, IOCs had needed to “*wanted access to oil, but only if it were cheaper to produce than it would be elsewhere*”<sup>163</sup>. However, this trend has shifted again after IOCs got several ‘*sweetheart deals*’ and resources nationalism has been started to shape the bargaining of oil industry in the 2000s.

### **3.6 Conclusion**

To sum up, this chapter further explained and provided insights about the roles of the actors involved in international energy negotiations. Even though interests of the actors are represented in a broad sense, it should be noted that every case of energy negotiation might have its own context and its own characteristics. However, the main interests that drive the actors on negotiations are typically steady concepts which introduced in this chapter such as an IOC’s profit-oriented approach to the negotiations. Next chapter explores the relations and negotiations of IOCs and producer states which are usually defined under contractual regime. Therefore, next chapter also introduce the contractual fiscal systems of production sharing agreements (PSAs) in oil and gas specific context.

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<sup>162</sup> Vivoda (2008), pg. 28

<sup>163</sup> Ibid

## **CHAPTER 4**

### **NEGOTIATIONS WITH IOCS**

#### **4.1 Introduction**

Negotiations of producer country with IOCs most typically involve contractual relation between a company and a state in the upstream of the sector. Up-stream in petroleum sector refers to the process in which exploration and development of the oil and gas fields take place. Firstly, a technology involves seismic waves is used in order to discover a field, then geologist make a map and make predictions of a field in terms of its richness of oil and gas. Afterwards, usually governments hold bidding auctions with some preconditions to join such as having enough capabilities, experience and finance to explore and develop a field as a company. After this point, international oil companies (IOCs) and governments start to negotiate an agreement and decide on how to divide the rent retrieved from oil production. There are different petroleum fiscal systems and types of contractual arrangements which will be explained in detail in the next sections. However, the significant point here is the relations between an IOC and a state is usually determined by the contracts in the upstream hydrocarbon sector. This chapter deals with the kinds of contracts and fiscal systems. Furthermore, the negotiation of such an agreement is vital for the actors and the further consideration of the chapter is therefore the characteristics of negotiating such contracts with a case analysis of Kazakhstan's Kashagan field.

#### **4.2 Contractual Relations and Fiscal Systems**

Contracts between international oil companies (IOCs) and governments on exploration and extraction of a state's natural resources (mostly hydrocarbons) is one of the most frequent way of establishing and defining a relationship between two actors in energy related issues. Historically,

states such as Kazakhstan had suffered from making unfavorable contracts with IOCs in early 1990s. Kennedy and Nurmakov suggest that this kind of contract making re-boosted what is called “*resource nationalism*”<sup>164</sup>. Resource nationalism is not something new, but the first wave of it started in South America in 1930s and Middle East countries such as Iraq, Kuwait and Iran also adopted resource nationalism policies which eventually lead to the establishment of OPEC in 1960. Sarsanbayev underlines that the world is experiencing new wave of resource nationalism policies by Russia, Venezuela, Bolivia and Kazakhstan and he analyzes the case of Kazakhstan oil industry trends in resource nationalism policies<sup>165</sup>. Contractual relation between two actors can vary case to case and have completely different structures and specific clauses. There are three main types of contractual relationship between states (can take a form of national oil company in Joint Ventures) and IOCs which are: (1) Concession or license agreements, (2) production sharing agreements (PSAs), and, (3) Service Agreements.

The first main issue in the contract negotiation is the percent of contractor and government take. Johnston defines it as “*contractor take is the percentage of profits to which the contractor is entitled. Government take is the complement of that*”<sup>166</sup>. There are two main systems in which governments and companies can negotiate their takes which are concessionary or contractual. The difference between two systems

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<sup>164</sup> Kennedy, Ryan and Nurmakov, Adilzhan. (2010). “*Resource Nationalism Trends in Kazakhstan, 2004-2009*”. RUSSCAP Working Paper.

<sup>165</sup> Sarsenbayev, Kuanysh. (2011). “*Kazakhstan petroleum industry 2008–2010: trends of resource nationalism policy?*” *Journal of World Energy Law and Business*, Vol. 4, No. 4. pg.369-379

<sup>166</sup> Johnston, Daniel. (1994). “*International petroleum fiscal systems and production sharing contracts*”. PennWell Books. Pg. 9

*stems from different attitudes towards the ownership of mineral resources. The Anglo-Saxon and the French concepts of ownership of mineral wealth are the root beginnings*<sup>167</sup>.

In up-stream oil industry, the main goal of a company is to maximize its profit with for doing so; they must find oil and/or gas reserves that are not costly to extract the hydrocarbons. It is more achievable in huge fields in which there are tight fiscal systems. For Johnston *“the oil industry is comfortable with tough terms if they are justified by sufficient geological potential. This is the birthplace of dynamic negotiations”*<sup>168</sup>. On the other hand, for the host countries’ main the objective is to maximize the wealth retrieved from its natural resources and in order to do so somehow, they need a fiscal system. The ideal fiscal system should include<sup>169</sup> (1) decent return both to industry and to the state, (2) avoiding undue speculation, (3) limiting undue administrative burden, (4) flexibility, and (5) boosting competition and market efficiency.

In concessionary systems, basically companies can own the mineral sources which mean private ownership is allowed. Johnston shows the US as the *“extreme example of such a system where individuals may own mineral rights”*<sup>170</sup>. Especially in the shale gas operations, companies usually make contracts directly with the land owners under certain regulations<sup>171</sup>. On the

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<sup>167</sup> Johnston (1994), pg. 21

<sup>168</sup> Johnston (1994), pg. 18

<sup>169</sup> Johnston (1994), pg. 17

<sup>170</sup> Johnston (1994), pg. 21

<sup>171</sup> For the detail discussion on the regulations please see, Elkan, A., & Smith, D. (2012). *“North Carolina Mineral Rights”*; Kulander, C. S. (2012). *“Shale oil and gas state regulatory issues and trends. Case W. Res. L. Rev., 63, 1101.*; Maugeri, L. (2013). *“The shale oil boom: a US phenomenon”*. Harvard Kennedy School, Belfer Center for Science and International Affairs., Richardson; N., Gottlieb, M., Krupnick, A., & Wiseman, H. (2013). *“The state of state shale gas regulation”*. Resources for the Future Washington,

other hand, in contractual systems, state is the owner of the mineral sources and “oil companies have the right to receive a share of production or revenues from the sale of oil and gas in accordance with a production sharing contract (PSC) or a service contract”<sup>172</sup>. The main difference between PSC or PSA and service contract is whether company get paid by crude or in cash. Service contracts are also in two kinds which are pure service contracts and risk service contracts. The distinction stems from whether the fee is based on the profit or not. Pure service contracts are quite rare and companies make a contract for a fixed fee for carrying the exploration activities on the behalf of the host state. These contracts are also known as the non-risk service agreement since governments take the all risks.

Even though it is not a type of fiscal system Joint Ventures (JVs) as a concept worth to mention since they can have critical role in a system. Joint venture in the industry came into being usually with joint operating agreements between companies and

*governments also get directly involved through joint ventures. The term is primarily used to describe arrangements where the national oil company is in partnership with the contractor*<sup>173</sup>.

When a state take part in the contract trough JVs directly, besides taxes and royalties, states also gets the share from profit, however, it also shares the risks and operating costs. Before 1960s, concession contracts were the main type of fiscal system which allows IOCs to carry exploration of the fields with owning the field as well. These types of contracts were very favorable

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DC.; Wiseman, H. J., & Gradijan, F. (2011). “Regulation of shale gas development, including hydraulic fracturing”.

<sup>172</sup> Johnston (1994), pg. 21-22

<sup>173</sup> Johnston (1994), pg. 26

for IOCs and it was seen as tool of exploitation in early 1900s<sup>174</sup>. However, as Ing points out “*following the independence of former colonies, they were more and more criticized*”<sup>175</sup>. Especially where concession contracts were mostly utilized in this sense was Middle East, where the most quality oil can be extracted in the lowest cost<sup>176</sup>. In the Middle East, concession contracts had four main features according to Ing<sup>177</sup> which are: (1) the mineral rights given the IOCs were covering huge fields or entire country in some cases, (2) the time period of the contracts were too long, (3) IOCs were the decision makers on the work-program and (4) there was no production requirement or limit which means IOCs could stop producing at the times of low oil price which can hurt states dramatically since they were paid based on the production. Subsequently, a regime in which there is more government control over the process and property rights of the states was established under PSA contracts. First PSA was signed by Indonesia in 1966 and it has spread since then rapidly. PSAs were introduced in order to close the gap create by concession contracts which provide ownership of the resources to IOCs and foundation of the NOCs that in need of technical knowledge. Nowadays, almost half of the petroleum extraction activities are based on the tax system which is adjusted according to PSAs<sup>178</sup>. Ing’s

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<sup>174</sup> Ing, Julie. (2014) "*Production sharing agreements versus concession contracts.*" Lyon Meeting. pg.2

<sup>175</sup> Ibid

<sup>176</sup> See: Owen, E. Roger. (2008) "*One Hundred Years of Middle Eastern Oil.*" Middle East Brief 24., and for the negative impact of the situation in environmental sense please see: Tagliapietra, Simone. (2017). "*The political economy of Middle East and North Africa oil exporters in times of global decarbonisation*". No. 2017/05. Bruegel Working Paper.

<sup>177</sup> Ing, pg.9

<sup>178</sup> Ing, pg.2

study<sup>179</sup> specifically investigates the role of the information asymmetry on the strategy of the firms and claims that PSAs are more effective for governments in terms of capturing the most efficient tax revenue when there is information symmetry since when only the firm has the information on extraction costs; they have the tactical superiority and maneuver capability in negotiations.

When first PSAs started to gain popularity among other oil producing countries, after Indonesia, at the beginning the majors were not keen to invest “*capital into an enterprise which they were not allowed to own or manage*”<sup>180</sup> within such a legislative system. Moreover, major IOCs did not want to sign contracts which can be example and affect their other concessions in other countries. Therefore, first PSAs were signed by independent IOCs which were more willing to “*compromise and accept terms that had been turned down by the majors*”<sup>181</sup>. It was also argued that<sup>182</sup> it was seen as window of opportunity to the independents to break the dominance of the majors with gaining some part of quality oil’s control by taking more risks. Only after this, the major has started to accept such contracts and undertake the risks within this type of legislative systems.

### **4.3 Key Issues in Contract Negotiations**

Negotiating a contract is a challenging task for both host governments and IOCs. As mentioned in the previous sections, their interests might vary significantly but in terms of absolute gains reaching an agreement can be

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<sup>179</sup> Ing, pg.4

<sup>180</sup> Bindemann, Kirsten. (1999). “*Production-sharing agreements: an economic analysis*”. Oxford Institute for Energy Studies. WPM 25. pg.1

<sup>181</sup> Ibid

<sup>182</sup> Barnes, Philip. (1995). “*Indonesia: the Political Economy of Energy*”. Vol. 3. Oxford University Press.



considered as the main goal of the both parties. In terms of general tendencies of the actors in negotiations, oil companies are very motivated and characteristically they are likely to complain about the costs of exploration which are speculated. Furthermore, they tend to

*lament that they have to deal in extremely difficult and corrupt situations, which admittedly require international institutions and the home government -- where oil companies are domiciled -- at times provide "political" support*<sup>183</sup>.

Especially within the circumstances of dealing with undemocratic states, where rule of law is not respected, or countries with civil wars; IOCs usually approach to negotiation in a strict way with non-compromising and self-protective attitude.

On the other hand, for the host governments, negotiating a fair contract with an IOC, which has more expertise and experience in the domain of bargaining contracts with a main goal of maximizing its profits in mind, is very challenging task. The task requires hiring teams of experts, investing time and money, but before all these it requires to recognize the negotiation is the essential part of the result of the contract which requires an expertise. Radon underlines the fact that *"negotiation is generally accepted as a routine experience, it is often not viewed as a real skill, but rather as something that anyone can do"*<sup>184</sup>. Selectin a team of expert, therefore, requires recognizing the tasks of the job which involves having a good and coherent plan, separating non-negotiable and negotiable factors while not ignoring the needs of the opponents' consideration in order not to turn down possible huge investments. For Radon, the experts are *"the motor of successful negotiations"*<sup>185</sup>.

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<sup>183</sup> Radon, Jenik. (2007). "How to negotiate an oil agreement." Escaping the resource curse. pg. 89.

<sup>184</sup> Radon (2007), pg. 91

<sup>185</sup> Radon (2007), pg. 93

One of the most important conditions which negotiation is dependent on is the time mainly due to current political, economic and market conditions are time sensitive. Even the expectations over these time-sensitive conditions at the time negotiation is taking place are paradoxically time-sensitive. Another issue that is vital for the host governments, as mentioned above, is the separation of negotiable terms from non-negotiable ones. Non-negotiable terms typically involve the domestic laws of the host country in order to protect the environment, health and safety on the benefit of its peoples, however, where the applicable law is not sufficient, a “*reference can be made in the contract for guidance -- or even for determination -- to a settled body of law, such as that of an EU member state*”<sup>186</sup>. The negotiable terms usually refer to the economic rent that nation will get from the production what is defined as governments’ and contractors’ takes.

Transparency is another key issue on negotiations between IOCs and governments. Governments in a way obligated to respect the transparency in making such significant contracts because it can be related directly to its people’s welfare and maybe the whole development of a nation can be dependent on the exploration activities and the contract signed. Also, constitutional view of that the oil’s property belongs to the nation and it ought to be protected whit not making contracts that are contrary to the interest of the nation. That is why transparency is such a key issue and requires the approval of the public. Besides these, Radon claims that a published agreement can be “*psychological, as well as the practical starting point, if not the model, for future negotiations and agreements*”<sup>187</sup>. However, as Radon underlines, oil contracts are in nature private documents

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<sup>186</sup> Radon (2007), pg. 101-102

<sup>187</sup> Radon (2007), pg. 98

whether by business custom, necessity or tradition<sup>188</sup>. Besides this fact, when there is a lack of transparency and availability of contracts for the analysis, it becomes very challenging to determine for negotiators whether the contract is ‘fair’ or a ‘competitive one for the nation. When there is such a lack of information or information asymmetry, as a consequence, a “negotiator will have to rely almost exclusively on his judgment, experience and analysis, which by definition will be based on incomplete information”<sup>189</sup>. Moreover, increasing public awareness on the issue via respecting transparency and making the contract available for the public also is one of the key precautions for fighting against corruption, especially in an industry which has huge investment capacity like oil. Corruption in oil industry is one of the most significant and mentioned issues with the illustration of what is called ‘resource curse’<sup>190</sup> which refers to the nations with abundance of resources and still lack the development, economic growth and democratic ruling compare to the ones with no abundant resources. Governments are in nature responsible for protecting its citizens’ rights, interests and well-beings in general. In making an oil or gas exploration contract, fulfilling this duty is usually provided via using its regulatory power. Therefore, health and environment concerns of a nation are also very significant factors in shaping a final agreement. However,

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<sup>188</sup> Radon (2007), pg. 105

<sup>189</sup> Ibid

<sup>190</sup> The theory originally formulated in: Auty, R. and Warhurst, A. (1993) ‘*Sustainable development in mineral exporting economies*’, Resources Policy, 19(1): 14-29. For detailed discussion and different dimension on resource curse please see: Mehlum, Halvor, Karl Moene, and Ragnar Torvik. (2006). “*Institutions and the resource curse*.” The economic journal 116.508: pp. 1-20., Ross, Michael L. (1999). “*The political economy of the resource curse*.” World politics 51.2. pp. 297-322., Robinson, James A., Ragnar Torvik, and Thierry Verdier. (2006). “*Political foundations of the resource curse*.” Journal of development Economics 79.2: pp. 447-468., Sala-i-Martin, Xavier, and Arvind Subramanian. (2013) “*Addressing the natural resource curse: An illustration from Nigeria*.” Journal of African Economies 22.4. pp. 570-615., Boschini, Anne D., Jan Pettersson, and Jesper Roine. (2007). “*Resource curse or not: A question of appropriability*.” Scandinavian Journal of Economics 109.3. pp. 593-617.

while protecting its citizens' right and provide environmental and health safety via regulations, the governments are also expected to attract investments, again in the interest of the public.

In negotiations, the lack of information for the both sides of the table, causing a complexity. Radon describes the situation as claiming

*typically, neither the oil company nor the host government knows with certainty at the time of signing the contract how much it will cost to explore and develop a field, whether future oil or gas prices will justify that cost, or how much oil or gas there is in a field*<sup>191</sup>.

As mentioned earlier, after the governments overtake the dominant position in the industry, their share (government's take) in PSAs are typically higher as well since they are 'now' the owner of the resources. However, the specific share of the government is determined by many factors which might be:

*how risky—financially, commercially, politically, and environmentally—the investment is for the companies; the availability of alternative projects for those companies on a world-wide basis; and the prevailing oil market price at the time of negotiations*<sup>192</sup>.

Also, the features of the field is also very significant in sharing the profit from technical point of view such as whether the field is onshore or offshore<sup>193</sup> and if the risks are higher for the companies, relatively their desire of profits become higher in such situations. Similarly, Penrose claims that both governments and companies have long term plans on expanding

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<sup>191</sup> Tsalik, Svetlana, and Anya Schiffrin. (2005). "Covering oil—a reporter's guide to energy and development". Chapter 5: *The ABCs of Petroleum Contracts: License-Concession Agreements, 61 Joint Ventures, and Production-sharing Agreements*. pg. 62

<sup>192</sup> Tsalik, Svetlana, and Anya Schiffrin, pg. 72

<sup>193</sup> Onshore exploration activities are those that are on the land, and offshore exploration activities are those in the seas or oceans. However, they also vary within themselves; such as deepwater or shallow are definitions used to identify the depth of the field, and onshore activities also might be in form of shale gas operations or landrig.

the industry, however, while governments are trying to expand its oil production, companies are looking for higher returns and choose the investment of capital accordingly<sup>194</sup>.

Salih and Salih shares the view of the contract is eventually is shaped by the negotiation process, however, they put a specific emphasize in their study to the stabilization clauses of oil contracts<sup>195</sup>. They show the importance of a stabilization clause with the case of Saudi Arabia v. Aramco (Arabian American Oil Company)<sup>196</sup>. Aramco was granted a concession right in 1993, however, Saudi Arabian government had an agreement with other two companies which give them a priority to transport the oil from Saudi Arabia. These two agreements (one of them is concession) was conflicting since Aramco had the right to transport the oil from its concession areas. The ad hoc tribunal they referred for the dispute was solved settled on the favor of Aramco since their agreement had a stabilization clause. Salih and Salih underlines the significance of this case as “*because of it, the validity of stabilization clauses was recognized under international law*”<sup>197</sup>. The case also illustrates how companies have more expertise in making such contracts since the details of negotiating a contract can determine the huge profit losses or gaining for them. As discussed earlier, also the

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<sup>194</sup> Penrose, Edith Tilton. (1959). "*Profit sharing between producing countries and oil companies in the Middle East.*" The Economic Journal 69.274. pg.240

<sup>195</sup> Salih, Mohsin Shareef, and Salih, Rdhwan Shareef. "*Strategy of Oil Contract Negotiation.*" International Journal of Business and Social Science 6.9. pp. 168-172

<sup>196</sup> For the details of the case please see: Saudia Arabia v. Arabian American Company (Aramco). (1963). 27 International Law Report 117. For more information on the importance of stabilization clauses please see: A Nwokolo, “*Oil and Gas Law: Is There a Legal and Functional Value for the Stabilisation Clause in International Petroleum Agreements?*” and also see: M T. B. Coale, ‘ *Stabilization Clauses in International Petroleum Transactions* ’ (2002). 30 Denver Journal of International Law and Policy. pp. 217- 237, and also see: Faruque, Abdullah. "*Validity and Efficacy of Stabilisation Clauses: Legal Protection vs. Functional Value.*" J. Int'l Arb. 23 (2006): 317.

<sup>197</sup> Salih and Salih, pg. 168

governments' need for expertise in negotiating a contract can be vital.

#### **4.4 Case Study: Negotiations over Kashagan Field**

Kazakhstan is located in Central Asia, having a small portion of land in the Europe, and sharing a long border with Russia in the North; Uzbekistan, Turkmenistan and Kyrgyzstan in the South and; China in the East. Officially, Kazakhstan is democratic and a secular country became independent from Soviet Union in 1991. Nursultan Nazarbayev is the president of the country since its independence. According to Human Rights Watch<sup>198</sup> report, the freedom of assembly, speech and religion is highly restricted in the country. Some of the memberships of Kazakhstan to international organizations are United Nations, Eurasian Economic Union, WTO and Shanghai Cooperation Organization. The economic development of the country is dependent on the development of the oil fields, as the developing countries with rich mineral sources see it as a quick-path to development.

According to International Energy Agency<sup>199</sup>, the population of Kazakhstan is 17.80 million people and the net energy import is between the years 1990-2016 starts from 16.62 Mtoe and ends in -82.18 Mtoe. In terms of its total proven oil reserves<sup>200</sup>, Kazakhstan have 30.0 thousand million barrels at the end of 2016 (1.8% of total world proved oil reserves). Oil production of Kazakhstan for the year 2017 is 1835 thousand barrels daily (2% of the total world production). In terms of oil production, Kazakhstan's growth rate per annum is 10.8%. In the light of quantitative data, Kazakhstan is not a major player in the international oil industry, however, the reserves of the country

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<sup>198</sup> Human Rights Watch. (2016) "*World Report 2017*". accessed in 14.12.2018: <https://www.hrw.org/world-report/2017/country-chapters/kazakhstan>

<sup>199</sup> International Energy Agency. "*Kazakhstan 1990-2016*". accessed in 14.12.2018: <https://www.iea.org/countries/Kazakhstan/>

<sup>200</sup> British Petroleum Company, pg.12

illustrate a potential. The reason for the gap between the production and proven oil reserves could be the rough conditions for the extraction of the reserves. There are three major oil fields in the Caspian Sea that is within the territory of the Kazakhstan which are Tengiz, Karachaganak and Kashagan. The development of the offshore Kashagan field and the negotiations was very fluctuating. The country's long process of negotiation with Italian IOC Ente Nazionale Idrocarburi (ENI) in developing its Kashagan field is analyzed next.

The Kashagan field was discovered in late 1990s and claimed to be the largest oil field except the Middle East reserves. According to U.S Energy Information Administration<sup>201</sup>, Kashagan field approximately has 7 to 13 billion barrels of proven reserves of crude oil and over 100 billion cubic feet of gas production capacity. However, the field is characterized by very problematic conditions for extraction such as the deepness of the reserves, high pressure and existence of toxic and corrosive gases, hydrogen sulfur, in the reservoir. When analyzing the Kashagan field development, it should be recognized that it is a long process than usual exploration activities due to many technical, political and financial issues. Therefore, the negotiation process of the Kashagan field is approximately 23 years. In this sub-section, the general process of the developments will be analyzed with identifying the key TPs in the process and how they affected the direction of the project. The specifics of the negotiations, such as the inside dynamics and cultural influences or the individual's behaviors will be analyzed in the next sub-sections.

In March 1993, a NOC, Kazakh Caspi Shelf (KCS) was founded in order to carry out the seismic surveys in the Caspian Sea along with BG Group, ENI, BP, Shell, Total Statoil, and Total. In 1997, a joint venture was formed

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<sup>201</sup> U.S Energy Information Administration. (2017). "*Country Analysis Brief: Kazakhstan*". pg. 5

between Kazakh government and IOCs which is called Offshore Kazakhstan International Operating Company (OKIOC). This venture includes

*Eni (Italy, 14.28%), BG Group (UK, 14.28%), Mobil (USA, 14.28%), Shell (UK, 14.28%), Total (France, 14.28%), BP (UK 9.52%), Statoil (Norway, 4.76%), and Kazakh Government (14.28%)*<sup>202</sup>.

The overall estimated budget for the 40 years life of PSA that undertakes the exploration and development of the field was 57 billion US dollars. In 1998, a TP occurs when Kazakh government decides to sell its 14% share to ConocoPhillips and Inpex companies because it showed the governments' intentions on reducing the risks. When Kazakhstan entered the consortium, it also shared the risks. However, the decision of selling its shares can be evaluated as a move to reduce the risks since in 1998 the average of nominal oil price was 11.91 US dollars which is lower compare to previous year's price of 18.64<sup>203</sup>. This TP in general should have affected the foreign investors' perception of the risk in investing even further. Therefore, it can be argued that it is a TP that pushes the process of negotiations into an impasse.

ENI took over the operation as the 'sole' operator in 2001, and the name of the OKIOC is changed to Agip Kazakhstan North Caspian Operating Company (Agip KCO). The work schedule for the oil production from the field is determined to be in 2005. The main negotiation issue between the years of 2002-2004 was the BG's share of 16.67%. Kazakh government used its regulative power in order to obtain the share in favor of its NOC, especially laws related with preemptive rights was worked to be changed. In

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<sup>202</sup> Reich, Nathan. (2010). "*The 2008 Renegotiation of Kazakhstan's Kashagan PSA Field and the Events that Led to It*". International Association for Energy Economics, Third Quarter. pg. 27

<sup>203</sup> Inflationdata.com. (2017). *Historical Crude Oil Prices (Table)*. Accessed in 15.12.2018 [https://inflationdata.com/Inflation/Inflation\\_Rate/Historical\\_Oil\\_Prices\\_Table.asp](https://inflationdata.com/Inflation/Inflation_Rate/Historical_Oil_Prices_Table.asp)



2003, Kazakh government introduced a new foreign investment law<sup>204</sup> which is criticized to be limiting the protections of the foreign investors with removing the right of applying to the international arbitration for the settlement of the disputes. Some of the investors tried to escape from the project due to negative developments and increasing role of the governments in limiting the foreigners such as BG's willingness to sell its stake to Chinese NOCs CNOOC and Sinopec for 1.23 billion US dollars. However, other parents in the consortium exercised their right to veto for China's partnership in the project. In March 2015, the negotiations are concluded as 8.33% of BG's share is purchased by the Kazakh government and the other 8.33% was shared between the consortium members. Meanwhile, in 2004, the first production delayed to 2008 and IOCs paid 150 US million dollars of fine to Kazakh government since first work program estimated the production year as 2005. The reason behind the delays was mostly due to technical difficulties of the field as explained earlier.

In 2006, Eni revised its development plan and budget as the CEO Paolo Scaroni claims that these delays were because of the implementation of the measures taken by the government in environment and health protection<sup>205</sup>. In 2007, environmental issues became the central issues in negotiations. Kazakhstan had suspended the project for three months due to environmental concerns which can cause irreversible damage. Another TP is occurred to an impasse in this point. After the Minister of Environmental Protection Nurlan Iskakov stated that the project may be even further suspended<sup>206</sup>, Eni announced the production cost increased from 57 billion

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<sup>204</sup> WTO. (2003). "*Law of the Republic of Kazakhstan on Investments January 8, 2003. N373*". Accessed in 15.12.2018:  
[https://www.wto.org/english/thewto\\_e/acc\\_e/kaz\\_e/WTACCKAZ42\\_LEG\\_1.pdf](https://www.wto.org/english/thewto_e/acc_e/kaz_e/WTACCKAZ42_LEG_1.pdf)

<sup>205</sup> Larionova, Marina. (2016). "*Making global economic governance effective: hard and soft law institutions in a crowded world*". Routledge. pg.152

<sup>206</sup> Reich, pg. 28

US dollars to 136 billion US dollars and the commercial production delayed from 2008 to 2010. Furthermore, the role of the KazMunayGaz in the operations wanted to be expanded as a joint-operator in the project by the government. Meanwhile, the parliament of the Kazakhstan accepted the changes in the Law on Subsurface and Subsurface Use which came into force in 2010<sup>207</sup>. The change in the law allows the government to review or/and break the contracts with the subsoil operators in case of event that can threaten the national and economic security of the country. Even though the president states that the government will not revise the contract, it holds the right to renegotiate it. The Finance Ministry estimated that the cumulative damages caused by the delays of the project to the GDP and planned economic development is minimum at 10 billion US dollars, therefore, the consortium is planned to be fined to 10 billion US dollars<sup>208</sup>. The impasse caused by the delays, overrun of the costs and, environmental concerns had led to first stabilization in which parties determined their strategy and then, to an agreement. Parties have agreed on the increasing the share of the KazMunayGaz's share from 8.33% to 16.66% with a fine between 2.5 and 4.5 billion US dollars linked to oil prices<sup>209</sup>; and Kazakh government is to pay 1.78 billion US dollars for the share, which was assessed as a 'fair' deal by Paolo Scaroni<sup>210</sup>. However, the partners have already invested 12 billion US dollars in the project and the price can be

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<sup>207</sup> Legal information system of Regulatory Legal Acts of the Republic of Kazakhstan. (2010). No291-IV. Accessed in 16.12.2018: <http://adilet.zan.kz/eng/docs/Z100000291>

<sup>208</sup> Overland, Indra, Heidi Kjærnet, and Andrea Kendall-Taylor, eds. (2010). "*Caspian Energy Politics: Azerbaijan, Kazakhstan and Turkmenistan*". Routledge. pg.31

<sup>209</sup> Watkins, Eric. (2008). "Production delay at Kashagan oil field". Oil&Gas Journal. Accessed in 16.12.2018: <https://www.ogj.com/articles/2008/06/production-delay-at-kashagan-oil-field.html>

<sup>210</sup> Financial Times. (2008). "*Kashagan partners end dispute*". Accessed in 16.12.2018: <https://www.ft.com/content/0e693928-a908-11dd-a19a-000077b07658>

seen as the below of the market value when the project almost on the phase of the production. The new distribution of the shares became “*KazMunaiGaz, Eni, ExxonMobil, Shell and Total (16.81% each), ConocoPhillips (8.39%), and Inpex (7.56%)*”<sup>211</sup>.

In late 2008, other issues became central on negotiations which were about the first production year and determining operators of the development of the field. On June 27<sup>th</sup> of 2008, a memorandum is signed between the parties determining that the production will start latest by 2013 October 1 and if not, the costs compensation will not take place. Due to inability of ENI to solve the technical and logistic complications as a sole operator, another important agreement is signed in 31<sup>st</sup> of the October 2008 which introduced a “*new consortium structure, the North Caspian Operating Company (NCOC), has been suggested and agreed upon by Kazakhstan and the Kashagan partners*”<sup>212</sup>. According to NCOC structure, each partner will be responsible on the different parts of the projects such as while Shell carry the production operations, ExxonMobil will be in charge of carrying out the drilling process<sup>213</sup>. Moreover, the royalties will be paid to Kazakh government is also linked to the oil prices as stated by Yenikeyeff “*Kashagan consortium to pay 3.5% of output to the Kazakh government at oil prices over \$45 per barrel, 7.5–8% at \$130, and 12.5% at \$195*”<sup>214</sup>.

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<sup>211</sup>Elliot, Stuart. “*The history of the Kashagan oil field*”. S&P Global Platts. Accessed in 16.12.2018: <https://www.platts.ru/news-feature/2013/oil/kashagan-oil-field/kashagan-timeline>

<sup>212</sup> Yenikeyeff, Shamil Midkhatovich. (2008). “*Kazakhstan's gas: export markets and export routes*”. Oxford Institute for Energy Studies. pg. 28

<sup>213</sup> Auyezov, Olzhas. (2008). “FACTBOX-Details of the final Kashagan agreement”. Reuters. Accessed in 16.12.2008: <https://www.reuters.com/article/kazakhstan-kashagan/factbox-details-of-the-final-kashagan-agreement-idUSLV14351220081031>

<sup>214</sup> Yenikeyeff, etall, pg. 29

Meanwhile in 2012, ConocoPhillips announced it sells its 8.4 share in the project to Indian company ONGC Videsh<sup>215</sup>, however, Kazakhstan used its preemptive right to buy the stake and sold it to China's NOC CNPC<sup>216</sup> for 5 billion US dollars.

After the decisions taken, the implementations of operations continued until 2013 and the first oil production from the Kashagan field has started<sup>217</sup>. It is stated that cost for the phase 1 one of the production has reached to 41.2 billion US dollars<sup>218</sup>. On 24<sup>th</sup> of September 2013, the production stopped due to gas leaks in the part of onshore facilities in Bolashak. The line was secured, however; on 9 October operation had to be stopped again due to pressure tests showed a potential for greater leaks<sup>219</sup>. In 2014, Kazakhstan's Environment Ministry announced that the consortium will be fined for 737 million US dollars for the leaks of 2.8 million cubic meters of toxic sour

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<sup>215</sup> RadioFreeEurope RadioLiberty. (2012). "ConocoPhillips Sells Stake in Huge Kazakh Oil Field". Accessed in 16.12.2018: <https://www.rferl.org/a/kazakhstan-conocophillips-sells-stake-in-kashagan-field/24781856.html> and also see: Gopinath, Swetha. (2012). "ConocoPhillips to sell Kazakh stake for \$5 billion to ONGC". Reuters. Accessed in 16.12.2018: <https://www.reuters.com/article/us-conocophillips-assetsale/conocophillips-to-sell-kazakh-stake-for-5-billion-to-ongc-idUSBRE8AP0IJ20121126>

<sup>216</sup> Gordeyeva, Mariya. (2013) "China buys into giant Kazakh oilfield for \$5 billion." Reuters. Accessed in 16.12.2018: <https://www.reuters.com/article/us-oil-kashagan-china/china-buys-into-giant-kazakh-oilfield-for-5-billion-idUSBRE98606620130907>

<sup>217</sup> U.S. Energy Information Administration. (2013). "Kazakhstan Consortium achieves first oil production from Kashagan Field". Accessed in 16.12.2018: <https://www.eia.gov/todayinenergy/detail.php?id=13011#>

<sup>218</sup> Oil&Gas Journal. (2013). "Kashagan oil field starts production". Accessed in 16.12.2018: <https://www.ogj.com/articles/2013/09/kashagan-oil-field-starts-production.html>

<sup>219</sup> OFFSHOREENERGYTODAY.COM. (2014). "Kashagan production restart depend on pipeline investigation results". Accessed in 16.12.2018: <https://www.offshoreenergytoday.com/kashagan-production-restart-depends-on-pipelines-investigation-results/>

gas<sup>220</sup>. The amount “was calculated based on the Rules of Economic Evaluation of Damages from Pollution of the Environment,” the Ministry said<sup>221</sup>. In 2015 NCOC N.V became the only operator of the field and the years between 2014-2016 “Pipeline Rehabilitation Project and FIMPR Programme (Finish, Improve, Maintain, Preserve, Re-start)”<sup>222</sup> took place. The impasse occurred led to a process of stabilization which lasted two years. Production has restarted in October 2016<sup>223</sup> and the cost for the phase 1 of production estimated at 55 billion US dollars<sup>224</sup> even though some speculative costs tagged to the project as the world’s most expensive project by claiming the cost of the project is at 116 billion US dollars<sup>225</sup>.

#### 4.5 Culture

After the dissolution of the Soviet Union, Kazakhstan was the last republic to declare independence in 1991. During the transition stage of the Central Asian countries, leaders have mentioned about the significance of the

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<sup>220</sup> Farchy, Jack. (2014). “Kazakhstan pushes for \$737m in damages from Kashagan gas leak”. Financial Times. Accessed in 16.12.2018: <https://www.ft.com/content/63cce302-a618-11e3-8a2a-00144feab7de>

<sup>221</sup> Tengrinews. “Kashagan operator fined \$737 million for flaring”. Accessed in 16.12.2018: <https://en.tengrinews.kz/environment/Kashagan-operator-fined-737-million-for-flaring-26582/>

<sup>222</sup> NCOC. “Milestone of North Caspian Project List. Accessed in 16.12.2018: <https://www.ncoc.kz/lists/ncoc%20project%20major%20milestones/allitems.aspx>

<sup>223</sup> Eurosiatx.com. (2016). “Kashagan field re-lunches oil production in November”. Accessed in 16.12.2018: <http://eurasiatx.com/kashagan-field-re-launches-oil-production-in-november/>

<sup>224</sup> NCOC. (2017). “2017 Sustainability Report”. pg.167

<sup>225</sup> Hargreaves, Steve. CNN Money. (2012). “10 Most expensive energy project in the world”. Accessed in 16.12.2018: <https://money.cnn.com/gallery/news/economy/2012/08/27/expensive-energy-projects/10.html>

democratic values and secularism in rhetoric level<sup>226</sup>, however; in democracy indexes<sup>227</sup>, the country is classified under the worst three classes.

Kazakhstan has experienced three phases of modernization in its recent history which are “*Russian Empire (1731–1920), the Soviet regime (1921–1991), and the post-Soviet Western neo-liberal reformation (1992 onward)*”<sup>228</sup>. These different models of modernization have affected the Kazakh people in terms of ideology and lifestyle. The norms and values have influenced significantly the mentality of the people in pre-Soviet era, and “*the nomadic culture and life style had a profound effect on routine norms and customs of Kazakh society and the mentality of people*”<sup>229</sup>. In this nomadic mentality, the tolerance for religion and level of collectivism<sup>230</sup> were identified as high along with adaptability to rapidly changing environments by Osmanova<sup>231</sup>. Also, paternalistic and protectionist structure of the Soviet Union had influenced the Kazakh society deeply

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<sup>226</sup> Please see: Bermeo, N., ed. (1992). “*Liberalization and Democratization: Change in the Soviet Union and Eastern Europe*”. Johns Hopkins University Press: Baltimore, 1992.; Dawisha, K.; Parrott, B. eds. (1997). “*Conflict, Cleavage, and Change in Central Asia and the Caucasus*”. Cambridge University Press: Cambridge. and; de Soto, H. (1989). “*The Other Path: The Invisible Revolution in the Third World*”. Harper and Row: New York.

<sup>227</sup> Idea. Global State of Democracy Indices. Accessed in 19.12.2018: <https://www.idea.int/data-tools/tools/global-state-democracy-indices>  
Also see: Economist. The Economist Intelligence Unit’s Democracy Index. Accessed in 19.12.2018: <https://infographics.economist.com/2018/DemocracyIndex/>

<sup>228</sup> Nezhina, Tamara G., and Ibrayeva, Aigerim R.. (2013). “*Explaining the role of culture and traditions in functioning of civil society organizations in Kazakhstan*”. Voluntas: International Journal of Voluntary and Nonprofit Organizations. 24.2. pg. 338.

<sup>229</sup> Nezhina and etall, pg. 338.

<sup>230</sup> Olcott, Martha Brill. (1983). “*Pastoralism, Nationalism, and Communism in Kazakhstan*”. Canadian-American Slavic Studies 17.4.pp. 528-544.

<sup>231</sup> Osmanova, N. (2004). “*Cultural foundation of myth as a factor of national identity*”. Second international scientific conference KRCU; Bishkek. pp. 158-165.

especially in terms of collectivist sentiments<sup>232</sup>. Additionally, the cultural impact of state type has influenced the business culture in Kazakhstan. Ardichvili and Gasparishvili<sup>233</sup> identified that Kazakhstan was highest on paternalism among other three post-communist countries.

As the disintegration process led by the World Bank, Kazakh Economy had suffered due to the lost industries from the Soviet-era with poverty and unemployment. Distrust and adjustment to the newly established capitalist system is also a tough issue to deal with when the cultural adherence of Soviets is taken into consideration. The expectancy from a government in people's mindset is completely different in two inherently different economic settings. It is another reason for Kazakhstan to see its natural resources as a short path to rapid economic growth. As a high distance power society, Kazakhstan's institutions feel a high degree of dependency with the leadership which influences the process of negotiations with IOCs in the consortium since mostly institutions trigger the TPs in the process such as Environmental Ministry.

In terms of the biases in negotiations, other than cultural impacts, motivational biases can be taken as a central object in this case. The motivational goal of the Kazakh negotiators, therefore, is related with this issue. Since the consortium is irrevocable both in terms of the investments (as fixed costs were made) and technical assistance, the negotiators could have motivational biases. As explained earlier, when negotiators perceive that the communication with other party will continue in the long-run, they are more likely to put emphasize on the common values and interest.

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<sup>232</sup> Olcott, pp. 528-544. Also see; Danilovich, Alex. (2010). "*Kazakhs, a nation of two identities: politics and revived tradition*". Problems of Post-Communism 57.1. pp. 51-58.

<sup>233</sup> Ardichvili, Alexander, and Gasparishvili, Alexander. (2001). "*Socio-cultural values, internal work culture and leadership styles in four post-communist countries: Russia, Georgia, Kazakhstan and the Kyrgyz Republic*." International Journal of Cross cultural management 1.2. pp. 227-242.

Cultural distance or closeness is another key issue in which subjective elements are central concepts such as values. In case of Kashagan negotiations, in terms of both collectivism vs. individualism and subjective values; the parties were in different dimensions. Therefore, when the work schedule was one of the central issues in negotiations, The Western rooted culturally individualist IOCs and collectivist Kazakh negotiators are likely to have hard process of communication even though motivational biases involved. Uncertainty avoidance in Kazakhstan has been determined dramatically higher than in Western countries of the US and Germany in an empirical study<sup>234</sup>. Therefore, it can be argued that the collectivist cultures have a higher tendency towards uncertainty avoidance. In Kashagan negotiations the issue of when the field will be operational was central to the debates for several years. It represents a well illustration of how sentiments of collectivist cultures can affect the negotiation process.

#### **4.6 Conclusion**

In conclusion, the contractual relation between a state and a non-state actor mainly refers to an extraction and development activity of oil fields. In negotiations of such contracts and implementation phase of the contracts can be long process which involves negotiations after the PSA is signed as well. The issues subject to negotiations were mainly non-sovereignty issues but mostly about the technical, environmental and relative bargaining positions of the parties. However, cultural differences on the process of negotiations and communication might also influence the course of developments. Especially, the possibly biases involved in the process such as motivational bias might have also influenced the course of negotiations in the positive sense. Contrary to the state vs. non-state actor negotiations, next chapter deals with more state dominated negotiations of pipeline bargaining situations in which culture and biases are again influential. Even though

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<sup>234</sup> Vasile, Alexandrina Cristina, and Nicolescu, Luminița. (2016). "*Hofstede's Cultural Dimensions and Management in Corporations*". *Cross-Cultural Management Journal* 18.1. pp. 35-46.



non-state actors are also involved in pipeline negotiations, their role is more limited with the implementation phase of the agreement reached between the states. Therefore, in the next chapter negotiations with intense state involvement is introduced and analyzed.

## **CHAPTER 5**

### **NEGOTIATIONS WITH IOCS AND STATES**

#### **5.1 Introduction**

The negotiations that involve different states and IOCs often take place in the mid-stream of the industry which refers to the transportation of the oil and gas via pipelines or in LNG form. The negotiations most typically involve two or three states (one of them as a transit country, one as a destination market country and one as an exporting country), their NOCs, and in some cases one IOC. After the exploration and development phases of hydrocarbons, the main question becomes how to transport them. Transportation of hydrocarbons is defined in the value-chain as mid-stream whether be with pipelines, trucks or ships. In international level, mid-stream sector is mostly characterized by import-export relations of states and private companies usually work only in the field and implement the states' decisions. Therefore, inter-state relations and negotiations dominate the agenda for constructing a pipeline. Producing and consuming nations have conducted plenty of successful and failed negotiations on constructing a pipeline and, differently from IOC and states relations, it is shaped by mostly international politics and geopolitical concerns of the states involved. Furthermore, a case study of Baku- Tbilisi- Ceyhan pipeline bargaining is represented in order to illustrate how intense state involvement also changes the course and the subjects of negotiations.

#### **5.2 Pipeline Economics and Interests of the Actors**

Whereas IOCs' and states' contractual relations is based on mainly the division of the rent; pipeline negotiations involve more complexities such as involvement of transit countries. Transporting the extracted oil and gas becomes another key issue and requires a long negotiation and decision-making process. There are two viable options for transporting such minerals

which are pipelines and transportation via trucks or ships in the form of liquefied natural gas (LNG). There are different studies on the economic decision of constructing a pipeline or preferring LNG. According to Avidan<sup>235</sup>, after the 3000 miles, LNG option becomes more competitive<sup>236</sup>. Another study by Dzhiganshina analyzes the effects of CO<sub>2</sub> price changes to the efficiency of pipelines, and shows that at 8 US dollars per tonne of CO<sub>2</sub> price; “pipelines are more cost-efficient for distances below 4726 km”<sup>237</sup>. Pipelines can be evaluated also under the natural monopoly theory<sup>238</sup>. Natural monopoly can be described as in a market where only one seller can provide the goods or services at the lowest possible cost due to their scale of operation (also defined as economies of scale). Contrary to competitive market where two or more firms are operating, in natural monopolies the efficiency is satisfied better only by single firm.

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<sup>235</sup> Avidan, A.A. (1997). ‘Lowering the Cost of LNG Delivery: Impact of Technology’, paper presented at the 15th World Petroleum Congress, Beijing, October. pp. 12–17.

<sup>236</sup> For a calculation of transporting natural gas from Middle East to Europe via pipeline vs. LNG please see: Brito, Dagobert, and Sheshinski, Eytan. (1997). “Pipelines and the exploitation of gas reserves in the Middle East”. pg.1

<sup>237</sup> Dzhiganshina, Tatyana. (2016). “CO<sub>2</sub> price sensitivity of LNG and pipelines”. International Journal of Environmental Studies 73.3. pp. 437-451.

<sup>238</sup> For a more detailed description of the theory please see: Sharkey, William W. (1982). “The theory of natural monopoly.” Cambridge University Press. ; Baumol, William J., Elizabeth E. Bailey, and Robert D. Willig. (1977). “Weak invisible hand theorems on the sustainability of multiproduct natural monopoly.” The American Economic Review 67.3 pp. 350-365. And; Panzar, John C., and Robert D. Willig. (1977). “Free entry and the sustainability of natural monopoly.” The Bell Journal of Economics. pp. 1-22. For the discussion related to regulations of natural monopolies please see: Train, Kenneth E. (1991). “Optimal regulation: the economic theory of natural monopoly.” MIT Press Books and; Posner, Richard A. (1978). “Natural monopoly and its regulation.” J. Reprints Antitrust L. & Econ. For the cost analysis in natural monopolies please see: Baumol, William J. (1977). “On the proper cost tests for natural monopoly in a multiproduct industry.” The American Economic Review 67.5. pp. 809-822.

There are mainly three categories of complications that parties face during the negotiations identified by ESMAP report<sup>239</sup> which are: (1) making the diversified interests of the actors aligned, (2) lack of single reliable legal regime to control and regulate the activities of the parties and (3) rent-sharing as discussed as a main problem or/and question in the contract negotiations in upstream industry. The problems related with pipeline construction become even more complex if there is a transit country involves in projects since there will always be a potential risk of the disruption. If there is symmetry in the opportunity cost for both parties, the likelihood of the disruption will be lower<sup>240</sup>, however; typically, importer or/and exporter countries loses will be higher in the event of disruption (except transit country is an off-taker). The transit country may receive a fixed transit fee which makes it pure transit, it can receive payments based on the agreed fractions (off-take form of transit), or a combination of the both system can define the role of the transit state. Omonbude argues that there two main reasons for such a decision by transit country which are (1) after the construction of a pipeline, relative bargaining power shifts to transit country as discussed earlier under OBM model, and (2) *“price changes that result from changes in the value of the throughput can affect the behaviour of the transit country”*<sup>241</sup>. Moreover, according to Stevens<sup>242</sup>, bargaining dynamics of oil and gas pipelines can be explained by OBM since the characteristics of the segments of the sectors are similar in terms of fixed costs which are very high in pipeline construction and low

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<sup>239</sup> ESMAP (Energy Sector Management Assistance Programme) (2003) ‘*Cross-border Oil and Gas Pipelines: Problems and Prospects*’, ESMAP Technical Paper 035, UNDP/World Bank/ESMAP.

<sup>240</sup> Menegaki, Angeliki N. (2011). "Bourgas–Alexandroupolis oil pipeline; will matching institutional and regulatory contexts lead to an effective bargaining and eventual consensus?". *Energy policy* 39.3. pg.1278

<sup>241</sup> Omonbude, pg.3

<sup>242</sup> Stevens, P. (1996). ‘*A History of Transit Pipelines in the Middle East: Lessons for the Future*’, CEPMLP Seminar Paper SP23, University of Dundee.

operating costs. Also, while a pipeline is in operation and can meet the operating costs along with recovering fixed costs even in a very slow trend, pipeline will continue to operate, however; during this phase, transit country keeps increasing its demands. Moreover, since pipelines cannot be defined as flexible,

*the cost and security of supply implications of disruptions to an operating transit pipeline are huge, particularly in the case of gas. This enhances the bargaining position of the transit country and tempts it to extract more from the pipeline*<sup>243</sup>.

The most obvious interest of a transit country at the first look is the transit fee. There is no unified view on the aim of the transit fee in the literature, however, the different views on the objective of a transit fee is summarized by Omonbude<sup>244</sup> as it can be a fund for a transit state for giving up some of its sovereignty rights, or it can be a price for the transit state's input for the accomplishment of the traded oil or gas, or it might be in a reward type payment for making the pipeline more efficient or/and effective.

The calculation of a supply cost in transporting natural gas as a sample can be as follows "TSC 1/4 PC+TC+TF (1)"<sup>245</sup>. In the equation; TSC is total supply cost, PC stands for the production cost, TC is the cost of transportation and, TF is the transit fee. Transit fee is dependent on different variables such whether the transit country has its own gas reserves or not since the product will be a competitor for them, or the length of the pipeline is also a variable. It is stated that "*the transit fee per 1000km is reduced, so*

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<sup>243</sup> Omonbude, pg.3

<sup>244</sup> Omonbude, pg.11

<sup>245</sup> Mavrakis, Dimitrios; Thomaidis Fotios, and Ioannis Ntroukas. (2006). "*An assessment of the natural gas supply potential of the south energy corridor from the Caspian Region to the EU.*" Energy Policy. 34.13. pg.1676

*that the total supply cost remains competitive compared to that of other routes*<sup>246</sup>.

One of the other important characteristics of the pipeline economics is that a pipeline must operate at maximal levels of throughput possible in order to “*spread the fixed costs over higher output levels over time*”<sup>247</sup>. Moreover, in micro-economic sense, any producer in a competitive market would consider the input prices as fixed for a given time period independent from their demand for those prices<sup>248</sup> or it can be their predictive output for the given period<sup>249</sup>. In the construction stage of the pipelines, these principles apply as well due to attitude of considering fixed costs as already sunk and setting the main target to minimize operating costs. The fixed cost of a pipeline directly dependent on its width and length<sup>250</sup> and relatively pipeline economic theories are based upon this basic assumption. Therefore, rents and transit fees are argued to be formulated accordingly such as Masseron<sup>251</sup>. Omonbude<sup>252</sup> lists the factors that capital costs are influenced in seven points which are (1) costs related with contractors’ mobilization

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<sup>246</sup> Ibid

<sup>247</sup> Omonbude, pg.12

<sup>248</sup> Besanko, D.A. and Braeutigam, R. R. (2002). “*Microeconomics: An Integrated Approach*”. New York: Wiley.

<sup>249</sup> Layard, P.R.G. and Walters, A.A. (1978). “*Micro-Economic Theory*”. London: McGraw-Hill.

<sup>250</sup> McLellan, B. (1992) ‘*Transporting Oil and Gas – the Background to the Economics*’, Oil and Gas Finance and Accounting 7(2).

<sup>251</sup> Masseron J.(1990). “*Petroleum Economics*”. Paris: Editions Technip.

<sup>252</sup> Omonbude, pg.13

and demobilization, (2) systems that provide communication and controls, (3) complications related with geographical constrains such as crossing rivers, roads, (4) some possible rents for the lands that pipeline crosses, (5) costs of some terminals and stations of compressors, (6) costs of steel and weld and finally (7) some costs related with environmental concerns.

### **5.3 Negotiation Process and Bargaining Dynamics of Pipeline Projects**

Additional to the economics and cost related issues of the pipelines, regulatory regimes or/and contract types that usually involve a transit country is another key issue<sup>253</sup>. Vinogradov and Mete recognizes the diversity of the contract types and state practices, however, they claim that a categorization is possible under two main systems or models<sup>254</sup>. Before going through two general models, one should be aware of that there are still applicable international law and norms such as UN Energy Charter Treaty that cannot be ignored. First model is the ‘*connected national pipelines*’ system. Under this model, each section of a pipeline is under the jurisdiction of the corresponding state and subject to the relative state’s domestic laws. In terms of regulations, under this model they take “*form of contracts between the owners or operators of the pipelines or agreements between the respective governments, or a mixture of both*”<sup>255</sup>. In terms of its advantages, parties in such a system can to some extent protect their interests, however, there is no restrictions upon how far parties can do so.

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<sup>253</sup> There is no comprehensive academic literature about the specific issue of international gas and pipeline regulations however, there are some case studies which can provide some insights such as Hubbard, R. Glenn, and Weiner, Robert J.. (1986). "Regulation and long-term contracting in US natural gas markets." *The Journal of Industrial Economics*. 35:1. pp. 71-79.; Little, Catherine. (2008). "Regulation of Oil and Natural Gas Pipelines: A Legal Primer for The Layman". *Pipeline & Gas Journal*. 235:3. and; Oliver, Matthew E., and Mason, Charles F.. (2018). "Natural Gas Pipeline Regulation in the United States: Past, Present, and Future." *Foundations and Trends® in Microeconomics* 11.4: pp. 227-288.

<sup>254</sup> Mete, Gokce & Vinogradov, Sergei. (2013). "Cross-Border Oil and Gas Pipelines in International Law". *German Yearbook of International Law*.

<sup>255</sup> Omonbude, pg.20

Contrary to the first system, the second model perceives the pipeline project as a whole single integrated unit. In this model, regulations take the form of intergovernmental agreements between the involved parties. Possibility of a conflict in such system stems from the sharing of the benefits (could be economic rent, transit fees, etc). The conflict that was born during or before the pipeline is operating can result in disruptions.

The element of the possible disruption is another significant issue. Other than capturing most of the rent sharing in agreements, there might be different factors that influence the relative bargaining power of the actors and negotiations in general. If the negotiations are taking place during the pipeline is operational (renegotiating the terms of the agreement), there is a risk of disruption in case of the parties cannot reach to an agreement, therefore, in such situations as OBM suggests, transit country has the higher relative bargaining power.

The risk of disruption or delay to the final market might be born due to border disputes as well. In terms of supply security (energy security for importing countries) and cost recovery such event can be dramatic. It is also caused by diplomatic relations, as Soligo and Jaffe illustrate<sup>256</sup>, some members of the Russian Foreign Ministry were not eager to export from Kazakhstan and Azerbaijan in 1998 due to the market position of Russia and their view of that these countries are serving as competitors for Russia in international markets. As in the case of Azerbaijan's gas exports to Mediterranean, Georgia seems to be the most beneficiary actor since the pipeline cannot transit Armenia due to the conflict and conflictual relations

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<sup>256</sup> Soligo, Ronald and Jaffe, Amy Myers. (1998). "*Unlocking the Assets: Energy and the Future of Central Asia and the Caucasus: Main Study*". Center for International Political Economy and The James A. Baker III Institute for Public Policy. pg.7



between two countries. Therefore, diplomatic relations of two countries also can benefit to the states which have a potential of alternative route<sup>257</sup>.

Some studies consider the pipeline politics as a strategic game that involves economics<sup>258</sup> and the issue of a route selection, for example, is a political issue rather than an economic or market based choice<sup>259</sup>. In the contrary, there also considerable amount of study that analyzes and seek for the optimal economic and cost based approach for selecting a pipeline route<sup>260</sup>. Environmental policies of the states also have a crucial role during the negotiations and in the economics of the construction and operation of a pipeline. In terms of both technical and pure environmental concerns need to be resolved during the negotiations. In terms of technical issues, Omonbude gives some examples such as “*the size of the pipeline to be constructed, whether the pipeline runs above- or underground, gas*

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<sup>257</sup> For the allover gains of Georgia as an alternative route to Armenia please see: Billmeier, Andreas, and Bert Van Selm. (2004). “*In the Pipeline: Georgia's Oil and Gas Transit Revenues*”. International Monetary Fund.

<sup>258</sup> Plase see Konończuk, Wojciech. (2007). “*Belarusian-Russian Energy Conflict: The Game Is Not Over.*” Batory Foundation Policy Brief. and; Olcott, Martha Brill. (1999). “*Pipelines and pipe dreams: energy development and Caspian society*” Journal of International Affairs: pg. 308. For a case study that takes the strategy as the main variable please see: Erickson, Andrew S., and Gabriel B. Collins. (2010). “*China's oil security pipe dream: the reality, and strategic consequences, of seaborne imports*”. NAVAL WAR COLL NEWPORT RI.

<sup>259</sup> Shaffer, Brenda. (2005). “*From Pipedream to Pipeline: A Caspian Success Story*”. Current History 104.684: pg. 343.

<sup>260</sup> Thomaidis, Fotios G. (2000) “*Method for route selection of transcontinental natural gas pipelines.*”; Jankowski, Piotr, and L. Richard. (1994). “*Integration of GIS-based suitability analysis and multicriteria evaluation in a spatial decision support system for route selection.*” Environment and Planning B: Planning and Design 21.3. pp. 323-340.and; Luettinger, Jason, and Thayne Clark. (2005). “*Geographic information system-based pipeline route selection process*”. Journal of water resources planning and management 131.3: pp. 193-200. Also, there are some technical studies that takes the main variable as possible hazardous impacts or risk assessments on the selection of a route, please see: Lee, E. M., and J. H. Charman. (2005). “*Geohazards and risk assessment for pipeline route selection*”. Terrain and Geohazard Challenges Facing Onshore Oil and Gas Pipelines. Institution of Civil Engineers.

*emissions*”<sup>261</sup>. In terms of pure environmental issues, if the pipeline construction sites fall into areas in which habitats of endangered species exist or area might be within the UNESCO world heritage list. These issues generate some compensation fees which return to the sums of operating costs.

Potentially, as discussed in contract negotiations (contract’s and government’s take), the leading source of conflict is the again the benefit sharing. While pipeline is operating and the project provides capital returns, transit countries typically will try to “*capture as much as it can from this rent*”<sup>262</sup>, however determination of the transit fee is the major issue here with some complexities<sup>263</sup>. The factors that determine the transit fee in general sense can be formulated in four points which are:

(1) *the costs to the transit country*;(2) *the value of the transit route*;  
(3) *the availability of alternative transit routes*; and (4) *the relative bargaining power of the parties involved (companies, producer government, transit country)*<sup>264</sup>

Another example can be shown from Russia’s rough pipeline relations. Alternatives routes for Russian natural gas to Europe affected the Ukrainian fees for being a main transit country<sup>265</sup>. Besides the political reasons or alternative routes, disruption also might be driven by “*disputes over transit*

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<sup>261</sup> Omonbude, pg.20

<sup>262</sup> Omonbude, pg.32

<sup>263</sup> For a detailed information on the calculation and discussion of transit fee please see: Yafimava, Katja. (2010). "*The June 2010 Russian-Belarusian Gas Transit Dispute.*" The Oxford Institute for Energy Studies. NG43.

<sup>264</sup> Omonbude, pg.32-33

<sup>265</sup> Hayes, Mark H., Victor, David G. and Jaffe, Amy A. (2006). "*Politics, markets and the shift to gas: insights from the seven historical case studies. In: Natural Gas and Geopolitics: From 1970 to 2040*". Cambridge University Press. pg.351.

*fees*<sup>266</sup>. In some cases, (such as Nigeria's choice of exporting its gas via LNG rather than Trans-Sahara Pipeline due to the huge amounts of transit fees to Algeria<sup>267</sup>), transit fees can cause a whole pipeline project to be cancelled. The involvement of the transit complicates the cost and profit projections as well not only due to the transit fee but also how rent shared and/or determined. Transit countries in pipeline negotiations might be characteristically similar in terms of the objectives of host countries since both actors in different cases try to catch as much as economic rent possible. Geography and geopolitics are other significant factors that have an influence on both determining the route for the pipeline and increasing or decreasing factor on the costs. These factors apply to the selection of LNG ports and units as well. While transit countries main objective is to get the transit fee economically, but before achieving this objective they "*need the companies and producing states to select routes through their territories*"<sup>268</sup>. Geopolitics, geography and economics of the transit country-producer country relations are still related<sup>269</sup>. With the security risks<sup>270</sup> and political constrains on geography or path chosen, pipelines and LNG ports can be evaluated as not "*exact project with fixed route and capacity, but a*

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<sup>266</sup> Stevens, Paul. (2000). "*Pipelines or pipe dreams? Lessons from the history of Arab transit pipelines.*" The Middle East Journal: pg.225

<sup>267</sup> Perner, J., and A. Seeliger. (2003). "*Impacts of a Gas Cartel on the European Gas Market-Selected Results from the Supply Model EUGAS.*" Utilities Policy 12.3: pg.16

<sup>268</sup> Kalicki, Jan H. (1998). "*US policy in the Caspian: Pipelines, partnership and prosperity.*" Middle East Policy 6.2: pg.148.

<sup>269</sup> For a case study exploring both economics and geopolitics of the transit game please see: Yegorov, Yuri, and Wirl, Franz. (2009). "*Ukrainian gas transit game.*" Zeitschrift für Energiewirtschaft. 33.2. pp. 147-155.

<sup>270</sup> For example, involvement of Taliban on the negotiated transit fee of 15 percent per mmbtu between Unocal and Pakistan under the Trans-Afghan pipeline blocked the further negotiations due to security riskis as well. For detailed information please see: Yegorov, Yuri, and Franz Wirl. (2010). "*Gas transit, geopolitics and emergence of games with application to CIS countries*". USAEE-IAEE WP 10-044. pg.12

*class of ideas*<sup>271</sup>. According to Masuda, cross border pipelines are more secure than shipping the oil or gas since “*newly built pipelines are buried in the ground, and they may not be attractive targets of terrorism*”<sup>272</sup> and the difficulty here is not about security but mostly in the complexities related with geopolitics. In terms of transit countries’ involvement, when there is a possibility of bypassing third parties geographically, inherently exporter country will choose the path in order to avoid transit fees and political difficulties as in the case of Iranian gas exports to Pakistan<sup>273</sup>.

The determination of the transit fee is also dependent on the outcome of negotiations. In other words, bargaining power of the parties as described in the OBM, applies in the trans-pipeline negotiations as well. According to Cross<sup>274</sup>, there are the main problems in the bargaining which are; first the outcome, second the concession and finally the influence by negotiators on the basic parameters of the negotiation. Outcome is evaluated under the game-theorem approach and mostly deals with the payoffs of the parties and distribution of the benefits. Pen<sup>275</sup> argues that the outcome values can be determined with the disagreement between parties over the payoffs. Even though outcome analysis on negotiations helps to explain the complicated social situation, it is argued that solutions offered by such analysis not

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<sup>271</sup> Yegorov and etall (2010), pg.6

<sup>272</sup> Masuda, Tatsuo. (2007). "*Security of energy supply and the geopolitics of oil and gas pipelines.*" European Review of Energy Markets 2.2. pg.2

<sup>273</sup> Tongia, Rahul, and Arunachalam, V. S.. (1999) "*Natural Gas Imports by South Asia: Pipelines or Pipedreams?*." Economic and Political Weekly.: pg. 1058.

<sup>274</sup> Cross, J.C. (1965). “A Theory of the Bargaining Process”. The American Economic Review, Vol. 55. pp. 67-94

<sup>275</sup> Pen, J. (1952). “*A General Theory of Bargaining*”. American Economic Review 42:1. pg. 24.

enough to establish predictive power<sup>276</sup>.

The actors involved in a pipeline project are typically, the company that operates and/or constructs the pipeline, a producer country, a transit country, and a final destination country that may connect to other markets as well. In the negotiations, due to the complexities described in the previous section, mostly transit country is the main player that should be convinced or should convince. There are some common interests between the parties as well, otherwise, with an absence of a common interest there would not be any negotiations as argued by Muthoo<sup>277</sup> because in trade relations there must be better off relations for both parties. In pipeline negotiations, the common interest is obviously benefit sharing and profit element for all actors involved. However, there are some dynamics that influence the negotiation process and relative bargaining power of the parties.

According to Omonbude<sup>278</sup>, when a party is more patient than its opposite, relative bargaining power tends to be in favor of the patience. However, there is a limitation of time as well. Whoever in the negotiations is less dependent on the time will try to make most out of it in order to reduce the opposite party's relative bargaining power. However, there some other constrains on being patient during the negotiations such as poverty<sup>279</sup>. When a party is poorer and desperately need the outcome as fast possible, the bargaining position of the opposite party will significantly higher and it gains the ability to get the agreement much closer to its own pre-conditions.

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<sup>276</sup> Esteban, J. and Sakovics, J. (2003) "*Endogenous Bargaining Power*". Working Paper 644, Department of Economics and Business, Universitat Pompeu Fabra, Barcelona.

<sup>277</sup> Muthoo, A. (1999). "*Bargaining Theory with Applications*". Cambridge: Cambridge University Press.

<sup>278</sup> Omonbude, pg.40

<sup>279</sup> Lindblom, C.E. (1948). "*Bargaining Power in Price and Wage Determination*". Quarterly Journal of Economics 62(3), pp. 396–417.

In cross-border pipeline negotiations, the significance of the time factor is slightly different for pure-transit countries and off-take transit countries. If an off-take transit's economy is not in a need of the oil and gas, the time does not cost much and they can benefit more from the situation since their bargaining power increases. However, for producing country, time is very crucial since it is related with security of supply. Any costs related with postponement or interruption will be huge. In case of an off-take transit is in the need of the gas or oil, then a producer country can enjoy some of higher bargaining power.

Risk aversion is another key factor in the relative bargaining power of the parties. When a party in cross-border pipeline negotiations is more risk-averse, it seeks to minimize the risk of failure of the negotiations. For determining to what extent is a party risk averse, there three main political and/or economic principles applies which are: (1) the extent how a party is dependent on the revenue (how much the transit is in need of the transit fee or how much does its economy need the off-take oil and gas), (2) how good is the relations of the countries involved (determined by compatibility of economic objectives, mutual dependence, unlikelihood of political disputes) and (3), its input to the project (whether is there a direct investment of the transit).

Commitments of the cross-border pipeline projects might seem obvious as stated in the negotiated contracts<sup>280</sup>, however, there is an element of revoke<sup>281</sup>. This is a dependent variable on the cost of in the case of revoke. Producing country is committed to sell its natural gas for a long period of time when a pipeline is constructed, and committed to pay the related transit fees or off-takes. On the other hand, transit country is committed to transit

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<sup>280</sup> Omonbude, pg.48

<sup>281</sup> Example for highlighting an element of revoke is studied in the example of wage negotiations, please see: Schelling, T.C. (1960). "*The Strategy of Conflict*". Cambridge, MA: Harvard University Press.

the gas without interruption, not exceeding the off-take volume, and fulfill the obligated costs under the agreement. Information asymmetry is another issue that have an impact on the outcome of trans-border pipeline negotiations. Incomplete information might be a reason for failure of a negotiation even though each part may better off in case of an agreement<sup>282</sup>. Therefore, in a situation in which one of the parties with a more information would have stronger bargaining position.

#### **5.4 Case Study: Baku-Tbilisi- Ceyhan Pipeline Negotiations**

Azerbaijan located in South Caucasus region. In the north, it has a border with Russia and in the northwest, there is Georgia. In the west side, it shares a border with Armenia and in the south part Iran is another neighbor of Azerbaijan. After the dissolution of Soviet Union, Azerbaijan become independent in 1991. Azerbaijan holds memberships of Council of Europe, Turkic Council, Commonwealth of Independent States and observer in the World Trade Organization. As a political system, Azerbaijan is unitary semi-presidential republic. After the short services of Ayaz Mutallibov (1991-1992) and Abulzaf Elchibey (1992-1993) as president; Heydar Aliyev came to power in 1993 until 2003 which succeeded by his son Ilham Aliyev, who is still the president of the country. In terms of democracy, the country still being criticized to be lacked some of the main features such as press freedom and application of torture and there is strict prosecution process for the critics to the government<sup>283</sup>.

The population of the country estimated at 9.76 million in 2016 and net energy import of Azerbaijan in 1990 was 2.77 Mtoe which became -43.13

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<sup>282</sup> Sen, A. (2000). “*Multidimensional Bargaining under Asymmetric Information*”, *International Economic Review* 41(2). pp. 425-450.

<sup>283</sup> Human Rights Watch. (2016) “*World Report 2017*”. accessed in 14.12.2018: <https://www.hrw.org/world-report/2017/country-chapters/azerbaijan>

Mtoe in 2016<sup>284</sup>. Total proved oil reserves of the country were at 7.0 thousand million barrels (0.4% of the total world proved oil reserves) at the end of 2016<sup>285</sup>. Oil production of Azerbaijan is 795 thousand barrels per day in 2017 (0.9% of the total world production), and the growth rate per annum in 2017 is -5.1%<sup>286</sup>. Compare to Kazakhstan, which is analyzed in the previous section, Azerbaijan has smaller reserves and production. Azeri-Chirag- Gunashli offshore oil field located in the central south of Caspian Sea operated by BP on the behalf of consortium of Azerbaijan International Operating Company established by PSA in 1994<sup>287</sup>. The consortium includes BP (35.78%) as a main share- holder; SOCAR, Chevron, Inpex and Statoil as medium share-holders with shares of respectively 11.64%, 10.96%, 8.56% ; Türkiye Petrolleri Anonim Ortaklığı, Itochu and ONGC Videsh as minor share-holders with shares of respectively 6.75%, 4.3%, 2.72%. Construction of BTC was aimed to exporting the oil reserves of Azeri- Chirag- Gunashli field as an alternative to other five pipelines system which will be explained in detail next.

As stated above, from a security of supply perspective, Caspian Region is a significant alternative oil source for Western markets. In order to open the region's reserves to global markets and prevent possible Russian and Iranian monopoly on Caspian pipelines, building an alternative pipeline from Azerbaijan to Turkey was argued by many regional and global energy specialists<sup>288</sup>. Eventually, in addition to security of supply concerns, due to

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<sup>284</sup> International Energy Agency. “*Azerbaijan 1990-2016*”. accessed in 22.12.2018: <https://www.iea.org/countries/Azerbaijan/>

<sup>285</sup> British Petroleum Company, pg. 12

<sup>286</sup> British Petroleum Company, pg. 14

<sup>287</sup> bp.com. Azeri-Chirag-Deepwater Gunashli timeline. Accessed in 22.12.2018: [https://www.bp.com/en\\_az/caspian/operationsprojects/ACG/projecthistory.html](https://www.bp.com/en_az/caspian/operationsprojects/ACG/projecthistory.html)



the “*inadequate capacity of the NREP and the WREP to meet demand from additional phases of the ACG oil fields*”<sup>289</sup> and “*to enable oil exports from the Caspian Sea without having to transit the Turkish Straits*”<sup>290</sup> the Baku-Tbilisi-Ceyhan pipeline agreement between Georgia Turkey and Azerbaijan signed on November 18, 1999. Following the main agreement, Republic of Turkey also signed a host government agreement with main pipeline associates on 19 October 2000. The project conducted by a consortium which comprises 11 national and international pipeline associate oil companies under the name of BTC company. Respectively, this venture includes BP (30.1%), a leading shareholder and operator of the pipeline,

*State Oil Company of the Azerbaijan Republic (SOCAR, 25%), Unocal (8.9%), Statoil (8.71%), Turkiye Petrolleri Anonim Ortakligi (6.53%), Total (5%), Eni (5%), Itochu (3.4%), ConocoPhillips (2.5%), Inpex (2.5%), and Amerada Hess (2.36%)*<sup>291</sup>.

The Baku-Tbilisi-Ceyhan (BTC) Pipeline transports the produced oil in the Caspian Region, mainly Azeri oil, through Azerbaijan, Georgia via a safe, economical and environmentally compatible pipeline system to Ceyhan marine terminal on the Turkish Mediterranean coast and from there to the world market with tankers. More specifically, it carries condensate from Shah Deniz offshore platforms, crude oil from Azeri-Chirag Deepwater Gunashli (ACG) field in Azerbaijan, Tengiz field’s crude oil from Kazakhstan and a proportion of Dzhygalybeg offshore fields’ production from Turkmenistan. Technically, the entire 1768 kilometers of pipeline

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<sup>288</sup> Morningstar, R. (2003) ‘*From Pipe Dream to Pipeline: The Realisation of the Baku-Tbilisi-Ceyhan Pipeline*’, speech delivered at Harvard Kennedy School of Government, Cambridge, MA. ”. Accessed in 22.12.2018: <https://www.belfercenter.org/publication/pipe-dream-pipeline-realization-baku-tbilisi-ceyhan-pipeline>

<sup>289</sup> Omonbude, pg. 61

<sup>290</sup> Ibid

<sup>291</sup> Ibid

compromises of 3 completely buried stages that locate in Azerbaijan, 443 kilometers, Georgia, 249 kilometers, and in Turkey, 1076 kilometers. The diameters of pipelines are 46 inches in Georgia stage, 42 inches in the majority of Azerbaijan and Turkey stages and 34 inches during the Ceyhan Marine Terminal downhill passage in Turkey<sup>292</sup>. From the date, pipeline became active in June 2016 till 2018, it carried 2,99 billion barrels of oil which make 240 million barrels in yearly average<sup>293</sup>. After a brief on Azerbaijan and the BTC pipeline, this sub-section will historically examine the project development process of the pipeline by describing the essential TPs in the process and how they affected the direction.

In 1989, SOCAR's senior executives and the head of UK Independent oil company (RAMCO) Steve Remp held a meeting in Baku to extrapolate a large Azeri oil field, Absheron Sill. In this meeting, first-time Remp mentioned about his consortium idea and the parties agreed to negotiate with international oil companies about the licensing of exploration and development activities in the region. The first concrete steps in the development of the oil zone began to emerge in October 1990. At that time, Azeri authorities pledged to grant BP, Statoil (today's Equinor) and Ramco the rights to research and develop the Azeri oil region. By 1991, Azerbaijan still ruled by a communist party; the party was using BP and Amoco as a trump against each other and trying to get the best deal possible from the bargaining table. On the 30th of August of the same year, a development changed the fate of the negotiations; Azerbaijan was separated from the Soviet Union and gained its independence<sup>294</sup>. In 1992, the newly formed

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<sup>292</sup> British Petroleum. (2018) "*Baku-Tbilisi-Ceyhan pipeline*". Accessed in 22.12.2018. [https://www.bp.com/en\\_az/caspian/operationsprojects/pipelines/BTC.html](https://www.bp.com/en_az/caspian/operationsprojects/pipelines/BTC.html)

<sup>293</sup> Ibid

<sup>294</sup> Independent Azerbaijan. (2016). "*Speech by Ilham Aliyev at the official reception to mark 25th anniversary of Azerbaijan's independence*". Accessed in 23.12.2018: [http://republic.preslib.az/en\\_e2-6.html](http://republic.preslib.az/en_e2-6.html)

government began to work on bringing Azeri oil to the world market and signed an agreement to fund research with SOCAR, Botaş, BP, Amoco, and Pennzoil. There were three route options from Baku to Novorossiysk, to Ceyhan, and to Supsa. In parallel with the designated routes, Turkey and Azerbaijan signed a memorandum of understanding to develop Baku-Ceyhan pipeline in March 1993. As a result of long-lasting negotiations, on June 11, 1993, the head of Azerbaijan, Aldufaz Elchibey, signed an agreement to develop Azerbaijani oil with a consortium including BP, TPAO, Pennzoil, Amoco, Statoil and McDermott. One week after the signing of the deal, another development took place, which one again changed the course of the project. Heydar Aliyev, the father of the current president Ilham Aliyev, swept the power by organizing a military coup<sup>295</sup>, arrested Elchibey and canceled the consortium deal as one of his very first actions. Following the five years of calm in the Baku-Ceyhan pipeline, Turkey established principal Pipeline Commission in April 1998. After detailing the project, a search for funding started. In October 1998, US Trade Development agency and Eximbank approved 827 million US\$ loan for the Baku-Ceyhan pipeline project. Later, Ankara Declaration signed between Turkey, the US, Azerbaijan, Georgia, Kazakhstan, and Uzbekistan to support the construction of Baku Ceyhan oil pipeline. Manning and Jaffe<sup>296</sup> claim that the top US government officials puts pressure on the oil companies BP and AICO to support the pipeline project between the years of 1998 and 1999. Although BP led AIOC consortium, continuously state that the pipeline would not be economically feasible, Turkey has offered considerable incentives and Azerbaijan and Turkey began work on the route and construction program of the pipeline.

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<sup>295</sup> The Guardian. (2003). “*Heydar Aliiev*”. Accessed in 23.12.2018: <https://www.theguardian.com/news/2003/dec/15/guardianobituaries>

<sup>296</sup> Manning, R. and Jaffe, A. “*The myth of the Caspian 'great game': the real geopolitics of energy*”. *Survival*,40:4, pg.113

In January 1999, US President Bill Clinton met with his Turkish, Azerbaijani, Kazakh, Turkmen and Georgian counterparts in the Organization for Security and Co-operation in Europe (OSCE), held in Istanbul<sup>297</sup>. Turkey pledged to subsidize the cost overruns arising in the 1076 kilometers which will be built within its borders. After a series of exchanges, the participants of the meeting renamed the project as Baku-Tbilisi-Ceyhan (BTC) pipeline project and reached an agreement<sup>298</sup>. Following the acceptance of principal terms, Azeri, Turkish and Georgian authorities held a meeting with the BP's board of directors in Washington DC and also reach an agreement about the key terms of the contract<sup>299</sup>. On May 29, 2000, BP International Relations Director Michael Townsend brought together about 30 oil companies including Shell, ExxonMobil, Texaco, Statoil, Chevron and Lukoil in Baku. During the meeting, firms went over the technical details of the BTC pipeline project and announce their intention to invest<sup>300</sup>. All companies that have decided not to invest have signed a confidentiality agreement. As one of the key player in the region, Anglo Iranian Oil Company abstained and decided to consult multilateral institutions before negotiating with the government on the agreement.

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<sup>297</sup> The Washington Post. (1999). "*Turkey's Pipeline Provocation*". Accessed in 23.12.2018: [https://www.washingtonpost.com/archive/opinions/1999/11/24/turkeys-pipeline-provocation/6d5a2290-0d0c-49f1-8ce8-c7307e8e6025/?noredirect=on&utm\\_term=.4f2d70347463](https://www.washingtonpost.com/archive/opinions/1999/11/24/turkeys-pipeline-provocation/6d5a2290-0d0c-49f1-8ce8-c7307e8e6025/?noredirect=on&utm_term=.4f2d70347463)

<sup>298</sup> Organization for Security and Co-operation in Europe. (1999). "*Istanbul Document 1999*". Accessed in 23.12.2018: <https://www.osce.org/mc/39569?download=true>

<sup>299</sup> Bankwatch Network. (2008). "*Timeline For A Pipeline*". Accessed in 23.12.2018: [https://bankwatch.org/documents/concerns\\_timeline.pdf](https://bankwatch.org/documents/concerns_timeline.pdf) pg.5

<sup>300</sup> Sahin, H. (2018). "*Host Government Agreements and the Law in the Energy Sector: The case of Azerbaijan and Turkey*". Routledge. Pg.12.

In October 2000, first sponsorship agreement is signed among SOCAR (50%), BP (25.41%), Unocal (7.48%), Statoil (6.37%), Turkish Petroleum (5.02%), Itochu (2.92%), Ramco (1.55%) and Delta Hess (1.25%)<sup>301</sup>. All of the companies have committed to pay their shares of USD 25 million, which they have defined as the initial basic engineering budget, and also chose BP as the operator company for the coordination of the project. After a few months of intense meetings on the technical details of the project, parties and Clinton's Caspian Energy resources adviser Elizabeth Jones met in London on 25 January 2001. During the meeting, signatories last time exchange ideas about both the final route of the pipeline and the list of companies that will join basic engineering work. On January 31, BP endorsed the initial route; following the decision, engineering studies started to carry out by Botas, PLE and Fluor Daniel in less than a month<sup>302</sup>. In February 2001, Chevron announced its interest to participate to the BTC pipeline venture. While the parties were seeking to find funds to finance the further cost of the project, the engineering design phase completed on May 15, 2001.

On 5 July 2001, Wref Diggings, BP Vice President for Oil Export in Azerbaijan, announces including financing cost, the total cost project will be USD 3.3 billion<sup>303</sup>. According to the Diggings, one-third of the cost of the project will be covered by the shareholders while international credit institutions and corporate lenders will cover the remaining two. After the announcement, committee members met in Turkey in early October. During the meeting, they run through the progress of the detailed engineering and

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<sup>301</sup> Bankwatch Network, pg.5

<sup>302</sup> Bankwatch Network, pg.6

<sup>303</sup> Bankwatch Network, pg.10. Also see: The Guardian. (2005). "*Q&A: The Baku-Tbilisi-Ceyhan pipeline*". Accessed in 23.12.2018: <https://www.theguardian.com/business/2005/may/26/businessqandas.oilandpetrol>

financial situation of the project. At the end of the session, it was decided to apply to the financial institutions before the end of the year in to provide the required 2/3 fund for the completion of the project<sup>304</sup>. On 19 December, general manager of the BTC pipeline project, Michael Townsend reports that international financial institutions such as French Société Générale and European Bank for Reconstruction and Development and International Finance Corporation have been positive to providing credits to the project<sup>305</sup>. At the beginning of September 2002, after a long period of negotiations and evaluations, the Italian Oil company Eni announced that it would participate in the BTC project; the company share of involvement set as 5%<sup>306</sup>. Following that, on July 13, 2002, French oil company Total declared its participation to the project with 5% share<sup>307</sup>. Thus, the companies that joined the consortium have fixed. As the participation of more international oil companies in the project is a factor that facilitates finding financing, the involvement of these two companies in the project has led to a more positive negotiation with financial institutions. In January 2003, the construction of the roads and labor camps, which were the basis of the project's construction activities, were completed.

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<sup>304</sup> Bankwatch Network, pg.10

<sup>305</sup> International Finance Corporation. (2006). "*The Baku-Tbilisi-Ceyhan (BTC) Pipeline Project*". Accessed in 26.12.2018: [https://www.ifc.org/wps/wcm/connect/d01d2180488556f0bb0cfb6a6515bb18/BTC\\_LOE\\_Final.pdf?MOD=AJPERES&CACHEID=d01d2180488556f0bb0cfb6a6515bb18](https://www.ifc.org/wps/wcm/connect/d01d2180488556f0bb0cfb6a6515bb18/BTC_LOE_Final.pdf?MOD=AJPERES&CACHEID=d01d2180488556f0bb0cfb6a6515bb18). Pg. 14. Also see: Bankwatch Network ,\_pg.12.

<sup>306</sup> Ente Nazionale Idrocarburi (ENI). (2003). "*Corporate Responsibility - Values and Practices*" [https://www.eni.com/docs/en\\_IT/enicom/publications-archive/publications/corporate-responsability/general/Corporate\\_Responsibility.pdf](https://www.eni.com/docs/en_IT/enicom/publications-archive/publications/corporate-responsability/general/Corporate_Responsibility.pdf) . pg.42

<sup>307</sup> Total. (2017) "*Our Activities in Azerbaijan*". Accessed in 26.12.2018: [https://www.total.com/sites/default/files/atoms/files/total\\_activities\\_in\\_azerbaijan.pdf](https://www.total.com/sites/default/files/atoms/files/total_activities_in_azerbaijan.pdf)

On February 3, 2004, the project finance agreement signed between BTC company shareholders and private financial institutions in the six countries of United States, France, Japan, Germany, United Kingdom, and Italy at the Gulistan Palace in Baku<sup>308</sup>. When the agreement was signed, more than 12,000 thousand workers were working in 17 different construction sites for the project, and more than 50% of the project completed. On May 26, 2005, with the participation of Samuel Bodman, the Minister of Energy of the United States, the BTC crude oil pipeline unveiled and the pipeline activated in September<sup>309</sup>. The pipeline has served with the daily transportation capacity of 1 million barrels per day until 2009. In March 2009, the transportation capacity of the pipeline increased to 1.2 million barrels per day<sup>310</sup>.

## 5.5 Culture

During the dissolution process of Soviet Union, the control over public spheres started to be loosening which after the dissolution unleashed a freedom to Azerbaijan's people in its religious and cultural lives. Contrary to Kazakhstan, Azerbaijan has experienced a more unleashing way of divorce from the Soviets. However, the sentiment of the collectivism is still there. According to Sajoo's study<sup>311</sup>, the reason behind following religion is answered mostly with the motive of 'moral self-perfection' among both men and women respectively with 19.7% and 19.1%. The second most frequent motive is 'We are a Muslim nation' among men and women respectively

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<sup>308</sup> Inpex Corporation. (2004). "Project Finance Agreements Signed for the Construction of Baku-Tbilisi-Ceyhan (BTC) Pipeline". Accessed in 26.12.2018: <https://www.inpex.co.jp/english/news/inpex/2004/0203.pdf>

<sup>309</sup> Aljazeera News. (2005). "Baku-Ceyhan pipeline opened". Accessed in 26.12.2018: <https://www.aljazeera.com/archive/2005/05/2008410112813613681.html>

<sup>310</sup> British Petroleum. (2018) "Baku-Tbilisi-Ceyhan pipeline". Accessed in 26.12.2018. [https://www.bp.com/en\\_az/caspian/operationsprojects/pipelines/BTC.html](https://www.bp.com/en_az/caspian/operationsprojects/pipelines/BTC.html)

<sup>311</sup> Sajoo, Aryn B. (2004). "Civil society in the Muslim world: Contemporary perspectives". IB Tauris. pg.198

18.3% and 18.7%. Identifying a motive to follow a religion with an attribution to the nation's choice of a religion can be evaluated as a clear indicator of a collectivist sentiment in the society. However, even though both Kazakhstan and Azerbaijan can be identified as collectivist societies, other parties approach and proximity to the producer country's culture is even more significant.

In the case of BTC project, the involvement of the Western IOCs was limited compare to the direct relations between Kazakhstan and Western IOCs. The BTC project's negotiations mainly driven by the states of Azerbaijan, Turkey and Georgia in which the main determinants were political discourse and geopolitics. Therefore, in this subsection cultures' and negotiators' impact will be addressed in a different way in which the individual biases will be based on the leaders and the proximity of Azeri, Turkish and Georgian cultures, common histories and discourse developed in the relations will be analyzed.

Georgia and Azerbaijan's relations date back to 1918 when two countries joint their effort in lobbying for international recognition. The relations of the countries were not born due to a geographical necessity<sup>312</sup> but have a deep rotted historical background. In the political and academic discourse two countries identified as "*Caucasian Tandem*", and "*time-tested Friendship*"<sup>313</sup>. Even in the war between Georgia and Russia, Azerbaijan did not hesitate to show its support for Georgia in spite of the Russian threat. It would be too unrealistic to argue that the Georgia only served as transit only due to their good and well-defined relations with Azerbaijan,

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<sup>312</sup> Shiryev, Zaur, and Kakachia, Kornely. (2013). "*Azerbaijani-Georgian Relations: The Foundations and Challenges of the Strategic Alliance*". Center for Strategic Studies, Special Double Issue 7.

<sup>313</sup> Shiryev and Kakachia, pg. 10



but Azeri choice of the route (not from Armenia since they have a territory dispute, and Iran has been facing international sanctions which can be a huge risk for such a project) was also a necessity. In the Georgian part, the transit fee of such a project was beneficial to the overall development of their economy. The good relations of the countries may not be the main determinant in the selection of the route but it was certainly a positive factor in providing a smooth process of negotiations.

Turkey was the first country to recognize the Azerbaijan after its independence from Soviet Union in 1991. Since then, it has become a tradition for Turkish presidents and president of foreign affairs to make the first official foreign visit to Azerbaijan<sup>314</sup>. Prime Minister of Turkey Suleyman Demirel's symbolic visit to Azerbaijan in 1992 resulted in signing cooperation agreement on economic spheres. The political discourse on defining the relations between two countries mostly centered upon the "brotherhood" and belonging to the same nation. "*Brother in arms*" and "*one nation-two states*" discourses both emphasize the political harmony, common interests and identities of the states. Shared religion of Islam is also one of the factors in shaping such discourses. More specifically, Abulfaz Elchibey's pro-Turkish foreign policy and pan-Turanism sentiments of Azerbaijan got some reactions from their other neighbors of Russia and Iran. As a political model, upon the independence, Azerbaijan chose the Turkish model of orientation towards Europe, rather than Iranian model of integrated Muslim country to Asia since Russia was even not an option due to "*high anti-Russian sentiments among the Azerbaijani population after the violent crackdown of protestors in Baku on January 20, 1990 by Russian military forces*"<sup>315</sup>.

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<sup>314</sup> Ibrahimov, Rovshan. (2011). "*Turkish-Azerbaijani Relations and Turkey's Policy in The Central Caucasus.*" *The Caucasus & Globalization* 5.3-4. pg. 15

<sup>315</sup> Ismailzade, Fariz. (2005). "*Turkey-Azerbaijan: The honeymoon is over.*" *Turkish Policy Quarterly* 4.4. pp. 69

Turkey and Azerbaijan had both subjective and objective common elements in cultural sense in which they both shared same political and economic settings along with religion and common history. In terms of subjective elements, the common beliefs and values that are also shaped by religious factors were also very compatible in two cultures. These factors lead to smooth negotiations process with little impasses and quickly reached to an agreement which is also implemented rapidly.

In terms of biases and individual level of the communication in negotiations, cognitive and social perception biases were central to the issues during negotiations. The risk perception of the Western IOCs was contrary to the political approach of Bill Clinton in which parties took different variables central in their assessment of the risk which can be defined under the cognitive bias. From Clinton's perspective, the pipeline monopoly of Iran and Russia could possess more risk than the feasibility of BTC project that involve economic risks for the companies. Moreover, social perception biases that both Azerbaijan and Turkey experienced contributed greatly to the realization of the project. Even though cultural proximity, common language, and discourse of 'one nation two state' is an illustrative of the actors' approach to each other, these are the main dynamics triggering the social perception biases. Both countries still had interests and roles for such a project and as explained earlier, common interest to negotiate. Turkey's ambitions to be an energy corridor, a bridge between Central Asia and Europe and enhancing its geopolitical importance were still main interests of the country<sup>316</sup>. On the other hand, Azerbaijan wanted to sell its oil to Europe which had no 'real' choice than transporting it via Georgia and Turkey. Moreover, Georgia as a transit country was interested in the revenues from the pipeline. Therefore, the attribution of the countries to the history of their relations, the discourse developed to identify the roles can somehow connected to the social perception biases.

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<sup>316</sup> Aras, Bülent, and Akpınar, Pinar. (2011). "*The relations between Turkey and the Caucasus*". *Perceptions* 16.3. pp 53-68.

## **5.6 Conclusion**

In conclusion, contrary to the non-state actor based negotiations, intense state involvement in international energy negotiations prevails more geopolitical concerns and the course of developments of negotiations are more dominated with such considerations also related with the foreign policy objectives of the states. However, in terms of culture and biases involved in the negotiations, pipeline bargaining is not free from such influences. Therefore, it is illustrated in this chapter that, even though geopolitical concerns are the main determinants of the process, culture and biases are still involved in the process. In case of Azerbaijan and Turkey relations, cultural proximity played a significant role and the historical well-defined Azeri- Georgian relations were also one of the drivers of the route choice of BTC project. Additionally, financial issues were not dis-signified in the negotiations. The main concluding remark that this chapter offers is that even though geopolitical factors are significant to the pipeline bargaining; still financial, environmental, historical, cultural and biases influences also have an impact on the process of international energy negotiations.

## **CHAPTER 6**

### **CONCLUSION**

In conclusion, this thesis tried to explore the dynamics of international energy negotiations. Mostly focusing on the oil and gas related issues, the role of the states in such negotiations is examined. The research question of “do geopolitical considerations influence international energy negotiations in similar ways in all types of international energy negotiations?”. It is found that contrary to the scholars who argue that geopolitical factors are very decisive in international energy negotiations, this thesis argues that geopolitical factors are influential only in those international negotiations which involve politically motivated state actors and in other energy negotiations technical, financial, ecological and cultural factors are more decisive due to the lack of intense state involvement. Additionally, intense state involved negotiations also have the issues of technical, environmental and financial issues. In terms of objectives of the projects analyzed in this thesis, geopolitical factors have played significant role in a pipeline bargaining case of BTC, however, it was not the only consideration subject to negotiations. Culture and biases as independent variables in this study is also argued to be influential factors in determining the outcome of a negotiation.

The second chapter of the thesis reviews the conceptual literature related with international negotiations. The interdisciplinary approach of the thesis was based on the combination of cultural and biases studies in international negotiations and the process analysis of international negotiations. Furthermore, in the third chapter, the literature on oil and gas specific negotiations was also discussed and explained. The limitations of the second chapter’s about explaining the sector based influences tried to be overcome

with using relative models and major studies both in contractual regimes and pipeline bargaining. Additionally, roles of the actors and their interests are also reviewed in the sector. Therefore, combination of such literatures constructed an inter-disciplinary study with borrowing concepts from IR, Psychology, International Law and Cultural Studies. It provided a comprehensive and broad perspective to the international energy negotiations. In the chapter four and five, the contractual regimes and negotiations along with pipeline bargaining analyzed via case study methodology respectively. Kazakhstan's Kashagan field development negotiations under a PSA regime is analyzed and the significant subject to the negotiations are identified as environmental, technical and profit sharing. No geopolitical considerations were observed to be affecting the project. Culture and biases involved also have influenced the negotiations process. Cultural differences between Kazakhstan and western IOCs might have crumble the communication between the parties. In terms of biases, motivational bias has played a sustaining role in continuing the negotiations since the consortium could not be withdrawn from the project. OBM observed to be partially fit in the case's chronological events however the exercise of such a power may be due to other reasons other than having the relative higher bargaining power. In Azerbaijan's case, the analysis based on the pipeline economics and role of the transit as the related literature suggest that the main obstacles to overcome in pipeline bargaining is the transit fee. However, in case analysis no such a contradiction or problems were identified in terms of transit state's role. The reason for such a result is found in the cultural proximity of the states involved in negotiations and the geopolitical interests of the strong third-part involvement of the US. The assumptions of OBM was also not observed in BTC pipeline project analysis.

From the cases analyzed and insights gained during the research, there are five additional conclusion remarks to the argument and a further research suggestion. Firstly, OBM's main argument, which is shifting relative

bargaining power of the actors after once the agreement signed or investment made, observed in Kazakhstan's case. Government tried to expand its role in the project and making more favorable agreements with re-negotiations. Even though bargaining power favored Kazakh government after the agreement signed and investment is made, the reason behind the Kazakh governments' actions may not be related with holding relatively higher bargaining power but it is observed that the environmental issues and non-compliance of ENI to the work-schedule were the main issues triggering TPs. In case of pipeline bargaining, no such a change in the relative bargaining power is observed. Therefore, the parties involved in negotiations against the producing countries are significantly influencing the relative bargaining positions of the parties. The following concluding remarks are dealing with why such a difference has been observed.

Secondly, if the relations built upon a common history and cultural proximity, then negotiations tend to go smoother with fewer impasses. Kazakhstan and the western IOCs had different cultural background and biases which influenced the course of developments negatively. On the other hand, Azerbaijan's common historical and cultural background has positively influenced the process. Strong third-party involvement as an incentive (in case of Azerbaijan, the US involvement with political and geopolitical concerns) can make the negotiation process rapid and straightforward.

Thirdly, technical complication of a project significantly influences the course of developments and duration of the negotiations in intense state involved international energy negotiations. In the case of Kazakhstan's Kashagan field development, the area was characterized by difficulties of reservoir being in deep water and the existence of the toxic gases. The continuous delays of the project in some part of due to these complications, however, not the only ones. In the BTC project, there were also arguments of the incompliance of the route for the pipeline project before the project

started. There were no delays or incompletion to work-schedule from any parties. Therefore, the actors involved in the process can significantly impact the process.

Fourthly, in case of Azerbaijan, multiple states' involvement has a positive impact upon the negotiation processes of the project due to well-defined political relations of the states and the interest of a third party (the US) in such a project bring all the possible positive conditions together. However, it may not be the case for any international oil and gas negotiations that involve multiple states. The regional cooperation, which may be the typical feature for cross border pipeline projects, in mid-stream oil and gas industry is significant factor in the development and realization of projects. Other regional studies ought to be done in cross-border pipeline negotiations in order to test the hypothesis further such as Russia- China dialogues on building a pipeline because of the parties' different culture even though they share the same region. In Kashagan field development, Kazakhstan's political environment have impacted the course of developments, however, negotiations were centered on mostly commercial conditions due to both technical issues and cultural differences. It is no surprise that when multiple states involve in negotiations the process become more political inevitably. Moreover, the Kazakh government's approach to IOCs were also to some degree was political since overall economic development of such countries, that have an agreement with IOCs, depend on the development of its oil and gas industry or the perception of the countries to see oil and gas as a quick path to development.

Finally, no emotional biases observed in the cases analyzed due to no information and/or data on the actual process of the talks since they have been made behind the close doors and even mostly signed agreements are not available to public. While the issue of transparency in oil and gas negotiations raise significant concern about corruption, this situation also disables to study negotiators' verbal behaviors empirically as done

traditionally by process analysis with using coding scheme techniques. However, some results can be drawn from the general process in terms of possible biases involved. In PSA negotiations, the motivational biases were observed to involve in the process since once the agreement signed between parties, the process of negotiation is continuing and parties somehow need to figure out how to develop and operate a field and overcome the technical difficulties faced or environmental damages done. While doing so, motivational biases of that the interaction with the other party will continue since agreements are signed and investments are made, the problem is tried to be solved with cooperative attitudes. In Kashagan case, despite the problems of long delays of the project, parties somehow solved the issue such as with a fee-based punishment, but the negotiations and/or project has never been suspended. In pipeline bargaining, cognitive and social perception biases were more dominantly involved in the process. In cognitive terms, the risk perception of the investor/IOCs and states are observed to be significantly different. While states perceive the risk from political point of view, IOCs tend to evaluate the risk in terms of investment and returns. Therefore, some incentives required by third party to invest on such a project. Social perception biases were mostly influencing the actual actors in the process which are the producing country, the transit country/ countries and final destination. In BTC project case, the discourse developed top define the relations were mostly base on the social biases since the real interests of the states in developing such a project was not mentioned much in political discourse and negotiations.



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## APPENDICES

### A. TÜRKÇE ÖZET / TURKISH SUMMARY

Müzakereler, günlük yaşamın bir parçasıdır ve aynı zamanda, ülkelerin müzakerelerin nasıl geliştiğinin, bir anlaşmaya varılmasının veya müzakerelerin başarısız olması durumunda stratejik pozisyon almasının temel direklerinden biridir. Müzakereler, yapılandırılmış ve yapılandırılmamış veya basit ve karmaşık gibi çeşitli biçimlerde olabilir. Her gün yapılan müzakereler, ikinci el bir araba almak gibi yapılandırılmamış ve basit bir müzakere şekli olarak sınıflandırılabilir. Birisi arabasını satmak isteyen bir araç sahibiyle etkileşime girdiğinde, genellikle sohbet kendiliğinden gelişir ve tarafların mutabık kalmasa da ana konunun fiyat olduğu hızlı bir sonuca varılır. Ancak, oyuncu (analiz birimi) kişiden devlete veya özel şirkete (birlikte bir kuruluş olarak sınıflandırılabilir) dönüştüğünde; müzakerenin içeriği, yapısı, karmaşıklığı, süresi ve sonuçlar üzerinde etkisi olan değişkenler de değişmektedir.

Uluslararası ilişkilerde, temel belirleyicilerden ve/veya itici güçlerden biri, ülkelerin sahip olduğu doğal kaynaklar ve uluslararası düzenin jeo-politik alanlarını ilişkilendirmektir. Elbette bu alanda devletler sadece aktörler değil aynı zamanda devletlerin sahip olduğu doğal kaynakları bulmak, çıkarmak ve geliştirmek için teknik yetenekleri ve bu tür projelere yatırım yapmak için teknik sermayeye sahip olmaları nedeniyle özel şirketler de çok baskın durumdadır. Devletlerin genellikle ulusal petrol şirketlerine (NOC) sahip olmalarına rağmen, NOC'ler genellikle bu tür operasyonları yürütmek için aynı anda finansal ve teknik özelliklere sahip değildir. Devletlerle, uluslararası petrol şirketleri (IOC) arasındaki ticaret, petrol ve gazı çıkarmakla sınırlı değil, aynı zamanda emtiayı taşımak, eyaletlerin ve IOC'lerin etkileşim içinde olduğu başka bir proje türüdür. Bu aktörler arasındaki etkileşime teknik, çevresel, finansal, jeopolitik ve farklı

seviyelerde dięer konulardaki müzakereler hakimdir. Herhangi bir projenin sonucunu etkileyen ana deęişken olarak müzakere konusu olan konulara baęlıdır. Bu alıřma, müzakereyi kltr ve davranıřsal yaklařımların da etkili olduęu bir sre olarak ele almaktadır. Devletler ve IOC'ler arasındaki szleřmeli iliřkilerde uluslararası müzakerelerin nasıl gerekleřtięini gstermek iin Hazar Denizi blgesinden iki dava seilmiřtir.

Bu tezin temel amacı, uluslararası enerji müzakerelerinin farklı aktrlerle etkileřim halinde nasıl tanımlandıęını arařtırmak ve aıklamaktır. Bu baęlamda, tez farklı aktrlerin baskın olduęu iki farklı durumu incelemeyi amalamaktadır. Buna gre, baskın aktrler deęiřtirildięinde uluslararası enerji müzakereleri srecinde ne tr faktrlerin etkili olduęu arařtırılmaya alıřılacaktır. Daha spesifik olarak, bu tezin arařtırma sorusu řudur: jeopolitik dřnceler uluslararası enerji müzakerelerini her trl uluslararası enerji mzakeresinde benzer řekillerde etkiler mi? Byle bir soruyu cevaplamak iin, Kazakistan ve Azerbaycan'dan, Kashagan petrol sahası ve ham petrol tařıyan Bak-Tiflis-Ceyhan (BTC) boru hattı projesinin arařtırılması ve geliřtirilmesine iliřkin müzakerelerin incelendięi iki farklı vaka seildi. retim paylařımı szleřmesi sreci aısından, szleřmenin uygulanma sresi de, farklı aılardan müzakerelerin devam etmesi nedeniyle bu alıřmada önemli rol oynamaktadır. Boru hattı projeleri de szleřmeye dayalı bir temelde uygulanmaktadır; ancak, müzakerelerin seyri buna gre řekillendirilmemiřtir. Bu nedenle, bu tez, szleřmeli bir szleřme kapsamında deęil, daha ok baęımsız bir sre olarak pazarlık srecini, anlařma imzalanmadan ve uygulama ařaması daha az karmařık ve daha basit olduęundan, daha baęımsız bir sre olarak incelemektedir.

Bu yazının devlet temelli yaklařımı, genellikle devletler iermeyen '*downstream*' müzakerelerin incelenmesini sınırlamaktadır, nk esas olarak petrol bir rn haline getirmek (rafine etmek) ve bu rn pazarlamaktan ibarettir. Dikey olarak btnleřmiř řirketler bu tr operasyonları yrtr ve devletler yalnızca bir szleřmeden (devletin PSA'lar tarafından belirledięi)

kabul eder, ancak bir NOC olsa bile şirket içindeki müzakerelere katılmazlar.

Üretici ülkenin IOC'lerle müzakereleri en tipik haliyle, bir şirket ile bir devlet arasındaki sözleşme ilişkisini içerir. Petrol sektöründeki “up-stream”, petrol ve gaz sahalarının keşfedilmesi ve geliştirilmesinin gerçekleştiği süreci ifade eder. Öncelikle bir teknoloji, bir alanı keşfetmek için sismik dalgaları içerir, daha sonra jeolog bir harita yapar ve bir alanın petrol ve gaz bakımından zenginliği açısından tahminlerini yapar. Daha sonra, genellikle hükümetler, bir alanı bir şirket olarak keşfetmek ve geliştirmek için yeterli kapasiteye, deneyime ve finansmana sahip olmak gibi bazı önkoşullarla ihaleleri düzenlerler. Bu noktadan sonra, uluslararası petrol şirketleri (IOC'ler) ve hükümetler bir anlaşmayı müzakere etmeye başlar ve petrol üretiminden elde edilen rantın nasıl bölüneceğine karar verir. Farklı petrol mali sistemleri ve sözleşme düzenlemeleri türleri vardır. Bununla birlikte, buradaki önemli nokta, bir IOC ile bir devlet arasındaki ilişkilerin genellikle “up-stream” hidrokarbon sektöründeki sözleşmeler tarafından belirlendiğidir. Bu bölüm sözleşme türleri ve mali sistemler ile ilgilidir. Ayrıca, böyle bir anlaşmanın müzakere edilmesi, oyuncular için hayati önem taşımaktadır ve bu nedenle, Kazakistan’ın Kaşagan sahasının durum analizi ile bu tür sözleşmeleri müzakere edilmesi incelenmiştir.

Farklı devletler ve IOC'leri içeren müzakereler, genellikle petrolün ve gazın boru hatları aracılığıyla veya LNG formunda taşınmasını ifade eden endüstrinin “mid-stream” olarak tabir edilen kısmında yer almaktadır. Müzakereler en tipik olarak iki veya üç devleti (bunlardan biri transit ülke, biri hedef pazar ülkesi ve biri ihracatçı ülke olarak), NOC'lerini ve bazı durumlarda bir IOC'yi içermektedir. Hidrokarbonların keşif ve geliştirme aşamalarından sonra, asıl soru, bunların nasıl taşınacağıdır. Hidrokarbonların taşınması, değer zincirinde boru hatları, kamyonlar veya gemiler olsun olmasın orta akış olarak tanımlanır. Uluslararası düzeyde, orta akış sektörü çoğunlukla devletlerin ve özel şirketlerin ithalat-ihracat

ilişkileri ile genellikle alanında çalışmakta ve devletlerin kararlarını uygulamaktadır. Bu nedenle, devletler arası ilişkiler ve müzakereler bir boru hattı oluşturmak için gündemde hakimdir. Üreten ve tüketen ülkeler, bir boru hattı inşa etme konusunda birçok başarılı ve başarısız müzakere gerçekleştirmiş ve IOC ve devlet ilişkilerinden farklı olarak, çoğunlukla, uluslararası politika ve ilgili devletlerin jeopolitik kaygılarıyla şekillenmiştir. Ayrıca, yoğun devlet katılımının gidişatı ve müzakere konularını nasıl değiştirdiğini göstermek için bir Bakü-Tiflis-Ceyhan boru hattı pazarlığı örneği sunulmuştur.

Tezde Uluslararası İlişkiler, Sosyal Psikoloji ve Psikoloji gibi çeşitli disiplinlerden müzakere ile ilgili literatürleri incelenmiştir. Ayrıca, tezin kapsamı sadece müzakere literatürü ile sınırlı kalmamakta, ayrıca enerji müzakere konusundaki spesifik çalışmaları da incelemektedir. Müzakere literatürü Kavramsal Çerçevenin 2. bölümünde detaylı olarak incelenirken, 3. bölümde müzakerelere dahil olan aktörlerin rolü ve gücü değerlendirilerek sektöre özgü yaklaşımlar gözden geçirilmiştir. Jeopolitiği herhangi bir enerji müzakeresinin sonucunu etkileyen ana belirleyici olarak alan literatür gözden geçirilecek ve bu çalışmanın kullandığı literatürlerin ana eserleri tanıtılmıştır. Jeopolitik terimi, 19. yüzyılın ortalarında Alfred Thayer Mahan'ın ulusların bir deniz gücünün dış politika yapma ve bir devletin hedefleri üzerindeki önemini analiz etmesinin ardından kök salmaktadır. Denizi kontrol altına almak için coğrafi olarak avantajlı konumların seçimi askeri bir yaklaşımıydı. Bununla birlikte, jeopolitik kavramının uluslararası ilişkiler çalışmasına geçirilmesi, çoğunlukla Henry Kissinger'ın ve Zbigniew Brzezinski'nin kitaplarından etkilenmiştir. Analizlerinin her ikisi de, ABD'nin Avrasya'daki jeopolitik etkisinin, soğuk savaşın sona erdiğini ve Rusya'nın küresel bir oyuncu olma niyetinin ortadan kalktığını iddia edenlerin aksine devam etmesi gerektiği sonucuna vardı. Jeopolitik çalışmanın temel teorileri, uluslararası ilişkileri analiz etmenin temel değişkeni olarak güç alan klasik ve yapısal gerçekçiliktir. Enerji jeopolitiği açısından, analizler aynı perspektifte petrol ve gaz gibi

enerji ürünlerinin ticaretine ve taşımacılığına dayanmakta, aynı zamanda kaynakların bu güç temelli ilişkilerde rolünü vurgulamaktadır. Enerji jeopolitiğini kurumsal bir perspektiften analiz eden, bazı araştırmacılar jeopolitiği piyasa güçlerini dikkate alarak birleştiren bazı çalışmalar da var.

Enerji ile ilgili analiz literatüründe eksik olan şey, müzakerelerin kendisinin rolünün ve süreç üzerindeki kültürel etkilerin olmasıdır. Petrol sektörüne dayalı müzakereler teorisi öneren Vernon tarafından geliştirilen Obsolescing Bargaining Model (OBM), enerji müzakereleri çalışmalarında en etkili çalışmalardan biridir. OBM'nin temel varsayımı, aktörlerin göreceli pazarlık gücünün değişmekte olduğudur. Model, devletler büyük petrol şirketlerinin yatırım ve teknik desteğini aradıklarında, çokuluslu şirketlerin göreceli pazarlık gücünün, nereye yatırım yapacaklarına karar vermeleri durumunda olduğundan daha yüksek olduğunu iddia ediyor. Ancak; bir anlaşma imzalandıktan ve yatırım yapıldıktan sonra, devletler çok uluslu şirketlerin halihazırda geri alınamayan yüksek sabit giderlerini geri çekemeyecekleri için anlaşma şartlarını yeniden görüşerek daha fazla pay almaya çalışmaktadırlar. Bu nedenle devletler, çok uluslu şirketlere baskı yapmak için düzenleyici araçlarını kullanarak, göreceli olarak daha yüksek pazarlık gücü elinde buldukları konuma geliyorlar. Vernon'un OBM'sini eleştirel bir şekilde değerlendirmekle birlikte, Vivoda ve boru hattı müzakerelerinde hem keşif hem de geliştirme faaliyetlerinde müzakereleri analiz eden bazı araştırmacılar var. Omonbude'nin çalışmaları kısmen boşluğu dolduruyor, ancak vurgu tamamen süreç üzerinde değil ve analizleri herhangi bir kültürel çalışma unsuru içermez. Bu nedenle, bu çalışma, süreç analizi teorisi ve müzakere üzerindeki kültürel etkiler gibi farklı literatürleri birleştirerek enerji müzakere konusuna odaklanmaktadır. Bunu yaparken, Druckman'ın Dönüm Noktaları'nın (Turning Points, TPs) süreç analizi kavramı, Raiffa'nın müzakerelerde yer alan farklı bilişsel unsurlar üzerindeki sınıflandırması ve Gelfand'ın kollektivist-bireyci gibi müzakereler üzerindeki kültürel etkilerinin sınıflandırılması bu tezin kullandığı önemli kavramsal çalışmalardır. Bu çalışma, enerji müzakereleri



ile ilgili farklı çalıřmaları eleřtirel bir řekilde deęerlendirmekte ve uluslararası enerji müzakereleriyle ilgili daha kapsamlı bir bakıř aısı keřfetmek için farklı disiplinlerden farklı literatürleri birleřtirmektedir.

Bu tez, hem ikincil hem de birincil kaynakların hem çevrimii veri tabanlarından hem de kütüphane arřivlerinden yararlanıldıęı bir masa bařı arařtırmasıdır. İkincil kaynaklar aısından; akademik dergiler, akademik kitaplar, uzman görüşleri, kütüphane kaynakları, tezin hem kavramsal hem de vaka analizi bölümlerinde incelenerek ifade edilir. Durum analizlerinde, BM, BP ve GreenPeace gibi çeřitli kuruluşların birincil istatistik kaynakları, gazete yazıları ve resmi aıklamalarla birlikte kullanılmaktadır. Bu tür kaynakların yardımıyla, tez soruyu yanıtlamak ve bir argüman oluřturmak için vaka çalıřması metodolojisini kullanır. Ölülemeyen farklı kültürel etkilerin ortadan kaldırılması nedeniyle, aynı Hazar bölgesinden seiliyorlar. Ek olarak, mevcut üretim verilerinin ıřığında, petrol ithal eden ülkeler 2028 yılına kadar birincil petrol arzı kaynaęı olarak Orta Doęu ve ABD'ye baęımlı olmaya devam edecekler. Ekonomik olarak, kısa üretimden kaynaklanacak olası arz düşüřleri göz önüne alındığında ABD kaya gazı alanlarının ömrü ve olgun Orta Doęu havzalarının azalan üretimi nedeniyle, bu durumun büyük olasılıkla petrol piyasasına arz darboęazları getirmesi muhtemeldir, bu da ürünü Hazar gibi farklı havzalardan teslim etmenin önemini arttırmaktadır. Hazar Havzası kuzeybatı Asya'da, Azerbaycan, İran, Kazakistan, Rusya ve Türkmenistan arasındaki bölgedeki fosil enerji rezervlerinin merkezinde bulunmaktadır. Azerbaycan, Kazakistan, Türkmenistan ve Özbekistan ile birlikte Rusya Federasyonu ve İran, Hazar bölgesinin en büyük enerji üreticileri arasında yer almaktadır ve bu ülkeler toplamda, 302,1 bin milyon varile karřılık gelen dünyanın kanıtlanmış petrol rezervlerinin% 17,8'ine sahiptir. Bu vakaların neden seildięine gelince, öncelikle aynı bölgeden ve iki yeni baęımsız Sovyet Cumhuriyetinden iki farklı türde müzakere yapılması, kültürel olarak benzerlik ve petrol ve doęal gaz ürünlerine yönelik benzer bir algıya iřaret eder (çoęunlukla hızlı Ekonomik gelişmenin yolu). İkincisi, kültür, farklı

bölgelerde / kıtalarda farklı bir müzakerenin müzakerelerini veya / ve sonucunu etkileyebilir ve bir bölgenin ortak inançları veya ortak değerlerinin müzakereleri etkileme yolu olabilir. Bu nedenle, aynı bölgeden iki vaka seçmek, bir yandan ortak kültürel, tarihi ve algısal arka planı yansıtmakta ve benzer ekonomik ve kurumsal özellikleri temsil etmektedir. Bu çalışmanın sonuçlarını uluslararası petrol ve doğalgaz müzakerelerine yansıtmak ve farklı bölgelerdeki çalışmalarla alanı çeşitlendirmek için literatürün daha da büyümesini sağlayacaktır.

Vakaların analizinde, uluslararası enerji müzakere konularının incelenmesinde farklı literatürlerin birleştirilmesi ile disiplinlerarası bir yaklaşım geliştirilmiştir. Disiplinlerarası yaklaşımın kullanılmasıyla ilgili olarak, sürecin içerik analizi kavramları, müzakerelerin kültürel ve davranışsal literatürleriyle ve IOC'ler veya çokuluslu şirketler arasında sektöre dayalı ve petrole özgü konular sağlayan OBM gibi ilgili modellerle birleştirilmelidir. Sektörün müzakerelerini analiz etmek için böyle bir teorik çerçeve inşa etmenin iki nedeni vardır. Birincisi, içerik analizleri süreçle ilgili kavramlar ve birçok değişken sunsa da, sektöre özgü bazı etkileri açıklamakta yetersiz kalmakta ve çoğunlukla kültürün, iletişimin, jeopolitik ve bireysel davranışların rolünü açıklayamamaktadır. Aynı zamanda, müzakere sürecinin çekirdeğinin TP'ler gibi ilgili içerik analizi kavramlarını kullanarak en iyi şekilde ele alınabileceğini unutmamakta fayda vardır. İkincisi, bu literatürlerin kombinasyonu potansiyel olarak hidrokarbon sektör müzakerelerinin analizinde mümkün olan en geniş perspektifi verebilir çünkü sektörün özellikleri ve dinamikleri göreceli modeller kullanılarak en iyi şekilde anlaşılabilir. Petrol ve gaz üreticisi devletlerin uluslararası müzakerelere nasıl dahil olduğunu incelemek için, müzakere türlerinin kategorileşmesi, devlet dışı aktör egemenliğinde ve devlet egemenliğinde yukarıda sunulmuştur. Özellikle, devlet hakim uluslararası enerji müzakereleri çoğunlukla transit devletleri içeren boru hattı müzakerelerine yoğunlaşmaktadır. Ancak; devlet dışı aktörlerin egemen olduğu müzakerelerde, genellikle devleti temsil eden bir taraf (NOC olabilir

veya birkaç kurum aynı çıkarları temsil eder) ve diğer taraf sözleşme müzakerelerinde IOC'leri (veya birden fazla IOC aynı çıkarları temsil eder) vardır.

- (1) üretici ülke hakkında arka plan bilgisi ve kronolojik olaylar içindeki TP'lerin belirlenmesi,
- (2) kültürel ve önyargı etkilerini değerlendirmek

Analizde, bu makale üretici ülkenin göstergelerine odaklanacaktır. TP'leri belirlerken, müzakere sürecini etkileyen ortak faktörler analiz edilecektir. Müzakerecilerin müzakere sürecindeki davranışlarının kültürel yakınlığı ve etkilerini değerlendirirken, kavramsal çerçevede incelenen literatürler ile birlikte Hofstede'nin ulusal kültürler modelinden yararlanılacaktır. Kültürlerin modele göre karşılaştırılması ve ölçülmesinde; güç / otorite ve toplum arasındaki ilişki, bireyci ve kolektivist yapılar ve belirsizlikten kaçınma ana belirleyiciler olarak ele alınacaktır.

Bu tezin argümanı, jeopolitik faktörlerin uluslararası enerji müzakerelerinde çok belirleyici olduğunu savunan bilim adamlarının aksine, bu tez, jeopolitik faktörlerin yalnızca politik olarak motive olmuş devlet aktörlerini ve diğer enerji müzakerelerinde teknik olarak yer alan uluslararası müzakerelerde etkili olduğunu iddia etmektedir. Finansal, ekolojik ve kültürel faktörler, yoğun devlet katılımının olmamasından dolayı daha belirleyicidir. Önceki bölümlerde de açıklandığı gibi, araştırma sorusunun nasıl yanıtlandığı, tezin organizasyonu belirtilerek açıklanacaktır.

Sonuç olarak, bu tez uluslararası enerji müzakerelerinin dinamiklerini keşfetmeye çalıştı. Çoğunlukla petrol ve doğal gazla ilgili meselelere odaklanarak, bu tür müzakerelerde devletlerin rolü incelenmektedir. “Jeopolitik düşünceler, uluslararası enerji müzakerelerini her türlü uluslararası enerji müzakeresinde benzer şekilde etkiliyor mu?” Jeopolitik faktörlerin uluslararası enerji müzakerelerinde çok belirleyici olduğunu

savunan bilim adamlarının aksine, bu tez jeopolitik faktörlerin yalnızca politik motive edici devlet aktörleri ve diğer enerji müzakerelerinde teknik, finansal, ekolojik olanları etkileyen etkili olduğunu ortaya koymaktadır. ve kültürel faktörlerin yoğun devlet katılımı eksikliği nedeniyle daha belirleyici. Ek olarak, yoğun devlet içeren müzakerelerin teknik, çevresel ve finansal sorunları da var. Bu tezde incelenen projelerin hedefleri açısından, jeopolitik faktörler BTC pazarlık hattında boru hattı pazarında önemli bir rol oynamış, ancak müzakerelere konu olan tek konu bu değildi. Bu çalışmada kültür ve bağımsız değişkenler olarak önyargıların da müzakere sonuçlarının belirlenmesinde etkili bir faktör olduğu iddia edilmektedir.

Tezin ikinci bölümünde uluslararası müzakerelere ilişkin kavramsal literatür incelenmiştir. Tezin disiplinlerarası yaklaşımı, uluslararası müzakerelerde kültürel ve önyargı çalışmalarının kombinasyonuna ve uluslararası müzakerelerin süreç analizine dayanıyordu. Ayrıca, üçüncü bölümde, petrol ve doğal gaz ile ilgili özel müzakereler hakkındaki literatür tartışıldı ve açıklandı. İkinci bölümün sektör temelli etkileri açıklama konusundaki sınırlamaları, hem sözleşmeli rejimlerde hem de boru hattı pazarlığında göreceli modeller ve ana çalışmaların kullanılması ile aşılmaya çalışılmıştır. Ayrıca, oyuncuların rolleri ve çıkarları da sektörde gözden geçirilmektedir. Bu nedenle, bu tür literatürlerin bir araya gelmesi, IR, Psikoloji, Uluslararası Hukuk ve Kültürel Çalışmalardan gelen barbar konseptleriyle disiplinlerarası bir çalışma kurdu. Uluslararası enerji müzakerelerine kapsamlı ve geniş bir bakış açısı sağlamıştır. Dördüncü ve beşinci bölümde, sözleşmeye dayalı rejimler ve boru hattı pazarlığı ile müzakereler sırasıyla vaka çalışması metodolojisi ile analiz edilmiştir. Kazakistan'ın bir PSA rejimi altındaki Kashagan saha geliştirme müzakereleri analiz edildi ve müzakerelerin önemli konusu çevresel, teknik ve kar paylaşımı olarak tanımlandı. Projeyi etkileyecek jeopolitik hususlar gözlenmedi. Kültür ve önyargılar da müzakere sürecini etkiledi. Kazakistan ve batı IOC'ler arasındaki kültürel farklılıklar, taraflar arasındaki iletişimi engelleyebilir. Önyargılar açısından, motivasyon önyargısı, konsorsiyumun projeden geri

alınamaması nedeniyle müzakerelerin sürdürülmesinde kalıcı bir rol oynamıştır. OBM'nin kronolojik olaylara kısmen uyduğu gözlemlendi, ancak böyle bir gücün uygulanması göreceli olarak daha yüksek pazarlık gücüne sahip olmaktan başka nedenlerden kaynaklanıyor olabilir. Azerbaycan'da, boru hattı ekonomisine ve transitin ilgili literatürdeki rolüne dayanan analiz, boru hattı pazarlığında üstesinden gelinmesi gereken temel engellerin transit ücreti olduğunu göstermektedir. Ancak, analiz durumunda, transit devletin rolü açısından böyle bir çelişki veya sorun tespit edilmemiştir. Böyle bir sonucun nedeni, müzakerelere katılan devletlerin kültürel yakınlığı ve ABD'nin güçlü üçüncü taraf katılımının jeopolitik çıkarlarında bulunur. BTM boru hattı proje analizinde OBM'nin varsayımları da gözlenmedi.

Analiz edilen vakalardan ve araştırma sırasında elde edilen içgörülerden, tartışmaya beş ek sonuç ve ileri araştırma önerisi vardır. Öncelikle, OBM'nin Kazakistan'da da bir anlaşma imzalandıktan veya yatırım yapıldıktan sonra aktörlerin göreceli pazarlık gücünü değiştiren ana argümanı. Hükümet, projedeki rolünü uzatmaya ve yeniden müzakerelerle daha olumlu anlaşmalar yapmaya çalıştı. Anlaşma imzalandıktan ve yatırım yapıldıktan sonra pazarlık gücü Kazakistan hükümetini tercih etse de, Kazakistan hükümetlerinin eylemlerinin arkasındaki neden göreceli olarak daha yüksek pazarlık gücüne sahip olmakla ilgili olmayabilir, ancak çevre sorunlarının ENI'nin çalışma takvimi, TP'leri tetikleyen ana konulardı. Boru hattı pazarlığı durumunda, nispi pazarlık gücünde böyle bir değişiklik gözlenmez. Bu nedenle, üretici ülkelere yönelik müzakerelere katılan taraflar, tarafların göreceli pazarlık pozisyonlarını önemli ölçüde etkilemektedir. Aşağıdaki sonuç ifadeleri, neden böyle bir farkın gözlemlendiğiyle ilgilidir.

İkincisi, ilişkiler ortak bir tarih ve kültürel yakınlık üzerine kuruluysa, müzakereler daha az sayıda pusula ile daha da yumuşaklaşacaktır. Kazakistan ve batı IOC'lerin gelişim sürecini olumsuz yönde etkileyen farklı

kültürel geçmişleri ve önyargıları vardı. Öte yandan, Azerbaycan'ın ortak tarihi ve kültürel geçmişi süreci olumlu etkilemiştir. Teşvik olarak güçlü bir üçüncü taraf katılımı (Azerbaycan'ın durumunda, ABD'nin siyasi ve jeopolitik kaygılarla katılımı) müzakere sürecini hızlı ve kolay bir şekilde yapabilir.

Üçüncüsü, bir projenin teknik komplikasyonları, yoğun devletteki müzakerelerin gelişme sürecini ve süresini önemli ölçüde etkilemekte ve uluslararası enerji müzakerelerini içermektedir. Kazakistan'ın Kashagan alanlarının gelişmesi durumunda, alan rezervuarın derin suda olması ve toksik gazların varlığıyla karakterize edildi. Ancak bu komplikasyonlar nedeniyle projenin bir kısmında sürekli gecikmeler yaşanıyor, sadece bunlardan değil. BTC projesinde, proje başlamadan önce boru hattı projesine yönelik yolun uygunsuzluğuna dair argümanlar da vardı. Herhangi bir tarafın çalışma programında herhangi bir gecikme ya da uygunsuzluk olmamıştır. Bu nedenle, sürece dahil olan aktörler süreci önemli ölçüde etkileyebilir.

Dördüncüsü, Azerbaycan durumunda, birden fazla devletin katılımı, devletlerin iyi tanımlanmış siyasi ilişkileri nedeniyle projenin müzakere süreçleri üzerinde olumlu bir etkiye sahiptir ve üçüncü bir tarafın (ABD) böyle bir projeye olan ilgisini, birlikte olası olumlu koşullar. Bununla birlikte, birden fazla devlet içeren herhangi bir uluslararası petrol ve gaz müzakeresi için geçerli olmayabilir. Petrol ve doğal gaz endüstrisinde sınır ötesi boru hattı projeleri için tipik bir özellik olan bölgesel işbirliği, projelerin geliştirilmesi ve gerçekleştirilmesinde önemli bir faktördür. Aynı bölgeyi paylaşsalar bile, partilerin farklı kültürleri nedeniyle bir boru hattı oluşturmaya yönelik diyaloglar gibi hipotezi daha da test etmek için sınır ötesi boru hattı müzakerelerinde başka bölgesel çalışmalar yapılması gerekiyor. Kashagan saha gelişiminde, Kazakistan'ın siyasi çevresi gelişmelerin seyrini etkiledi, ancak hem teknik sorunlar hem de kültürel farklılıklar nedeniyle müzakereler çoğunlukla ticari koşullara odaklandı.

Birden fazla devlet müzakerelere dahil olduğunda, sürecin kaçınılmaz olarak daha politik hale gelmesi şaşırtıcı değildir. Dahası, Kazak hükümetinin IOC'lere yaklaşımı da bir dereceye kadar politiktir, çünkü IOC'lerle anlaşması olan bu ülkelerin genel ekonomik gelişimi, petrol ve gaz endüstrisinin gelişmesine veya ülkelerin petrol görmesi ve gelişime hızlı bir yol olarak gaz.

Son olarak, kapalı kapılar ardında yapıldığı ve çoğu zaman imzalanan anlaşmalar bile halka açık olmadığından, görüşmelerin fiili süreci hakkında hiçbir bilgi ve / veya veri olmadığı için analiz edilen davalarda duygusal önyargılar gözlenmedi. Petrol ve doğal gaz müzakerelerinde şeffaflık konusu yolsuzlukla ilgili kaygılar uyandırırken, bu durum da müzakerecilerin sözlü davranışlarını ampirik olarak geleneksel olarak kodlama şeması tekniklerini kullanarak yapılan süreç analizi ile incelemeyi engellemektedir. Bununla birlikte, genel süreçten dahil olan muhtemel önyargılar açısından bazı sonuçlar çıkarılabilir. PSA müzakerelerinde, taraflar arasında imzalanan anlaşma bir kez yapıldığından, müzakere süreci devam ettiğinden ve tarafların bir alanın nasıl geliştirileceğini ve işletileceğini ve karşılaştıkları veya çevresel zorlukların üstesinden gelmek zorunda olduklarını anlamaları gerektiğinden, sürece dahil olduğu motivasyonel önyargıların olduğu gözlemlendi. Zararlar yapıldı. Bunu yaparken, anlaşmalar imzalanıp yatırımlar yapıldığından diğer tarafla etkileşimin devam etmesinin motivasyonel önyargıları devam etmekte, sorun işbirlikçi tutumlarla çözülmeye çalışılmaktadır. Kashagan davasında, projenin uzun gecikme sorunlarına rağmen, partiler bir şekilde ücrete dayalı ceza gibi bir sorunu çözdüler, ancak müzakereler ve / veya proje hiçbir zaman askıya alınmadı. Boru hattı pazarlığında, bilişsel ve sosyal algı önyargıları süreçte daha baskındır. Bilişsel anlamda, yatırımcının / IOC'lerin ve devletlerin risk algılarının önemli ölçüde farklı olduğu görülmektedir. Devletler, riski politik açıdan algılayarak, IOC'ler riski yatırım ve geri dönüşler açısından değerlendirme eğilimindedir. Bu nedenle, üçüncü taraflarca böyle bir projeye yatırım yapmak için bazı teşvikler istenmiştir.

Toplumsal algı önyargıları çoğunlukla üretici ülke, transit ülke / ülkeler ve nihai varış noktası olan süreçteki gerçek oyuncularını etkiliyordu. BTC proje vakasında geliştirilen söylem, ilişkilerin çoğunlukla sosyal önyargıya dayandığını belirledi, çünkü devletlerin böyle bir projeyi geliştirmedeki gerçek çıkarları siyasal söylem ve müzakerelerde pek söz edilmedi.



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CONTRACT PROCESS AND CROSS BORDER PIPELINE BARGAINING

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