



華東政法大學

East China University of Political Science and Law



# Dispute Resolution in International Economic and Tax Law and Mediation

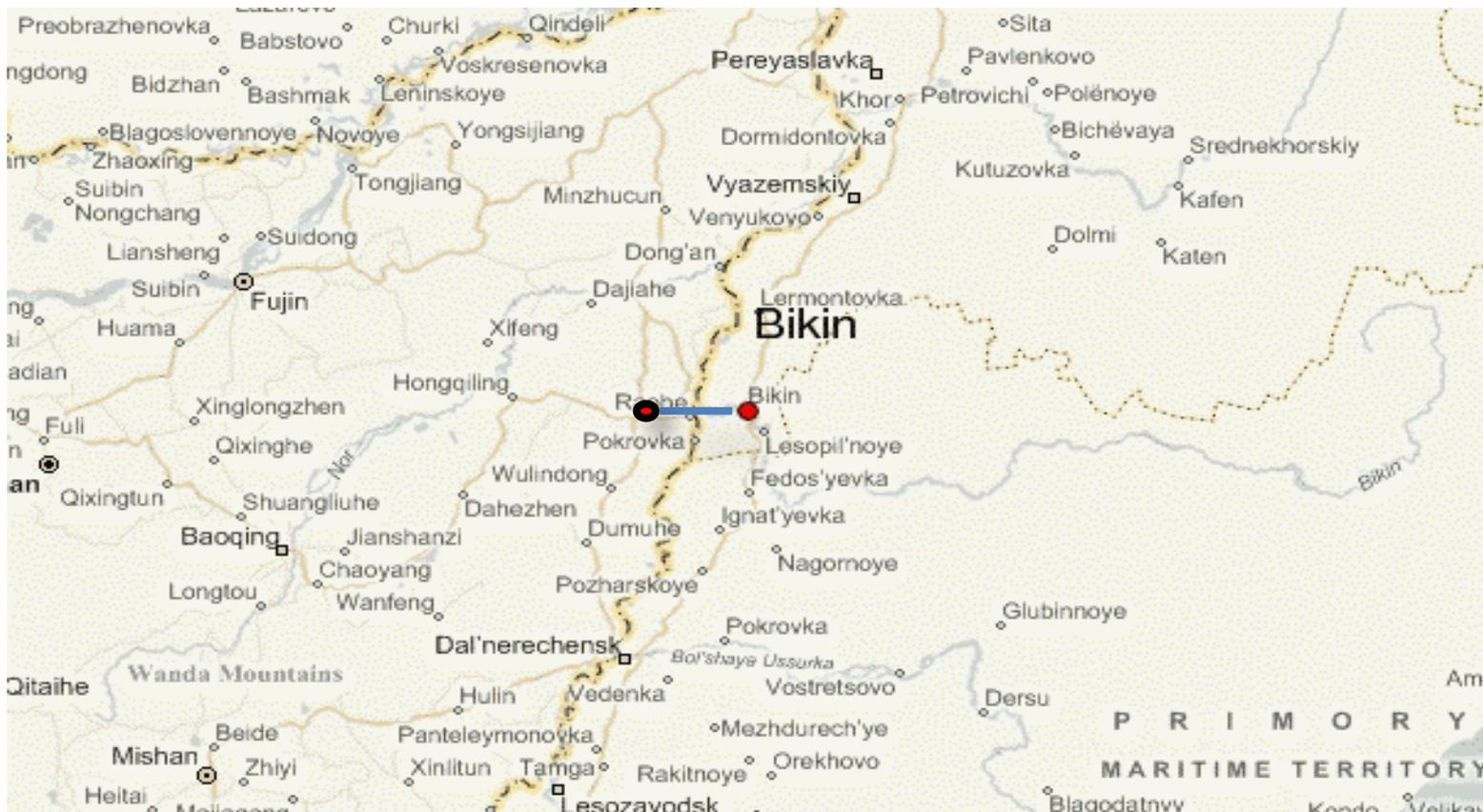
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# A Real Tax Case – Bikin/Raohe



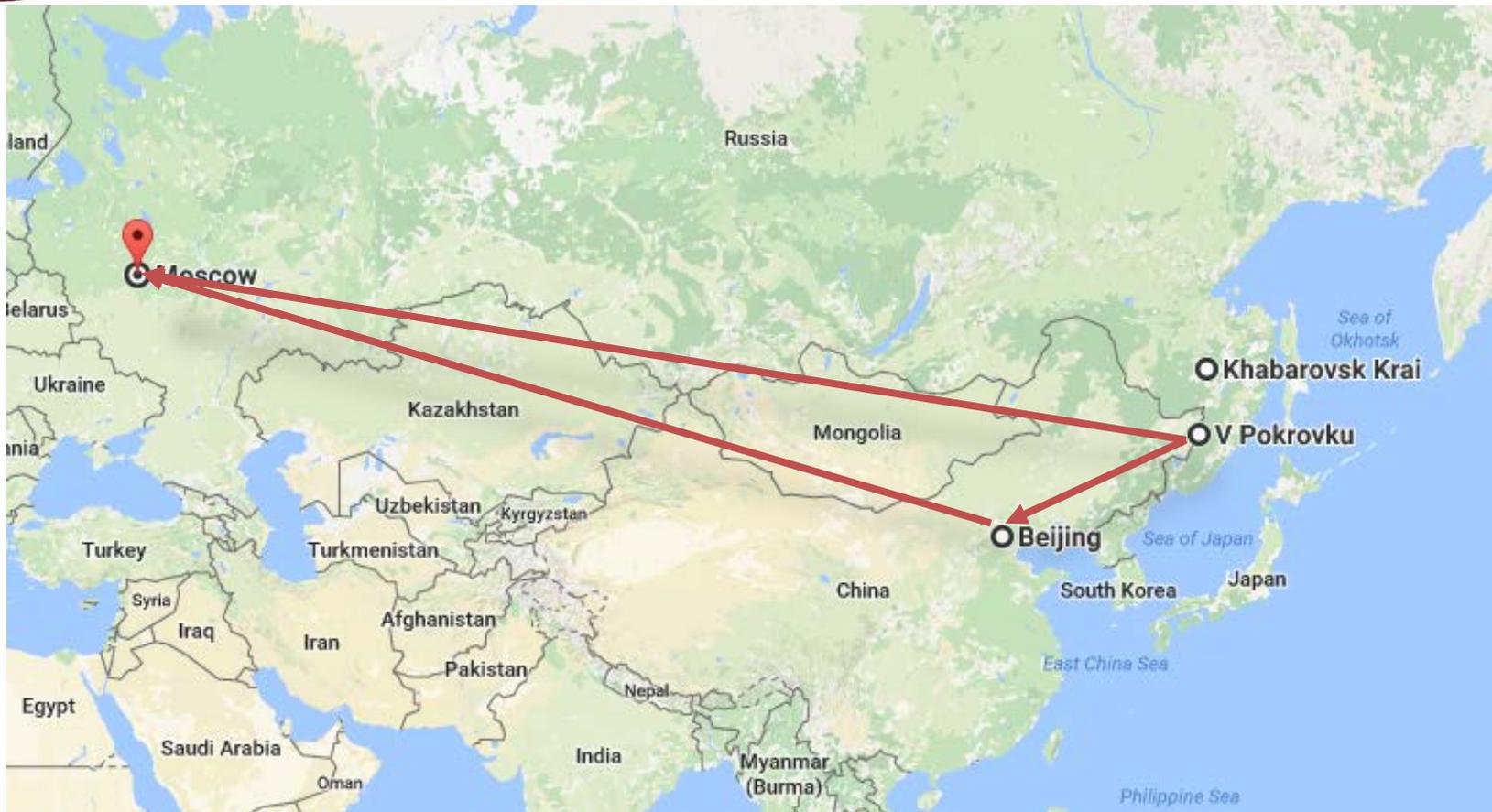


## **Fact of the Dispute**

- **A Chinese entrepreneur farmed lands in Russia through using his employees and equipment, aggregately more than 18 months, but each time less than 2 weeks.**
  
- **Russia-China Tax Treaty (1994)**
  - **PE? Business profit or individual service income, or other income?**



# A Tax Dispute Case – MAP?



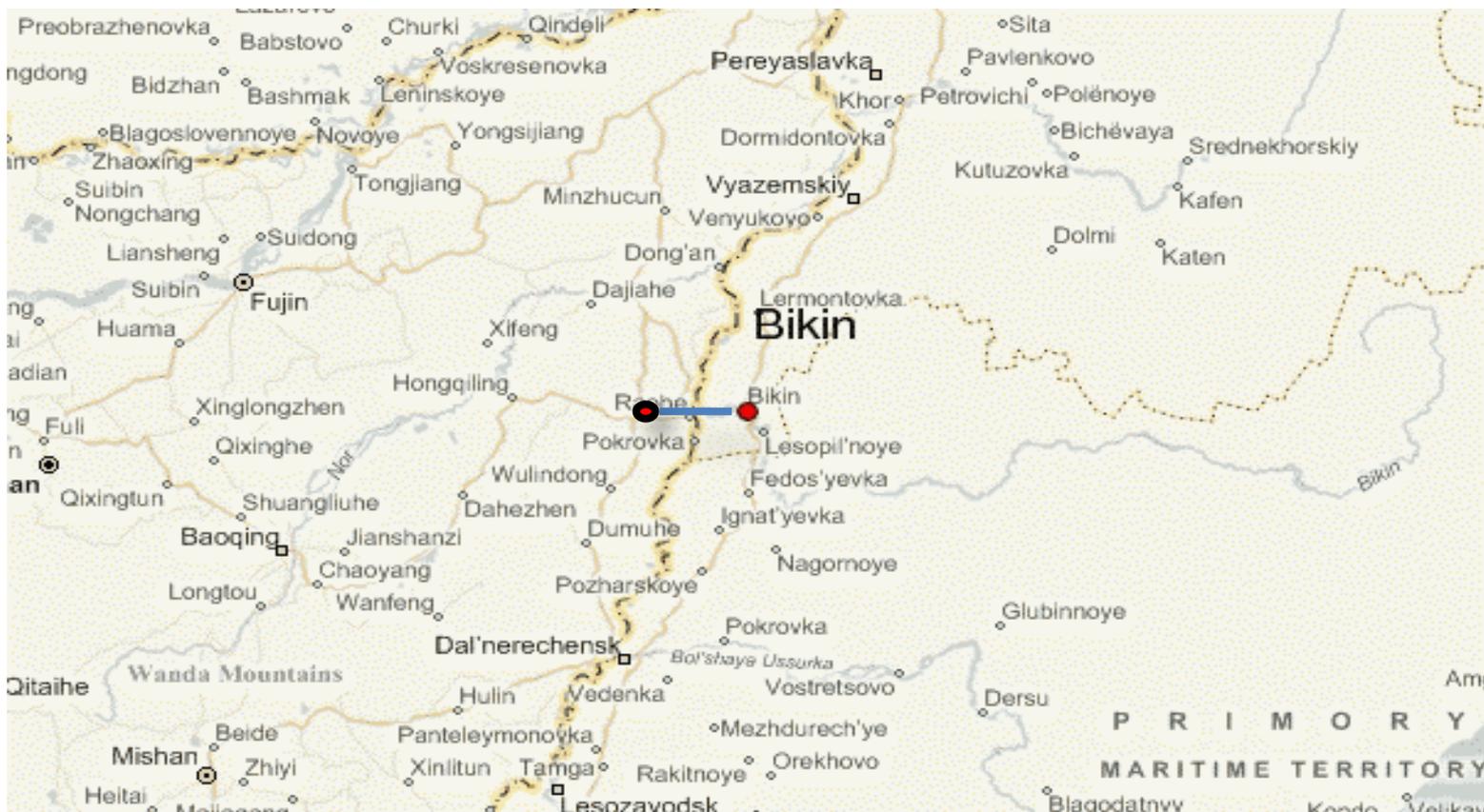


# MAP

- **All 106 tax treaties China concluded use MAP; no arbitration; no mediation**
- **Limitation of implementing MAP**
  - **Location distance; Time consuming; No participation of taxpayers; Unpredictable result; Short of human resources, etc.**



# Mediation?





## **Doubts on this Approach**

- **The payment: to Russian tax bureau or to Bikin government – Is it really a “tax” payment?**
- **Any interaction between local governments of Russia and China with their competent tax authorities?**
- **An alternative resolution approach or an illegitimate result?**



## **Improving this Approach**

- **Make it a legitimate mediation approach for the BRICS**
  - **Delegation of negotiation power from the central (Competent Authorities) to the local (tax authorities)**
  - **Involving local governments and local experts**
  - **Accepting the mediation result by the central competent authorities**



# The BRICS: Mediation + Arbitration

- **Is arbitration a possible approach amongst the BRICS?**
  - **a multilateral agreement**
  - **Tribunal: a 5 countries round-table; involvement of BRICS Bank**
  - **mechanism: referring to the EU arbitration directive proposal, or the U.S.-Canada approach?**



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**Thank you!**

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