The Energy Charter Treaty and Dispute Settlement of Transnational Energy Pipelines [*] A Chinese Perspective

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Abstract: There are many types of disputes on transnational energy pipeline with various and complicated reasons. International legal system based on *the Energy Charter Treaty* (ECT) contains a comprehensive system for settling disputes on transnational energy pipeline, which covers international arbitration, adjudication of international judicial bodies, a specialized conciliation mechanism under *the ECT*, and the Energy Charter conference mechanism, besides the traditional diplomatic and political means, such as negotiation and consultation. As to the dispute settlement of those pipelines related to China, it's crucial to establish and develop a friendly relationship with those countries related.

Keywords: Disputes on Transnational Energy Pipelines *The Energy Charter Treaty* A Specialized Conciliation Mechanism under the ECT The Energy Charter Conference

I. Introduction

In May 2006, China-Kazakhstan oil pipelines starting oil transmission. It is designed for an annual transmission capacity of 20 million tons, and this is the first time that China acquires oil through pipelines. [1] On July 17, 2007, China National Petroleum Corporation (CNPC) signed the production sharing contract on the area at Amu Darya Right Bank in Turkmenistan and

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1 As RIA Novosti says on May 29, 2006, Moscow, the transmission of China-Kazakhstan oil pipelines has a significant meaning in the world. See Koselev, *China-Kazakhstan oil pipelines—New Reality of World Politics*, from *Reference News(China)*, Page 8, May 31, 2006.

the Sino-Turkmenian natural gas purchase and sale agreement with Turkmen State Agency for Management and Use of Hydrocarbon Resources and Turkmengaz State Concern respectively in Beijing, China. According to these agreements, Turkmenistan will export 30 billion cubic meters of natural gas to China annually for 30 years. [2] In July 2008, the China-Kazakhstan gas pipeline has started construction. As a part of the China-Central Asia gas pipeline project, the China-Kazakhstan gas pipeline, extending 1,300 km, is a joint venture between China and Kazakhstan, which runs from Turkmenistan, passing through Uzbekistan and Kazakhstan, and finally reaches Central, East and South China, with a total length of approximately 10,000 km. [3] Furthermore, the route of Russia-the Pacific Ocean pipeline (including the branch pipeline to Northeast China) has finally come into being. [4] Thus a research on the dispute settlement of transnational energy pipelines has a significant and realistic meaning for China.

This article has five parts: the first is a brief introduction of China's transnational energy pipelines; the second part analyzes various types of disputes over pipeline and their causes; the third, based on *the ECT,* makes a detailed discussion on international legal system on the settlement of disputes over transnational energy pipelines; the fourth analyzes particular mechanisms to settle disputes; the fifth discusses the referential and enlightening significance of these mechanisms centered on *the ECT* for China.

II. Types of disputes over transnational energy pipelines and their causes

II.i Various types of disputes over transnational energy pipelines

There are various types of disputes over transnational energy pipelines. With different standards, its classifications are different too.

1. Based on subjects of dispute, it is classified into three types: A. disputes between contracting parties. It covers not only the dispute between *the ECT* member countries and the EU[5], but also the dispute between con-

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[2] See CNPC website, http://www.cnpc.com.cn/cnodc/gsxw/gsyw/E.htm, last visit on May 30, 2011.

[3] See Xinhua News on July 9, 2008, "the China-Kazakhstan gas pipeline has started construction", Chutian Metropolis Daily, Pg. A 17, July 10, 2008

[4] See Glada Lahn and Keun-Wook Paik, *Russia's Oil and Gas Exports to North-East Asia,* available at http://www.dundee.ac.uk/cepmlp/journal/html/volme15.html, last visit on May 29, 2011.

[5] The EU is a contracting party of *the Energy Charter Treaty*.

tracting parties of transnational energy pipelines contract or agreement. B. state-state disputes, e.g., the gas dispute between Russia and Ukraine in the end of 2005. C. investor-state dispute, which is mainly the dispute between energy company and host government. For example, Article 26 of *the ECT* provides specific options to settle investor-state disputes.

2. Based on objects of dispute, it can be divided into four categories: A. trade disputes, for example, the dispute over taxes and fees; B. transit disputes, for example, the dispute over freedom of transit crossing different national borders. As a scholar says, "the ability of oil and gas producing States and companies to transport energy products unimpeded and without risk of stoppage and siphoning via transit States is perhaps one of the most significant international legal issues for the energy industry in the 21st century. " [6] C. investment disputes, e.g. disputes over maintenance of pipelines, or unilaterally stop the investment contract. D. disputes related to environment, e.g., the dispute over damage on local ecology and environment.

II. ii Causes for disputes over transnational energy pipelines

After an analysis of problems in practice, the causes for disputes over transnational energy pipelines are as following:

1. Technology, e.g. pipeline accidents, pumping station accidents, and so on.

2. Commercial and economical reasons, e.g. taxes and fees, freedom of transit crossing different state borders, interpretation of contract terms, and unilateral termination of contract, which are main reasons for transnational pipeline disputes. According to Rainer Liesen, "most energy transit disputes between FSU countries were and still are about money".[7]

3. Disputes over damage on ecology and environment caused by transnational energy pipelines.

4. Threat to interrupt pipeline caused by political reasons[8], which is one of the main reasons of transit disputes. For example, the Russia-Ukraine

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[6] Grace Wandoo Nomhwange, *Transboundary Pipelines: What Is the Role of the Energy Charter Treaty Regarding Disputes Settlement?* Dundee University Thesis 2005, p. 5.

[7] Rainer Liesen, Transit Under the 1994 Energy Charter Treaty, available at http://www.dundee.ac.uk/cepmlp/journal/html/vol3/vol3-7.html, last visit on May 21, 2011.

[8] In the 1970s, Verzijl, a famous international law scholar, pointed out, the construction, operation and legal status of energy pipelines have a strong political purpose. Pipeline disputes in the Middle East and North America have shown the insecurity of transnational pipelines because transit states interrupted pipelines regardless of treaty obligations. See Verzijl, *International Law in Historical Perspective*, Vol. 3, Leiden, 1970, p. 281.

"Gas Crisis" in December 2005 seems to be the pricing power on gas, but in fact, it is a result of geo-politics, and diplomatic and strategic competition.

5. Implementation of market economy principles in the area of transnational energy pipelines, including disputes over competition, freedom of transit, and infrastructure.

6. The improvement of present cross-border infrastructures and the investment on new infrastructure projects.[9]

Besides, some scholar points out that a single transnational energy pipeline is much vulnerable to break down[10], which consequently aroused a lot of discussions.

III. *The Energy Charter Treaty* – the main international legal system of dispute settlement on transnational energy pipeline

The international legal system centered on *the ECT* has set up specific provisions for the dispute settlement on transnational energy pipeline. It's true that "*the Energy Charter Treaty* is the main regulatory and dispute settlement instrument for the transit of energy commodities ".[11]

III. i *The Energy Charter Treaty*

The ECT is the only multilateral treaty specialized on energy. It establishes "a special, simpler dispute resolution procedure".[12]

In July 1990, Dutch Prime Minister Ruud Lubbers launched the proposal for a *European Energy Charter* at a European Council meeting in Dublin in order to build a legal and political foundation for cooperation among the states of Eurasia after the Cold War. This proposal received quick response and substantial support from many European countries. In December 1991, *The European Energy Charter* was signed in Hague. Although *The European Energy Charter* has a title of "Charter", it is only a political declaration without any legal binding force, and shall not be registered with the

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9 See Stanislav Z. Zhiznin : *International Energy Politics and Diplomacy*, trans. by Qiang Xiaoyun, East China Normal University, 2005, pp. 201-202

10 See Paul Stevens, A History of Transit Pipelines in the Middle East: Lessons for the Future, in Gerald Blake etc. ed., *Boundaries and Energy: Problems and Prospects,* Kluwer Law International 1998, p. 227.

11 Ekpen J. Omonbude, *Cross-Border Oil and Gas Pipelines and the Role of the Transit Country: An Analysis of the Consequences of Shifts in Bargaining Powers of the Parties to the Pipeline Agreement*, Dundee University Thesis 2007, p. 158.

12 Karl Petter Waern, Transit Provisions of the Energy Charter Treaty and the Energy Charter Protocol on Transit, *Journal of Energy & Natural Resources Law,* Vol. 20, No. 2, 2002, p. 175.

Secretariat of the United Nations.[13] In order to implement its aims and principles, with the persistent coordination of Secretariat of European Energy Charter Conference, negotiation has been carrying on for the following years; as a result, *the Energy Charter Treaty* was signed in Lisbon in December 1994. In April 1998, *the ECT* entered into force. *The ECT* also set up a governmental organization—"the Energy Charter Conference", which presently has 52 members (states), 19 observer states including China, and 10 international organizations as its observers including IEA.[14]

The ECT is comprised of a preamble and 50 articles divided into 8 parts. Its aim, abiding by the purposes and principles of the European Energy Charter, is to build a legal framework for a long-term and mutually beneficial cooperation on energy. *The ECT* is mainly devoted to four aspects: investment, trade, transit, and dispute settlement. Dispute settlement mechanisms available under *the ECT* Disputes between parties to the Treaty are as following: 1. Article 26 provides procedure on settlement of disputes between investor and a contracting party. 2. Article 27 provides for a special procedure for disputes between contracting parties. 3. Article 29 and Annex D include a mechanism for settling trade disputes over energy trade between member countries. 4. Article 7.7 provides a specialized mechanism for transit disputes. Furthermore, Article 19 is about environmental issues, as well as disputes over competition is Article 6.7.[15]

It is worth mentioning that the Energy Charter Conference Secretariat invited its member countries and observer countries to hold a meeting on "Dispute Settlement Mechanisms under the Energy Charter Treaty" in Brussels in October 2005, which mainly discussed various dispute settlement means under *the ECT* and especially dispute settlement provisions related to investment.[16]

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[13] See Craig Bamberger etc., The Energy Charter Treaty in 2000: In a New Phase, available at http://www.dundee.ac.uk/cepmlp/journal/html/vol7/vol7-1.html, last visit on August 29, 2011.

[14] More information on member states and observer states in the Energy Charter Conference, available at http://www.encharter.org/index.php?id=61, last visit on August 23, 2011.

[15] See Graham Coop and Clarisse Ribeiro, Dispute Settlement Mechanisms under the Energy Charter Treaty, available at http://www.encharter.org/index.php?id=269, last visit on September 12, 2011.

[16] See Conference, "Dispute Settlement Mechanisms under the Energy Charter Treaty", Brussels, 20 October 2005, available at http://www.encharter.org/index.php?id=185, last visit on September 12, 2011.

III. ii. ***The Energy Charter Protocol on Transit***

Following *the ECT* 's adoption in 1994, a consensus emerged among contracting countries, that these provisions (Article 7) on energy transit issues could be amplified and strengthened in order to mitigate some operational risks that affect energy transit flows. Thus, in December 1999, the Energy Charter Conference mandated the start of negotiations on an Energy Charter Transit Protocol. Agreement was reached on the bulk of the Protocol's text at the end of 2002. However, *the Protocol* has not been finalized, and the discussion has been going on and off since then due to the difference between the EU and Russia.

The draft text of the Transit Protocol, with a preamble and 8 parts, has 34 articles.[17] The Contracting Parties to the Protocol have reached an agreement on its definitions, objectives and scope (Part I), general provisions (Part II), specific provisions (Part III), International Energy Swap Agreements (Part IV), implementation and compliance (Part V), dispute settlement (Part VI), institutional provisions (Part VII), and final provisions (Part VIII). Article 21 (Part VI), Settlement of Disputes Between Contracting Parties, says, "If a dispute concerning the application or interpretation of this Protocol, either exclusively or in conjunction with *the Treaty*, has not been settled through diplomatic channels within a reasonable period of time, either Contracting Party may, upon written notice to the other party to the dispute, submit the matter to an ad hoc arbitral tribunal in accordance with, mutatis mutandis, the procedures of Article 27, paragraph 3, of the Treaty."

III. iii The Model Agreements

In order to provide a neutral model agreement for negotiations on transnational pipeline, and facilitate talks and implementation of projects, the Energy Charter Conference mandated its Secretariat to work out two model agreements in December 2003: the Inter-Governmental Model Agreement on Cross-Border Pipelines (IGA Model Agreement) and the Host-Government Model Agreement on Cross-Border Pipelines (HGA Model Agreement). Since 2005, the Legal Advisory Task Force chaired by the Secretariat has worked to revise and update the Model Agreements, in order to bring them into line with best international practice and to reflect as much as possible the interests of the different parties concerned. The second edition of the Model Agreements has been adopted by the Energy Charter Conference in 2007.

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[17] The draft text of *the Transit Protocol*, available at http://www.encharter.org/index.php?id=61, last visit on August 30, 2011.

This second edition of the Model Agreements includes an explanatory note which gives a brief account of the purpose, nature and structure of both Model Agreements.[18] IGA Model Agreement has four parts (21 articles): Interpretation and Scope of the Agreement (Part I), General Obligations (Part II), Taxes and Non-discrimination (Part III), and Final Provisions (Part IV). HGA Model Agreement has 6 parts (40 articles): Interpretation and Scope of the Agreement (Part I), General Obligations (Part II), Taxes, Import & Export and Currency (Part III), Implementation (Part IV), Liability (Part V) and Final Provisions. Article 19 (IGA Model Agreement) and Article 43 (HGA Model Agreement) prescribe dispute settlement respectively.

III. iv Summary

"*The ECT* has endeavoured to set up a specific dispute settlement system which the signatories and investors can rely on."[19] According to Article 26 and Article 27 of *the ECT,* all disputes may possibly be settled by arbitration, even if contracting parties give no consent in respect of commercial arbitration clauses. Since *the ECT* has not set up an Energy Charter Court with jurisdiction to hear disputes related to *the ECT;* however, as the only charter treaty on energy, with 51 signatory states and 19 observer states from Europe, Asia, America, Oceania, and Africa, some stipulations of *the ECT* embody undoubtedly customary international law.

The Energy Charter Protocol on Transit, the same as the two Model Agreements, still under revising and updating, is only a guide without any binding force for host governments or investors[20]; but they represent the development trend of customary international law, and to some extent play an important role in proving the existence of customary international law.

IV. Particular mechanisms to settle disputes on transnational energy pipelines

According to the principle of settling international disputes by peaceful means, disputes on transnational energy pipelines should be settled by non-coercive measures within the framework of international law as well. However, the particularity of these disputes requires special dispute settlement

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[18] The second edition of the Model Agreements, available at http://www.encharter.org/index.php?id=61, last visit on August 10, 2011.

[19] Hans-JÜrgen Schroth, The Energy Charter Treaty in the Context of the Treaties of the European Union, in Thomas W. Wälde ed., *The Energy Charter Treaty: An East – West Gateway for Investment & Trade,* Kluwer Law International 1996, p. 246.

[20] See Grace Wandoo Nomhwange, *Transboundary Pipelines: What Is the Role of the Energy Charter Treaty Regarding Disputes Settlement?* Dundee University Thesis 2005, p. 35.

mechanisms which submit disputes to international arbitration, adjudication of international judicial agency, specialized conciliation procedure, and the energy charter treaty conference, as well as traditional diplomatic and political means, such as negotiation and consultation.

IV. i Diplomatic and Political Means

Traditional diplomatic and political methods include negotiation, good offices, mediation, conciliation, international investigation and measures taken under the UN. According to Article 26.1 and Article 27.1 of *the ECT*, disputes between a contracting party and an investor of another contracting party, or between contracting parties, if possible, should be settled amicably. This implies that it's their obligation for both contracting parties and investors to settle disputes through diplomatic or political channels. Some scholar regards the two provisions of *the ECT* as in fact a codification of customary international law, since "customary international law imposes a duty on states, even in the absence of a treaty, to attempt to resolve disputes through good faith negotiations before resorting to arbitration".[21] As a matter of fact, the diplomatic or political means are the most economic among all mechanisms in practice, given both parties shall abide by the agreement which they have reached.

IV. ii Arbitration and adjudication of international judicial bodies

1. International Arbitration under *the ECT*

According to Article 26 of *the ECT*, if disputes between a contracting party and an investor of another contracting party cannot be settled through diplomatic or political channels within a period of three months from the date on which either party to the dispute requested amicable settlement, the investor party to the dispute may choose to submit it to international arbitration for resolution.[22] In this situation, each contracting party hereby gives its unconditional consent to the submission of a dispute to international arbitration.

(1) Arbitral Organizations under *the ECT*

The disputes can be submitted to the following four arbitral organizations[23]: (1) The International Centre for Settlement of Investment Disputes, if

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[21] Kenneth J. Vandevelde, Arbitration Provisions in the BITs and the Energy Charter Treaty, in Thomas W. Wälde ed., *The Energy Charter Treaty: An East – West Gateway for Investment & Trade,* Kluwer Law International 1996, p. 414.

[22] But, according to Article 27.2, there is no specific time limit for the submission of disputes between states to arbitration: If a dispute has not been settled through a political or diplomatic channel "within a reasonable period of time", either party may submit the matter to an ad hoc tribunal.

[23] See the Energy Charter Treaty, Article 26.4.

the Contracting Party of the Investor and the Contracting Party party to the dispute are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention); (2) The International Centre for Settlement of Investment Disputes, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the Contracting Party of the Investor or the Contracting Party party to the dispute, but not both, is a party to the ICSID Convention; (3) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law; or (4) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce.

(2) Applicable laws and enforcement of arbitration awards

According to Article 26.6 of *the ECT*, the tribunal shall decide the issues in dispute in accordance with *the ECT* and rules and principles of international law. The awards of arbitration shall be final and binding upon the parties to the dispute. Each Contracting Party of *the ECT* shall carry out any such award without delay and shall make provisions for the effective enforcement in their respective territories. [24]

But if the Investor party to the dispute choose to submit the disputes for resolution: (a) to the courts or administrative tribunals of the Contracting Party party to the dispute; (b) in accordance with any applicable, previously agreed dispute settlement procedure, the Contracting Party will not give its consent to the submission of the dispute to international arbitration or conciliation in accordance with *the ECT*.[25] That is to say, if investors resort to local remedies or any previously agreed dispute settlement procedures, they shall lose their right to settle these disputes through *the ECT* mechanisms. This is to avoid the possibility that adjudication of courts in the host state be reversed by awards of international arbitration tribunal.

2. Awards of international judicial bodies

If both parties are sovereignty states, the disputes over transnational energy pipelines may also be submitted to International Court of Justice for resolution. Furthermore, *United Nations Convention on the Law of the Sea* (Part XV) provides sophisticated provisions on the settlement of disputes over offshore pipeline construction and operation. According to *Statute of the International Tribunal for the Law of the Sea* (Article 21), "The jurisdiction of

[24] See the Energy Charter Treaty, Article 26.8.
[25] See the Energy Charter Treaty, Article 26.3(b), (i).

the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal". Generally, *the International Tribunal for the Law of the Sea* only has jurisdiction over contracting states, but entities other than contracting states may also submit the disputes to the Tribunal based on Part XI of *the United Nations Convention on the Law of the Sea* or previous agreements. So, if the transnational energy pipelines pass through international seabed or continental shelf of a coastal state, the disputes related to these pipelines may also be submitted to the International Tribunal for the Law of the Sea.

IV. iii A Specialized Conciliation Mechanism under *the ECT*

Conciliation, or amicable settlement, is a process in which the parties submit disputes to a commission who will identify the disputed issues, put forward advices and reports and endeavor to settle the disputes. With its relative flexibility and quickness, conciliation is especially suitable for complicated multilateral disputes, such as disputes on transnational energy pipelines. So *the ECT* provides a Specialized Conciliation Mechanism to settle disputes over transnational energy pipelines.

According to Article 7.7 of *the ECT*, when contracting parties have exhausted "all relevant contractual or other dispute resolution remedies previously agreed",

(a) A Contracting Party party to the dispute may refer it to the Secretary-General by a notification summarizing the matters in dispute. The Secretary-General shall notify all Contracting Parties of any such referral.

(b) Within 30 days of receipt of such a notification, the Secretary-General, in consultation with the parties to the dispute and the other Contracting Parties concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or permanently resident in a party to the dispute or one of the other Contracting Parties concerned. [26]

(c) The conciliator shall seek the agreement of the parties to the dispute to a resolution thereof or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, he shall recommend a resolution to the dispute or a procedure to achieve

[26] Article 7.7(e), the Secretary-General may elect not to appoint a conciliator if in his judgment the dispute concerns Transit that is or has been the subject of the dispute resolution procedures and those proceedings have not resulted in a resolution of the dispute.

such resolution and shall decide the interim tariffs and other terms and conditions to be observed for Transit from a date which he shall specify until the dispute is resolved.

(d) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under subparagraph (c) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier.[27]

Of course, nothing in this Article shall derogate from a Contracting Party's rights and obligations under international law including customary international law, existing bilateral or multilateral agreements.[28]

It's worth mentioning, in order to implement that "the Charter Conference shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators" [29], the Charter Conference adopted the Rules for the Conciliation of Transit Disputes in December 1998.[30]

To sum up, the Specialized Conciliation Mechanism under *the ECT* is a mechanism other than legal or arbitral means.[31] But the conciliator is mandated to make binding interim decisions. The Special Conciliation Mechanism is a very short process, including 4 months to reach an agreement and 12 months for its implementation. During this period, the contracting states should not impede or stop the transit of the energy pipeline, nor charge a big fee for the transit, nor take the transit as a means to serve any political purpose. So, to some extent, the Mechanism plays a role of a fuse.[32]

IV. iv The Energy Charter Conference

According to Article 34.3 of *the ECT*, the Energy Charter Conference is a body of discuss, consider, and settle disputes. If any dispute is referred to the Conference Secretariat by a contracting party, the Secretariat shall make investigations and informal mediation so as to coordinate the parties to the dispute to reach informal or formal settlement.[33]

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27 See the Energy Charter Treaty, Article 7.7(a),(b),(c) (d).

28 See *The Energy Charter Treaty* Article 7.8.

29 *The Energy Charter Treaty* Article 7.7(f).

30 See Craig Bamberger etc., The Energy Charter Treaty in 2000: In a New Phase, available at http://www.dundee.ac.uk/cepmlp/journal/html/vol7/vol7-1.html, last visit on September 11, 2011.

31 See Thomas W. Wälde, *Investment Arbitration under the Energy Charter Treaty*, Dundee University 1997, p.21.

32 See Grace Wandoo Nomhwange, *Transboundary Pipelines: What Is the Role of the Energy Charter Treaty Regarding Disputes Settlement?* Dundee University Thesis 2005, p. 49.

33 See Thomas W. Wälde, *Investment Arbitration under the Energy Charter Treaty*, Dundee University 1997, p.22.

It's especially remarkable that Article 19 of *the ECT* is about contracting party's obligations concerning environmental protection. "At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference aiming at a solution."[34]

This shows that the Energy Charter Conference in some way acts as a consultative body that can make recommendations for dispute settlement.[35]

V. What is important to China?

In recent years, given China's increasing transnational energy pipelines, researches on dispute settlement mechanisms under *the ECT* and international practices have shown that the following are especially important for China:

1. Establishment and development a friendly relationship with different countries are the most crucial.

Although the international legal system centered on *the ECT* has provided mechanisms to settle disputes over transnational energy pipelines, none of them are cure-all. True to some scholar, "The multilateral dispute settlement procedure of Article 7(7) is a blunt weapon" [36], which cannot solve dispute by itself. Therefore, a harmonious world and a friendly relationship with different countries are crucial for the settlement of disputes. Firstly, the history that all 8 transnational oil pipelines in the Middle East were interrupted more than once because of political antagonism has proven this.[37] Secondly, the reality is another proof—the Russia-Ukraine dispute over natural gas prices in the turn of 2005 and 2006 is essentially a conflict of their strategies on foreign affairs after the Color Revolution. Lastly, in practice, legal obligations always give way to political needs;

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[34] *The Energy Charter Treaty* Article 19.2.

[35] See Grace Wandoo Nomhwange, *Transboundary Pipelines: What Is the Role of the Energy Charter Treaty Regarding Disputes Settlement?* Dundee University Thesis 2005, p. 26.

[36] Rainer Liesen, Transit Under the 1994 Energy Charter Treaty**,** available at http://www.dundee.ac.uk/cepmlp/journal/html/vol3/vol3-7.html, last visit on September 12, 2011.

[37] See Paul Stevens, A History of Transit Pipelines in the Middle East: Lessons for the Future, in Gerald Blake etc. ed., *Boundaries and Energy: Problems and Prospects,* Kluwer Law International 1998, pp. 227-228; Rainer Liesen, Transit Under the 1994 Energy Charter Treaty**,** available at http://www.dundee.ac.uk/cepmlp/journal/html/vol3/vol3-7.html, last visit on September 12, 2011.

some countries play "energy card" as a political tool by threatening to interrupt transit energy pipelines.

2. The best choice to settle a dispute is through a diplomatic or political means.

Firstly, *the ECT* attaches great importance to diplomatic and political means to settle transnational energy pipeline disputes; Article 26 of *the ECT* especially prescribes that investor must resort to diplomatic or political settlement first, and only if the dispute cannot be settled within three months, the investor may submit it to other mechanisms for resolution. Secondly, a diplomatic or political mechanism is comparatively flexible and economic. Thirdly, many disputes over transnational energy pipelines have been settled successfully through diplomatic or political mechanisms.

3. Multilateral Mechanism is an important channel.

In 2002, some scholar had pointed out: "the People's Republic of China are contemplating joining the Energy Charter process by signing the European Energy Charter as a first step of possible accession to the Treaty itself." [38] At present, China is an observer state of the Energy Charter Conference. As the latest multilateral international organization specialized on energy[39], the Conference is valuable for Chinese government to settle disputes over transnational energy pipelines. Besides, the Specialized Conciliation Mechanism under *the ECT* not only is a flexible means to settle disputes, but also can be utilized as a practical tactics since no country should impede the energy pipeline during this process[40].

In addition, because of the importance of the Central Asian countries for the transnational energy pipelines, some scholars proposed to found an international pipeline organization – the Central Asian Pipeline Organization, to take full responsibility of settling disputes over these pipelines.[41]

4. Legal methods are the last resort.

Legal methods are always the last resort to settle disputes over transnational energy pipelines, since legal mechanisms' inflexibility and protracted

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[38] Karl Petter Waern, Transit Provisions of the Energy Charter Treaty and the Energy Charter Protocol on Transit, *Journal of Energy & Natural Resources Law,* Vol. 20, No. 2, 2002, p. 173.

[39] See Thomas W. Wälde, *International Energy Law and Policy,* in Cutler J. Cleveland Editor –in Chief, *Encyclopedia of Energy,* Vol.3, Elsevier Inc. 2004, p. 568.

[40] See Grace Wandoo Nomhwange, *Transboundary Pipelines: What Is the Role of the Energy Charter Treaty Regarding Disputes Settlement?* Dundee University Thesis 2005, p. 49.

[41] See Jeremy Carver, The Energy Charter Treaty and Transit, in Thomas W. Wälde and Katherine M. Christie ed., *Energy Charter Treaty: Selected Topics*, Dundee University 1997, pp. 76-77.

procedures would affect the normal operation of pipelines. However, they really can play a positive role. Take arbitration as an example, investors choose arbitration as a means to reduce their political risks in host states so that they can focus on commercial and industrial risks; meanwhile, host governments take arbitration as a means to create more competition for foreign direct investment opportunities in the host state, "hence increasing investors willingness to invest, thereby obtaining more favorable terms and maximizing benefits from national inward investment opportunities".[42]

[42] See Conference, "Dispute Settlement Mechanisms under the Energy Charter Treaty", Brussels, 20 October 2005, available at http://www.encharter.org/index.php?id=185, last visit on September 12, 2011.