Commercial Mediation and the "Belt&Road" International Commercial Dispute Resolution Mechanism

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This article is directed by Dr. Wang Li (Chief Global Partner of DeHeng Law Offices and Chairman of Belt and Road Service Connections), and a part of the research on the "Path of Building a Commercial Dispute Resolution Center in the context of 'Belt and Road' Initiative in Beijing" under Beijing Law Science Society in 2017 [Project number: BLS (2017) A010].

Abstract: Commercial mediation has become a crucial component of the international commercial dispute settlement mechanism. ICSID, the dispute settlement mechanism of the Energy Charter Treaty and the dispute settlement mechanism of WTO all value the important function of mediation in the commercial dispute settlement mechanism of investment. The efforts of United Nations Commission on International Trade Law on the Draft of and will help to promote and apply international commercial mediation in international commercial dispute settlement mechanism. China is establishing its international commercial dispute settlement mechanism under the Belt and Road Initiative which expressively supports to solve international commercial dispute via mediation and promote to establish a comprehensive dispute settlement mechanism combining litigation, arbitration and mediation. However, the international commercial mediation system of the dispute settlement mechanism under the Belt and Road Initiative still remains to be improved. It is advised for China to promulgate its own laws on international commercial mediation, accede to the to ensure the effective implementation of the settlement agreement, encourage and support the professional international commercial mediation institutions to participate in the dispute settlement under the Belt and Road Initiative so as to perfect the dispute settlement mechanism under the Belt and Road Initiative and its legal system on the international commercial mediation.

Key Words: Commercial Mediation, the Belt and Road Initiative, International Commercial Dispute Settlement Mechanism

At the 51st conference which was held from 25 June to 13 July 2018, the United Nations Commission on International Trade Law (UNCITRAL) passed the final draft of the , which will be accepted by all countries in Singapore as of 1st August 2019. On one hand, the Conference passed the revised , and on the other hand, commercial mediation is clearly written into the "Belt and Road" international commercial dispute settlement mechanism. On January 23, 2018, the Central Leading Group for Comprehensively Continuing Reform of the People's Republic of China held a meeting and passed the " (referred to as "Opinions"), and explicitly supported the settlement of "Belt and Road" International commercial disputes through mediation and arbitration, and establishing a diversified as well as efficient dispute settlement mechanism system linked with mediation and arbitration. How to incorporate international commercial mediation into the "Belt and Road" international commercial dispute settlement mechanism and establish an effective and convenient "Belt and Road" diversified

dispute resolution mechanism has become an important research topic.

I. Commercial Mediation in International Commercial Dispute Settlement Mechanism

International law is a special legal system which is constantly developing and improving, which cannot be separated from the development of human science and technology and the changes of international relations. [1] In the field of international commercial dispute settlement, commercial mediation has become an increasingly important component of international commercial dispute settlement mechanism. The role of negotiation and mediation in dealing with international trade conflicts, inter-state conflicts, developing regional cooperation and providing a promising future for mankind has been recognized by the world and it is changing the traditional pattern which was dominated by power.[2] Mediation has turned into an irresistible trend, and it has become the preferred way to resolve cross-border international trade disputes in all countries of the world. [3] The United Nations Conference on Trade and Development (UNCTAD) released " " in February 2017 and the as an annex, among which the second action clearly includes the need to establish a friendly dispute settlement mechanism, including mediation, to prevent and settle investment disputes. [4] The "Belt and Road" international commercial dispute settlement mechanism should refer to the design of the existing international commercial dispute settlement mechanism and draw lessons from the existing rules and application of mediation procedures.

1. Meditation in ICSID

In order to resolve investment disputes arising from investments between countries and nationals of other countries, the International Development and Reconstruction Bank, which was also known as the World Bank, formulated the (referred to as the "Washington Convention") on 18 March 1965 and submitted it to governments for signature and accession. On 14 October 1966, there are 162 signatory parties. [5] The International Centre for the Settlement of Investment Disputes (referred to as "ICSID") was established under the Washington Convention to facilitate mediation and arbitration in the settlement of investment disputes between State Parties and nationals of other State Parties and to govern any composition of the State Party (or the State Party designated by ICSID). Any legal dispute arising directly from investment between a party or institution and a person of another Contracting State shall be submitted to ICSID with the written consent of both parties. China signed the Convention on 9 February 1990, and ratified it on 1 July 1992 by the 26th meeting of National People's Congress, thus formally becoming a member of the Washington Convention. [6]

Chapter III of the Washington Convention provides separate rules for conciliation, including the request process, the composition of conciliation committees and conciliation procedures. Although ICSID has set up a panel of mediators, and has separately stipulated procedures for mediation, there are not many cases in which investment disputes between a country and the investors can be settled through mediation in practice. In 2017, ICSID registered 49 new cases, which is the second largest amount in ICSID's history. However, all these new cases are subject to arbitration procedures. Up to 2017, ICSID has accepted 258 cases with 218 pending. It is the highest number of pending cases in ICSID history. Of the 44 cases concluded by ICSID in 2017, 30 cases were arbitrated and only 14 cases were settled through conciliation or terminated for other reasons. [7]

ICSID expressed its support for facilitating the settlement of investment disputes by mediation and organized a series of forums or activities to promote people's understanding of investor-state mediation. However, it is obvious that more time will be needed to resolve investment disputes between investors and countries through mediation in the future.

2. Mediation in the

(hereinafter referred to as “ECT”) is a comprehensive framework treaty system on energy cooperation in international law. It covers a wide range of fields such as energy trading, energy investment, energy transit, energy efficiency, etc. ECT was signed by its member states in December 1994 and entered into force in April 1998. At present, 53 member states have signed and acceded to ECT. [7] The purpose of ECT is to promote energy security by establishing a more open and competitive energy market while following the relevant principles such as sustainable development and national sovereignty of energy resources. China became an observer of the Energy Charter Congress in 2001 and signed a new declaration on the International Energy Charter in May 2015, which shifted its identity to a contracting observer.

ECT mainly focuses on the following four aspects, including: (1) protection of foreign investment based on the principle of national treatment or most-favored-nation treatment; (2) the principle of non-discriminatory trading in energy-related materials, products and equipment based on WTO rules to ensure reliable cross-border transmission of energy through pipelines, power grids, etc. (3) settlement of disputes between contracting states, and settlement of investment disputes between investors and state parties; (4) improvement of energy efficiency and minimization of the impact of energy production and energy use on the environment.

Part V of ECT specifies on dispute settlement, including Article 26 ( ) and Article 27 ( ). For the settlement of disputes between the investor and contracting parties, ECT stipulates that the parties shall first settle the disputes through friendly negotiation. If no settlement agreement can be reached within three months from the date of the request, the investor in the dispute may choose and the contracting party shall unconditionally agree (except for special reservations) [9] to resolve the dispute through litigation or arbitration. Arbitration refers to: (1) submitting the dispute to ICSID for arbitration under the Washington Convention, or arbitration under the ICSID Secretariat rules; (2) arbitration through a sole arbitrator or special arbitration tribunal established by the International Trade Law Commission of the United Nations; (3) according to the arbitration procedure of the Stockholm Chamber of Commerce Arbitration Court. With regard to the settlement of disputes between the parties, the parties shall first seek to settle the relevant disputes through diplomatic means. If the disputes are not settled within a reasonable period of time, either party may notify the special arbitral tribunal established under ECT in written form to submit the relevant disputes.

It is worth noting that Article 7 of ECT provides for a special mediation mechanism for disputes related to energy transit transport. After using every means of dispute settlement between the parties, any party may notify the Secretary General who shall notify all parties in such notification. The Secretary-General will consult with the disputing parties and other relevant parties and appoint a mediator within 30 days upon the receipt of the notification. The mediator must have experience in resolving disputes and cannot be a citizen or a permanent resident of all parties concerned. The mediator will assist the parties to the dispute in seeking settlement agreements or other solutions. If the mediator fails to assist in reaching a settlement agreement within 90 days of his appointment, he/she shall recommend a dispute settlement resolution or a procedure for achieving a settlement, and decide as of a date prior to the settlement of the dispute provisional tariffs and other terms and conditions relating to the energy transport. Within 12 months as of the mediator’s decision or until the dispute settlement date, the contracting parties will monitor and ensure that entities in their areas of control or jurisdiction comply with the interim decisions, terms and conditions of the tariffs mentioned above. Through the special mediation mechanism mentioned above, when the dispute settlement mechanism is not explicitly stipulated in the contracts concerning energy transit, the transportation of related energy products will not be interrupted by disputes, and thus will not result in the expansion of losses. ECT has also formulated on energy transit disputes, the latest revision of which was completed on 21 October

2015.

In addition to the ECT provisions listed above about friendly settlement or mediation, the Energy Charter Conference passed the on 19 July 2016 as a friendly approach to promote the settlement of investment disputes through mediation. The consist of 14 parts. It mainly introduces the mediation process, matters which need special attention and the role that the Energy Charter Secretariat can play in mediation, including: (1) the definition of mediation; (2) mediation as part of ECT dispute settlement mechanism; (3) initiation of mediation; (4) assessment of mediation; (5) preparation of mediation; (6) roles of parties and legal representatives; (7) roles of mediation rules and institutions; (8) selection of mediators; (9) basic rules of procedure; (10) initial matters; (11) mediation procedures; (12) reconciliation; (13) implementation of reconciliation agreements; (14) obstacles to reconciliation. The reflect ECT's emphasis on mediation as a friendly approach to settle disputes, which is beneficial to both parties to resolve disputes amicably and properly through mediation.

3. Mediation in WTO Dispute Settlement Mechanism

The WTO dispute settlement mechanism is based on the , annex II to the (hereinafter referred to as "DSU"). The DSU was established and came into force on January 1, 1995. The procedures of WTO dispute settlement mechanism mainly include consultation, mediation, expert group, appeal, execution, retaliation, etc. Its characteristics are unity and compulsion. As of now, WTO has 164vmember states. [10] China joined the WTO on December 11, 2001.

Article 5 of the DSU defines mediation-related procedures, including good offices, conciliation and mediation. The parties to the dispute may at any time request the initiation or termination of good offices, conciliation and mediation. If the good offices, conciliation or mediation proceedings are terminated, the prosecution may request the establishment of a panel of experts. If the parties have entered the procedures of good offices, conciliation and mediation within 60 days as of submitting the request for consultation, they must set aside a period of 60 days as of the date of submitting the request for consultation and the establishment of the expert group for the process of good offices, conciliation and mediation. If the parties to the dispute agree that good offices, conciliation or mediation procedures cannot resolve the dispute, the claiming party may, within 60 days, submit a request for the establishment of a panel of experts. Even after the establishment of a panel of experts, the procedures of good offices, conciliation and mediation can continue if the parties to the dispute agree. Procedures of good offices, conciliation and mediation should follow the principle of confidentiality, without prejudice to the rights and interests of the parties in subsequent proceedings. The Director-General of WTO can assist in mediation, good offices as well as conciliation and promote friendly settlement of disputes among members.

4. Singapore Mediation Convention and Model Law

The will be signed and acceded by all countries as of August this year. As a member of UNCITRAL, China has participated in the formulation of the and is expected to accede to it.

(1) Scope of application

The applies to written settlement agreements reached by the parties to international commercial disputes through mediation. Whether commercial disputes are international or not depends on the following factors:

i. The place of business of at least two parties to a dispute settlement is established in different countries; or

ii. The countries in which the parties to the dispute settlement have their places of business different from: (a) the country in which most of the obligations under the settlement agreement are expected to be fulfilled; or (b) the country which has the closest relation with the matters covered by the settlement.

It can be seen from the above that international commercial disputes need to have transnational elements. Whether it is the place of business of the parties, the place where the obligations of the settlement agreement are fulfilled, or the place where the international commercial disputes are most closely related to, simple domestic commercial mediation doesn't apply to the

.

The , while defining the applicable object as international commercial disputes, explicitly excludes civil disputes, including: 1) agreements aimed to settle disputes arising from the trading among the parties for personal, family or household purposes; 2) agreements related to family law and inheritance law or employment act.

In addition, the does not apply to: 1) a settlement agreement approved by a court or concluded in relevant court proceedings or can be executed as a judgment in the country where the court is located; and 2) an agreement that has been documented and can be executed as arbitration award. If a party has applied or requested relating to a settlement agreement to a court, arbitral tribunal or any other competent authority, the executing state may suspend the execution of the relevant settlement agreement and may, at the request of one party, order the other party to provide proper collateral measures.

(2) Requirements for mediation agreements to be implemented

For a qualified settlement agreement, the parties have the right to request its implementation in accordance with the and the national procedural rules of the contracting states, and shall provide: 1) a settlement agreement signed by both parties; 2) evidence showing that the settlement agreement resulted from the mediation, including: (a) the signature of the mediator on the settlement agreement; (b) the documents signed by the mediator indicating that mediation is conducted; © certification issued by the mediation authority; or (d) any other evidence acceptable to the competent authorities of the executing state.

According to the , mediation refers to the process in which a third person acts as a mediator and the parties try to settle their disputes amicably. In this process, the mediator has no right to impose a solution on the disputed parties. It is very important here that the essence of mediation is to settle disputes amicably and reach a settlement agreement on the basis of the parties' willingness rather than the will imposed by the third party.

A settlement agreement must be in written form and can be transferred in any form, including electronic means of communication, as long as it is accessible for future reference use. In case of a settlement agreement reached by a party or mediator through electronic communication, the following two conditions need to be fulfilled: 1) a method is used to identify the party or mediator and the intention of the party or mediator by the information used in electronic communication; and 2) the method : (a) is both appropriate and reliable for the purpose of generating or transmitting electronic communication; (b) has been proved to have the mentioned functions of appropriateness and reliability.

In addition, the does not require further qualifications of mediators and mediation authorities.

(3) Circumstances of refusal to enforce a Settlement Agreement

There are two main situations in which the competent authorities of the executing country can refuse to execute the settlement agreement. One is to refuse to execute the settlement agreement according

to the request of the other party, and the other is to refuse to execute the settlement agreement after investigation. In the former situation, the other party needs to provide the following evidence: 1) one party to the settlement agreement does not have the ability to act; 2) the settlement agreement to be executed is invalid or changed due to specific circumstances; 3) the obligations in the settlement agreement have been fulfilled, are unclear or incomprehensible; 4) granting a relief will be contrary to the settlement agreement; 5) the mediator has seriously violated the mediation rules, without which the party would not have concluded a mediation agreement; or 6) the mediator has not disclosed the circumstances which may give rise to legitimate doubts about his/her fairness or independence, and the party would not have entered into a mediation agreement had the information not been concealed.

There are two kinds of cases in which the executing state refuses to execute after voluntary review: 1) granting relief would violate the public policy of the party; or 2) according to the law of the member state, disputes could not be settled by mediation.

In respect of the refusal to execute the settlement agreement, the adopted similar provisions as the which also consists of two situations, 1) where the other party provides evidence to refuse recognition and enforcement, and 2) where the competent authorities of the implementing country refuse recognition and enforcement after initiation of investigation. The refusal to recognize and enforce arbitral awards by the competent authorities of the enforcing country after voluntary review is almost the same as that of the , including: 1) under the law of that country, disputes cannot be settled by arbitration; and 2) recognition or enforcement of awards would be contrary to the public policy of that country. There are also many situations similar to the in which the other party refuses to recognize and enforce an arbitral award by providing evidence, including: 1) the parties to the agreement are incapable of enforcing, or the agreement is invalid under the applicable law agreed by the parties, or the law applied is invalid; 2) the other party has not received appropriate notice of the appointment of arbitrators or arbitration proceedings, or has not been able to defend for other reasons; 3) the dispute settled by the award is not within the scope of the arbitration dispute or arbitration clause, or the decision of the award contains matters beyond the scope of arbitration, and the matters within and beyond the scope may be separated independently; 4) the composition of the arbitration institution or the arbitration procedure are inconsistent with the arbitration agreement achieved by the parties or with the law of the country where the arbitration is located; (5) the award doesn't have force on the parties, or has already been withdrawn or terminated by the administration of country where the arbitration is located.

(4) Model Law on International Commercial Conciliation

The can be used as a reference for the formulation of national laws on international commercial conciliation by various countries. It can also be used for domestic commercial conciliation, but the relevant international words, paragraphs or wording need to be deleted. The mainly includes two parts: one is about international commercial conciliation and the other is about international conciliation agreements.

The international commercial mediation mainly includes: the beginning of mediation procedure, the suspension of limitation period, the number and appointment of mediators, conduct of conciliation, communication between the mediator and the parties, information disclosure, confidentiality, admissibility of evidence in other procedures, termination of mediation procedure, resort to arbitral or judicial proceedings, and enforceability of settlement agreement..

As for the international conciliation agreement, its contents mainly include: definition, scope of application, general principles, requirements for relying on the conciliation agreement, reasons for refusing to grant relief, parallel applications or claims. The states may choose to apply this part beyond the

conciliation agreement reached through mediation, or the conciliation agreement only with the consent of both parties.

II. International Commercial Conciliation in the "Belt and Road" dispute settlement mechanism

China has received extensive international attention since it proposed the "Belt and Road" initiative in 2013. China's outbound investments along the Belt and Road has been steadily advancing in recent years. In 2017, China's enterprises increased investment in 59 countries along the "Belt and Road", totaling 14,360 million USD, and signed new contracts for foreign projects in 61 countries along the "Belt and Road" with the amount of 144,320 million, with a total turnover of 85530 million USD. [11] During the whole year of 2018, China's enterprises realized 15,640 million USD of non-financial investment in 56 countries along the "Belt and Road", which increased 8.9% over the same period last year, and a total of 89,330 million dollars [12] in foreign contracted projects in 63 countries along the "Belt and Road". However, with the further development of the "Belt and Road", various international commercial disputes are expected to emerge. It is necessary to establish an effective "Belt and Road" international commercial dispute settlement mechanism.

1. "Belt and Road" dispute settlement mechanism for international commercial disputes

The formulation of the "Belt and Road" international commercial dispute settlement mechanism should formulate a set of rules that apply both to trades and investments. The rules should emphasize the combination of mediation and arbitration, maintain a high degree of transparency, respect the will of both parties and take it as the principle of the dispute settlement institution. [13] In respect of the establishment of the "Belt and Road" international commercial dispute settlement mechanism, a diversified dispute resolution mechanism to promote effective docking of litigation and mediation and arbitration is the key. Since the " " puts forward "establishing a diversified dispute resolution mechanism", China has accomplished two most important leaps: first, to explore the docking between courts and other non-litigation mechanisms, such as mediation, and to upgrade it to a system recognized within all fields in China; second, a substitute plan to release pressure from the courts has been upgraded to the strategic action of modernization of national governance system. [14] According to the Opinions, the "international commercial dispute resolution mechanism" should play an important role of mediation. For cross-border commercial disputes, the international commercial expert committee of the court should firstly mediate in accordance with the voluntary principle of the parties and make a mediation agreement. The Opinions support the domestic mediation institutions with qualified conditions and international reputation to carry out international commercial mediation related to the "Belt and Road" initiative, and support certain qualified law firms to participate in international commercial conciliation so as to give full play to the role of lawyers in international commercial mediation. With regard to the enforceability of the conciliation agreement, the conciliation agreement issued by the "Belt and Road" international commercial mediation institution can be judicially confirmed by the people's court to become enforceable.

In order to serve and protect the construction of "Belt and Road" initiative and handle international commercial cases in a fair and timely manner, the Supreme People's Court of China adopted " " on June 25, 2018 (No. 2018 [11]), and established the international commercial tribunal, which is responsible for hearing major international commercial cases. [15] The Supreme People's Court has set up a committee of international commercial experts, and has selected qualified international commercial mediation institutions, international commercial arbitration institutions and the International Commercial Court to jointly build up a dispute settlement platform that integrates mediation, arbitration and litigation. Within seven days after the acceptance of the case, the International Commercial Court may, with the consent of the parties

concerned, entrust members of the International Commercial Experts Committee or international commercial mediation agencies to mediate. If the parties reach a mediation agreement, the International Commercial Court may prepare and issue a mediation agreement in accordance with the law; if the parties request to issue a judgment, they may prepare a judgment in accordance with the content of the mediation agreement. A mediation statement made by the International Commercial Court shall have the same legal effect as a judgment upon signature and receipt by the parties.

2. Weaknesses of the existing “Belt and Road” dispute settlement mechanism in international commercial mediation

(1) Lack of arrangements of international commercial mediation system on the basis of international conventions

The Opinions promote the establishment of “Belt and Road” diversified dispute resolution mechanism. However, the Opinions itself is only a domestic regulatory document issued by the Central Leading Group for Comprehensively Continuing Reform of the People’s Republic of China. It lacks the recognition and support from the “Belt and Road” relevant countries. Compared with the international commercial dispute settlement mechanism mentioned earlier, ICSID is based on the Washington Convention and currently has 162 parties; ECT is based on the Energy Charter Treaty and ICSID, the Arbitration Rules of International Trade Law of the United Nations Commission and the Stockholm Chamber of Commerce Arbitration Court, and the Energy Charter Treaty has 53 member states; DSU is based on the Marrakech Agreement for the Establishment of the World Trade Organization and related documents, and there are at present 164 members of the WTO. China’s current “Belt and Road” dispute settlement mechanism is still lacking the support of both influential and international conventions. Therefore, the relevant international commercial mediation arrangements are also limited due to the lack of international conventions, resulting in limited scope of application.

In the future, the “Belt and Road” international commercial dispute settlement mechanism can be linked to the Asian Infrastructure Investment Bank, the Shanghai Cooperation Organization, the BRICs and so on. It will absorb the available dispute settlement resources and develop it as a new rule basis, and thus formulate new rules according to the needs so as to form a new combination of old and new resources and a new system of rules. [16]

(2) Lack of professional business support from international commercial mediation agencies

The effective “Belt and Road” dispute settlement mechanism and the arrangement of international commercial mediation system require professional and internationally recognized mediation institutions to provide professional support. There is no special commercial mediation institution as provided in the legislations of China. Currently, Chinese law stipulates that commercial dispute mediation institutions include courts, arbitration institutions, trade associations, administrative organs, and civil commercial mediation institutions, etc. [17]At present, the Supreme People’s Court has set up the International Commercial Expert Committee to provide mediation services for major international commercial cases. However, since it is established within the Supreme People’s Court, the International Commercial Expert Committee may lack of independence from the view of foreign parties. At the same time, according to “

”, there are only 32 members in the Committee, and still lack of adequate and experienced mediators.

(3) Lack of effective implementation of settlement agreements made by international commercial mediation

As for the implementation of mediation documents, judicial confirmation is still the main approach in China. The judicial confirmation system is a new system established by the newly revised

in 2013, and it is also a great achievement of the reform of the diversified dispute settlement mechanism of the courts in China. [18] "The Opinions points out that the mediation statement issued by the international commercial mediation institution can be verified by judicial confirmation of the people's court to be enforceable. The mediation statement made by the International Commercial Court of the Supreme People's Court has the same legal effect as the judgment after the parties sign and receive it. On April 10, 2012, the Supreme People's Court established "

", which stipulates that the agreement reached through mediation by administrative organs, commercial mediation organizations, industry mediation organizations or other organizations with mediation functions shall be confirmed when referring to "

". However, how to realize cross-border enforcement is still a great challenge even if the mediation statement has been confirmed by the judicial court of China.

III. Advices and suggestions

1. Establishment of domestic laws on international commercial mediation

At present, China's mediation laws mainly include the promulgated in 2010 and related laws and regulations. People's mediation mainly refers to the activities of people's mediation committees to resolve civil disputes through mediation. People's mediation committees are established by villagers' committees and residents' committees, or by enterprises and institutions as people's organizations to mediate civil disputes according to the law. The People's Mediation Committee shall not charge any fees for mediating civil disputes. [19] It can be seen from the above that people's mediation is mainly aimed at solving civil disputes rather than commercial disputes.

Referring to the adopted by UNCITRAL, China can establish a for commercial mediation. The scope of application of the may be not limited to international commercial mediation, but also include domestic commercial mediation. The content of the can cover mediation procedures, mediation agencies, mediators, mediation conducts, confidentiality, evidence recognition, validity of the settlement agreement, requirements for judicial confirmation of the settlement agreement, reasons for refusal of relief of the settlement agreement, parallel applications or requests, etc.

2. Accession to the Singapore Mediation Convention

China's accession to the will be conducive to the effective implementation of the mediation agreement resulting from the "Belt and Road" international commercial dispute mediation. As observers, China International Economic and Trade Arbitration Commission and Beijing Arbitration Commission participated in the 51st session of UNCTAD. On September 19, 2018, the Ministry of Commerce held a seminar on the in Beijing. The conference concluded that the would provide a new way to resolve international commercial disputes in a diversified way and enhance the enforceability of mediation agreements. At the same time, it was expected to study relevant technical issues and clarify the relevant path of China's accession to . [20]

It is noteworthy that China made a number of reservations when it acceded to the New York Convention in 1986. According to the

, these reservations include reciprocal and commercial reservations (excluding disputes between foreign investors and host country governments). There are two kinds of reservations permitted by the . One is that the state or any government agency or any person acting on behalf

of a government agency serve as a party in the mediation agreement, who could declare the reservation and no application to the . The other reservation is that the applicability of depends on the agreement of both parties to the settlement agreement to apply. In case of the two reservations mentioned above, Chinese government may raise the first reservation when it accedes to the and the second reservation only on the basis of reciprocity. Otherwise, it will affect the validity of the settlement agreement under the in cases involving Chinese parties or other cases involving execution in China.

3. To encourage and support professional international commercial mediation institutions to participate in the “Belt and Road” dispute resolution.

The regards the documents issued by the mediation institutions as one of the most important evidences that the settlement agreement is generated from mediation. If it is to establish a “Belt and Road” international commercial dispute settlement mechanism and promote friendly settlement of the “Belt and Road” international commercial dispute through mediation, it is advised to encourage and support professional international commercial mediation institutions, such as the Belt and Road International Commercial Mediation Center (hereinafter referred to as “Mediation Center”). The Mediation Center is under Beijing Retio Legal and Commercial Service Center for Belt and Road Initiative (hereinafter referred to as the “Service Center”) , which is supervised by the Beijing Law Science Society and registered at the Beijing Civil Affairs Bureau. The function of the Mediation Center is to assist the parties involved in the dispute and settle the disputes through mediation. The Mediation Center is non-governmental, independent, international and non-profitable. It has many experienced lawyers and experts both within China and abroad as mediators. On October 14, 2016, the Judicial Reform Office of the Supreme People’s Court designated the Service Center as a sub-program of the reform project of diversified dispute resolution mechanism. On December 9, 2016, the Beijing Association for Alternative Dispute Resolution awarded its membership plaque to the Mediation Center. On December 27, 2016, the Fourth Intermediate People’s Court of Beijing signed an agreement with the Mediation Center to carry out litigation mediation and docking. A professional commercial mediation institution similar with the Mediation Center can effectively promote the settlement of the “Belt and road” related international commercial disputes through mediation and other diversified dispute settlement mechanisms. It will form an important part of the “Belt and Road” international commercial dispute settlement mechanism.

In the future, with the establishment of the “Belt and Road” diversified dispute resolution mechanism, it is suggested to set up a “Belt and Road” diversified dispute resolution institution such as “Belt and Road” international investment dispute settlement center, and pay attention to the development and application of mediation system in resolving investment disputes. [21] The " Belt and Road" international investment dispute settlement center could set up a special mediator team, with the mediators mainly coming from the “Belt and Road” related countries, supplemented by the mediators from the western developed countries, because it is crucial for mediators to understand the status, culture and position of both parties in order to conciliate the conflicting relationship of both sides. [22]

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