

A review of the peaceful settlement of international disputes and its impact on the development of international trade; with a focus on energy industry disputes

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Received: 06.07.2025

Accepted: 05.08.2025

Published: 13.08.2025

Abstract: Legal claims regarding international trade, on the one hand, indicate the level of participation of countries in international trade as well as their commercial activities in various economic issues. Since energy is currently considered one of the main foundations of international trade, and the resolution of international disputes and claims or failures in this field can play an important role in international trade. This is especially evident in the energy sector, which plays an important role in international trade.

In this context, the present article raises the question of how the use of peaceful methods of resolving international disputes in the energy sector can affect the development of international trade? The hypothesis is that the use of the Energy Charter Treaty and the adoption of special diplomatic approaches by different countries can significantly reduce the number of referrals to the International Court of Arbitration.

In this context, utilizing the methods of the investor state, diplomatic methods, and establishing centers for resolving disputes between the two parties can be considered as alternative approaches to referring to the International Court of Arbitration, and countries can resolve their disputes before referring to it, thereby promoting the development of trade in the international arena. Due to the attention paid to the role of peaceful methods in resolving international disputes in the energy sector, this article uses a descriptive-analytical method that has collected data using library and document resources.

Keywords: *International Disputes, International Trade, Energy, Trade Development, Diplomatic Methods.*

Cite this Article

Dr. Mehmet. U, A review of the peaceful settlement of international disputes and its impact on the development of international trade; with a focus on energy industry disputes (2025) *GRS Journal of Arts and Educational Sciences*, Vol-1(Iss-2).10-16

Introduction

International disputes in various fields play an important role in attracting and utilizing foreign capital in a country, and if the strategies and methods of attracting and deploying capital are not taken into account, wide gaps will arise in economic development. This issue can play a significant role in the development of trade in various fields, including energy.

From this perspective, disputes, conflicts, and disputes over the protection of rights and interests, or the conquest of countries and the greed for the rights of others have been real characteristics of human society and the international system.

Despite the multitude of divine and human peacemakers and calls for peace and resolution of disputes and various treaties based on cooperation and peaceful resolution of disputes, the scene of history has not been free from disputes, conflicts or crises for a moment (Rahai, 1998: 194).

In this context, international arbitration courts and a set of international legal institutions operate as a type of legal system governing the resolution of disputes and conflicts of political systems in various fields. (UN Legal Affairs Office, 2017)

Although resolving disputes between states and also trying to achieve international peace and security is considered one of the

basic goals of peaceful methods, the importance of joining governments in global and regional cooperation, in turn, requires attracting capital in various fields.

From this perspective, another of the most important goals of dispute resolution methods is trying to attract capital and promote trade in the economic and financial fields. In general, and based on historical evidence, these efforts have been made for a long time and It had begun in earnest with the formation of modern states in the West.

However, the lack of appropriate structures for resolving investment disputes led to a new effort in this field in the 1960s. The aim of this effort was to create a specific mechanism for resolving disputes between host states and foreign investors. This effort was initiated by the World Bank as an institution related to economic development (Brahoi Moghadam, 2018: 75).

After that, numerous mechanisms were found in different sectors with the aim of developing and expanding trade in different sectors, including the Energy Charter Treaty, which tried to resolve existing disputes between states in different energy fields by adopting procedures. In this way, the support of states in the

international arena for the Energy Charter Treaty indicates support for investment and the prosperity of trade between states.

From this perspective, the protection of foreign investors through international investment treaties is an important issue that is related to the rights related to Each of the different energy sources is a priority. The main concern is to achieve stability by reducing political and regulatory risks related to energy production, thereby supporting investment and facilitating the flow of investment and trade (Ghanbari Jahromi and Alikhani, 2016: 128).

Accordingly, the most important concern of the present study is to pay attention to peaceful methods in resolving international disputes that will ultimately affect trade development in the energy sector. In this context, attention to important variables such as international disputes and the Energy Charter Treaty is the focus of the present study.

International Disputes and Their Impact on Investment and Trade Development

Disputes in various political, cultural, and military fields are inevitable in the field of international relations, which even today have occupied an important part of the field of international law. So that most of the activities carried out in the direction of global peace and security are in some way aimed at resolving international disputes. From this perspective, the realm of international law is the scene of the presence and activity of states, which are its main actors.

Thus, undoubtedly, preventing and resolving disputes and paying attention to global peace, security, and international tranquility are prominent features of human society and an effective factor in improving relations between states (Rahai, 1998: 194). Also, from another perspective, achieving international convergence and cooperation requires efforts to join regional and international treaties and commitments that are appropriate for peace and stability, as well as international ones that provide mechanisms for relatively establishing appropriate investment procedures (Sauvant, 2020).

The rules and commitments that are seen in the field of resolving international disputes can be implemented both by states and in the domestic arena, and can be carried out by binding international laws and to achieve regional and international cooperation.

In this context, and in order to guide the process of internal growth and development in third world societies, states intervene and perform their duties in several ways. When states assume the role of trustee, they develop, formulate, and implement specific regulations and laws in the matter of development. The type of regulations that are developed The policies adopted by governments are also different; because some governments aim to encourage and motivate, while others have acted the opposite way, aiming to limit or prevent private sector initiatives (Tharvati Bayraq, 2010: 31). However, the resolution of disputes in the international arena has in turn paved the way for the development of the market and the continuous activities of governments in various fields.

In this case, it can be said that the resolution of disputes leads to the increase and expansion of investment. This issue continues to be influenced by the policies of governments in various fields as the role of the free market in the economy becomes more widespread.

From this perspective, when governments assume the role of an entrepreneur or producer, they play two responsibilities. In fact, they are both the producer of a good and are responsible for its supply. In some cases, governments play the role of an entrepreneur indirectly in domestic investment.

That is, when the private sector is hesitant about investing, the government, by adopting appropriate methods and practices, encourages investors And it helps and encourages entrepreneurs to overcome the challenges in production and investors to survive in the external competitive field (Sharoutibireq, 2010: 32). In any case, governments, as the final decision-makers, play an important role in linking international law, treaties and international agreements with trade development. Another point that plays an effective role in examining the rules of attribution and international responsibility of the state in supporting investment is the issue of the “condition for maintaining obligations”. This fixed condition of capital protection treaties, which is almost a part of the treaty today, is important because it can, under certain conditions, transform the state’s obligations towards natural persons or private rights into international obligations and create international enforcement guarantees for the violation of those obligations (Akhavan Fard and Taqidar, 2010: 17).

The issue of international rules and regulations and their effects on the fields of investment and trade is one of the important topics in international law that has been reflected in the form of various rules and regulations.

This is because disputes are a reality of commercial relations; in the field of domestic and international trade, despite the fact that reputable companies have the services of legal consultants and lawyers to draft contracts, there is still the possibility of disputes.

Regardless of the high cost of resolving disputes, many of these companies fear the disclosure of these disputes and the impact it can have on business relationships with colleagues (Shiravi and Abdollahi, 2018: 163). This is because the spread of disputes and failure to comply with obligations by actors involved in trade and investment, in turn, have negative effects on the field of trade. For this reason, various mechanisms and methods are seen, most of which are defenders of investment by governments, private institutions and various economic sectors that can pave the way for trade to flourish in various fields. Thus, peaceful methods are seen that attempt to resolve existing disputes between the parties by entering the legal process. For example, quasi-litigation is a peaceful dispute resolution process whose main goal is to place the senior managers of the parties in an environment where the strengths and weaknesses of their dispute are considered and they are informed of the possible outcome of bringing the dispute to court (Shiravi and Abdollahi, 2018: 163). 167). In addition, there are other methods that can be proposed as alternative dispute resolution methods. In this method, the parties to disputes that have a transnational and international aspect cannot accurately predict in advance which country's law will resolve their disputes, because each court will apply its own rules regarding conflict resolution and law enforcement in the event of a conflict of laws (Arfaniya and Malabrahimi, 2018: 307). On the other hand, international dispute resolution centers in the field of global trade and international investment carry out extensive activities and adopt numerous rules for governments to join and comply with existing laws. In this context, developing countries, along with developed countries, provide the basis for the confidence of foreign investors, and one of the things that can be fruitful in this regard is joining the

International Center for Settlement of Investment Disputes (ICSID). According to the global trade agreements in ICSID, In the event of a dispute between the members of this center, in the first stage, it is resolved through consultation with each other. If no result is achieved from consultation and reconciliation, the matter in dispute is referred to the International Dispute Resolution Authority, which was established to handle disputes between member states, at the request of the plaintiff (claimant). The said authority supervises the handling and execution of judgments by forming committees.

Therefore, in the case of resolving disputes between states on the issue of foreign investment or technology transfer, there is no possibility of legislative interference for any of the member states of this center. This issue is also seen in other laws in the form of supporting the capital invested by countries in adopting and adhering to international trade laws.

For example, the Iranian legislator, in explaining the principle of consent of the parties to a contract, states Article 194 of the Civil Code as a legal regulation that "the words, gestures and other actions by which the parties conclude a transaction must be agreed upon in such a way that one of the parties accepts the same contract, otherwise the transaction will be void." Regarding this article, the other party's intention to conclude it It has been, and otherwise, diverse opinions have been presented by jurists.

Energy Charter Treaty; What it is and its objectives

The Energy Charter Treaty is considered one of the well-known experiences of European countries, which was created to regulate legal relations and create fair rules for member states and is still used today for cross-border cooperation between different states (Vives Pascual, 2018). From this perspective, the Energy Charter Treaty, by determining its intended framework, seeks to improve multilateral rules for cooperation in the energy sector, which is also governed by certain principles and conditions, which in turn lead to sustainable development (Arcas-Leal, 2003: 1).

Therefore, developing trade, resolving disputes between states, and providing a basis for sustainable development are among the most important objectives of the Energy Charter Treaty, which is used in the energy sector.

In general, the most common form of resolving investment disputes is arbitration, and the important advantage of this method compared to resorting to diplomatic support is that the proceeds belong to the private claimants themselves (Brahoi Moghadam et al., 2018: 75). However, resolving disputes in the energy sector has specific and specific rules, which, of course, have taken on different dimensions compared to other sectors. After the Energy Charter Treaty was expanded from European countries to other parts of the world and was accepted by most countries, the ground for its transformation into an international agreement to protect investment among different countries was expanded. For this reason, the Energy Charter, as the owner and standard for resolving international disputes in the energy sector, is also known as an international agreement. With the argument that specific international agreements are a type of special agreements that have a specific name and title and their own specific conditions of effects. In concluding these types of agreements, without the need to include the rights and responsibilities of the contracting parties in the text of the agreement, it is sufficient to have an agreed

agreement. The parties must agree and the main elements of the contract must be fulfilled by observing the conditions of all legal effects and responsibilities, in which case, the consequences arising from the contract will be (Vahbeh Zohaili, 2010: 157).

In any case, the Energy Charter Treaty is known as one of the peaceful international methods that has provided an important role in creating the necessary mechanisms for investment and trade. In this approach, peaceful methods actually refer to a situation where a neutral person helps to find a mutually acceptable solution voluntarily and confidentially (Darvishi Hoveida, 2008: 290).

Therefore, accepting the rules of the Energy Charter Treaty reflects the fact that the policies adopted by the European Union are one of the characteristics of a modern and successful economy; even if this economy is in the upstream sector of the oil and gas industry (Wald, 2002: 27).

Effects of the Energy Charter Treaty on Trade Development

The Energy Charter Treaty is actually an international agreement in the energy sector that seeks to determine the rules and framework for trade and investment in the energy sectors in the field of international law.

Therefore, the use of peaceful methods, including the Energy Charter Treaty in the energy sector, can provide a basis for trade development. So that it can be said that investment protection is one of the important parts of the Energy Charter Treaty.

In the Energy Charter Treaty, after investment, that is, when the investment has been made, the rules and regulations become stricter and more serious. The reason for this division is that governments should have freedom of action regarding the conditions for the entry and investment of foreign companies. However, when the investment is approved and accepted by the government and the investment is made, the investor is exposed to significant political risks. Therefore, stricter laws should be enacted so that his rights are not violated (Wald, 2002: 27).

Thus, in the Energy Charter Treaty, fulfilling the duties and obligations of the parties to develop trade is considered a fundamental and fundamental issue. Because the main goal of such cooperation and compliance with laws and regulations is to ensure energy security and sustainable economic development (Talus, 2016).

In addition, the Energy Charter Treaty has created specific legal approaches in this field by supporting investment in two stages, before investment and after investment. Thus, the existing treaty in the energy sector, taking into account fundamental and principled objectives, improves and develops trade, predicts trade, investment, and protects investment in the field of energy agreements (Arcas-Leal, 2003: 2).

By linking the economic fates of the actors involved in trade, the treaty increases the level of interdependence and establishes an interconnected trading system that ultimately leads to convergence and synergy in trade. Specifically, the Energy Charter Treaty is a multilateral legal framework for international cooperation centered on principles such as the freedom of international energy markets, facilitating cooperation between governments, non-discrimination, and striving for sustainable development, which in turn guarantees long-term cooperation and the establishment of unity and convergence of all societies on energy issues.

It is obvious that the formation of such an approach will have the best effect on the development of trade in international arenas (UNSC, 2017). Establishing investment security and investment protection in trade areas is one of the most important dimensions in which peaceful methods can demonstrate their capabilities in this field.

This goal, in turn, is influenced by the egalitarian and egalitarian methods that these methods employ. From this perspective, the rejection of discrimination in such treaties is very important and significant.

In the Energy Charter Treaty, and to prevent any discrimination, public and private, foreign or domestic companies based on ownership must compete with each other on purely technical and commercial grounds, and no special privileges or favoritism should be given in this competition (Wald, 2002: 27). Meanwhile, the commitments contained in the energy sector and the treaties resulting from it emphasize energy security worldwide, which refers to the ability of a country to provide sustainable security, especially in the energy sector (2014: Filis and Arcas-Leal).

In addition, the nature of interaction through peaceful methods is that it continuously provides other areas for mutual cooperation that can create a kind of interdependence and increase the grounds for following existing rules. In this context, and specifically, it can be said that the areas of cooperation can be in the field of nuclear safety, energy security, promoting environmental policies and even greater use of renewable resources (14, 2014: Filis and Arcas-Leal).

Satisfaction and creating satisfaction among the parties to the contract is one of the legal issues in contracts and peaceful methods that has also been considered in the Energy Charter Treaty. Another basis that constitutes consent is the alignment of wills; because in the absence of this alignment, the contract will lose its essence. For example, if the buyer buys a commercial property, but the seller sells a residential house, the contract will not be concluded due to the lack of alignment of the will of the two parties (Salehi, 2015: 48). It seems that this issue is pursued in the field of supporting various activities of investors in the fields of trade (Ramsbotham, 2016).

Therefore, other items are also foreseen for foreign investment in the Energy Charter, including:

1. Clause 11: Facilitating the entry of required personnel and employees into the country.
2. Clause 12: Compensation for damage caused by the outbreak of a state of war.
3. Clause 14: The right of the investor to transfer income from investment to his country of origin.
4. Clause 18: More limited supervision and control of the Energy Charter over the tax system.
5. Clause 20: Transparency, especially in laws and regulations.
6. Clause 21: Determining effective and practical rules on environmental protection and their implementation (Wald, 2002: 28).

Regarding the effects of peaceful methods and specifically the Energy Charter Treaty on trade, several cases can be mentioned in this regard, which are examples of the development of international trade based on the above criteria and other criteria contained in this treaty (Vives Pascual, 2018).

So that, as a result of these rules and regulations, the bilateral partnership that has been established between the African Energy Union and the European Union in this field is a political and long-term framework that expands the dialogue and cooperation between Africa and the European Union on energy and mutual strategic cooperation (Filis and Arcas-Leal, 2014: 19). Also, on the other hand, peaceful methods require attention to the damages caused by arbitration between the parties in this field, which are well seen in the Charter Treaty, which in turn leads to the development of trade and protection of investors.

This means that the Energy Charter Treaty considers its most important goals to be compensation for damages in various cases, the development of relations and agreements in the field of energy, and the resolution of international disputes and claims, which in turn leads to cooperation and the development of relations between states in the international arena. From this perspective, the resolution of international disputes in the energy sector leads to the development of trade in its various dimensions.

If, in the field of arbitration and in accordance with Article 36 of this treaty, any violation of the state's duties and obligations can be pursued at the request of the investor, and no state can be immune from this pursuit under any circumstances (Wald, 2002: 28).

This strict and transparent approach in the fields of investment and arbitration based on consideration of investment laws is one of the most important effects that peaceful methods, including the Energy Charter Treaty, use in the field of international trade development. In this way, the Energy Charter Treaty has the basic goals in the fields of promoting free energy markets, forecasting and foresight in this field, and even supporting investment in the fields of (Leal-Arcas and Filis, 2014: 22). In general, in any contract, the will and consent of the parties must correspond.

If the parties to the contract state that they intended a specific item at the time of drafting the transaction and accept the conformity of their wills to a single item, However, the claimed object of each of them is different from the object claimed by the other party (Shahidi, 2009: 384). It seems that the aforementioned principle is seen in various ways in the Energy Charter Treaty as a peaceful method. Furthermore, peaceful methods in resolving international disputes, in addition to paying attention to clear and strict rules and regulations, also emphasize other principles such as non-discrimination in transactions, so that international convergence and cooperation in the field of trade can be further expanded. In order to achieve the aforementioned goals, the parties to such agreements, in the light of multilateral obligations, without prejudice to the sovereignty of the country and state over their resources, and accepting the right to transfer it to the designated territory, as well as respecting all international obligations, consider coordination measures to achieve greater cohesion based on the principle of non-discrimination and the formation of common markets. Such decisions even pay attention to environmental concerns (Rusnak, 2016: 16).

According to some researchers: "Designating the judicial system of the host countries as the dispute resolution authority and entrusting the fate of foreign investors' claims to this authority due to the suspicion of its lack of impartiality is the main cause of concern and concern of many foreign investors (Madsen, 2016). Foreign investors expect access to an impartial and independent judicial authority in the event of a dispute arising from investment.

Although the arbitration method is a preferential system in resolving these disputes, in this method too, the concern about the possible sovereignty and dominance of the host country must be removed from the minds in a tangible way” (Mojtahedi, 2016: 175). Therefore, to develop trade and support investment, we need peaceful procedures within the framework of which we can create a transnational view of trade and also provide barriers and discrimination for all investors.

In this context, one of the factors seen in the Energy Charter Treaty is attention to fair and equitable behavior, which in turn lays the groundwork for measures. It is a negative and positive obligation from the parties in order to be effective and practical in the process of creating investment and developing trade between states. In terms of substance, the content of these standards can be distinguished. The fair and equitable treatment standard mainly provides an obligation on the host state to refrain from a series of actions; that is, a negative obligation.

In contrast, a state with a commitment to full protection and security has an obligation to create a framework that provides security and therefore must take necessary measures to be able to protect investments against the actions of private individuals and government agencies (Ghanbari Jahromi and Alikhani, 2016: 120). On the other hand, the legal rules contained in the Energy Charter Treaty have minimized the influence of governments and political movements to attract political actors.

Also, the role of policies and decisions based on non-discrimination is fundamental. In this sense, determining behavior based on non-discrimination does not require a specific type of behavior, but rather requires the application of any behavior that granted to local or foreign nationals, in a non-discriminatory manner.

Therefore, host countries have the ability to adopt and apply the investment regime they deem appropriate. What the Energy Charter requires is that the regime they decide to establish be applied equally to all investors (Ghanbari-Jahrami and Alikhani, 2016: 116). As it is said, adhering to these obligations means overstepping the natural inclinations of governments that dictate that they prefer companies that have good relations with the ruling political currents over foreign companies. Therefore, foreign capital will flow to countries that have put the principle of non-discrimination in the international arena on their agenda (Wald, 2002: 28).

In any case, it must be acknowledged that the peaceful resolution of disputes in the field of energy trade is an advanced and powerful factor that strengthens regional cooperation and international cooperation, especially in the field of energy security. It will also lead to sustainable development among all stakeholders, which will ultimately benefit all exporting, consuming and affected countries (Rusnak, 2016, 11). The review of the said treaty shows that the government of a country has no right to give preference to domestic investors over foreign investors or to discriminate between foreign investors (Wald, 2002: 28).

Finally, the development of trade in the energy sector in turn leads to the expansion of multilateral obligations that can affect the sector in various aspects of international trade and its development in the following ways:

1. Access to energy resources, exploration, development and export on a commercial basis;

2. Provides a free and competitive market for the provision of energy products, materials, equipment and services;
3. Access to national, regional and international markets;
4. Providing a transparent approach in various energy sectors and the international energy market (production, export, transit and consumption);
5. Removing technical, administrative and commercial barriers in the field of energy, providing related technology and services related to this field;
6. Improving national and regional energy capacities and creating a common energy system;
7. Promoting and expanding coordination in the field of Laws, standards and regulations in the field of energy;
8. Promoting and implementing important infrastructure and infrastructure projects to ensure global and regional energy security;
9. Promoting and expanding best practices in accessing capital, in particular through existing financial institutions;
10. Creating conditions for better and more appropriate access to transit transport infrastructure in line with the goals of the Charter;
11. Access to commercial conditions and technologies for the exploration, development and conversion of energy and the use of resources derived from it (1-14 2016: Rusnak).

Conclusion

The number of appeals to international arbitration tribunals indicates the lack of peaceful procedures in various fields, including the energy sector. Therefore, the present study has shown that peaceful methods in the energy sector, including attention to the Energy Charter Treaty, can effectively minimize this judicial procedure.

On the other hand, the development of trade in the world requires political and diplomatic mechanisms, as well as the existence of transparent and enforceable legal rules in various areas of investment and dealing with existing obstacles based on future predictions. Therefore, with the centrality of the economic element in the modern international era, efforts to find peaceful solutions to develop international trade have become more intense.

The models that have been proposed in this field are very diverse, and in the field of energy, we can specifically mention the Energy Charter Treaty, which began in the 1990s in European countries and was accepted by various countries as an acceptable practice in this field due to the executive and judicial mechanisms contained in it, and has provided many opportunities for regional convergence and cooperation based on free trade and government and non-government investment.

The peaceful guidelines and mechanisms that are seen in the Energy Charter Treaty and in line with the protection of investment have a significant impact on the development of international trade. Since economic liberalization as the main practice of this treaty, along with the development of strict legal rules in the field of combating discrimination in the fields of investment, lack of immunity for governments and preventing the creation of information rents and the influence of partisan and political factors in investment, are among the solutions that show that the Energy Charter Treaty plays an important role in the development of trade.

In addition, the resolution of international disputes in the field of energy is possible both by relying on the arbitration of the aforementioned treaty and economic convergence in various

sectors, so that economic interdependence in turn provides the basis for resolving disputes based on an economic and political procedure, not just a belligerent one. In addition, the Energy Charter Treaty creates a kind of long-term cooperation in order to resolve international disputes with the aim of sustainable development and combating environmental risks, which leads to the establishment of economic unity and convergence based on the preservation of mutual interests.

The Energy Charter Treaty also respects the principle of sovereignty of states over their resources and interests, and only by attracting and ensuring the security of capital based on peaceful methods and strict laws, it aims to eliminate discrimination and economic liberalization.

From this perspective, paying attention to the rules of the Energy Charter Treaty as one of the peaceful methods in resolving international disputes can lead to the development of trade in various energy sectors worldwide and, most importantly, reduce the number of appeals to international arbitration courts.

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