

**ENSURING RELIABLE AND STABLE ENERGY TRANSIT:
THE ROLE OF THE ENERGY CHARTER TREATY**

Amb. André Mernier
Energy Charter Secretary General

24 April 2009

Presentation at the international conference 'Reliable and Stable Transit of Energy and Its Role in Ensuring Sustainable Development and International Cooperation (23-24 April 2009, Ashgabat, Turkmenistan)

Your Excellency, Ladies and Gentlemen,

I would like to thank the government of Turkmenistan for its initiative to convene this international conference and for its generosity in hosting the event. I would also like to express my appreciation for the work of the United Nations Department of Economic and Social Affairs in the preparation for the conference.

Your Excellency, please allow me to congratulate the authorities of Turkmenistan on the adoption by the 63rd Session of the General Assembly of the United Nations, following your initiative, of the resolution "Reliable and Stable Transit of Energy and its Role in Ensuring Sustainable Development and International Cooperation". I welcome Turkmenistan's commitment to strengthening the international framework for regulating energy issues, through its leading role within the United Nations and as a Contracting Party to the Energy Charter Treaty.

Turkmenistan's initiative in the area of transit and sustainable development is timely. Energy policy has become one of the key issues for the international community. Yet, while the intertwined issues of energy security, sustainable economic development and environmental protection remain at the top of governments' energy agendas, the context for policy keeps changing. Recent years have been characterised by rising volatility in world energy markets. During this period, energy security was approached in a high price environment. Environmental protection, which used to focus on the prevention of pollution, increasingly has become concerned with reducing global greenhouse gas emissions and mitigating their climate change impact.

Today, energy markets continue to be volatile, although many of the elements that drove markets higher have shifted. Demand has shrunk and prices have collapsed. This change will affect the immediate agenda for international energy policy. The pressure for immediate action on global climate change is likely to ease – reflecting the significant decline in the production of greenhouse gases. New priorities have emerged. Now we must act to ensure that there will be sufficient investment to meet the demand for energy resources as the global economy revives.

The promotion of greater stability in the face of such dramatic swings in global energy markets is clearly a priority today. But to do this effectively we must take account of the changing situation in the world economy. As we look to the future, it is clear that recovery will take place in an environment of deep seated political and economic changes in the global order – as signalled at the recent G20 meeting in London. These changes have already had a crucial impact on energy markets and will continue to affect them. These far reaching shifts will ensure that the issue of the transit of energy products becomes increasingly important.

Studies by a range of international public and private bodies, notably the International Energy Agency, point to a significant rise in the demand for energy up to 2050. This will take place in the developed economies of the world but especially in the economies outside the traditional OECD

area. All indicators suggest that this broad trend is set to resume with the end of the global economic crisis.

At the same time, under the pressure to develop new energy mixes to mitigate global climate change and bearing in mind the regional differentiation in energy markets, a diversity of energy products – notably hydrocarbons and electricity – will need to be moved efficiently to energy markets across the globe, in particular to the rapidly growing new economies. This will ensure a strengthening of energy interdependence between countries of the world.

The growing demand for energy across the world will take place at the same time as many existing energy sources are being exhausted. The energy required to satisfy future demand is increasingly located in regions far from major markets. Many of these regions are landlocked or preclude easy access to the high seas, such as Central Asia. Extended transportation, principally pipelines, will be required to move energy products to markets.

In this context, transport infrastructure for energy products will become more important. The transportation of energy products over considerable distances brings with it great benefits. Indeed, energy markets will not be able to develop without an increase in energy supplied in this way. It also, however, brings certain challenges. The complex variety of factors that can affect the transport of energy products through different countries has led some experts to conclude that transit infrastructure is inherently conflict prone.¹ In the face of growing pressure on global resources – notably carbon based energy resources – energy disputes are likely to intensify.² One has only to look around the world – to the Middle East, Asia, Africa, Europe, and the Americas – to see that pipelines have been littered with conflicts in the past. We have, for example, witnessed in January of this year the case of the Russian and Ukrainian gas dispute.

Much has been made of the political dimension, including geopolitics, of the transit of energy products. Fears about limitations on political independence as a result of over reliance on external energy suppliers is a key element driving energy security policies. Experience has shown that concern over security of supply and demand is especially strong when exporting and importing countries are linked by fixed cross-border infrastructure. Diversification of energy supply can alleviate this concern but rarely resolves all of the uncertainties and frictions.

While political issues are important in understanding the challenges involved in the transit of energy products, there are other equally important dimensions to consider. The transportation of energy through different countries means that these products must transit multiple jurisdictions. This creates substantial legal uncertainties and may lead to misunderstandings and even conflicts. This situation can be compounded by the position that transit countries find themselves in as a result of the transmission of energy products across their territory. There is a temptation for transit countries to seek to strengthen their role as energy consumers and exporters on the basis of their position and to maximise their income from tariffs.

The transit of valuable energy products through underdeveloped regions can also cause tensions. As H.E. President of Turkmenistan Gurbanguly Berdymukhamedov noted in his address to the 62nd session of the United Nations General Assembly on 26 September 2007,³ it is important to promote economic growth within the communities where pipelines run. Failure to develop social infrastructure, including employment, local access to energy, and also to ensure environmental protection as part of the construction of transit pipelines may lead to the emergence of resentments, anger and even conflict.

¹ Paul Stevens, *Transit Troubles: Pipelines as a Source of Conflict* (Chatham House Report) 2009.

² United States National Intelligence Council, *Global Trends 2025: A World Transformed* (November, 2008).

³ Statement by the President of Turkmenistan His Excellency Gurbanguly Berdymukhamedov at the 62nd Session of the United Nations General Assembly (26th September 2007).

The complex and potentially conflictual nature of the transit of energy projects points to the need to develop common solutions. The United Nations resolution initiated by Turkmenistan rightly acknowledges the key role of cooperation to ensure the reliable transportation of energy to global markets through pipelines and transmission systems. I share the view that energy security is a joint endeavour that is in the interest of the entire international community. Moreover, as is suggested in the resolution, energy security involves access to reliable, affordable and economically viable energy services that are socially acceptable and environmentally sound. This approach offers a way to ensure that energy policy helps to achieve international development aims such as the UN Millennium Development Goals.

The Energy Charter Treaty (ECT) occupies a valuable and distinctive place in the international architecture of energy governance. The Treaty demonstrates that it is possible to bring a large and diverse group of countries together within a legally binding international framework on the basis of common principles and mutual interest. Indeed, the ECT is unique in uniting producer, consumer and transit countries.

The promotion of the reliable transit of energy products is a key component of the Energy Charter Treaty. Together with investment protection and arbitration, transit represents one of the ‘three pillars’ of the Treaty. The Treaty provisions on transit reflect the principles of freedom of movement and non-discrimination in terms of origin, destination and ownership of energy materials and products as key elements, and provide for arbitration and conciliation mechanisms when disputes arise.

The Charter has become a leading inter-governmental forum for exchanging information on issues such as access to transit pipelines, tariff-setting, congestion management and investment in new transit infrastructure. These activities are complemented by work on non-binding instruments that can facilitate new cross-border infrastructure projects, such as the Charter’s Model Agreements for Cross-Border Pipelines – the second edition of which was released early last year.

Currently, the Energy Charter is supporting the activities of the Task Force on Regional Electricity Cooperation in Central and South Asia. Here the particular focus is on encouraging cooperation to facilitate and secure regional and cross border electricity trade based upon the principles of the Energy Charter. To assist in this aim, the Secretariat has taken a leading role in developing model agreements for the cross border electricity projects.

Additionally, the Charter’s work brings an important element of transparency to energy markets. I want to highlight in this respect the work that we have undertaken on transportation and transit tariffs for oil and gas. This work not only provides a good basis for assessing transit regimes, it also reinforces transparency and accountability – which are at the heart of efficient energy sector governance.

Lastly, I would like to underline that the Charter provides an accessible multilateral discussion and policy forum for a very diverse group of countries. It is the right place for a regulatory dialogue on issues affecting the movement of energy across Eurasia.

Current developments in global energy markets and the special characteristics of the transit of energy products together point to the need to think carefully about the future of energy governance and especially the issue of transit. Within the Energy Charter process, work in this direction is already underway. For several years the members of the Energy Charter community have been involved in discussions on a separate Protocol on Transit. The draft Transit Protocol is intended to specify the binding rules of the Energy Charter Treaty in more detail. Bearing in mind the disputes that can develop around transit infrastructure, we need to look upon the finalisation of the draft Transit Protocol as a vital element for conflict prevention, and indeed confidence building.

The energy dispute between Russia and Ukraine of January 2009 has raised important issues, including what the Treaty can contribute to strengthening the trust and confidence that underpins energy relations between states. Nobody can deny that in years since the Treaty was adopted the world, and notably the world of energy in the Eurasian continent, has changed in important ways. In these circumstances, it is surely right to look at the Treaty adopted in 1994 with a fresh perspective. One that clearly recognises the value of the existing text but which, in light of new demands, looks to strengthen the Treaty, perhaps by allocating to it new tasks and new directions.

I believe that the recent dispute between Russia and Ukraine has pointed to possible ways forward to build the trust and confidence necessary to prevent the emergence of transit related conflicts. In the future, we should consider how to strengthen the ability of the international community to manage and diffuse energy crises. For example, the role of independent, international monitoring and other confidence building mechanisms could be considered. As I noted in a statement of 6 February 2009, the ECT could be modernised taking into account the new demands of energy markets and the issue of transit. This does not mean renegotiating the Treaty. Rather, there are considerable opportunities to strengthen existing provisions and to supplement the Treaty through amendments, new protocols and through clarification of key text.

The issue of the transit of energy resources is a crucial issue. Its growing importance is based upon increasing energy interdependence in the context of rising pressure on world energy supplies. Given the global distribution of energy resources, current technologies and projections of demand, the priority for policymakers should be on how to manage interdependence and supply most effectively; on creating functioning and balanced international frameworks that can mitigate the associated risks. Turkmenistan's initiative within the United Nations offers an important stimulus to intensify our search for the right framework and it points us in useful directions. The resolution complements the work that is being undertaken within the context of the Energy Charter on these issues.

A starting point is to find common principles that can underpin international cooperation. For the Energy Charter, these are expressed in a political declaration from 1991, signed by almost 60 countries across the world. These countries include major energy producers and net energy importers, as well as transit countries, all of whom have subscribed to certain core principles: national sovereignty over energy resources, respect for contracts and property; stable and open frameworks for flows of energy, capital, technology and investment; an orientation towards market solutions; non-discrimination; transparency; energy efficiency and sustainable development.

I am convinced that in addition to the efforts of national governments, an interdependent energy world needs institutions to promote coordination and to provide a stable framework for cooperation. The Energy Charter Treaty offers a balanced framework of international rules and principles that is already established, effective and widely supported. The Energy Charter process is flexible and ready to respond to new challenges. Moreover, the Treaty is open to all.

Today's challenges point to the need for further creative thinking and the development of operational approaches. The conference today and tomorrow offers an opportunity to explore ways to strengthen further the international legal framework for the regulation of energy relations. My experience with international energy cooperation leaves me optimistic about its potential, but there are significant challenges ahead. We need to bring new energy players into the cooperative dialogue on energy. And we need to ensure that policies pursued by governments and international organisations provide the right bridge to a sustainable energy future, so that energy can continue to be synonymous with human development and opportunity. In seeking to resolve these challenges, I look forward to working closely with the authorities in Turkmenistan.

Thank you for your attention.