**WORKSHOP ON ENERGY REGULATION AND SECURITY OF SUPPLY**
**SAN DOMENICO DI FIESOLE, FLORENCE, ITALY**

**9 JUNE 2011**

# From Wishes to Actions: a Short Story of Security of Energy Supply with a Few Indications for the Years to Come

**PRESENTATION BY THE ENERGY CHARTER SECRETARIAT**
**(ANDRÉ MERNIER[1] AND DARIO CHELLO[2])**

## 1. In the Beginning

The security of energy supply was and remains the most important target of any energy policy both at national and multilateral level. While the concept of security of supply has evolved during the last 40 years we define it, for our discussion today, as a strategy which provides the uninterrupted energy supply at a stable and acceptable price.

For many years the dream of all state-nations around the world has been to secure energy supply using indigenous primary energy resources. At that time the merit index which discriminates the energy policies state by state was the so-called "energy independence rate" through which it was possible to appreciate the level of dependence on foreign supplies.

Of course, the strong producer countries such as, Saudi Arabia, Algeria, Qatar, Iran, United Arab Emirates, and Russian Federation, have had no difficulty in reaching the full energy independence.

For all the other countries the challenge was and still is enormous.

Soon after the second oil crisis (1979-1980 as a consequence of the Iranian revolution) it was clear for consumer countries and for weak producer countries that energy independence was unreachable. Reconsidering the definition of the security of energy supply as a strategy to reduce or hedge risks that derive from energy use, production and imports, then it is possible to say that the security can be ensured through eliminating the risks, both in the short-term[3] and long-term.[4] Hans H. Landsberg and his colleagues of the *Resources for the Future* (Washington) have clearly explained the reasons for this change in the meaning of security of supply in their "*Energy Today and Tomorrow: Living with Uncertainty*".[5] Namely, the above-mentioned authors pointed out more than 25 years ago, that even if the US were able to produce all the energy which they need in their country, this full energy independence would not be sufficient to isolate their country from external events. At least for four different reasons:

1) A huge interruption of oil production in the Middle East could oblige the US to share their indigenous production with their allies;
2) Many enterprises and banks in the US are implicated as buyers, financing institutions or suppliers in all transactions linked to the energy outside the US;
3) The US is trying to avoid that energy constraints become terrible obstacles to be overcome for the developing countries in order to progress economically;

---

1 Secretary General, Energy Charter Secretariat, Brussels.
2 Director, Energy Charter Secretariat, Brussels.
3 The short-term risks usually are unexpected events which cause the supply disruption, like the whether disaster, sudden political crisis, technical problems.
4 The long-term risks are more predictable and long-lasting problems like the gap between the demand and the supply, the unavailability of the resources because of the lack of investment and the problem in infrastructure.
5 Prentice-Hall, Englewood Cliffs, 1983.

4) Being one of the most important exporters of nuclear energy technologies, plants and materials, the US is deeply concerned that civil nuclear programmes of other countries do not implicate any enhanced nuclear proliferation.

Of course this list is not exhaustive and we could add other reasons in order to sustain our thesis. Twenty five years later we could also extend this case study to the Russian Federation bearing in mind the role that natural gas resources play in the energy world right now.

For most of the producer countries energy export is one of the main sources of revenue and, for this reason, a sharp decline in the energy prices can directly affect their economy. But the volatility of the oil market damages both consumers and producers. As consumers, it's possible to recognise that abnormally low oil prices, while giving short-term benefits, do long-term damage. They diminish incentives to invest not only in hydrocarbon production but also in energy savings and carbon-free alternatives.[6]

Finally we can conclude that since the end of the 1980s everybody recognises the necessity to consider energy **interdependence** instead of energy **independence** to be the target of any energy security of supply policy. This new concept has forced the stake-holders and decision makers to reflect on how it will be possible to manage this interdependence respecting the legitimate interests of each nation but at the same time sharing a few common rules in order to achieve a common objective of security of energy supply.

Nevertheless, some state-nations are continuing to pursue the dream of the energy independence, mitigating it through a participation in multilateral organisations. The recent "Unconventional Gases Revolution" could represent a good case study to support the thesis of energy independence.

## 2. The Energy Dialogue

Diplomatic movement towards an oil producer and consumer dialogue began in the earliest stages of the creation of the IEA, during and after the 1973-1974 oil crisis, in response to the disruption of supply and the increases in the price of oil which occurred in that crisis.[7]

In October 1974, while the IEA was still in the preparatory stage, President Giscard d'Estaing of France took the initiative to launch officially the idea of the producer-consumer dialogue.

In December 1974 the Governing Board of the IEA established the crucial issues which would need to be considered in such a dialogue, namely:

(i) the general concept of the dialogue, strategy and development of appropriate concrete topics of discussion;

(ii) the price of oil and security of supply.

We had to wait until June 1977 before the first "Conference on International Economic Cooperation" was organised, because of the long discussions concerning procedures within the IEA. There were also some difficulties about contacts with OPEC. In fact, at this time, the relations between the IEA and OPEC were shaped more by confrontation than by dialogue. The IEA furthermore, tried to coordinate the bilateral relations existing between its members and OPEC's members instead of building a global dialogue on multilateral basis. Finally, the first "Ministerial Seminar" was organised in Paris in 1991, which constituted the forerunner of the actual International Energy Forum. Since then, eleven other Ministerial Meetings have been organised,[8] and, in 2000, King Abdullah bin Abdulaziz Al-Saud launched the initiative to establish a permanent Secretariat for the Energy Forum offering to host it in Riyadh.

---

6 Gordon BROWN and Nicolas SARKOZY "We Must Address Oil-Market Volatility" The Wall Street Journal, July, 8, 2009.

7 The History of the International Energy Agency. The first 20 years (1974-1994) Paris, 1994. See volume I, Chapter II, Section A.

8 All meetings are listed in the chronology table.

*Fora* of this kind also exist at the regional level. For example:

(i) the five Economic Commissions within the United Nations system of which the Economic Commission for Europe has been working for more than 20 years on energy efficiency policies and measures;

(ii) the Ministerial Forum on Energy Security, within the Asia-Europe Meeting which addresses global challenges (ASEM), which facilitates the sharing of national experiences and discussions on how regional energy security goals are being or can be translated into strategies and action plans at national level.

Last but not least, we can consider also the new formats of the G8,[9] namely for its energy concerns as another example of global dialogue forum. Dr Ulrich Schneckener[10] has named all these *fora* as *Club Governance* and has considered four aspects in order to characterise it: legitimacy, effectiveness, coherence and resource mobilisation.

To be brief, the remaining difficulty is to measure the effect of this dialogue on the security of supply. The volatility of oil and other hydrocarbon prices has remained high during the last ten years' dialogue and some disruption in oil and gas deliver has nevertheless happened. However, volatility control and energy crisis prevention have been the targets for this above mentioned *fora*.

| **CHRONOLOGY**[11] | | | | |
|---|---|---|---|---|
| **YEAR** | **EVENT** | | **HOST** | **CO-HOST** |
| 2012 | IEF13 | 13th International Energy Forum & 5th International Energy Business Forum | Kuwait | Algeria & the Netherlands |
| 2010 | IEF12 | 12th International Energy Forum & 4th International Energy Business Forum | Mexico | Germany & Kuwait |
| 2008 | IEF11 | 11th International Energy Forum & 3rd International Energy Business Forum | Italy | India & Mexico |
| 2006 | IEF10 | 10th International Energy Forum & 2nd International Energy Business Forum | Qatar | China & Italy |
| 2004 | IEF9 | 9th International Energy Forum & 1st International Energy Business Forum | The Netherlands | Iran & Norway |
| 2002 | IEF8 | 8th International Energy Forum | Japan | Italy & UAE |
| 2000 | IEF7 | 7th International Energy Forum | Saudi Arabia | Japan & the Netherlands |
| 1998 | IEF6 | 6th International Energy Conference | South Africa | Qatar & UK |
| 1996 | IEF5 | 5th International Energy Conference | India | Brazil & Norway |
| 1995 | IEF4 | 4th International Energy Conference | Venezuela | EC & Russia |
| 1994 | IEF3 | 3rd International Energy Conference | Spain | Algeria & Mexico |
| 1992 | IEF2 | Ministerial Workshop | Norway | Egypt & Italy |
| 1991 | IEF1 | Ministerial Seminar | France | Venezuela |

[9] The G8's dialogue with selected African states and the African Union ("Africa Outreach"); the G8's discussions with G5 states of Mexico, Brazil, South Africa, India and China; the Major Economies Forum (MEF) which comprises G8 plus G5 states together with the European Union, South Korea, Indonesia, Australia and Denmark. The Italian G8 Presidency also extended invitations to Egypt and Turkey.

[10] Dr Ulrich Schneckener, "the Opportunities and Limits of Global Governance by Clubs" Stiftung Wissenschaft und Politik. German Institute for International and Security Affairs, Berlin, 2009.

[11] Bassam Fattouh and Coby van der Linde "The International Energy Forum. Twenty years of producer-consumer dialogue in a changing world." Riyadh, Saudi Arabia, 2011.

## 3. From Dialogue to Governance

Many political analysts[12] agree that global governance has five common denominators as follows:

1. Provision of Management in the sense of defining decision making and vesting power for action;
2. In response to Global problems, such climate change, scarce resources, maintenance of peace and security and so on;
3. Pursuing Global objectives, for instance, protection of human rights, reduction of global warming;
4. Applying Concerted efforts which imply cooperation, constant negotiations and the willingness to compromise;
5. By States and other international actors, which include State, international organisations, non-governmental organisations and so on.

It's also important to underline that global governance is not the government of the world or a region and that the decision to adopt or not a global governance scheme in a defined domain, implies the acceptance that no single country on its own is able to tackle the complex problems in this domain. Therefore, it should renounce a part of its sovereignty by sharing a few common rules.

Now, bearing in mind what is mentioned above, it's easy to recognise that the energy security of supply responds fully to the five criteria and so global governance could be the solution best adapted to manage it.

Over the past two decades the energy interdependence between countries, and especially its major impact on national security of supply, has asserted its place on the global agenda. With the advance of globalisation and vast improvements in energy trade, there have been substantial changes to countries energy profiles. Cheaper energy imports have become a strong competitor to indigenous resources. The global trade opportunities stimulated more resourceful countries like Australia, South Africa and Russia to increase their exports and make their economies more dependent on the energy trade revenues.

Politicians from leading economies have acknowledged that no single country is able to tackle the complex energy problems with domestic policies only. For example, the UK Government stated that "the most effective way to reduce the potential security consequences of issues such as climate change and rising energy demand is to take the tough decisions now to tackle them, both as global issues in their own right and their implications for global security.

In addition, there is a well-documented need within Europe and globally for sizeable energy infrastructure investments over the next decades. The common polices developed by the institutions of the European Union are the key impetus for the national governments of the Member States to respond adequately and deliver a stable and predictable regulatory environment to incentivise the needed investment in Europe. However, apart from the Energy Charter Treaty, regional in character, there is no other global governance mechanism to create an enabling regime for private sector cross-border investments in energy assets.

It is no wonder then why energy and security of energy supply have risen to the top of the global agenda and the urgent need for concerted action by States and other international actors has been recognised.

## 4. The Energy Charter Process

The Energy Charter Treaty[13] is one of the most successful examples of a binding multilateral instrument containing the key criteria of governance, namely sharing common rules. To date, the Treaty has been

[12] See also: Dario Chello and Boris Petkov: "Does energy efficiency need global governance?" Energy Technologies from Italy 2010-2011 Gruppo Italiaenergia Roma, 2011.

signed or acceded to by fifty-one states from Europe, Asia and the Middles East, including both developed and developing countries and representing a fair share of OECD and non-OECD countries. It plays an important role as part of an international effort to build a legal foundation for energy security, based on the principles of open, competitive markets and sustainable development.

Although the ECT covers a broad range of energy related subjects, its principal provisions are those regulating energy investment, trade and the transit of energy goods through States which are Parties to the Treaty. Last, but not least, the Treaty, and its additional protocol, encourages international cooperation in developing and implementing energy efficiency strategies and policies.

Despite both the originality of the Energy Charter concept in facilitating East-West cooperation in the energy sector, together with the political support enjoyed by the ECT in the initial phases of its development, Russia decided not to ratify the Treaty, which they signed in 1994. This has, for long time, created confusion about Russia's role in the Treaty, even if it has continued to apply the Treaty on a provisional basis. Russia's provisional application has represented a considerable degree of commitment to the Treaty's binding provisions.

On 21 April 2009, the Office of the Russian President published a "Conceptual Approach to the New Legal Framework for Energy Cooperation" (Goals and Principles), which the Russian government had intended to discuss with their colleagues in the G8, G20, the CIS, international organisations and neighbouring states. A draft document translating the ideas contained therein into the legal terms of an international agreement will be released soon. In the context of the presentation of the ideas for a new Legal Framework for Energy Cooperation, the Russian leadership expressed dissatisfaction with the existing Energy Charter Treaty. The Energy Charter and the accompanying documents were not satisfactory for Russia and that is why a new international legal base was necessary.

On 30 July 2009, the Prime Minister of the Russian Federation signed a government decree (N 1055-r) which put an end to the provisional application of the Energy Charter Treaty (ECT) in accordance with art. 45(3(a)); this decree was notified to the government of Portugal, the Depository of the Treaty, who has received it on 28 August. Therefore, starting from Monday, October 19th, the Russian Federation terminates his provisional application confirming that it does not intend to become a participant of the ECT. On 25 August 2009 the Depository of the Treaty has informed all member states and the Secretariat in Brussels about the above events. Why has this happened? Some considered that the difficulties in preparing the additional protocol on transit issues were the origin for this situation. Some others tried to link the Russian attitude to the evolution of the so-called 'Yukos-Case'. Indeed, the majority of the shareholders of 'Yukos Oil Company' estimated arbitrary, unfair and discriminatory expropriation of their investments by the Russian Federation, seeking compensation for an aggregate amount up to USD 100 billion, under the ECT provisions.

Still some others tried to justify it as an unsatisfactory reaction of the Energy Charter Process to the Russian-Ukrainian crisis of the beginning of 2009. The two-week interruption of Russian gas supplies through Ukraine to Europe in January 2009 constituted an unprecedented interruption of energy supplies. It was also the occasion for a questioning by some of the effectiveness of the Energy Charter Treaty in emergency situations.

More emotionally, some have considered that the Russian Federation has not ratified the Treaty and then, has withdrawn from its provisional application just because the Treaty has been considered a humiliation as it has been created in order to favour consumers who have considered themselves as the winners of the Cold War. Whatever the motivation, the lesson to be learnt from this story is that the most delicate moment in constructing the global governance is when you have to decide how many, and which rules have to be shared. Furthermore, it is very important to have within the governance, a clear, transparent and easy procedure in order to update, integrate or modify the rules shared coherently with the new deals and

[13] The Energy Charter Treaty of 1994 is a legally binding extension of the principles contained in the European Energy Charter of 1991, a non-binding political declaration and precursor to the ECT. The ECT came into force in 1998, upon its ratification by the 30th member state.

evolution as far as the governance is concerned. Unfortunately, the Energy Charter Treaty is not well adapted to these criteria thus presenting another obstacle in order to modernise the process.

## 5. Conclusions

Briefly analysing the evolution of the energy security of supply concept, we have tried to show that security of supply today has to be considered as a global problem. Therefore, global governance could be a solution in order to manage it. The limits of the so-called *Club Governance* are essentially linked to the incapability of implementing any strategy lacking of common rules shared, compulsory targets, monitoring system and dispute settlement mechanism.

After more than 15 years of experience in the Energy Charter Process it is clear that the way forward in order to reach the final objective is not a straight path; sometimes you go back, some times you turn right, some times left and sometimes you can find yourself in a dead-end. But we do believe that there are no other solutions to adopt in response to global evolving challenges. For the Energy Charter Process this means that before any attempt to expand the participation of other important emerging economies around the globe while the highest efforts should be employed to recuperate the Russian Federation within the process. Russia has the world's largest natural gas reserves, the second largest coal reserves and seventh largest oil reserves.[14] It currently supplies around 30% of the oil and 25% of the gas that European Union consumes, and is also significant global force in the nuclear power industry. A global governance on energy without the Russian Federation is for Europe like a marriage without the bride; a paradox.

***

[14] John Longh 'Russia's Energy Diplomacy' Chatham House, May 2011.