

OPEC 5th International Seminar

**THE ENERGY CHARTER TREATY'S POTENTIAL CONTRIBUTION TO
ENERGY POLICY AND GLOBAL ENERGY GOVERNANCE**

Address by Ambassador Urban Rusnák
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Your Excellency, Mr. Yousfi, distinguished fellow panellists and distinguished delegates,

I am very pleased, and indeed honoured, to have the opportunity to address you here today at this 5th OPEC International Seminar.

On the first day of this year I took up office as Secretary General of the Energy Charter Secretariat, which is based in Brussels. I have come to the role at a very challenging time. There are huge changes underway in the political and economic spheres, all of which greatly impact the energy world.

As a member of this panel, I would like to share some thoughts with you, which will mainly focus on the policy aspects of this discussion, specifically on policies affecting the energy scene. I will, of course, also discuss the Energy Charter itself, and consider its significance with regard to the changes taking place in the energy world. I will look at the potential of the Charter's contribution towards the development of energy policy and indeed global energy governance.

The Energy Charter Treaty was developed on the basis of the 1991 Energy Charter. Whereas the latter document was drawn up as a declaration of political intent to promote energy cooperation, the Energy Charter Treaty is a legally-binding multilateral instrument. The Treaty is part of international law.

The fundamental aim of the Energy Charter Treaty is to strengthen the rule of law on energy issues, by creating rules for a level playing field to be observed by all participating governments. In doing so, the provisions of the Treaty reduce the risks associated with energy-related investment and trade. The organisation's governing and decision-making body, the Energy Charter Conference, brings the diverse states of the Energy Charter constituency together to discuss energy issues at its meetings or through its subsidiary bodies. In addition, the Charter promotes energy efficiency policies consistent with sustainable development on the legal basis of the Protocol on Energy Efficiency and Related Environmental Aspects.

The Energy Charter Treaty is built on the principle of inclusiveness. It establishes a legal framework for long-term energy cooperation. Such cooperation brings benefits for energy producing, energy consuming and transit countries. The Treaty is in fact the only example of a comprehensive energy treaty with such broad membership.

It is very apparent that the world of energy is changing. The era of cheap oil is over.

Meanwhile the new emerging economies account for significant increases in global demand. Prices have become extremely volatile, posing major risks to much needed investments.

International energy governance therefore needs to be adapted to meet this challenge. Today energy security is part of a triangle of shared policy objectives, the other two being economic

development and environment protection. In addition to policies related to economic development, and policies aimed at ensuring security of oil and gas supply and demand, governments are eager to decrease CO₂ emissions. The means of achieving this include increasing energy efficiency and developing low-carbon energy sources.

Given these contemporary challenges to the energy sector, the Energy Charter modernisation process has been launched by the Conference to ensure that the potential of the Treaty's legal framework for long-term cooperation in the energy field is fully utilised. Modernisation is intended to strengthen the Energy Charter's authority. Modernisation is also aimed at making the Treaty more attractive for those major actors on the global energy market who have not become members. Those countries include major consuming countries, as well as major producing ones. In the context of this 5th OPEC International Seminar, I would like to focus on the second group, the energy producing countries.

Seven out of the twelve OPEC members are currently observers to the Energy Charter. There is no doubt that the Energy Charter constituency would welcome closer cooperation with OPEC and the countries it represents, as well as indeed with other producing countries outside OPEC.

Why the Energy Charter? How does the Energy Charter and its portfolio relate to those of similar organisations within the system of energy governance? Allow me to look at the existing organisations from two perspectives: their membership, and the extent to which they meet the needs of energy governance.

On the consumers' side, there is the International Energy Agency. Over the last twenty years the IEA has evolved from an instrument to ensure security of supply for the developed world into one that addresses energy security in a broader sense. The IEA has stepped up cooperation with emerging economies to take account of their growing significance. But the organisation remains oriented to the interests of energy consumers.

On the producers' side, there is this organisation, OPEC. OPEC has also developed into an organisation that addresses issues of global governance. There are a number of instances where OPEC has intervened on the global oil market in an effort to stabilise it.

There is also the Gas Exporting Countries Forum, a gathering of the world's leading gas producers. This, too, was established as an international intergovernmental organisation with the objective of increasing the level of coordination and strengthening collaboration among member countries.

Then there are the inclusive *fora*: the Jeddah meeting, the World Energy Council, the International Energy Forum and of course, the Energy Charter Treaty.

The development of the International Energy Forum, in which OPEC is actively involved, demonstrates that producers and consumers share more and more common interests. Producers and consumers are willing to expand cooperation and to build mutual understanding. The IEF's work on investment, transparency and sustainability is very relevant and important.

The Energy Charter Treaty is not however an alternative to the IEF. The added value of the Energy Charter is its legally binding rules, which are of major significance for further investments into the energy sector, and to secure reliable transportation rules and promote market access.

The Charter has also more flexible and informal instruments at its disposal which cover the substantial areas of the Treaty. Experience shows that dialogue around critical energy issues

can do much to promote better understanding, transparency, and exchange of information and, in these ways, contribute to building confidence.

So what precisely are the benefits of the Energy Charter Process for energy producers? There are three which I would like to specifically highlight: (i) sovereignty over resources (ii) investment promotion and protection and (iii) trade and transit.

- (i) First, there is the area of sovereignty over resources. The ECT is the only international treaty that explicitly proclaims state sovereignty over countries' energy resources.

The Treaty's Contracting Parties recognise state sovereignty and sovereign rights over energy resources. Contracting Parties are free to choose the governing system of property ownership of energy resources. Furthermore, each state can freely decide the geographical areas to be made available for exploration and development of its energy resources and the rate at which they may be depleted or otherwise exploited. Contracting Parties may specify and enjoy any taxes, royalties or other payments for such exploration and exploitation. Resource-owning states also have the right to regulate the environmental and safety aspects of such exploration and development.

- (ii) Secondly, there is the area of investment promotion and protection. The OPEC Secretariat has estimated that in the medium term, about 140 projects with an overall estimated cost of some \$155 billion are being undertaken by OPEC member countries. Such projects are in addition to all energy infrastructure projects, such as pipelines, export terminals and downstream expansion schemes.

OPEC members clearly need to attract large-scale investment and to work with international partners to promote investment flows in the region. There are many areas of uncertainty regarding investments such as the certainty and consistency of demand, changing regulations, fiscal regimes, strategic and political factors.

There is a need for stability and harmony in the long term, as well as certainty and consistency on future levels of demand.

Transparency, consultation and planning are required to meet the challenges posed by these factors. That involves all the major energy producers and consumers, energy companies, financial institutions and other interested parties. In other words, it involves cooperation on an unprecedented, immense, multilateral and sustained basis.

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 is such an organisation. The Charter's framework of international rules and principles is already well established, effective and widely supported. At the same time the Energy Charter Process is flexible and ready to respond to those new challenges.

As I have explained, the Treaty does not create investment opportunities for companies by forcing open access to resources or defining a certain market structure for our member countries. These are sovereign decisions for member state governments. But, once an energy investment is made, the Treaty is designed to provide a stable interface between the investor and the host government. This stability is particularly important in the energy sector, where investments are highly strategic and capital-intensive, and where risks have to be assessed over the long term.

The reduction of investment risk and the creation of a stable and transparent investment climate is a major challenge.

The Energy Charter Treaty assists in this respect by offering binding protection for energy investors against key non-commercial risks. Examples of such risks are discriminatory treatment, direct or indirect expropriation, or breach of individual investment contracts.

(iii) The third benefit of the Charter relates to trade and transit. The Charter's focus is on fixed infrastructure, pipelines and grids, or LNG terminals. New energy players and consumer countries have a clear interest in securing oil supplies by pipeline. Even for OPEC members, who all have access to the sea, pipelines are in some cases a more cost-efficient option, providing the basis for close partnership with other countries. Building on the existing provisions of the Treaty, the Energy Charter's ambition is to facilitate new infrastructure projects, to increase energy security, and in particular to prevent emergency situations.

There is a view that the Energy Charter Treaty has not yet lived up to its full potential. I have already referred to the modernisation of the Energy Charter Process. Modernisation does not mean renegotiating the Energy Charter Treaty, but rather using the considerable opportunities that already exist to strengthen existing provisions and to supplement the Treaty through new protocols and through clarification of the existing Treaty text. However, the substance of the Process is also being looked at in an effort to identify areas where the legal framework might be adapted to the new realities. Perhaps new activities need to be developed.

I would very much welcome the contribution of OPEC and its individual member states to these discussions. The discussions are aimed first and foremost at balancing the interests of energy producers and energy consumers and to increase mutual benefits.

Under my direction as Secretary General, the Secretariat, in cooperation with the member states, is developing a targeted expansion policy. This is another important component of the modernisation process. Strong political support from our members will be provided. I should also explain that those countries that have observer status, achieved by signing the 1991 Energy Charter, have the entitlement to participate in negotiations on Energy Charter protocols and declarations authorised by the Charter Conference.

I would like to conclude my brief remarks by reiterating that in the fast changing world of energy careful reflection is required as to whether the existing arrangements for energy governance are sufficient to meet the full range of new challenges. Today's challenges point to the need for further creative thinking by all the players. The Energy Charter Process is flexible and ready to respond to new challenges.

It is hoped that OPEC member states will take this important opportunity to contribute to the development of the Energy Charter Process. The engagement of the member states of OPEC with the Charter would do much to enhance the standing of the Charter.

In that context, I would like to specifically refer to an event being organised by the Energy Charter Secretariat on 26 September which might interest OPEC member states. This is a meeting of oil stakeholders which will consider oil transit issues.

Participation in Charter activities would be for the mutual benefit of those states and the existing constituency. It would allow those OPEC member states an opportunity to help to shape the future direction of the Energy Charter Process and perhaps even the direction of global energy governance.

On that note I would like to thank you for your kind attention.