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International Mining Investors' Forum

NORTH EAST ASIA'S ENERGY SUPPLY AND DEMAND: THE POTENTIAL OF THE ENERGY CHARTER

Speech by Amb. Urban Rusnák
Secretary General of the Energy Charter Secretariat

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Your Excellency, distinguished fellow panellists and delegates,

I am very pleased and also much honoured to have the opportunity to address you today at this Conference – Discovering Mongolia. This is my first visit to Mongolia, and my first experience of this beautiful country. Thank you for the great welcome and hospitality shown to me.

I speak to you as the Secretary General of the Energy Charter Secretariat which is based in Brussels, Belgium. The Energy Charter Treaty is an international agreement which provides legally binding rules for energy investment, trade and transit.

I may first need to explain, or perhaps remind you, of what I mean by (a) the Energy Charter and (b) the Energy Charter Treaty (ECT). The Energy Charter Treaty was developed on the basis of the 1991 Energy Charter. Whereas the Charter was drawn up as a declaration of political intent to promote energy cooperation, the Energy Charter Treaty is a legally binding multilateral instrument and part of international law.

Mongolia is rich in natural resources and now has one of the world's most impressively developing economies. The country has been a valued and respected member of the Energy Charter Treaty since July 1999. In the context of North-East Asia, it is important that Japan is also a Member of the Treaty. In addition, China has ECT observer status since 2001.

The Energy Charter Treaty came into force in 1998. Today it applies in 46 countries of Europe and Asia, including each of the 27 EU member states, Turkey, FSU countries, Mongolia, Japan and Australia.

In recent months there has been some international focus on Mongolia and on its law on the protection of foreign direct investments in the mining sector. I therefore welcome that this conference allows me consider with you the significance of the issue of investment protection and also to explain the relevance of the Energy Charter Treaty for Mongolia. But it is important that I also outline that the Energy Charter has relevance on a broad scale. The Treaty has the potential to be of benefit to the North-East Asia region and to Asia Pacific as a whole.

1. Sharing of multilateral rules

My main argument relates to the benefits of sharing multilateral rules precisely as provided for in the Energy Charter Treaty. 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.

The legal framework of the Energy Charter Treaty provides some principles on the role of governments in facilitating international cooperation in the energy field and in addressing non-commercial risks.

The Treaty provisions include common rules on investment promotion and protection, and on trade and transit. It also provides dispute resolution mechanisms, including international arbitration.

The provisions of the Energy Charter Treaty with regard to investment promotion and protection encourage and safeguard foreign direct investments in the energy sector of Mongolia. This is of tremendous value to the mining sector which is of prime importance to foreign investors.

A suitable legal and judicial framework is very important to attract and encourage the necessary energy infrastructure investments. The rules of international trade and cooperation must be defined, accepted and known by the players. Very generally this is the aim of the World Trade Organisation, known as the WTO. More specifically, in the energy context, this is the aim of the Energy Charter Treaty.

The ECT is one of the most successful examples of a binding multilateral instrument containing the key criterion of governance, namely the sharing of common rules. The Treaty 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.

The protection of foreign investments has been a challenging topic for decades. From the 1950s and in the wake of the new global economic order, investment protection has been covered mainly in the form of bilateral investment treaties (BITs).

There are many similarities as well as critical differences in the various BITs. BITs cover many different fields. However, only some of them include the energy sector in the range of activities which enjoy legal protection.

In comparison to BITs, an important feature of the Energy Charter Treaty is its multilateral character. While bilateral investment treaties can be amended or replaced by the agreement of the two countries, a multilateral legal instrument provides much more security and certainty for investors. Furthermore, while BITs generally are valid for a certain period (normally between 10 to 20 years), the ECT as a multilateral legal framework has no limited duration.

Furthermore, the ECT has the widest scope available for the protection of investments as compared to the whole range of BITs. This is due to the fact that the term “investment” in the ECT is widely defined. For all these reasons, the ECT might be considered as a more advantageous tool than BITs.

2. Achieving correct balance of interests of foreign investors and those of the public of Mongolia

Today it is apparent that Mongolia is opening up to the world, and rapidly so. Many foreign investors have already made major commitments to participate in the development of the mining sector. There is therefore a great importance to ensuring the correct balance between the interests of foreign investors and the interests of the citizens of Mongolia.

Sovereign states have the right to regulate foreign investment, which should nonetheless be subject to certain conditions as stipulated by their domestic laws and states' obligations under international law.

The Energy Charter Treaty strives to achieve a balance between the public interest and the interests of those willing to invest in the development of the economy of Mongolia. I therefore welcome the recent proposal by the President of Mongolia to engage with the international community and to combine efforts to further improve investment legislation in creating a level playing field for domestic and foreign investors. The proposal is entirely consistent with Mongolia's international obligations under the Energy Charter Treaty.

The Energy Charter Secretariat stands ready to cooperate with the authorities of Mongolia in promoting an open dialogue related to the investment climate and development of the energy sector. The energy sector is very important to the well being of the general population, to the country's booming economy and to its rapidly developing mining sector.

On the basis of the Energy Charter Treaty, member states established the Energy Charter Process. The Energy Charter Process provides for regular dialogue and serves as an important means to enhance transparency and to develop trust and confidence. The Process is designed to provide member states with the opportunity to cooperate on implementation of the Treaty, and to develop common responses to emerging issues. It also serves as a means to assist policy development and energy governance in developing countries – drawing on the experience and expertise of member states and of the Secretariat.

Mongolia as a relatively small economy is experiencing a high inflow of investment capital which is expected to generate significant cash flow in the form of taxes and other payments. The question is how to manage those revenues in order to develop the economy and ensure that people of Mongolia fully benefit from it. There again Mongolia can certainly learn from the experiences of the Energy Charter countries such as Norway, Azerbaijan, Kazakhstan and others who are managing revenues from the energy sector without serious implications of the so called "Dutch disease".

The Energy Charter Process, while remaining true to the Treaty and its principles, is a living and evolving community. Membership of the ECT allows states to participate in the further development of the Treaty and its associated institutions and to meet new challenges.

In today's globalised world, it is an advantage not to be isolated. The Treaty is open to every state ready to share its basic principles.

3. North-East Asia issues

A number of recent developments illustrate the growing interdependence of the international community on energy issues and the requirement for a form of global energy governance. This in turn points to the potential of the Energy Charter Treaty as such an instrument.

At the beginning of this year, Chinese Premier Wen Jiabao called for a global governance mechanism for energy, under the G20 framework, as an effort to stabilise oil and natural gas markets. Premier Wen suggested that the proposed mechanism should incorporate supplier, consumers and transit countries to draft "fair, reasonable and binding" global rules.

In May of this year in Brussels there was an EU-China Joint Declaration on Energy Security which inter alia stated that "rule-based energy governance should be promoted at a global level".

In his speech there the EU Commissioner for Energy, Mr. Oettinger, said that "the European Commission would welcome China to sign the Energy Charter Treaty and become a member".

In June of this year the energy ministers of the Asia-Pacific Economic Cooperation (APEC) forum met in St.-Petersburg. Their communiqué stated that "open markets and transparent regimes are of great importance to the development of both traditional and new forms of energy". The communiqué also reiterated that trade and investment continue to be important for promoting regional energy security and greater economic prosperity for people.

It is clear that there are a number of energy issues which can only be approached on the basis of international dialogue and cooperation. If energy is not sustainable it can never be secure. Without energy security there is no national security. In recent years the European Union experienced a serious gas crisis while China and most recently India have experienced power cuts.

There are also geo-political changes underway which pose further challenges. In these early years of this decade there have been events which have had major effects on the energy world. I am thinking of North Africa, the Middle East and Japan. While these events have unfolded, world energy demand seems to grow faster than global production. This brings about the prospect of a severe energy squeeze.

Then there is the move towards a low-carbon economy so as to tackle climate change challenges and to carefully manage natural resources. The climate question is also an issue of geopolitics. Greenhouse gases can be tackled most effectively by a sound global energy policy but the move to such policy is very slow. Large players such as China are vital to this.

The Energy Charter has already some significant experience of using the principles of the Treaty to further regional cooperation in the energy sector. A very worthwhile initiative might be the development of solar energy in the desert of Mongolia and the idea of an "Asian Super Grid" to connect electricity networks of countries in the region. This has already attracted interest from energy companies and investors from countries in the region, namely Japan, Republic of Korea, China and of course Mongolia itself.

There is one final matter which I would like to refer to. In 2011, The Energy Charter Secretariat in cooperation with the Mongolian authorities already released an in-depth energy efficiency review of Mongolia. Currently, the Secretariat and the Mongolian Ministry of Energy are working on an in-depth review of the investment climate and market structure in Mongolia's energy sector. The report will be presented in Brussels in the spring of 2013.

The Energy Charter Conference, our top governing and decision-making body, will adopt the conclusions of the review and recommendations to Mongolia related to improving the investment climate and the development of the energy market.

Ladies and gentlemen, I hope that my brief remarks have helped your understanding of the Energy Charter and its Process, its significance for Mongolia and its potential for the North-East Asia region.