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Energy Charter Treaty: COMMON RULES for GLOBAL ENERGY SECURITY

- **Multilateral** and **binding** international treaty: the common rules

- Link between **energy security** (supply and demand) and **security of investments** in the energy sector (level playing field) (Energy Charter)

- **Collective responsibility** of the international community (G7 2014) and **global energy architecture** (G20 2014)

- Responding to **growing global energy needs**: IEA call for 4 trillion USD energy investments by 2035 (WEIO 2014)

- **Sustainable Development Goal No. 7**: “**Access to affordable, reliable, sustainable and modern energy for all**” (UN Post 2015 Development Agenda)
Energy Charter Treaty: GOOD GOVERNANCE of CROSS BORDER ENERGY INVESTMENT

- Creating a **climate favourable** to cross border **enterprises** and investment flows
  - Good governance of energy investments: **market confidence** and **regulatory stability** (non-discr., transfer of capital, key personnel)
  - Protection against **breaches** of international standards (rule of law; losses; direct and indirect expropriation)
  - General **exception**: to protect essential security interests and to maintain public order

- Within State **sovereignty over natural resources**
  - No interference with the public/private energy market structure; no privatisation nor liberalisation; no market access
  - **Political commitment** to open and efficient market

- Taking into account **environmental concerns**
  - Technologically neutral: including low carbon and energy efficiency
IMPLEMENTING the Common Rules: Effective DIALOGUE with Public Private Stakeholders

- Empowering governments’ sovereignty over energy resources
  - Peer review of domestic law and policy on foreign energy investments
  - Policy recommendations by the Energy Charter Conference

- Regional cooperation for cross border projects
  - Regional studies for integration of energy markets
  - Model agreements for cross border pipelines (Baku-Tbilisi-Ceyhan) and cross border electricity projects

- Solid and constant dialogue with the private sector (Energy Charter Industry Advisory Panel IAP)
  - Energy companies and industry associations reporting to the Energy Charter Conference and to other international organisations
  - Financial institutions to support ratification of the Energy Charter Treaty in target countries for energy projects
Regional Cooperation : FACILITATING Energy INFRASTRUCTURES AND TRADE

- Central and Southern Asia
  - Task Force on Regional Cooperation (Afghanistan, China, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Tajikistan, Turkmenistan, Uzbekistan)
  - Price of Electricity Transit in Transition Countries

- North East Asia
  - Gobitec and the Asian Supergrid (Russia, Mongolia, China, South Korea and Japan)
  - Integration of energy markets

- East and Central Africa
  - African Clean Energy Corridor (ACEC) with IRENA
  - Enabling Frameworks for Markets and Investments
ENFORCEABLE Common Rules: EMPOWERING the Investor against Host State

- Directly enforceable by the investor against the host state
  - Before domestic courts or administrative tribunals
  - Before international arbitration under ICSID, UNCITRAL and SCC rules
  - As opposed to state to state diplomatic protection

- Investor state dispute settlement
  - Equivalent to an investment insurance against political and regulatory risks
  - Compensates damages arising from breaches of international standards (non discrimination; direct and indirect expropriation)

- Integrating criticism against investment dispute settlement
  - UNCITRAL Transparency Rules
  - Mediation and conciliation
An EGREGIOUS and Recent Case: The Former Yukos Shareholders vs. the Russian Federation

- Since 2001: 60 known cases (16 cases in 2013); 17 arbitral decisions; 7 settlements; 6 awards of damages in compensation; 24 disputes still pending

- Russian Federation to compensate USD 50 billion an unlawful and indirect expropriation consisting in tax assessments, harassment and interference with the management leading to bankruptcy

- The Energy Charter Treaty is a powerful instrument to scrutinise host state measures and to protect foreign investments but magnitude of the award raise concerns regarding its enforcement

- Announcement of attempts to seize Russian oil companies’ assets in Germany, according to ‘equivalence’ to assets owned by the Russian Federation; and of Russian countermeasures against Germany
Exploiting COMPLEMENTARY Roles: Activities with INTERNATIONAL ORGANISATIONS

- With UNCTAD, promoting investment for sustainable development
  - Investment country reviews and training programs

- Enabling Frameworks for Markets and Investments with IRENA
  - Africa Clean Energy Corridor

- Promoting, with OECD, Low Carbon Investment
  - Achieving a Level Playing Field for International Investment in Green Energy
Energy Charter MEMBERS and OBSERVERS

54 Contracting Parties (*Afghanistan, 2013*) and OPEN to any consuming, producing and transit countries regardless whether industrialised, developing and transition

*This map is without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area*
LOOKING FORWARD: International or World Energy Charter

- **Link** between *energy security* and *security of investments* is still of relevance
- **Reaching out** to new countries and regional organisations
- Political declaration supporting the Energy Charter as a *model* for international *cooperation in energy*
- *Domestic* and *regional* activities, dialogue with *private* sector and complementary *international* organisations
- *100 countries* participating
- Signature expected *spring 2015* in The Hague
The signatories are desirous of improving security of energy supply and of maximising the efficiency of production, conversion, transport, distribution and use of energy, to enhance safety and to minimise environmental problems, on an acceptable economic basis.

(...) They are determined to create a climate favourable to the operation of enterprises and to the flow of investments and technologies by implementing market principles in the field of energy.