

**Legal Forum of the International Energy Charter
20th Anniversary of the Energy Charter Treaty's Entry into
Force**

17 December 2018, Brussels

Good morning distinguished Guests, Ladies and Gentlemen.

It is my pleasure to welcome you here today. All of you know the reason of this event – twenty years ago the Energy Charter Treaty entered into force. During this Forum we would like to reflect on the lessons learned, objectives achieved and challenges ahead, in particular, the potential Modernisation of the ECT. While we welcome new Contracting Parties (my congratulations again to Jordan and Yemen –as well as to Eswatini who has just been invited to accede–), the Energy Charter Conference has identified a list of topics for potential modernisation of the Treaty.

Modernisation was my primary goal since I took office as the Secretary General of the Energy Charter Secretariat in 2012. The understanding that the Energy Charter Process has to be updated came from the developments which I witnessed back in 2009.

Back then, I was an Extraordinary and Plenipotentiary Ambassador of the Slovak Republic to Ukraine. The discontinuation of Russian gas supplies through Ukraine to the European Union in January 2009 was followed in October by Russia's withdrawal from the provisional application of the Energy Charter Treaty. At that time, no one thought about invoking the transit provisions of the ECT, which oblige parties not to interrupt transit of energy resources in case of a dispute.

As you may all know, the first phase of modernisation of the Energy Charter Process was finalised successfully in 2015 with the adoption of the International Energy Charter. It updated the initial political declaration signed in 1991. As of today, 91 countries and international organisations have signed the International Energy Charter, thus, enlarging and diversifying the Charter family.

The second phase of modernisation consisted in achieving important tools and improvements beneficial for both the governments and the industry, but without touching the Treaty. These tools and improvements aim at preventing different kind of disputes under the ECT, which is considered as the most

frequently invoked international investment agreement, with 120 publicly known cases. Since 2013 we multiplied our efforts towards dispute prevention, investment mediation, transparency and the adoption of different soft law tools.

Let me just point out some of the most relevant achievements:

- the early warning mechanism, called to address emergency situations related to transit;
- the Conflict Resolution Centre to assist with good offices, mediation and conciliation, as well as to provide neutral, independent legal advice and assistance in dispute resolution.
- the guide on investment mediation, aiming to promote amicable dispute settlement in investor-state disputes;
- the investment facilitation toolbox, aiming at removing barriers to the establishment of energy investment.
- the handbook on *General Provisions Applicable to Investment Agreements in the Energy Sector*, expected to help government officials to better understand the different

policies and clauses available when negotiating an investment agreement.

- the Energy Investment Risk Assessment – or EIRA – publication which aims to assist governments improve investment conditions for foreign investors in the energy sector.
- the Model Instrument on Investment Dispute Management, which aims to provide a clear framework for managing investment disputes for states who have no similar framework in their domestic legislation or for those who want to update the existing framework. Next year, we will focus on dispute prevention tools.
- While the Secretariat is currently working on a digest of publicly available awards under the ECT, the first publication of the summaries of those awards will soon be published.
- last but not least, I would like to underline our transparency efforts, such as the de-restriction of Conference decisions and clear access to *travaux préparatoires* of the Energy Charter Treaty. In addition, the Legal Department of the Secretariat launched the new web-site dedicated

exclusively to the Energy Charter Treaty, which you will be able to experience as a premiere at the end of this event.

I believe now is the time to start the third phase of modernisation – the potential revision of the Energy Charter Treaty. I am glad that the Contracting Parties of the ECT share my sentiments and joined the general trend to assess updating existing international investment agreements (even if the ECT is much more than just an investment agreement).

In November 2017, the Energy Charter Conference confirmed in Ashgabat the launching of a discussion on the potential modernisation of the Treaty. Within the framework set out by the Conference, it was also agreed to establish a subgroup to centralise and conduct the discussions in the most effective way.

The Subgroup on Modernisation convened six times in 2018 (including consultations with Observers and the industry) under the leadership of its Chair, Ms. Sofía Sanz Estébanez.

After several substantial discussions and full consideration of all the provisions of the Treaty, the Conference approved in November the list of topics, which include transit, investment

protection standards, potential exceptions among members of a REIO, and the revision of obsolete provisions. You have a list of topics on the table at the back of the room.

The Subgroup will continue working in order to identify the potential policy options for each of the topics listed (including the context and the potential instrument to be used), considering also the main international trends.

Once the policy options have been identified, Members of the Conference will be invited to confirm (if possible, during the 2019 review under article 34.7 of the ECT) their political will to start negotiations based on the identified list of topics and their specific policy options.

For those not familiar with the Charter Process, the review is an exercise which the members of the Conference should undergo every 5 years with a view of revising the functions provided for in the Treaty.

Ladies and Gentlemen,

Thank you for your attention and I wish all of us an interesting exchange of views today. Will be glad to further discuss with you during the reception at the end of the event.