

**ENERGY AND SECURITY IN NORTHEAST ASIA:  
TOWARDS A NORTHEAST ASIAN ENERGY  
COOPERATION COUNCIL  
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Seoul, Republic of Korea

**THE ENERGY CHARTER PROCESS:  
THE EUROPEAN EXPERIENCE**

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# OUTLINE

- Setting the Context
- A bird's eye view of the Energy Charter Process
  - The Birth of the ECP
  - From a political declaration to binding agreements
  - Objectives of the European Energy Charter
  - Objectives of the Energy Charter Treaty
  - Members and institutional structure
  - Compliance mechanisms and participation
- Russia and the Energy Charter process
- Final words

# INTRODUCTION AND CONTEXT

- “Nation states are... incompetent. Not one of them, not even the United States as the single remaining super-power, can adequately provide for the needs that its citizens now articulate. The extent of that incompetence has become sharply clearer during this century. The inadequacies of national governments to provide security, prosperity or a decent environment has brought into being a huge array of international rules, conferences and institutions; the only answer to the puzzle of the immortal but incompetent nation state is effective co-operation between those states for all the purposes that lie beyond the reach of any one of them.”

Douglas Hurd, *The Search for Peace*, 1997, p. 6.

# INTRODUCTION AND CONTEXT

- “If you had to name the world’s largest industry, which would you pick?”
  - Energy is the biggest business in the world; there just isn’t any other industry that begins to compare.”
  - Turn over of the global energy business: \$1.8 trillion
  - Global investment between 1990 – 2020: \$30 trillion
  - Energy is the very fuel of society, and societies without access to competitive energy suffer
  - How to ensure that the very fuel of society continues to flow for the benefit of present and future generations
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- **IN SHORT: SECURITY OF ENERGY SUPPLY**

# INTRODUCTION AND CONTEXT

*“Good markets need good governments that protect individual rights, especially property rights, and provide a stable framework for economic activities.”*

Martin Wolf

# THE ENERGY CHARTER PROCESS

- A brief history of the Energy Charter process (please see handout)
- Main instruments
  - **The European Energy Charter 1991**
  - **The Energy Charter Treaty 1994, 1998**
  - Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects
  - Supplementary Treaty (unadopted)
  - Transit Protocol (unadopted)
  - Model Inter-governmental and Host Government Agreements for the Construction of Pipelines

# THE ENERGY CHARTER PROCESS

## THE EUROPEAN ENERGY CHARTER

- A political declaration signed 17 December 1991
- Main objective: Title I
  - *“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.”*
- Other relevant features

# THE ENERGY CHARTER PROCESS

## THE ENERGY CHARTER TREATY (ECT)

- Signed and provisionally applied in 1994.
- Entered into force on 16 April 1998: 47 ratifications, including all EU Member States.
- Japan deposited its instrument of ratification of the ECT on 23 July 2002
- Russia applies the ECT provisionally (Art. 45)
- China and the Korea are observers
- ASEAN is an observer.

# THE ENERGY CHARTER PROCESS

## ➤ THE ENERGY CHARTER TREATY (ECT)

- Purpose of the Treaty (Article 2)

“This Treaty establishes a legal framework in order to promote long-term co-operation in the energy field, based on complementarities and mutual benefit, in accordance with the objectives and principles of the Charter.”

# THE ENERGY CHARTER PROCESS

## ➤ Main pillars of the ECT

- Trade (incorporates GATT)
- Transit (Art. 7)
- Investment promotion and protection (Part III, Arts: 10 – 17 & Art. 5)
- Dispute settlement mechanisms (Arts: 26, 27 and 29).

# THE ENERGY CHARTER PROCESS

## Institutional Structure of the Energy Charter Process

- The Energy Charter Conference (Chairman ambassador Takekazu Kawamura 2007 - )
- Various Groups:
  - Investment Group
  - Trade & Transit Group
  - Working Group on Energy Efficiency and Related Environmental Aspects
  - Industry Advisory Panel
- Budget Committee
- Legal Advisory Committee
- The Energy Charter Secretariat

# THE ENERGY CHARTER PROCESS

## ➤ COMPLIANCE AND PARTICIPATION

- Effective Dispute Settlement Mechanisms
- Soft mechanisms
  - Peer review by the various Groups mentioned earlier

# RUSSIA AND THE ENERGY CHARTER PROCESS

- Main negotiator of the Charter and the Treaty
- Has not ratified but applies the ECT provisionally
- Plays an active role in the EC process activities
- Heavy presence in Conference and Secretariat
- Played a major role with the EU in undermining the Transit Protocol negotiation
- The Yukos affair: the tipping point in Russia's energy policy

# THE YUKOS AFFAIR

- *Yukos Universal Ltd., Hulley Enterprises Ltd. and Veteran Petroleum Trust v. The Russian Federation*
- The Claim: Governmental measures amount to expropriation, thus in breach of Art. 13 ECT.
- The arbitral tribunal consists of three arbitrators (one Canadian and two Americans)
- The case is still at the jurisdictional phase. The main question is can an Investor bring an arbitration claim against a state which is not a Contracting Party but applies the ECT provisionally?

# Chairman's Statement of the 3rd ASEAN+3 Ministers on Energy Meeting

Vientiane, 27 July 2006

- “ 7. We reiterate the importance in encouraging energy cooperation and integration, energy security, cross-border energy trade and investment in the development of energy interconnection networks including hydropower projects and the ASEAN Power Grids. We acknowledged the role of the Energy Charter Treaty in promoting energy security. We look positively at the increasing interest shown by some ASEAN + 3 countries to deepen the understanding of the Energy Charter process.