

STATEMENT

NAME : **Mr. Urban RUSNAK**
TITLE : **Secretary-General**
AFFILIATION : **International Energy Secretariat**
COUNTRY :

Dear Secretary General, Excellences, Ladies, Gentlemen,

The Energy Charter Treaty was recently mentioned by UNCTAD as the **most invoked international investment agreement**¹.

As it is usual, falling trees make more noise than a growing forest.

1. The experience from the implementation of the Energy Charter Treaty

The forest was growing during **twenty years of implementation** of the Energy Charter Treaty. Without furore, such implementation now provides ideas for action. I see three lessons which can be learnt from this experience.

First, **global rules for transparency and predictability** strengthen the **domestic rule of law**, reduce costs, mitigate risk and enable energy business decisions while preserving **state sovereignty** and the **right to regulate** energy resources².

Let me refer to the 2015 **Addis Ababa Action Agenda**³, where the UN Conference on Financing for Development recommends “**strengthening** [...] **regulatory frameworks** [...], **unlocking the transformative potential of people and the private sector**” and “**reaffirm[s] the importance of** [...] **national sovereignty, good governance, rule of law** [...] to **enabling the effective, efficient and transparent mobilization and use of** [financial] **resources**”.

¹ UNCTAD, IIA Issue Note, June 2016

² Art. 18 ECT: *Sovereignty over Energy Resources*: “(1) The Contracting Parties recognise state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law. (2) Without affecting the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources.”

³ <http://www.un.org/esa/ffd/overview/mission-statement.html>

Second, a **multilateral investment platform** providing **technical assistance** to host states is a useful tool to accompany host states and build their capacity in **restructuring the energy sector** and **opening to private investors**.

Third, in the energy sector, common rules and multilateral platform contribute positively to shape a solid **energy diplomacy** and **global energy governance** for the advancement of **energy security, economic development** and **environmental protection** (the 'energy trilemma').

Twenty years later, **global rules for predictability** and **multilateral energy investment platform** are the crucial lesson learnt for countries willing to implement their integrated **investment and sustainable energy strategy** so as to achieve universal access to energy and climate change [SDG 7 and 13].

2. Coherence for investments in the energy sector: sharing improved rules

Based on these lessons, the Energy Charter Conference has envisaged the **path for reform** of the Energy Charter Treaty.

UNCTAD recommends that the **second phase of IIA reform** should **reduce fragmentation and increase the coherence** of the IIA system.

In this sense, the Energy Charter Treaty provides a good example of multilateral rules in force for **54 countries**. In addition, since 2015, more than **75 countries** from Europe, Africa, South and East Asia, Latin America and Middle East, have **signed the International Energy Charter** and **endorsed the common principles of transparency and predictability** for **mobilising sustainable energy investments**⁴.

Those countries are now observers to the Energy Charter Conference and reflect the **growing weight of developing countries** in **global energy security**. This enlargement of the Energy Charter constituency (so-called 'first' modernisation) further **broadens the scope** of the multilateral and **common principles** and of **technical assistance**.

Besides, envisaged reform seeks to respond to the challenges arising from the implementation of the Energy Charter Treaty including published arbitral awards. Since 2013, reform (so-called 'second' modernisation) focused on **clarifying substantial protection standards** to safeguard the right to regulate, **amicable settlement** and **transparency** in investor state disputes along the UNCTAD lines.

As a **concrete outcome**, the conference has just approved today the **Energy Charter guide on investor state mediation** that should facilitate government officers to **take mediation decisions**, the **enforcement of settlement agreements** and the **good offices** of the Energy Charter Secretariat. More discussion is ongoing on **energy investment ombudsmen**.

Further areas for the modernisation of the Energy Charter Treaty include common rules for the **entry of energy investments** as well as common rules for **international energy transit**, and in strengthening relations with USA, Canada, Brazil, India, China, and South Africa and the 'next eleven economies'.

⁴ Bangladesh, Benin, Burundi, Cambodia, Chad, Chile, China, Colombia, Economic Community of West African States (ECOWAS), Jordan, Republic of Korea, Mauritania, Morocco, Niger, Pakistan, Palestine, Serbia, Swaziland, Tanzania, Uganda, United States, Yemen (Botswana, Burkina Faso, Iran, Israel, Lebanon, Philippines).

3. International cooperation on investment facilitation

In relation to **facilitation of energy investment**, one of the UNCTAD proposed reform areas, the Energy Charter Treaty expressly requires to “encourage and create stable, equitable, favourable and transparent conditions” for energy investors.

As in many old generation IIAs, the Energy Charter Treaty considers investment promotion and facilitation indistinctly part of the same equation: **making it easy to establish or to conduct energy investments**. The formulation and choice of promotion and facilitation tools are left to the host state.

In practice, the implementation of investment facilitation under the Energy Charter Treaty is more rich and specific and **essentially in line with the UNCTAD Action Menu**, which should be endorsed and concretely implemented sector by sector.

In the energy sector, the Energy Charter country reports together with **policy and legal analysis** to provide concrete recommendations to **implement** the principles of **transparency, predictability, efficiency and result-orientation** in internal proceedings (UNCTAD WIR 2016 , Global Action Menu for Investment Facilitation, lines 1-3). A **specialisation of investment promotion agencies** in the energy sector is often recommended as well as their international coordination under the WIPA (lines 5-7).

The **private sector dialogue** established in the **Energy Charter Industry Advisory Panel (IAP)**, a group of energy companies that **channel the views of the industry** to the Energy Charter Conference, is a model of stakeholder relationship. The involvement of energy investment decision makers and other stakeholders is crucial to ensure **transparency in the making** of energy strategies and policies (line 4).

The activities of the Energy Charter Secretariat provide an opportunity for **capacity building** through trainings and seminars (line 8), for **sustainable energy development project appraisal** (line 9) and for strengthening cooperation on **investment insurance and guarantees** with national and international institutions (line 10).

4. Perspectives

The **modernisation** of the Energy Charter Treaty offers an unique opportunity to implement the proposed IIA reform specific to the energy sector, including: **multilateral** common rules and governance, **clarification of the applicable** rules, promotion of **amicable dispute settlement, investment facilitation**.

The **International Energy Charter** looks forward further cooperation with **UNCTAD** towards IIA reform, the modernisation of the Energy Charter Treaty and its enlargement to more countries.

At a moment when **sustainable energy investment are insufficient**, enlargement and reform will contribute mobilising the **sustainable energy investments** required for the **sustainable development goals** of universal access to energy and of climate change.

Nairobi, 19 July 2016