

STOCKHOLM ECT FORUM
8 March 2016
Opening Remarks of the Secretary-General

Ladies and Gentlemen, Governments and companies,

Thank you for joining us today, just when the new Chinese year of the monkey starts. This small remark serves to highlight how the Energy Charter has expanded its geographical scope. Today, we have speakers representing governments from all over the world (Latin America, Africa, MENA and Asia), together with industry representatives from all types of energy sectors (oil & gas, renewable, clean coal energy and nuclear).

I would like to thank the Stockholm Chamber of Commerce, and in particular its Arbitration Institute, for the warm welcome and for co-organizing this forum on the Energy Charter Treaty.

The Forum **will not focus exclusively on the dispute resolution** mechanisms of the ECT. This forum will also address the relevance of the Treaty for the promotion of energy investments, something which is now more needed than ever.

International financial institutions such as MIGA and the EBRD have already confirmed the usefulness of the ECT as a mitigation risk mechanism for energy investments. Similarly, the

G8 confirmed in its 1998 Energy Ministerial that the ECT provides an effective framework to attract and mobilize private sector investment.

➔ **So what is the Energy Charter currently doing to further promote energy investments?**

In 2015, the Investment Group (with the help of government delegates and the energy industry) carried out a comprehensive assessment of the **Investment Climate and Market Structure (ICMS) country reviews**. The conclusion was that the reports provide a comprehensive overview of the existing legal framework for foreign investment in the energy sector, as well as of the energy market (identifying potential investment opportunities).

In addition, the Secretariat has started working on a flagship publication on **Energy Charter Investment Risk Assessment**. The Secretariat will present a comparative analysis of investment risks in the pre- and post-investment phase across all energy sectors in Contracting Parties, observer and outreach countries. By comparing country investment risk profiles, the publication aims at sharing transparent information, promoting investment opportunities, identifying barriers to investment,

enhancing the domestic investment climate, stimulating regional cooperation.

The Conference has also tasked the Secretariat to analyse and prepare the ground on the conditions to negotiate a new legal instrument providing for **non-discriminatory treatment in the establishment of investments**. The analysis of a new legal instrument should also address less obvious and more complex non-discriminatory barriers specific to the establishment of energy investments.

The Secretariat, together with the Legal Advisory Task Force, is also working on a **guide/handbook on general provisions applicable to investment agreements in the energy sector** (including explanatory notes, policy options and model clauses on specific topics). This is designed to help and empower governments in their negotiations of complex investment agreements in the energy sector and follows the successful experience of the cross-border pipeline model agreements.

➔ **My colleagues from the Secretariat will explain some of those initiatives in more detail, so let me refer you to a final important development linked with the resolution of energy investment disputes.**

Since the first case recorded in 2001, the Energy Charter Secretariat has collected information on 89 investment arbitrations under the ECT. As there is no obligation to inform the Secretariat about existing disputes, we only have partial information.

Out of those 89 cases, 52 are pending, 1 was discontinued by the parties on mutual agreement, 8 were settled by an agreement of the parties (some of them recorded as a consent award) and the last 28 were concluded with a final award.

Out of those 28 final awards, 7 denied jurisdiction (including two confirming a previous agreement between the parties), 8 declared there was no breach of the treaty, 2 considered there was a breach of the ECT but no damages (investor failed to prove damages or the claim was premature or unfounded) and in 11 cases the tribunal awarded some compensation to the investor.

At the request of the Conference and with the support of the industry, the Energy Charter Secretariat is working with the International Mediation Institute and several dispute resolution institutions present here today to produce a clear and effective framework for the amicable resolution of investment disputes within the energy sector. This year we expect to publish under

the Japanese Chairmanship the **Energy Charter mediation guidelines**.

In addition, I should mention another mechanism already provided by the Energy Charter Secretariat: its **facilitating role and good offices**. In fact, there is an increased tendency of investors seeking the Secretariat's facilitating role (good offices) both at an early stage (through the triggering letter or even before sending it) or even after the arbitration started. As a recognition of such useful practice, the Energy Charter Conference mandated the Secretariat to provide assistance with good offices, mediation and conciliation.

I hope that today's event will contribute towards a useful discussion on the role of the ECT for facilitating energy investments. **Thank you for your attention.**