

CHAPTER I

INTRODUCTION

A. Reason for choosing of title

Energy Charter is a mechanism of multilateral cooperation in the field of energy. Through this charter states that signed it can meet its energy needs in the present and the future. This Charter also requires the opening of a liberal energy market starting from upstream to downstream sector. European countries, like France, Italy, Germany and the UK has ratified it in 2001.

European countries rely energy supply from Russia, where no less than 50% of European energy resources imported from Russia. In other words, Russia has an important role in the availability of energy in Europe. The official of European countries, including through the European Union, has urged Russia to immediately ratify the Energy Charter. However, Russia still insists with his rejection. Igor Shuvalov said: "The principles of the Energy Charter are very good, but we have not taken the decision to ratify it".¹ This was said on the sidelines of his visit to France as one of the committee chairman in the G-8 meeting in St.Petersburg, Russia, in 2006. The same thing also said Alexey Kurdin, Russian Finance Minister, on different occasions.

¹ RIA Novosti, "Russia to wait on Ratifying Energy Charter -presidential aide" (accessed December 2, 2009); available from <http://www.rferl.org/newsline/2006/11/1-rus/rus-151109.asp>

It is interesting to study more about why Russia did not ratify the Energy Charter Treaty.

B. Background

Nowadays every country requires energy to be used as supporting primary needs. The energy itself becomes very vital for the country that needs it. Without the energy, the daily activities will stop. That is why every country seeks and exploits the energy to fulfill their household. Even problems of energy could emerge the conflict among countries that require the energy. Indirectly the country will compete to reach energy source. The increasing in world oil prices that touch 100-level United States dollars per barrel in early 2007 made a panic among the industrial countries. It is feared that if world oil prices higher then the world will experiencing economic downturn and lead to conflict of struggle over energy sources. The dependence of the international community to the petroleum and have not found an energy cheaper alternative which is adding complex this issue. Therefore the international community requires a mechanism to over come the global energy problem, namely Energy Charter Treaty.

The Energy Charter Treaty is a mechanism of multilateral cooperation in the energy field between Western Europe countries and Eastern Europe countries . The basic idea of Energy Charter Treaty was first proposed in Europe in 1991. Along with the end of the Cold War the countries of Western Europe want to

create a mechanism of trade and investment in the energy field with East European countries that are rich sources of energy but not yet able to manage it. With the agreed cooperation mechanisms based on international law it will create a mutually beneficial cooperation between the countries of energy exporters and importers. Russia is rich in energy resources. Russia has the largest known natural gas reserves of any state on earth, along with the second largest coal reserves, and the eighth largest oil reserves.

Energy Charter Treaty focuses on five things namely; protection and promotion of foreign investment in the energy sector, non-discriminatory treatment in products trading and equipment related to energy based on WTO rules, guarantee energy supplies through pipelines or other transportation facilities, reduce the negative impact of using energy to the environment and improve energy efficiency, and dispute resolution mechanisms, both between the government and the government or government with investors.² In investment sector the country's role only limited on rules making and creating of investment climate that conducive for signatory countries. In this case due to the April 1998 Trade Provisions in the Energy Charter Treaty that adopt the principles of the GATT (General Agreement in Trade and Tariff) has been modified as the principles of WTO.³ This is reflected in the principle of non-discrimination in

² The Energy Charter Treaty and Related Document, published by Energy Charter Secretariat, September 2004 (accessed December 2, 2009); available from <http://www.encharter.org>

³ Ibid

trade, transparency, and commitment to progressive liberalization of world trade. In article 7 of the Energy Charter is regulating about transit and delivery of energy products through the pipeline. This Article requires the application of the same transmission rates in recipient countries of energy supply. This Charter also regulates the energy-saving efforts and reduction of negative impact of energy use on the environment as stipulated in the Energy Charter Treaty Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA). In addition to ensuring the availability of energy in the future, PEEREA also be formulated to respond to global climate change caused by carbon emission. The issue is no less important is the disputes resolution in the implementation of the Energy Charter, both among company even government, which will be completed with the procedures outlined in the WTO (the WTO Dispute Settlement Understanding). This is stipulated in article 26, 27, and 28 of the Energy Charter Treaty.

Countries that do not sign can participate by becoming an observer who has the right to attend all the meetings, obtain documentation, reports and analysis that produced in these meetings, and participate in workplace discussions held within the framework of the Energy Charter.⁴

⁴ Energy Charter Treaty (accessed December 3, 2009); available from http://en.wikipedia.org/wiki/Energy_Charter_Treaty

Until 2007, 52 countries that signed the treaty and 46 countries mostly European countries had ratified them.⁵ Russia is one of the biggest exporters of energy supply and has the largest gas reserves in the world. In 1994 Russia had signed but had not ratified yet it, as well as Japan, Australia, and the United States. European Union had asked Russia to ratify the Energy Charter Treaty.⁶ Minister of Industry and Energy of Russia, Viktor Khristenko, said that Russia's ratification of Energy Charter Treaty depends on talks between Russia and the European Union. He also emphasized that was a pragmatic step of Russia and had nothing to do with politics.⁷

European dependence on Russian energy supplies and Russian attitudes toward energy charter treaty becomes another problem for Europe. German Chancellor, Angela Merkel, urging Russian President, Vladimir Putin, to immediately ratify the Energy Charter and liberalize the energy sector.⁸ Through the G-8 summit forum, the developed countries also urged Russia to be more open in its energy policy. Concern was also expressed by EU Energy Commissioner, Andri Pielbags, which EU should seek alternative energy sources other than Russia if they do not want to be too dependent on energy supplies,

⁵ The Energy Charter Treaty and Related Document, published by Energy Charter Secretariat, 2007 (accessed December 3, 2009); available from http://www.encharter.org/public_ratification

⁶ Dan Bilefsky, Putin rejects EU Demand that Russia ratify Energy Charter, (accessed December 3, 2009); available from <http://www.euherarld.com>

⁷ RIA Novostia, "Russia to wait on Ratifying Energy Charter-presidential aide" (accessed December 1, 2009); available from <http://www.rferl.org/newsline/2006/11/1-rus/rus-151209.asp>

⁸ Ibid

especially gas from Russia.⁹ Moreover, the Russian attitudes toward the Energy Charter not show positive response to immediately ratify. As the report released by Radio Free Europe / Radio Liberty, Anna Fotyga (Minister of Foreign Affairs of Poland) and Benita Ferrero-Waldner (External Relations Commissioner of the European Union) urged Russia to ratify the Charter of Energy immediately.¹⁰ Both countries suggest a more intensive approach from European countries in order to reach consensus on this issue. Most members have ratified the Treaty until 2009 except Australia, Belarus, Iceland, Norway, and Russia.

A problem arises when Russia faced a conflict with some European and CIS countries in the energy sector. First the Russian conflict with Ukraine. It is triggered because Ukraine is a transit country for Russian energy that channeled to Europe and Russia has accused Ukraine for stealing energy that sent by the Russians and the resulting losses approximately US\$ 1.25 millions. This made Russia angry, and raised the oil price of more than US\$ 230 per 1000 cubic meter for delivery to Ukraine. This must have violated the provisions of the Energy Charter Treaty. In the previous year, European countries have urged Russia several times to ratify the Energy Charter Treaty as soon as possible so that no problems occurred and a guaranteed supply of oil and gas well for countries in

⁹ Andrew Monaghan, Dr., *Russia-EU Relation : An Emerging Energy Security Dilemma*, published by The Russia Research Associate at the Conflict Studies Research Centre, Defence Academy of the UK, 2007 (accessed December 3, 2009); available from <http://www.carnegieendowment.org/files/EmergingDillemma1.pdf>

¹⁰ RIA Novosti, "*Russia to Wait on Ratifying Energy Charter - presidential aide*" (accessed December 7, 2009); available from <http://www.rferl.org/newsline/2006/11/1-rus/rus-141106.asp>

need. Finally raise a variety of assumptions and questions why Russian does not ratify until now, while energy-producing countries such as Turkmenistan and Kazakhstan had ratified it.

C. Research Question

Based on the problem background above, the question is: Why Russia does not ratify the Energy Charter Treaty?

D. Theoretical Framework

1. National Interest

The decision of a State to an international agreement is always based on national goals. The fundamental objective and ultimate determinant that guides the decision makers of a state in making foreign policy. The national interest of a state is typically a highly generalized conception of those elements that constitute the state's most vital needs. These include self-preservation, independence, territorial integrity, military security, and economic well-being. Because no single

“interest” dominates the policymaking functions of a government, the concept might more accurately be referred to, in the plural, as national interest.¹¹

Meanwhile, according to Morgenthau in achieving its national interests is also necessary to national power. National power according to Morgenthau include: geography, natural resources, industrial capacity, military preparedness, population, national character, national morale, the quality of diplomacy and the quality of governance.¹²

For the Russian government of national interests to be achieved through not ratify the Energy Charter Treaty are the economic prosperity that depends on oil and gas exports that could make Russia's economic rose from the crisis after the collapse of post-Soviet Union and Yeltsin’s period.

Besides, the Russian government assumes the presence of foreign forces in the CIS countries, with the expansion of NATO up to the State of Ukraine, potentially disruptive influence of the former Russian territory. Russia does not want the presence of other forces in CIS area that have the potential security destabilize his country and became a Pro-Western.

To realize the national interests, Russia used the energy superpower in dealing with other countries through its energy.

¹¹ Jack. C Plano and Roy Olton, *The Dictionary of International Relations*, Holt, Rinehart and Winston, INC, 1982

¹² H.J Morgenthau, *Politics Among Nation*, revised by Kenneth W. Thompson, 5th Edition ,1st Book, 1990

2. Energy Superpower

Energy superpower defined the nation that supplies large amounts of energy resources (oil, natural gas, coal, uranium, etc) to a significant number of other states, and which therefore has the potential to influence world markets to gain a political or economic advantage. On the one hand, means with or without threat to gain both of them. In the other word, the energy could be economic or political tool. The objectives could reach by significantly influencing the price on global markets (raise price), or by withholding supplies. The status of energy superpower is defined very differently due to the non -military nature of an energy superpower's power base. Even the energy is a vital national interest. For state who have the largest reserves and production in the areas of energy, it could control the other state who import the energy from them through a policy even terminate the energy supply if there is conflict or disagreement between them. Further to enhance the influence, the state will expand their institution/ company to various countries by buying shares or joining the other state's company that vital. The state of energy superpower make the other state will dependent on its energy supply. Beside the state will create strategy and tactic in short term or long term if necessary.¹³

¹³ Andrew Kuchin, *How Sustainable is Russia's Future as an Energy Superpower?*, available from <http://www.carnegieendowment.org/events/index.cfm?fa=eventDetail&id=860&&prog=zru>

Russia, one of the world's energy superpowers, is rich in natural energy resources. By using energy superpower Russia has potential to influence the other state who import the energy from Russia, to gain objectives. Russia is the world's leading net energy exporter and a major supplier to the European Union. Russia used its natural resources as a policy tool to be wielded against states like Ukraine. Even Russia use it's to influence the states on the former of Soviet Union (CIS). By ratification the Energy Charter Treaty, it could weaken the Russian position as energy superpower state. Besides having a large energy reserves and a strong energy industry then Russia has an important position in the European energy market.

No Energy Charter Treaty ratification by Russia is strongly influenced by current world conditions. Oil prices are soaring, but not followed by an increase in world oil production. Russia has huge energy reserves and the longest of supplier pipelines for oil and gas in European energy markets and the world, but the European Union wants more liberalistic relationship .

The stronger the energy superpower of Russia and the more interests to be achieved. Ratification is a legal concept derived from the authority of making laws to serve as the basis of a policy in response to interaction with the environment.¹⁴ Ratification contains some consequences, By ratifying the Energy

¹⁴ Richard D. Wurderman, *Ratification of a Voidable Ordinance* (accessed 10 December 2009) available from http://www.hawaii-county.com/corp_counsel/99opinion1.pdf

Charter Treaty, the Russians are obliged to implement the decrees, to respect, protect and fulfill the mandate of international agreements.

3. Rational Actor Theory

Rational Actor Theory is a way of actor on looking at deliberations between a number of potential courses of action, in which "rationality" of one form or another is used either to decide which course of action would be the best to take, or to predict which course of action actually will be taken . The basic idea of rational actor theory is that patterns of behavior in societies reflect the choices made by individuals as they try to maximize their benefits and minimize their costs.¹⁵

The formal way of laying out the Rational Actor Theory is using four key concepts. To determine the cause of nation's actions, one must analyze: (1) the Goals and Objectives of the Nation, (2) the Alternatives, (3) the Consequences, and (4) the Choice the nation made. These four concepts, one can analyze the nations leaders development of making a decision by using the Rational Actor Theory.¹⁶

¹⁵ Graham T. Allisson, "Essence of Decision: Explaining the Cuban Missile Crisis" (accessed 23 April 2010); available from <http://ahmadzakium.blogspot.com/2009/09/rational-actor-model.html>

¹⁶ Ibid

Putin as President of Russia conducted various way to improve the condition of his country especially in economics and politics. Putin try to realize his desire as national interest and considered rational. In one hand, Putin try to maximize his benefits and minimize his costs in foreign policy making. In other words, Putin make decision about how he should act by comparing the costs and benefits of different courses of action. Here there are the assumptions of Putin toward the Energy Charter Treaty:

A. By Ratifying The Energy Charter Treaty

The Benefits:

1. More European countries will import the energy resources from the Russia.
2. Many investors will invest in the energy sector in Russia.

The Costs:

1. The benefit from the energy sector will not much or little.
2. Several European countries will seek another energy supplier that cheaper than Russia.
3. The Russian energy pipeline will used by several countries that will import freely from another energy supplier such Kazakhstan, Turkmenistan, Saudi Arabia, etc

4. The monopoly in energy sector conducted by Russia will decline or vanish.
5. The CIS countries will be more inclined to Pro West

B. By not Ratifying the Energy Charter Treaty

The Benefits:

1. Russia get much benefit from energy supply that become the only biggest exporter for European
2. Russia could influence the price on global market
3. Russia could control the policy of other states through the energy
4. The monopoly of oil and gas pipeline will achieve national interest of Russia.
5. Russia could maintain the influence on CIS countries and avoid the sanction from European countries where Russia conducts the discriminatory treatment.

The Costs:

1. Some European countries will looking for another energy supplier (e.g. Norway)

Russia could choose 2 options namely, ratifying the energy charter treaty or not ratifying the energy charter treaty. If Russia choose to ratify the energy

charter treaty, several countries from Europe will import the energy supply from Russia, because the energy security for Europe will more guaranteed by the provision in Energy Charter Treaty. In other side many investor from several European countries will invest their shares in the energy field in Russia, because the investor is protected by the provisions of Energy Charter Treaty, which are the investor will get the protection and encouragement of foreign investment in energy field, and also there is mechanism of dispute settlement between investor and states.

If Russia chooses to not ratify the energy charter treaty , Russia will get much benefit from energy supply because Russia is the biggest energy supplier for European and has the longest oil and gas pipeline that pass European countries. Russia could influence the price on global market, because with their larges t supply to Europe and their shares to several countries in Europe, Russia has important position in decision making. Russia could control the policy of other states through energy. When the states import the energy supply from Russia, Russia provides policy to that states which have to follow the desire of Russia. Beside when the states make the policy that harm for Russia, Russia will conduct something extreme or terminate the energy supply. The monopoly of oil and gas pipeline in European countries it will achieve national interest of Russia. In other words almost of the benefit from monopoly will enter to treasury department of Russia, and also to improve the Russian economics. In politically, Russia could

maintain the influence on CIS countries with the ir energy supply. But also Russia could avoid the sanction from European Union where Russia has implemented the monopoly and discriminatory treatment.

After the consideration by comparing the benefits and the costs, therefore Russia has to choose which one the best for Russia. This matter is becoming an indication to explain why Russia has not ratified the Energy Charter Treaty.

E. Hypothesis

The refusal of Russia to ratify the Energy Charter Treaty because Russia want to maintain the status quo in which Russia get the economic and political benefit by conducting its energy superpower.

F. Method of Research

This research is using a technical collective data from some document study that done it by gathering the secondary data. The information from every literature relevance with the problem of the research that co nsidered by:

1. The technical collective data on this research are using qualitative data which is based on literature research and use a relevance literature, such as from book, magazine, journal, news, and internet.
2. The characteristic of the research purpose is giving an explanation to answer the question “Why” that formed as collective evidence from qualitative data.
3. The writer tries to elaborate with the real facts happening in the world today, thus implementing the theory related to the case and the hypothesis will be taken from the empirical data.

G. Purpose of Research

The purposes of author writes about Russian Background has not ratified the Energy Charter are:

- a. To find out what the background of Russia did not ratify the Energy Charter.
- b. To find out what points are not agreed upon by Russia in the Energy Charter, in addition to the reasons why the points are not agreed upon by Russia.
- c. To know Russian energy policy. Orientation and Russian energy policy objectives are to influence and impact on surrounding countries behavior.

d. To determine the importance of Russia in the continuity of energy supply in the European region.

H. Scope of Research

To further focus the research in this thesis the authors limit the scope of the study between 1994 until 2007. This is because in the year 1994 Energy Charter Treaty was introduced in Europe and signed by several countries, including Russia. And since 2000 a fundamental change in Russian policy in the energy sector until now.

I. System of Writing

Systematic of writing this thesis is as follows:

CHAPTER I: Introduction that contains about Reason for Selection of title, formulation of background of main problem and idea of framework and also proffering of main problem, hypothesis and theoretical framework which is related to problems background. This chapter also mentions writing purpose of this thesis, technique of collecting the data, scope of research and System of writing of this thesis

Chapter II: Overview of the Energy Charter and the reluctance of Russia to ratify. Contains the history of the formation of Energy Charter

Treaty, the purpose, scope, and the countries had ratified it, EU's general views, and the reluctance of Russia to ratify.

Chapter III: Economic Benefits obtained by Russia over the policy not ratify the Energy Charter Treaty. Contains about economic benefits obtained by the Russians on a variety of bilateral agreements in the energy sector with some European countries

CHAPTER IV: Political Benefit obtained by Russia over the policy not ratifies Energy Charter Treaty. Contains about political advantage obtained by the Russia in the maintaining the influence on CIS countries and EU's obstacle in giving sanction.

CHAPTER V: Conclusion that conclude from explanation in chapter I, II, III, and IV which already explain before