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Facsimile Message

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TO: MS. LISA WEIS. ECT SECRETARIAT. DG-XVII

Fax No: (02) 296-6261.

FROM: COLIN MILNER. FIRST SECRETARY

MESSAGE:

Dear Lisa,

AS DISCUSSED EARLIER TODAY, WE SHOULD BE GRATEFUL IF YOU WOULD BRING THE FOLLOWING LETTER CONCERNING ARTICLE 21 TO THE ATTENTION OF CHAIRMAN RUTTEN.

REGARDS

Colin

(COLIN MILNER)
FIRST SECRETARY

EUROPEAN ENERGY CHARTER CONFERENCE SECRETARIAT
DATE/N°: 23.8.94/3430
ATTN.: ECT
FOR INFO: LKE/VV/LW



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22 August 1994

Mr Craig Bamburger
 Chairman
 Legal Sub-Group
 c/- Energy Charter Secretariat
 Brussels

Dear Mr Bamberger,

I am writing to provide comments by Australia on your draft Legal Sub-Group (LSG) report concerning Article 21(2) of the Energy Charter Treaty which was conveyed to us earlier this month. I apologise for the delay in reply.

Australia would like to have it clearly recorded that it can accept Article 21 as currently drafted on the basis that it is merely declaratory of existing international law. We do not read it as overriding any other provision of the Treaty. In particular, our understanding is that Article 21 does not override the core obligations contained in Article 13 in relation to the standard of treatment to be provided to investments. This is in line with the view expressed by Norway that Articles 21(2) and (4) are not intended to undermine or 'gut' the Treaty.

Australia wishes to note that Norway's assertion that Articles 13(2) and 13(5) only apply to entities which have received authorisations etc. in accordance with Article 21(4) and its assertion that 21(4) exhaustively regulates 'access to energy resources' contradict the above assurances. We also consider that such an interpretation would be contrary to the clear intentions of all other negotiating parties. Any interpretation other than that presented in the preceding paragraph is definitely unacceptable to Australia.

In light of the above, we do not consider that the proposals for changing Article 21 which have been put forward are necessary.

I should also record the strong desire of Australia to be represented at any LSG or other meeting which might consider re-opening the text of Article 21.

Yours sincerely

(Colin Milner)
 First Secretary
 LSG Member