

International Energy Charter as a milestone for global energy co-operation in the 21st century

by A F M Maniruzzaman

In May 2015 some 75 states and institutions adopted (of which 65 signed) the International Energy Charter (IEC) in The Hague ministerial conference to herald a new age of global energy co-operation (see <http://www.energycharter.org/process/international-energy-charter-2015/>). The Charter is a political declaration by states and it modernises its predecessor the European Energy Charter (1991) – the foundation of the Energy Charter Treaty which established a legally binding energy governance framework. It has to be recognised that the adoption of the IEC is the first major political achievement in the field of energy since the Treaty itself was signed in 1994. The new Charter is an indication of the maturity and self-confidence of the process after 25 years of its existence.

It is noteworthy that there was an urgency to bring about this modernisation of the Charter for wider global engagement of states from all regions and to respond to the acute need for sustainable development of energy through co-operation between states for a safer planet.

The European Energy Charter was primarily considered to be a European initiative, despite its membership outreaching Europe. The IEC thus corrects that perception and intends its true global scope and wider acceptability. Its purpose is to ensure sovereign equality of states irrespective of their levels of economic development, and a fair balance of interests of energy producing, energy consuming and energy transit countries in the context of energy security for all.

If there are still sceptics despite the modernisation of the European Energy Charter as such, it is opportune to be part of it as an observer state, at least, and contribute to debates and influence policies as they consider best at the meetings of the Energy Charter Conference (the governing and decision making body of the Energy Charter process) and its subsidiary bodies. Rather than being outside of it, it is better to participate strategically in the process and influence it. This realisation will encourage more states to join the process. The door is still open.

The IEC has much to offer as a bible of sustainable energy investment and trade. At a time of some acute urgency, it is the clarion call for co-operation of states for efficient use of energy, discovering affordable and renewable energy; alleviation of energy poverty, environmental protection and sustainable development of fossil fuels. Such sustainability mantra applies to all aspects of energy investment (including exploration, development and exploitation), trade and transit. Thus the new Charter may prove in due course to be a harbinger of a new international energy legal order loaded with much needed normative standards and rules to deal with the challenges of the 21st century. Such a prospect will add a new dimension to international arbitration by extending to novel categories of subjects for energy and investment dispute resolution.

In a spirit of energy co-operation states can avoid – as a fallout – many existing and prospective disputes, whether related to cross-border energy or else between them, and can ensure peace and security for years to come. The Charter thus may prove to be a harbinger of goodwill of states.

The Energy Charter Treaty provides the legal framework for the promotion and protection of energy investment, trade, transit and dispute resolution. The International Energy Agency estimates that in order to meet the growing global demand for energy more than \$48 trillion in investment will be required over the period to 2035. The Treaty may give confidence to investors. However, it may need to reflect in due course the expectations of the wider global community for its global legitimacy. The process needs to start right now.

In order to develop a global architecture of energy governance, states should contribute to it nationally, regionally and globally. At the national level states need to respond to the Charter principles and reflect them in their national energy policies so that some harmony can be maintained among them in this respect. Various regions can prove to be building blocks for that global architecture. At the regional level, groups of states, for example, in Asia, the Middle East and North Africa (MENA), Latin America and Europe can endorse the Charter

principles. However, it may happen that due regard may need to be given to the regions' respective value judgments and some requirements of some type of countries in the region as a special consideration (eg "common but differentiated responsibilities of states") for the Energy Charter Treaty's wider acceptability as a multilateral legal framework. In such a way, if the regional blocks can be established on the Charter principles the super global energy governance architecture can then firmly rest on them.

The Energy Charter Secretariat is very much aware that it has an important but daunting task in its hand to convince the non-signatory Latin American, MENA and Asian countries about the value of the Charter principles and to persuade them to participate in the Charter process. It needs the political will of all states to take the IEC's mission forward for the greater

global good. Once this is in order, any differences in positions may be accommodated and balanced in a spirit of co-operation of the international community.

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